M.R. O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 339 Press ~~Mis.~~

Dated 27-7-~~18~~1861

Not to be folded or roughly handled

Proceedings of the Madras Government, Political Department, 27th July 1861.

Read the following papers :—

No. 60. From THOMAS SYDNEY SMYTH, Esq., Advocate General ; to the Chief Secretary to Government, Fort Saint George, dated 22nd July 1861.

In returning my best thanks to the Government of Madras for having succeeded in procuring for me, from Her Majesty's Secretary of State for India, part of the compensation which they recommended for me in their Order of the 19th January 1861, I trust that they will excuse me for soliciting their support in requesting the Secretary of State to reconsider his decision, both as to the *amount* of compensation which he has sanctioned for me, and its *proportion* to that sanctioned for the Government Solicitor.

2. Such reconsideration will, I trust, lead the Right Honorable Secretary to see that he has in fact,—probably during the pressure of Parliamentary business—overlooked some of the grounds which, though perhaps less pointedly noticed than others, must have been well known to this Government, and have entered largely into the decision embodied in their Order of the 19th January 1861.

3. The main grounds upon which this Government recommended Rupees 55,000 as "no more than a fair and equitable compensation" for my "extra labors" and "professional losses" consequent thereon, were two-fold—1stly, that these "labors," so far as they related to the 21 cases litigated before the Supreme Court, were altogether "extra" and "additional to the duties ordinarily devolving" on me, and were in fact "expressly created by a *special* Act of the Legislature;"—2ndly. That the settlement of the great mass of these claims, 381 out of 413, which I settled out of Court,* was effected by me not as Advocate General but acting as a "quasi Commissioner," which, this Government expressly observed "can hardly have been contemplated unless upon special remuneration."

* *To the* great *saving of* time *(an object much urged by the' Secretary of State) and to the* entire *saving of* all law costs *:—but, to the destruction of my private practice, and the loss of my health.*

4. As regards the first of these points, namely my claim to compensation in lieu of Fees, for extra labors *in* the Supreme Court, I did not consider it necessary—nor probably did Government—to lay stress upon a point perfectly well known to Government here, and to the whole legal profession, namely that this principle had already been recognized, and for a considerable time acted upon in the case of another Government Law Officer, I mean the Government Pleader in the Court of Sudr Udalut. Government is as well aware as I was, that the Government Pleader in addition to his salary, is allowed the ordinary Fees in all appeal cases preferred to the Sudr Court wherein the interests of Government are involved ; and moreover that the salary of his Office was increased, with reference to the additional duties thrown upon it with respect to Criminals' appeals.

5. This fact was perhaps not known to the Secretary of State. If his attention is called to it, I trust he will not consider it just to deny me the benefit of a precedent so well established, and so precisely in point.

6. In those 21 cases the fees actually received by the claimants' Counsel considerably exceeded the amount which the Secretary of State has struck off from the very moderate amount which this Government expressly stated to be, in their opinion, "no more than a fair and equitable compensation," for my "extra labor and professional losses."

7. The Government of Madras when stating that Rupees 55,000 was "*no more* than a fair and equitable compensation" for me, did in fact, I believe, consider it to be, (with reference to the success, and to the extent and severity of my extra labors, and the saving of one Million sterling thereby effected for Government) really *less* than "a fair and equitable compensation," and fixed that very moderate amount chiefly with reference to the then low state of the Indian Treasury, and to their belief that the moderation of their recommendation would insure the immediate assent of the Secretary of State.

8. For a *class* of cases whereof *one* lasted eight weeks, another *six* weeks, several others five and four days each, with consultations and refreshers in proportion, and where the briefs in the first two cases amounted to *many thousands* of Folios—for such a class of cases, an average

Fee of 35 Guineas each would certainly be considered in England a *very* moderate one for any Attorney General—if indeed he would accept it. Fees in India are generally supposed to be larger than in England.

9. At this very moderate rate the Fees for these 413 cases would have come to 14,455 Guineas, or £15,177-15-0, equal to Rupees 1,51,784. This Government recommended me only Rupees 55,000; Sir Charles Wood, has cut down that to nearly one half. * Had I resigned my office of Advocate General when Act 30 of 1858 was passed, and taken up the claimants cases, I should probably have made considerably more than £20,000 out of these Carnatic Claims—a sum which would enable me to retire at once.

* *It is* 1-18*th more than half.*

10. One reason why I did not, in January last, officially request this Government to reconsider its decision as to the *amount* of compensation, was on account of the notoriously low state of the Treasury, and because I did not then know the large amount which (*besides* the one Million sterling *saved* to them by my settlement of the Carnatic Claims for one-fourth of their amount) Government had *actually realized* by the Punjum Hissa and the sale of the Carnatic property, exclusive of the large amount still unsold in the hands of their Carnatic Receiver.

11. Permit me also to solicit the attention of Government to the fact, and their support in requesting its reconsideration, that the Secretary of State has not merely struck off nearly one-half of the *amount* of compensation recommended for me by this Government as "no more than fair and equitable," but has *entirely altered its proportion* with respect to that recommended for the Government Solicitor. To me he has given *barely one-half*, to him he has given nearly *three-fourths*,† of the amount recommended by this Government. The same proportion would have given me Rupees 11,250 more; but the principle involved is to me far more important than the amount.

† *All but Rupees* 250.

12. In my letter to Government of the 18th December 1860, I certainly included the Government Solicitor along with myself under the general name, of "the law Officers," without laying stress on the fact that it is often as difficult for a Barrister to get back practice when relinquished for nearly three years, as it is for a Solicitor to recover Clients,—and without drawing, or wishing to draw, any comparison between our respective labors, (for I knew that with the Government of Madras this was not necessary,) this Government was and is well aware, not only that on me alone devolved the resporsibility of deciding on and sanctioning the terms of settlement in all these numerous cases; but that, more especially, on me alone—in most cases too without even a Junior to assist me—necessarily and exclusively devolved the *severe and protracted*‡ labor of contesting, as Advocate General, before the Supreme Court, the 21 heavy and important cases *so strenuously contested*‡ there; one of which alone, Salar-ool-Moolkh's, lasted eight weeks! The *principle* involved in the alteration of the proportion recommended by this Government, is that of which I would especially solicit Government to request the reconsideration by the Secretary of State.

‡ *See paras.* 7 *and* 9 *of the Order of the* 19*th January* 1861.

13. There is also another point. Sir Charles Wood in his Despatch of the 17th June 1861, mentions the time within which I completed the settlement of the late Nabob's debts as "two years and a half." This is not quite correct. At the time when the Government of Madras passed their Order, dated 19th January 1861 that was the time. Government however is well aware from my Report of the 1st May 1861, concerning the 43 Tunkhy Cutcherry Claims§ (and the full calculations which I prepared and deposited *privately*|| with the Chief Secretary) that up to that date my time was fully occupied in investigating these claims. It will be remembered that it was considered that these claims (though legally barred, and therefore beyond the strict sphere of my official duty to attend to) might possibly be considered ultimately to merit consideration from Government on equitable grounds; and that, therefore, it became desirable to furnish Government with full information as to the merits of each, and also as to the total possible amount of the expence that would be incurred, if Government should ultimately resolve to entertain these claims. The period therefore during which I was fully occupied with these Nabob's debts was nearly three months and a half in excess of that named by the Secretary of State.

§ *The principal of these amounted to Rupees* 13,12,036.

|| *It was considered advisable not to print my Report—and to keep the calculations in question more secret still.*

14. Trusting that these facts may appear to Government not unfit to be brought by them to the notice of the Secretary of State, with a view to requesting him to re-consider his decision.

No. 61. MINUTE BY THE HONORABLE W. A. MOREHEAD, dated 25th July 1861.

I would forward Mr. Smyth's letter to the Secretary of State with our urgent recommendation that its request be acceded to.

The Secretary of State admits that remuneration is due to Mr. Smyth and Mr. Boyson, it therefore seems to me but right that we should point out to him the error he has committed in so reducing the payments to be made to these gentlemen, as to defeat in a great measure the object we had in view in bringing to his notice their meritorious conduct. I would call attention to paras. 16 and 17 of our letter and state that after again carefully considering the subject, we felt that we were only acting with justice towards our Law Officers in soliciting for them the full payment of the sums which we had then advised should be made to them.

No. 62. MINUTE BY THE HONORABLE E. MALTBY, dated 25th July 1861.

I concur in these remarks.

No. 63. MINUTE BY HIS EXCELLENCY THE GOVERNOR, dated 25th July 1861.

The circumstances connected with this appeal occurred previous to my arrival in the Presidency, but I think that the recommendation of the Government that Mr. S. Smyth should receive 55,000 Rupees as an acknowledgment of his services was fully justified.

No. 64. ORDER THEREON, 27th July 1861, No. 339.

Ordered that copy of the foregoing papers be forwarded for the favorable consideration of the Right Honorable the Secretary of State for India.

(Signed) J. D. SIM,
Secretary to Government.

Exd. T. O'Connor.

Mr Simpkin has inform-
-ed that he has shown
this letter to the journa-
-list, who, as the matter oc-
-curred upon his ad-
-journed office, wishes
it to be first circulated
to the other members of
the [illegible] for their observations
and then forwarded

Should Jones and Wife
refuse to leave Legislative
with our report recommending
Legislation that the
request be granted

2- The Secretary of State
must then inform
Jones that his
Jones & Wife must leave
the Country at once
or Jones will be
liable to be put

communicated in to be
advising the payments
to be made to these
Gentlemen — as to the
~~first~~ in a great measure the effect we
had in view in bring
ing to his notice these
meritorious conduct —

I would call attention
~~[illegible]~~ to paras
16 & 17 of our letter & state
that after a full
carefully

considering the subject
we felt that we were
only acting with justice
the Guardians
[illegible] Officers in [illegible]
for them the full
payment of the sums
which we had then
advised should be
made to them.

W. Moorhead

25 [illegible]

Political 1860 Dept.

List of 9 docs.

Pol. Lr. to Govt. 27th July No. 17 of 1861.

No. 339

Minutes by the H. E. the Governor & the Hble Messrs Morehead & Maltby.

Rd 25th June }
Rd July } 1861

No. 346

Regarding the extra. remuneration claimed by the Advocate General in connection with his settlement of Carnatic claims—

61@63

B

Pol. Department.

Proceedings of the Madras Government

Read the following papers:

From the Advocate Genl— Rec'd 22d July 1861.
Minute by the Hble Mr.
Morehead ——— 25 do.
do — Hon E. Maltby ——— 25 do.
do — H.E. the Governor ——— 25 do.

Order thereon. 27th July 1861 No. 339.

Ordered that copy of the foregoing Papers be forwarded for the favorable consideration of the Rt Honble the Secretary of State for India.

F. D. Love

Copy of the Order only to the Advt General — 3 Augt 29th.

List of Papers sent

Polit. Ltr to Engd
27th July 2 & 17 of 1861
Replied 4th Nov: No 18
of 1861

Political. 1861. Sept.

No. 339.

Govt. of the Madras Govt.

dated 27 July.

Transmitting to the Secretary of State papers relating to the increased rate of remuneration asked by the Advocate General.

copy sent to the Advocate General 10/11/61

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