

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1395 — Press
Mis

270-271

Dated 28.8.1862 #

W/S

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,

28th August 1862.

No. 270. Read the following letter from CLEMENT DALE, Esq., Government Pleader; to the Honorable THOMAS PYCROFT, Chief Secretary to Government, Fort Saint George, dated 20th August 1862, No. 1254.

Paragraph 1. I do myself the honor of reporting, for the information of the Honorable the Governor in Council, that yesterday afternoon, Mr. Alexander Ritchie (the Solicitor) mentioned in my presence, that he was about to institute in the High Court, exercising its ordinary original Civil jurisdiction, a suit against the Government, and that he proposed asking the Court to be allowed to serve the Summons on myself.

2. His Excellency is aware, that the duties of the Government Pleader in the late Court of Sudder Adawlut were, to prosecute and defend all appeal suits in that Court in which Government was concerned; as also to advise with the authorities in the Provinces, and with the Board of Revenue and Government, in cases of difficulty in regard to the institution, defence and conduct of public suits instituted before the subordinate tribunals; and occasionally, in suits of more than ordinary importance, to revise and settle the pleadings.

3. The duties in respect of public suits instituted in the late Supreme Court, were entrusted to the Advocate General and the Government Solicitor.

4. The suit which is now threatened would, if the Courts had not been amalgamated, have been instituted in the Supreme Court; the process would have been served on the Government Solicitor, and its defence would have been conducted by Mr. Advocate General under instructions from the Government Solicitor.

5. It would not have formed part of my duty to have assisted in the defence.

6. His Excellency in Council is aware, that under the Charter establishing the High Court, the Proceedings in Civil Suits brought in the High Court, are to be regulated by the Code of Civil Procedure, (Act No. 8 of 1859) by Section 67 of which it is enacted, that if a suit against Government be instituted "the Summons shall be served on the Government Pleader."

7. His Excellency in Council is also aware that this Code was prepared with reference to suits instituted in the Mofussil Courts.

8. To protect the interests of Government under the alteration of the character of the present High Court, and of the law for the procedure therein, some arrangement may be required.

9. Doubtless the matter has been under consideration at Calcutta, and possibly also at Bombay, and some provision may have been made to meet the exigency of the case.

10. Indeed I am of opinion that under Act No. 20 of 1862, Section 9, the High Court or a Judge thereof, may direct that the service of a Summons to be issued against Government shall be through the Government Solicitor, and may authorize that all acts necessary for the defence, other than pleading the case, may be conducted by the Government Solicitor.

11. In Appeal Suits, the Appellate Court sends to the lower Court notice of the Appeal, which is to be served on the Respondent (Section 345) and in Government cases the notice is not served on me, an order is passed by Government directing the prosecution or defence of an appeal, and authorizing me to appear and plead the case on behalf of Government, such Order is filed in Court; and under it I appear and plead; and it is on this Order being passed I first take motion.

12. So far therefore as I can at present judge, no difficulty is likely to arise, as regards the appeal cases in which the Government are now, or hereafter may be engaged; and that it is only in respect of cases which may be instituted against Government in the High Court exercising its original Civil jurisdiction that at present requires consideration. This is a subject

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28th August 1862.*

that comes more properly within the sphere of duties falling on Mr. Advocate General. I however would suggest for the consideration of Government and that Gentleman, whether all objection and difficulty might not be removed if by Warrant (similar to that which under the 26th Section of the old Charter used to be filed by the Solicitor to the Honorable Company) His Excellency in Council were to name and appoint Mr. Miller to be the Attorney and Pleader for the Government and for them, and on their behalf to appear and act in the High Court exercising its original jurisdiction. A notification to that effect might also be inserted in the Gazette if considered desirable, but if that course were pursued, I would suggest whether it might not be desirable to add, that as regards all cases of appeal from decisions of the Courts subordinate to the High Court, I should continue until further notice to appear and plead on behalf of Government; and if thought desirable to prevent confusion, the name of my office might be altered to that of "Legal Remembrancer" or "Legal Remembrancer and Government Pleader."

13. If this course were pursued, no duties dissimilar to, or in excess of, those heretofore performed by the Honorable Company's Solicitor would devolve on the Government Solicitor.

14. The rules for the appointment, &c., of Government Pleaders are contained in Regulation 14 of 1816, Section 37. The 18th Section of Act No. 8 of 1859, makes provision regarding the appointment of a Pleader,

No. 271.

ORDER THEREON, 28th August 1862, No. 1,395.

Referred to the Advocate General and the Government Solicitor for their remarks.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

2c
I have the honor to acknowledge the receipt of your letter of the 28th inst. in relation to the above matter. I have the honor to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
Yours obedient servant,
T. Pycroft
Chief Secretary

Yes let him
be done - over the side
like ask more well
pay!

Judicial.

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Proceedings of the Madras Govt.

Read letter from

the Govt. Pleader - Enter 20th Aug. '62

N^o. 125¹/₂

Order - 28th Aug. 1862 No. 1395

Referred to the Ad-

vocate Genl. & ^{the} Govt.

Solicitor for their

remarks.

[Signature]

The Advocate Genl. }
" Govt. Solicitor. }
" Govt. Pleader. }

Despatch 28th

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No. 1862

PROCEEDINGS OF GOVERNMENT.

Dated 28th Jan 1862.
1862-1863.

Referring to the Committee
General and the Lord
William a letter from the
Lord Rader relative
to the institution of a suit
against her in the
High Court.