

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 905

Press
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94

Dated 10-6-1863

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18/19

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
10th June 1863.*

No. 94. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 10th June 1863, No. 905.

His Excellency the Governor in Council has had under his consideration the necessity of providing some adequate means of training, for their future duties, such of the Covenanted Civil Servants of this Presidency as are destined for employment in the Judicial branch of the Service. For some years past the judicial offices which in this Presidency have been filled from the Covenanted Civil Service, have been the three Judgeships of the late Sudder Court—now the Appellate branch of the High Court—20 Zillah Judgeships, and 10 Subordinate Civil and Criminal Judgeships with powers similar to those exercised by the Principal Sudder Ameer. There have also been occasionally two or three Assistant Judges appointed to aid the Judges of some of the heavier Zillah Courts in reducing the arrears of those Courts. Of late, partly owing to the numerical strength of the Civil Service having been much below its requirements, and partly for economical reasons, the work formerly done by Assistant Judges and by some of the Subordinate Civil and Criminal Judges has been transferred to Principal Sudder Ameer; and last year the remaining Subordinate Judgeships—then only six in number—were, with one exception, converted into Courts of Small Causes established under the provisions of Act XLII of 1860. Hitherto, the majority of the Zillah Judges have previously held the office of Subordinate Judge or Assistant Judge, but not always; and there are several instances of a Sub Collector being promoted direct to a Civil and Sessions Court without any special judicial training. The Subordinate Judges, Assistant Judges, and, latterly, the Judges of the Courts of Small Causes have been usually taken from the grade of Head Assistant Collector and Magistrate; the appointment in their case, as in the case of Revenue Officers appointed direct to Zillah Judgeships, not having been preceded by any special training. The want of such a training has long been recognized; and something has of late been done towards supplying it, by the prominent place which is given to legal studies in the second examination which the selected candidates for the Civil Service are required to pass before leaving England. They are then required to prove their acquaintance with the general principles of Jurisprudence as laid down in the Institutes of Justinian and Bentham's Treatises on Legislation, Civil and Penal. They have also to pass in Blackstone's Commentaries, Vol. I, MacNaghten's Hindu and Mahomedan Law, the Indian Penal Code, and the Codes of Civil and Criminal Procedure; and to furnish a certain number of reports of cases heard by them in a Court of Justice. Moreover, all Assistants, before they can be promoted, are now required to pass an examination which, besides testing very thoroughly their ability to transact business in the Vernacular languages, guarantees a fair knowledge of the Regulations and Acts applicable to the duties of a Magistrate and of a Collector of Revenue, as well as some acquaintance with the Law of Evidence, which has recently been included in the scheme. But these measures, though important steps in the right direction, are not enough. A more complete training is needed for the responsible office of Civil and Session Judge, and scarcely less so for that of Judge of a Court of Small Causes, which at present is the lowest grade of judicial office filled from the Covenanted Civil Service of this Presidency. In regard to the Civil and Session Courts, it is not too much to say that the efficiency of the judicial system of the country depends more on the competency of the Judges of these Courts than of any others. On the Civil side of the Court, their decisions in the great majority of cases are practically final; while, on the Criminal side, the administration of Criminal Justice throughout a District is paralyzed by the inefficiency of the Session Judge. It cannot be said that the antecedent employment of a Civilian in the office of Assistant Collector and Magistrate, is sufficient to qualify him for the office of Judge, even with the aid of his previous legal studies. As a practical training, it is not only confined to one branch of a Judge's duties, but it is open to the objection that there is no supervision or check on the inefficiency of the novice in judicial investigation, beyond that which is afforded by the Appellate tribunal. Loose habits of investigation are thus formed, which no amount of subsequent experience will effectually remove.

2. It is certainly very difficult to devise any satisfactory mode of practical training for judicial functions, where practice as an advocate is out of the question, except to a limited extent,

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and that only on the Criminal side of the Court. Various schemes have been proposed of late years for meeting the difficulty. So far back as 1842,* the Indian Law Commissioners laid before the Government of India proposals for separating the Judicial from the Revenue branch of the service, and giving to each Candidate for the former a sort of Judicial apprenticeship by attaching him to a Court as Official Assessor, in which capacity he should sit with the Judge on the trial of cases, Civil and Criminal; attending closely throughout the conduct of the cause, and giving his opinion "upon every matter coming up for decision;" which opinion, however, "should have no legal effect, and, indeed, no other effect than such moral influence as the training and character of the Officer delivering it, and the arguments by which he might support it, should produce upon the mind of the Judge." The Commissioners further proposed that the Assessors should be occasionally employed in the ministerial duties now left principally to the Ministerial Officers of the Court, and so obtain an insight into the practical working of the Court in all its details. It was also suggested that they should be occasionally deputed for the purpose of conducting local investigations connected with cases depending before the Judge. It was pointed out that upon the plan proposed, the probationer, when employed as an Assessor in the trial of cases, Civil and Criminal, would actually go through all the duties of the judicial office, not excepting that of deciding; but that the decisions having no legal weight, would, if erroneous, have no evil influence on the suitors or parties before the Court; and that, while thus engaged under the guidance of an experienced Officer in the operation of weighing evidence, of applying the principles of the law to the facts which the evidence establishes, and eliciting from the evidence the facts which form a proper basis for the application of the principles of law, he would "derive all the benefits of real experience without inflicting upon the suitors any of those evils to which judicial inexperience gives rise."

3. A suggestion very similar to the above was laid before the Bombay Government by Mr. Howard, the present Director of Public Instruction in that Presidency, in 1859,* adopted from a system which is said to prevail in Prussia, where every passed law student is sworn in as an Auscultator (hearer or apprentice to the law) at one of the inferior tribunals. "Here, under the instruction of some member of the College of Judges, to whom he is assigned as a pupil, he familiarizes himself with the whole course of Judicial business, from the office of simple Clerk or Writer in the several bureaus, up to that of the Judge. He makes digests of the cases before the Court, with detailed augmentations, and his own conclusions thereupon, for the opinion of the Judges. He makes reports and protocols, and takes down evidence, draws up and registers proceedings for the use of the Court. He acts as Clerk to the Magistrates in Criminal proceedings, and learns to draw judgments and decrees both in Civil and Criminal matters."

4. In the same year, 1859, the Madras Judicial Commissioners, in their report† "on the evils in the present system of Judicature and on the means whereby they may be most effectually remedied," recommended that the office of Registrar to the Zillah Courts should be constituted "with the view of affording to the Judicial branch of the Covenanted Civil Service that training which they cannot obtain by practice at the Bar, and of relieving the Courts from the mass of merely ministerial work which the Judges are now called upon to perform." The duties of this Officer the Commissioners observed, should be purely ministerial, and should comprise the supervision of pleadings, the execution of decrees, the issue of processes, &c., &c. "He should perform all duties of a strictly ministerial character which are now thrown on the Judge. He should look for promotion to the bench of the Zillah Court, and service in the office of Registrar should for the future be an indispensable step to promotion to the Judicial bench."

5. The plan which on full consideration the Governor in Council would wish to adopt experimentally in this Presidency, embraces the leading features of the several schemes above described,

* Letter from the Indian Law Commissioners to the Governor General of India, 2nd July 1842.

* Letters from Mr. E. J. Howard, Director of Public Instruction, to the Secretary to Government, Bombay, dated the 6th September and 17th October 1859, printed in the sixth report of Her Majesty's Civil Service Commissioners. Appendix p. p. 397 to 404.

† Page 7, paragraph 53.

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10th June 1863.*

with the addition of ^{ing} in the course of practical training, practice at the Bar of the Court in the capacity of Public ^{Prosecutor}. The measures which he would recommend are as follows:—

1st.—That every Covenanted Civil Servant who may desire employment in the Judicial branch shall, while prosecuting his studies in the Native languages on his arrival in the country, attend a course or courses of lectures in law so arranged as to be supplemental to the course prescribed for the 2nd examination in England, and shall pass an examination therein.

2nd.—That the Junior Civil Servant shall thereupon be employed not less than three years in the Revenue branch of the service, wherein, as the Madras Commissioners observe, he may obtain useful knowledge of systems of tenure, and of the manners, habits, and feelings of the people, together with practical experience of the duties of a Magistrate.

3rd.—That, after passing three years in the Revenue Department, any Junior Civil Servant who may be selected for the Judicial branch, shall, on a vacancy occurring, be appointed Registrar and Public Prosecutor in a Zillah Court, in which capacity he shall perform the functions of chief ministerial Officer of the Court, as proposed by the Madras Commissioners, and shall also conduct the prosecution in all Criminal cases tried at the monthly Sessions, and, further, during the first year of his employment as Registrar, shall sit with the Judge at the trial of a certain number of suits, Original or Appeal, preparing full notes of each case, as well as the draft of a decree in each, which shall be forwarded periodically to the Judges of the High Court for inspection. He should also be employed as a Commissioner for the examination of witnesses, or for holding local investigations under Sections 175 and 180 of the Code of Civil Procedure.

4th.—That after a certain time, to be hereafter named, no Covenanted Civilian shall be appointed to the office of Judge, or of Registrar to the High Court, who has not served at least two years in the office of Registrar of a Zillah Court.

5th.—That each Registrar of a Zillah Court, during the first year of his service as such, shall be considered to be a probationer; and that his confirmation in the office shall depend upon the recommendation of the Judges of the High Court, based upon the inspection of his notes of cases and on the reports of his work periodically furnished to them by the Judge of the Court in which he is employed.

6. The Governor in Council would attach to each Registrarship a salary of Rupees 800 a month, of which only Rupees 700 should be drawn during the year of probation; and I am directed to request that authority may be granted for the creation of ten such appointments; the number to be increased hereafter, if the measure should prove successful. I am also to request sanction for the appointment of a Law Lecturer on a salary of Rupees 300 per mensem, for the purpose of completing the theoretical instruction of the Junior Civil Servants on their arrival in the country. It is desirable that these young gentlemen should be formed into a separate class, distinct from the classes which attend the Professor of Law at the Presidency College. The present Law Professor would be unable to undertake the teaching of a separate class; and even if the two appointments should hereafter be held by the same person, separate remuneration must be assigned to each.

7. The Governor in Council trusts that these recommendations will meet with the favorable consideration of the Government of India. The present appears a favorable time for dealing with the question, and the present position of the judicial administration renders it of great importance that its settlement should no longer be delayed. The Chief Court of Appeal and Revision has very recently been strengthened by its amalgamation with the Supreme Court. Measures for improving the qualifications of the District Moonsiffs, Pleaders, and Princi, Sudder Ameens, have been in operation for some time past; but as yet little has been done to ensure the efficiency of the Covenanted Judicial Officers. The probable consequences of this neglect, and the embarrassment in which the Government will be placed, if it be persisted in, are forcibly stated in Mr. Howard's letter, to which allusion has already been made, and in which he shows that, sooner or later, the result of the present system will be, to exclude Civilians from the bench, not in favor of English Lawyers in whose behalf the agitation

*including
Prosecutor*

*17 40
1 12300*

*Proceedings of the Madras Government, Judicial Department,
10th June 1863.*

Annual cost of Ministerial Establishment of the High Court, as it stood on the 31st ultimo.....		Rs. 2,22,711
Do.	do. as now fixed.....	2,02,397
Saving, Rupees...		20,314
Deduct Probable loss of fees consequent on the Officers on the Original side of the Court being paid by salaries.....		5,000
Net saving, Rupees...		15,314
Eventual saving by reduction of salary of 4 Prizenc Judges of the High Court, in the case of one from Rupees 50,000, and in the case of three from Rupees 40,000, to Rupees 45,000.....		17,000
Estimate of fees payable for public prosecu- tions.....		20,000
Salary and Office Establishment of the Di- rector of Revenue Settlement.....		67,370
Rupees...		1,19,684

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

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*Proceedings of the Madras Government, Judicial Department,
10th June 1863.*

Forwarded for sanction to the Home Department of the Government of India.

(Signed) A. J. ARBUTHNOT,

BOULNOI,
Chief Secretary to Government, Fort Saint George.

FORT SAINT GEORGE,

10th June 1863.

Exd. T. McMoorty.

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Nº 905 Judicial Dept

The Secretary to the
Government of India
Home Department.

Dated 10th June 1863.

Sir,

His Excellency the
Governor General
had under his consideration
the necessity of providing
some adequate means of
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ernment Civil Servants of
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in the judicial branch of
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[Signature]

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three Judgeships of the
late Sudder Court - now
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dinate Civil and Criminal
Judgeships with powers
similar to those exercised
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and, latterly, the Judges
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Head Assistant Collector
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The want of such a
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Treatises on Legislation,
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Commentaries, ^{Vol. I.} MacNaghten's
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And Criminal Procedure,
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In regard to the Civil
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* Letter from the Indian
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A suggestion very similar
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at one of the inferior tribunals.
Here, under the instruction
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of judges, to whom he is
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Letter from Mr. E. J. Howard,
Director of Public Instruction,
to the Secretary to Government,
Bombay, dated the 6th
September and 17th October 1859.
Printed in the Sixth Report
of Her Majesty's Civil Service
Commissioners. Appendix pp. 397
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He makes drafts of the
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He makes reports and
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In the same year, 1859,

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Madras Judicial
Commissioners, in their
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*page 7. para 53.

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He should perform all
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The plan which on
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in this Presidency, embraces
the leading features of
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capacity of Public Prosecutor.
The measures which he
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1st That every Covenanted
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2nd That the Junior
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3^d That, after passing
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24th - That after a certain
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the Office of Registrar,
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5th That each Registrar
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he is employed.

The Governor in Council
would attach to each

Registrarship a salary
of Rs. 800 a month, of
which only Rs. 700 should

be paid to the Registrar
in the office and the balance
of Rs. 100 should be paid
to him in the form of a gratuity
at the expiration of his term of office.

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The present Law Professor
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The Governor in
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The present appears a favor-
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The Chief Court of Appeal
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Measures for improving
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The probable consequences
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he shows that, sooner
later, the result of
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to exclude civilians from
the Bench, not in favor
of English Lawyers in
whose behalf the agitation
against the judicial
arrangements of the Indian
Government has been
hitherto carried on, but
in favor of Natives and
East Indians specially
educated for the judicial
office. The Governor in
Council sees every
reason to think that in
the new class of junior
Civil Servants appointed
by Competition, the
Government have excellent
materials for the Department.

since now under
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they be afforded
suitable means of qualify-
ing themselves. It appears
to him that such
means will be ^{furnished} ~~afforded~~
at a moderate cost and
with little or no distur-
bance of the general
arrangements of the Service.
The plan now submitted
is free from the objection
which it may be assumed
has prevented the adoption
of any of the schemes
hitherto proposed, viz.
that while they entail
additional expense, no
definite service - none, at
least, which could not
be secured at a smaller
cost - is rendered to the
State

Proposed
Registers
No
Ad
in
the

State by the Candidate
judicial employment.
his judicial apprenticeship
this objection, His Excellency
in Council would observe
is in a great measure
removed by the prop- in
employment of the ^{it} as
Public Prosec in the present
Criminal Court, for can
be with ^{out} charge now,
officer, ^{the} ~~the~~ ^{the} ~~the~~
inconsistent with the
functions of a Judge.
he should be required
to conduct the prosecution
The Registrars, moreover,
will relieve the Judges of
minor ^{is a} work, which
now occupies so much of
their time and seriously
hinders them from in the
performance of their proper
duties.

Whether, therefore,
 look to the immediate
 improvement of the existing
 tribunals, or to the
 prospect of raising up
 a better qualified class
 of judges than those
 at present in the civil service
 with the assistance
 of the furnished,
 arrangement in Council
 of the plan now
 proposed to meet
 be a judicious application
 of two of public money.
 It may be said that
 the same want is felt
 in the other Presidencies,
 and that whatever remedy
 is applied, should be
 applied generally; but
 the Governor in Council
 hopes that this considera-

tion will not be
 permitted

Original Cost of Ministerial Establish-
 ment of the High Court, as it stood
 on the 31st ultimo — Rs. 2,22,711
 Do — as now fixed — Rs. 20,23,977
 Deduct Saving Rs. — 20,314
 Probable loss of fees consequent
 on the officers on the Original
 Side of the Court being paid
 by Salaries — 5,000
 Net Saving Rs. 15,314
 Potential saving by reduction of
 salary of 4 Puisne Judges of the
 High Court, in the case of one from
 Rs. 50,000 and in the case of three
 from Rs. 49,000, to Rs. 45,000 — 17,000
 Estimate of fees payable for
 public prosecutions — 20,000
 Salary & office establishment of
 the Director of Revenue Settlement — 67,370
 Rs. — 1,19,684

to delay the adoption
 measures which he de-
 sires to introduce for the pur-
 pose of furnishing the
 members
 of this Presidency with
 well-trained judges —

I am directed, in
 conclusion, to submit in
 application in the pres-
 ent tabular form, for sanction
 for the charge now
 of the entire cost, as
 further proposed — all
 a certain number of
 prisoners on the lower
 of salary — will be un-
 Rs. 1,00,000 per annum,
 than one half will be
 eventually by the reduc-
 which have been ordered
 in the Ministerial Estab-
 lishment of the High Court
 and in the salaries of the
 Puisne