Revenue Department

G.O. No 1314 dt. 28-9-1858

Book No 51-52

Diary 28-5-1858

No. 51. Read the following Extract from the Minutes of Consultation in the Judicial Department, under date the 15th September 1858, No. 1261.

Read the following letter from the Government Pleader, Sudder Udalut.

Para. 1. *With reference to Extract Minutes Consultation, 19th March* 1858, *No.* 356, *para.* 1, *enclosing copies of correspondence passed between Government Pleader and the Acting Collector of Malabar, on the subject of the fee payable to him as Government Pleader, and soliciting instructions regarding the time at which the fee should be paid to the Government Pleader.* } (Here enter 2d September 1858, No. 103.)

Order.—In Extract Minutes Consultation, Revenue Department, No. 356, dated 19th March last, Government authorized *Mr. Dale* to institute an Appeal in the Sudder Court against a Decree of the Civil Judge of *Calicut*. This was done and *Mr. Dale* on the 2d June last, applied to the Acting Collector of the District for Rupees 390 the fee payable to him, as he calculated it, under Clause fifth, Section XXXVII., Regulation XIV. of 1816. The Suit in the Civil Court was an original one; the Appeal consequently was a "Regular" Appeal, and *Mr. Dale*, being of opinion that the "merits" of the question would be involved in the decision thereof, estimated the amount payable to him as Pleader accordingly; under the rules contained in the Regulation* of the "Madras Code," adverted to in Section VII. of Act No. I of 1846; and further requested that it should be paid to him at once.

* *Regulation XIV.*, 1856, *Section XXV.*

2. The Acting Collector considers that the fee is payable on the *costs* awarded against the Defendant in the O. S., and not on the sum sued for—and objects, secondly, to disburse the amount of fee until the result of the Appeal is known, observing that the "Decree (of the Sudder Court) is essential as a voucher to support any expense of this nature."

3. *Mr. Dale* now asks Government to decide on the second objection taken. In regard to the first, that involves a technical point, the duty of determining which devolves on the officers of the Sudder Court. He refers to C. O. of the Sudder Court, No. 129 A, and shews cause generally against the practice of disbursing fees to Pleaders only *after* the result of the Suit in which they are engaged.

4. The Government observe that that C. O. prohibited the practice among *Vakeels* of entering into *conditional* agreements with their Clients, which had sprung up since the enactment of Act No. I of 1846; and cannot therefore apply to the present case, where the fee is calculated by the terms of a specific Regulation, and where both Client and Pleader are responsible to Government. They agree however with *Mr. Dale*, that it is important to regard the "great leading principle, that a Barrister should receive his fee before he pleads." The Acting Collector will therefore pay to *Mr. Dale* the fee that may be ultimately pronounced the correct one, without waiting the result of the Appeal. As to what is said about the necessity of a 'voucher,' it is observed, that the Government are kept informed *direct* of the official acts of their Pleader.

(True Extract.)

(Signed) T. PYCROFT, *Chief Secretary.*

No. 52. ORDER THEREON, No. 1314; dated 28th September 1858.

Ordered that the above Extract be communicated to the Board of Revenue for their information and for circulation among the Collectors.

(Signed) T. PYCROFT,
Chief Secretary.

No. 1261.

Extract from the Minutes of Consultation under date the 15th September 1858.

Read the following letter from the Government Pleader, Sudder Udalut.

Para. 1. With reference to Extract Minutes Consultation, 19th March 1858, No. 356, para. 1. Enclosing copies of correspondence passed between Government Pleader and the Acting Collector of Malabar, on the subject of the fee payable to him as Government Pleader.
3. Soliciting instructions regarding the time at which the fee should be paid to the Government Pleader.

(Here enter 2nd September 1858, No. 103.)

Order.—In Extract Minutes Consultation, Revenue Department, No. 356, dated 19th March last, Government authorized *Mr. Dale* to institute an Appeal in the Sudder Court against a Decree of the Civil Judge of *Calicut*. This was done and *Mr. Dale* on the 2nd June last, applied to the Acting Collector of the District for Rs. 390 the fee payable to him, as he calculated it, under Clause fifth, Section XXXVII, Regulation XIV of 1816. The Suit in the Civil Court was an original one; the Appeal consequently was a "Regular" Appeal, and *Mr. Dale*, being of opinion that the "merits" of the question would be involved in the decision thereof, estimated the amount payable to him as Pleader accordingly, under the Rules contained in the Regulation* of the "Madras Code," adverted to in Section VII of Act No. I of 1846; and further requested that it should be paid to him at once.

* Regulation XIV, 1856, Section XXV.

2. The Acting Collector considers that the fee is payable on the *costs* awarded against the Defendant in the O. S., and not on the sum sued for—and objects, secondly, to disburse the amount of fee until the result of the Appeal is known, observing that the "Decree (of the Sudder Court) is essential as a voucher to support any expenses of this nature."

3. *Mr. Dale* now asks Government to decide on the second objection taken. In regard to the first, that involves a technical point, the duty of determining which devolves on the Officers of the Sudder Court. He refers to C. O. of the Sudder Court, No. 129 A and shews cause generally against the practice of disbursing fees to Pleaders only *after* the result of the Suit in which they are engaged.

4. The Government observe that that C. O. prohibited the practice among *Vakeels* of entering into *conditional* agreements with their Clients, which had sprung up since the enactment of Act No. I of 1846; and cannot therefore apply to the present case, where the fee is calculated by the terms of a specific Regulation, and where both Client and Pleader are responsible to Government. They agree however with *Mr. Dale*, that it is important to regard the "great leading principle, that a Barrister should receive his fee before he pleads." The Acting Collector will therefore pay to *Mr. Dale* the fee that may be ultimately pronounced the correct one, without waiting the result of the Appeal. As to what is said about the necessity of a 'voucher,' it is observed, that the Government are kept informed *direct* of the official acts of their Pleader.

(True Extract.)

Chief Secretary.

To the Government Pleader.
,, President and Members of the Board of Revenue, (through Rev. Dept.) for communication to all Collectors.

Exd. F. Cartledge.

Revenue 1858 Dept.
Cons 28th September.

No 1311

Extract from the Minutes of Cons. in the Judicial Department.

Dated 15th September 1858
Recd 21st

Directing the Att. Collector of Malabar to pay to the Govt Pleader the fee payable to him in the case of an appeal suit referred to without awaiting the result of the appeal.

William Arden

No 1314. 28th Septr 1858.

No 1314.

Ordered that the above Extract be communicated to the Board of Revenue for their information and for circulation among the Collectors.

Fort St. Geo.
28 September 1858.

181 Copies to the Bd of Revl. Dated 29th