M.R.O. 1—39,000—16-10-20.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 157 Press ~~Mis.~~

5-6

Dated 2. 2. 1863 ~~19~~ .

7/8

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 2nd February 1863.

No. 5. Read the following letter from C. F. CHAMIER, Esq., Registrar of the High Court of Judicature at Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 18th December 1862, No. 49.

1. With reference to the Order of Government, dated the 6th instant, I am directed to forward a statement showing the probable annual expenditure in each Zillah, which the system of granting fees to Pleaders of the Courts of Session, specially retained for conducting Criminal prosecutions, would entail.

2. From this it will be seen that less expense will be involved by the arrangement which the Court propose, than if the position of the Government Pleader were raised, and a sufficient salary assigned to the office to secure the services of a duly qualified person, which, in the Court's opinion, would be the only alternative with reference to the requirements of Section 360 of the Code of Criminal Procedure.

3. With regard to the authorization of fees in cases where Rupees 10 may appear an insufficient remuneration, or in important cases where it may be desirable to retain the services of an Advocate of the High Court instructed by an Attorney at law, the Chief Justice and Judges are of opinion, upon further consideration, that the same arguments which have induced the legislature to place the power of appointing a Pleader to conduct Crown prosecutions, in the hands of the Magistrate, and not of the Session Judge, must prevail in relation to the High Court before whom the same cases may come judicially in appeal; and that the amount of the fee should in all such cases be settled by the Magistrate, under the direct sanction of the Government, with reference to the provisions of Section 231 of the Code of Criminal Procedure.

No. 6. ORDER THEREON, 2nd February 1863, No. 157.

Previous to the enactment of the Code of Criminal Procedure, the services of the Government Pleaders were seldom required except in Civil cases. Their duties were therefore light and simple, and their salary of Rupees 21 per mensem, although not large, was deemed a sufficient remuneration.

2. The new Code requires that every Criminal case in the Session Courts should be conducted by a public prosecutor. The question then arises whether this duty should devolve on the Government Pleaders *ex-officio*, or whether the Magistrates should employ a Prosecutor at their discretion on each particular occasion. In the former case it is obvious that the Pleaders' salary should be considerably increased: in the latter the services of the person selected should be remunerated by a fee.

3. The High Court prefer the latter course, as they doubt whether the Government Pleaders, as a class, could be confidently entrusted with the duty of conducting prosecutions in all cases. The Governor in Council observes that under the system proposed it will still be open to the Magistrate to select the Government Pleader whenever he sees fit. He therefore sanctions its immediate adoption.

4. From paragraph 2 of the High Court's Proceedings, dated 21st November last, it would appear that, in all cases committed by a Subordinate Magistrate of the second class, an Extract from the Register of preliminary inquiries is forwarded to the Magistrate of the District, as well as to the Division Magistrate, under whose more immediate control the Subordinate Magistrate may be placed. His Excellency in Council agrees with the High Court that in such cases, for the present at any rate, the order to prosecute should issue from the Magistrate of the District.

5. It remains to settle the amount of remuneration to be paid to the Prosecutor for his services. The rates proposed by the High Court appear suitable. The Magistrates are accordingly empowered to disburse such fees in each case as may appear proper, provided that the maximum of Rupees 10 be not exceeded without the special sanction of Government. Whenever the Magistrate may consider a higher fee necessary, as in the case of his deeming it requisite to retain an English Barrister, he must apply to Government for sanction.

Registrar.

Proceedings of the Madras Government, Judicial Department,
2nd February 1863.

6. The annual expenditure throughout the Presidency under the system now approved is estimated at Rupees 19,278. The Estimate is based on the number of cases tried in the first eleven months of 1862. An average fee of Rupees 8 has been allowed for each case, and a further sum of Rupees 50 has been added for each Zillah, or Rupees 1,150 in all, to enable Government to raise the fee under special circumstances. His Excellency in Council accordingly directs the Accountant General to add 20,000 Rupees on this account to the Law and Justice Budget Estimate for 1863-64.

7. Three months of the current year still remain, and it is probable that an expenditure of about 5,000 Rupees will be incurred before the next Budget grant becomes available. The Accountant General is requested to state how this may be met. If necessary, he will provide for it in the Supplemental Budget to be submitted to the Government of India.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMoötry.

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Statement of cases tried in the Courts of Session during the year 1862 and the prosecuting fees which would have been payable thereon.

Zillah.	Cases tried from 1st of January to end November	Probable No. of cases in December	Total Cases.	To Readers of Courts of Session. Fees by Engt. Fees under Statute, at sanction of average of Govt. at an average of Rs 8 per case.	Total Fees. Rs 50 per Zillah.
Bellary	239	22	261	2088	50 2,138
Calicut	149	14	163	1304	50 1,354
Chicacole	35	3	38	304	50 354
Chittoor	102	9	111	888	50 938
Chinglepute	70	6	76	608	50 658
Coimbatore	172	16	188	1504	50 1,554
Cuddalore	109	10	119	952	50 1002
Cuddapah	110	10	120	960	50 1,010
Guntoor	33	3	36	288	50 338
Madura	86	8	94	752	50 802
Manjeri	71	6	77	616	50 666
Masulipatam	49	4	53	424	50 474
Nellore	75	7	82	656	50 706
Nundial	78	7	85	680	50 730
Negapatam	59	5	64	512	50 562
Rajahmundry	103	9	112	896	50 946
Salem	185	17	202	1,616	50 1,666
Tinnevelly	46	4	50	400	50 450
Tellicherry	79	7	86	688	50 738
Tanjore	62	6	68	544	50 594
Ganjam	69	6	75	600	50 650
Vizagapatam	44	4	48	384	50 434
	53	5	58	464	50 514
Total	2,078	188	2266	18,128	1,150 19,278

P. S. Chamier.
Registrar.

Exd. T. McMoötry.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Registrar of the High Court
(Here enter 18th Decr 1862
No. 119

Order thereon 2nd February 1863 No 159.

Previous to the Enactment of the Code of Criminal Procedure the services of the Govt Pleaders were seldom required except in Civil cases. Their duties were therefore light & simple; and their salary of Rs 21 per mensem, although not large, was deemed a sufficient remuneration.

2 The new Code requires that every Criminal case in the Sessions Courts should

Read 2nd February 1863 Order No 159

Letter from the Registrar of the High Court dated 18th December 1862 No 119.

be conducted by a public prosecutor. The question then arises whether this duty should devolve on the Govt Pleaders, Ex Officio, or whether the Magistrates should be authorized to nominate employ a Prosecutor at their discretion for each particular occasion. In the former case it is obvious that the Pleaders' salary sd be considerably increased; in the latter the services of the person selected should be remunerated by a fee.

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with the duty of conducting prosecutions in all cases. The Govt in Council observe that under the system proposed it will still be open to the Magistrate to select the Govt Pleader whenever he sees fit. He therefore sanctions its immediate adoption.

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Magistrate may be placed. H.E. in C. agrees with the High Court that in such cases, for the present at any rate, the order to prosecute should issue from the Magistrate of the District.

5. It is necessary to settle the amount of remuneration to be paid to the Prosecutor for his services. The rates proposed by the High Ct appear suitable. The Magistrates are accordingly empowered to disburse Rs 10 fees in each case as may appear proper, provided that the maximum of Rs 10 be not exceeded without the special sanction of Govt. Should the Magistrate during the course of his hearing a case find that in addition to the charge originally framed against the accused, he must apply to Govt for sanction

6. The annual expenditure throughout the Presidency under the system now approved is estimated at Rs 19,278. The estimate is based on the number of cases tried in the first eleven months of 1862. An average fee of Rs 8 has been allowed for each case, and a further sum of Rs 50 has been added for each Zillah, or Rs 1150 in all, to enable Govt to raise the fee under special circumstances. H.E. in C. accordingly directs the Accountant Genl to provide Rs 20,000 in this account to the Law & Justice Budget Estimate for 1863-64.

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To the Dy Auditor Accountt Genl
" Magistrate —
" Civil Paymaster
" Hon'ble the Judges of the High Court

despd 3/2/63

Judicial 1863. Department.

No. 157

PROCEEDINGS OF GOVERNMENT,

Dated 2d July 1863

Ref. 636 - 2504
" 906
" 632/64 2126 "
" 2402 " 1873/66
" 258 " 2328 "

Sanctioning the increased rates of Salary to Public Prosecutors in Criminal Cases.

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