1. Number of pages. 170
2. Date of repair 12-4.35
3. Initials of Reference

M.R.O. 1—88 400—22-11-30

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1369

9-12

Press
Mis.

Dated 1—9— 1866

47/46

Not to be folded or roughly handled

From 9-13

The Honorable Charles Collett,
Madras Civil Service

To

The Honorable A. J. Arbuthnot,
Chief Secretary to Government.

Honorable Sir,

In reply to the Proceedings of Government dated the 27th January, No. 195, (which I understand to have been addressed to me personally rather than as Judge of Vizagapatam) I have the honor to offer my opinion that it will probably be found best to abolish the office of Government Vakil.

2. I am not sure whether the salary is the sole remuneration or whether it is only a retaining fee and in addition the usual fee is given in each case; perhaps there is not the same practice

in all places. The salary is I think more than sufficient as a mere retaining fee, but not so as the sole remuneration.

3. The selection for the office is often defective. Choice is made too often of a person on the ground of his having been long a Vakil and being a man of some respectability; he is then kept on in the office though younger and abler men may have subsequently joined the local bar.

I do not know what is the precise amount of civil litigation in which the Government is engaged during the course of the year in the various Courts of the Presidency; but I believe that the Government would be better served, if, instead of the present system, they employed and paid Vakils in the usual way just as business arose. It is true that there are in the Procedure Code some provisions for service of process on the Government Vakil,

but it is only the first summons that is so served. But all difficulty on this matter might be got rid of, if the Government, when made a party to a suit, will accept a service on the Collector of the District as a sufficient service which practically it really is. When, not the Government collectively, but some officer of Government is made a party, service on him direct would be a good service.

5. During two and a half years the Government was a party in only one suit in the Vizagapatam Court. The Collector accepted service and employed a Vakil. The Decree gave the Government their costs and the Vakil probably was satisfied with the fee taxed by the Court.

6. But if it should be thought desirable in any or all Courts to retain a Government Vakil I would suggest

that the office should cease to be permanent. The Collector might each year retain some Vakil on behalf of Government paying him down some small retaining fee and agreeing as to the fees to be allowed on any business that might arise. The fees that the Court would allow on taxing the costs of an opposite party, would probably secure the services of the best Vakils at the local bar. The selection should be left entirely to the Collector; and at the end of any year the plan of retaining a Vakil might cease, if thought advisable.

7. In Criminal cases it is competent to the Magistrate of the District to appoint any one he likes to prosecute before the Court of Session, and I entertain a strong opinion from what I have seen both at Chittoor and Vizagapatam that Session cases should always be

prosecuted by some officer from the Magistrate's Office and not by the Government Vakil. A Government Vakil is seldom experienced in Criminal business and when he is, his fee for defending a prisoner would be at least from 5 to 20 times what the Government allows for prosecuting a case. Then he is not a subordinate of the Magistrate, and it is not very material to him whether he gives satisfaction or not to the Magistrate; and if he has much Civil practice he has no time to look into the Session Cases thoroughly when this business pays him so badly.

8. Both Mr Fraser at Chittoor and Mr Carmichael at Vizagapatam sent to my Courts as public prosecutors officers on their own establishments whose fixed salaries varied from 70 to 100 Rupees a

month, and I believe every Magistrate could easily do the same. By such an officer the fees allowed by Government are appreciated as an addition to his regular pay; and besides such an officer is thoroughly a subordinate of the Magistrate, he has much to lose if he fails in his duty, and his future promotion greatly depends on his success. Further, being in the Magistrate's Office he has every opportunity of consulting the Magistrate on any case and on the spur of the moment. It is within my experience that defects have thus been supplied before trial; and also improper prosecutions stopped at once by the Magistrate ordering his officer to produce no evidence and submit to a verdict of acquittal. It is no doubt a fact that Subordinate Magistrates sometimes from ignorance or corruption,

make the most groundless commitments of respectable persons, the disgrace of a public trial, if not a conviction, being what is sometimes desired.

9 I know of no other measure so likely to induce Magistrates of Districts to exercise thorough supervision over their Subordinate Magistrates and to appreciate their own responsibility for the prosecution of every case before the Courts of Session. I venture to doubt if in all Districts the Magistrates do now rightly appreciate this responsibility. Under the Code it is expressly the duty of the Magistrate to appoint the prosecutor; and Session Judges now rightly decline to conduct the prosecution, or to do the work of the Superior Magistrates in supervising the Subordinate Magistrates in details. This change is not yet, I think, fully appreciated by the Superior

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Magistrates; and until it is, the supervision will be defective. As about 90 per cent of the committed cases are sent up by Subordinate Magistrates it is difficult to exaggerate the importance of this duty of supervision.

10. Occasionally an officer of the Police as for instance a Court Inspector might be substituted for an officer from the Magistrate's office, but as a general rule Police Officers ought not in my humble opinion to be public prosecutors. The Court Inspector is of great service to the officers of the Magistrate both before and at the trial; but that is his proper duty; and it is rather too much to expect that as a public prosecutor he will always forget his position as a police officer.

11. I need scarcely say that prosecutions in serious cases must not be left to inferior officers. Of course the plan will fail if a low Gumasta, or Jawabnivis, or a petty police officer is sent to prosecute Session cases.

12. I would beg to add the suggestion that young Assistants should be required to attend the Sessions, and report to the Magistrate all remarks made by the Court on the getting up of the cases, or any defects which during the trial may strike themselves. Mr Carmichael's Assistant constantly attended my Court.

Madras,
10th March 1866.

I have the honor to be,
Honorable Sir,
Your most obedient servant,

Charles Collett

Pro: 27th January 1866 Nos 195-196.

Judicial 1866 Department
No.

From,
The Hon'ble Charles Collett
M. C. S.

To,
The Chief Secretary to
Government.

Dated 10th } March 1866
Received 13 }

S. O. No. 1369

No 554.

Fet. 2419.

Submitting his opinion called for in the order of the Madras Government dated 27th January last, No. 109 as to the Office of Government Pleader in the Mofussil Courts.

9.

27 July
A31 "
C31 "
R 30 Aug
27th Septr

No. 89. Tanjore
6th February 1866.

From
E. W. Bird Esquire
Civil & Session Judge
of Tanjore

To
The Hon'ble A. J. Arbuthnot
Chief Secretary to Government
Madras.

Sir,

In reply to the Proceedings of Government No. 109, of the 27th January 1866 calling for my opinion in respect to the emoluments of the Government Vakils in Mofussil Courts, and requesting suggestions for making better provision that the interests of Government should be efficiently represented in these Courts, I have the honor to submit the following for the consideration of Government.

2. There can be no doubt that the Government Vakil, in all Mofussil Courts, is a greatly under-paid Officer. Being retained for Government in all Civil Suits, to which Government is a party, he is, of course, restricted in such cases, to the bare fee allowed by law and no more. As Government

Vakil, further, he is bound to prosecute at the Sessions all such cases (the majority here) as the Magistracy may, under the Code of Criminal Procedure, direct him to conduct. His time is taken up therefore entirely during the Sessions in this work, and he is, of necessity, obliged to devote several days before the Sessions commence in view to master all the facts of the cases for the Prosecution & Defence, to enable him, if possible, to secure convictions. The fee allowed (Rs 8 per Session Case) certainly does not cover the loss of private practice which the Government Vakil incurs as compared with the income which the other Vakils of the Court whose time is their own, secure during the month. The consequence is that, in this Zillah at least, the best qualified Vakils who make, on an average, I suppose clear Rs 400 a month, by private practice, cannot be induced to accept the Government Pleadership the salary of which - Rs 21 - is supplemented

by

by about 65 Rs a month, average Session Fees and 2d rate private practice, which, from the necessity of the case, I am told rarely exceeds Rs 70 per mensem.

3. The remedy for this state of things, of course, is to increase the pay of the Government Vakil and to make it better worth the while of a really superior man to seek the place. With this view, I should recommend that the Government Vakil's salary proper, should be raised to Rs 70 a month, his fees for conducting Session Cases being 8 Rs per Trial as at present. This increase, tho' it will not, in this District, equalise the income with that obtained by private practice by the best Vakils, will render the disproportion less; & in other Zillahs of this Presidency may probably command the highest talent available.

4. These remarks should not, however, be taken to convey that I am dissatisfied, myself, with the Government Vakil now employed in the Civil Court here. He is, I consider, well suited

for the work he has to perform for the Government and public; especially on the Criminal side of the Court, and on the whole I do not think we could have a better man. When I selected him for the post he was the best man then available, and I am sure that, if the pay be increased now to Rs 70, the one or two whose Educational attainments are superior, could not be induced, even if I desired it (which I do not) to accept the appointment.

I have the honor to be
Sir,
Your most obedt. Servt.
E. W. Kirk
Civil & Session Judge

Pro: 27th January 1866 Nos 195—196.

Judl. 1866 Departt.
From ~~Lsf~~ No 10
The Civil & Session Judge
of Tanjore
To
The Chief Secy to Govt.
Madras.

Dated 6th } February
Recd – 10th } 1866.

No 294.

Replying to a reference regarding the remuneration to Govt. Vakils.

10.

Printed Copies Sent to the Chief
21/3/66

No 9

Civil and Session Court
of Bellary 5th February 1866.

From,
J. R. Kindersley Esquire,
Civil and Session Judge of Bellary.

To,
The Honorable A. J. Arbuthnot,
Chief Secretary to Government,
Judicial Department,
Fort St. George.

Sir,

I have the honor to acknowledge the receipt of Proceedings of Government of the 27th January desiring the opinion of myself among others as to whether it is the fact that the best of the pleaders in the mofussil Courts are as a general rule not disposed to accept the Office of Government pleader on account of the smallness of the salary, and of the Office shutting them out from lucrative practice.

2. I understand the Office of Government pleader to have reference only to practice on the Civil side of the District Courts. But the same person is so generally employed as public prosecutor at the

Criminal Sessions that it seems proper to consider his remuneration in either office.

3. I am of opinion that the usual salary of a Government Vakeel is generally sufficient for the Civil work which he is called upon to perform. In exceptional cases, in which the Government have large interests at stake, it might be advisable to stimulate their pleader with a fee, which would have more effect than an increase of salary. I believe that the salary is the same in every district, whereas the work to be done is not the same. In Bellary there has not been a suit against Government for years, and the office of Government pleader is almost a sinecure. I have never heard of the office being declined by a vakeel; and I have always believed that it was coveted as a distinction. On the civil side of the Court I believe that it would increase the practice of almost any vakeel. I am quite aware that the Government pleader in a Mofussil Court has not generally been the ablest

of

of the vakeels; but I do not think that that is attributable to the insufficiency of the salary. The ablest vakeel may not bear a good moral character, or his manner may not conciliate the favor of the Judge and of the Collector. It would be endless to enumerate the causes which often exclude the most able men not only from the office of Government Vakeel, but from other offices also. I have never heard any complaint of the insufficiency of the salary for civil work.

4. But the remuneration for criminal prosecutions in the Courts of Session is notoriously insufficient, and the payment is not always prompt. . . . I believe that the usual fee for defending a prisoner in the Court of Session is Rs. 25, but it is often very much more, and if the Government do not sufficiently fee their vakeel the opposite party is generally quite ready to do so. Of course the rich will spend money in their own defence; but also large sums are subscribed when the honor of a particular

case

caste or profession is involved in the issue of a trial.

5. I think that when the accused is defended by a vakeel, the vakeel for the prosecution ought to receive not less than Rs. 10 or 15. The Collector has generally the means of knowing when it would be expedient to give more.

I have the honor to be,
Sir,
Your most Obedient Servant.
J. R. Kindersley
Civil and Session Judge.

Pro: 27th January 1866 No. 195–196.

Judicial 1866 Depart.

From,
The Civil Judge
of Bellary.

To, The Chief Secretary
to Government
Judicial Dept.

Dated 5th February 1866
Received 9 —

No. 9.
No 285.

Conveying his opinion that the salary of the Government pleader in the Zillah Court is sufficient, and that his remuneration for conducting criminal prosecutions should be raised to Rs 10 or 15 for each case.

11.

25

No. 4

From,
C. R. Pelly Esquire
Civil Judge of Bellary

To
The Honorable A. J. Arbuthnot
Chief Secretary to Government
Fort Saint George

Honorable Sir,

I have the honor to acknowledge receipt of the Proceedings of Government Judicial Department, together with the Order thereon dated 27th January 1866 No. 109 and in reply to state that I do not think it is the fact that the best of the Pleaders in the Mofussil Courts are, as a general rule, not disposed to accept the Office of Government Pleader on account of the smallness of the salary and of the Office shutting out the holders from lucrative practice, any instance in which it may have been declined on the above grounds (and none such has fallen within my Experience) I take to be Exceptional. In the Courts in which I have had the honor to preside, the Government Pleadership (writing from Memory) has twice become vacant, in Each Case I offered the appointment (as far as the Matter rested with me) to the Pleader I deemed Most Efficient and the offer was accepted without hesitation- the Nominee Evidently Considered that a benefit had been Conferred on him. I have always found the office sought after, notwithstanding the Small Salary attached to it and I question that the appointment does in reality Entail loss of practice. I believe on the whole, in this

respect

#27

respect the incumbent is a gainer; and that the Official position has a tendency to increase rather than diminish his practice. In the instances I have referred to above the Pleaders as far as I could form an opinion had about the largest practice of any in their respective Courts and if they had found that the appointment Entailed loss on them- I cannot doubt that their resignations would have quickly followed on the discovery.

2 The appointment is at present pretty nearly a sinecure, I refer of course to work on the Civil side and that portion of it for which the fixed monthly Salary is assigned, the Government Pleader as such having ceased to conduct prosecutions before the Court of Session & receiving separate remuneration for suits

to which the Collector may be a party. The interests of Government are only nominally represented and though the Salary is inadequate remuneration for the duties if efficiently discharged, I cannot say it so far the work now performed which consists simply of acting in conformity with specific written orders received from the Collector relative to Miscellaneous matters, beyond this they do nothing. I do not however think that a mere increase of Salary will of itself effect an improvement; My view of the Matter is that if the Government interests are to be as efficiently represented as the present State

of

of the Mofussil bar will fairly admit of– the appointment must be left entirely in the hands of the Collector of the District *with power to dispense with the incumbent's services when he deems this course advisable*. Much no doubt may be urged against this suggestion, but in practice it would, I think, be found to work well– if with this check over the Pleader – – – – – the Collector finds he cannot get the duties efficiently discharged at the present rate, then the monthly Salary will have to be raised to the requisite point which he will soon be in a position to determine, but to do this and leave other matters as they now stand would be to benefit the individual without improving the position of the Government, increase of Salary might possibly here and there give rise to a little temporary zeal but before long we should have the pleader again running in his old groove. I attribute the inefficient manner in which the Government interests are looked after to the independent position of its Court representatives and so long as they hold office on their present footing which practically renders removal impossible they will as a rule adhere to the do-nothing course - if Government invests its district representative viz: the Collector with that power over the pleader that every private individual has over his, it will have its interests as efficiently represented as theirs are. I remember being struck when in another District

at

at the manner in which the interests of Certain Zamindars were looked after by their Salaried Pleaders who were not perhaps the best in the Court to which I refer and Certainly not, as far as I could form an opinion, in the largest practice. Nothing Cropped up then likely to affect their Employer directly or indirectly without their taking immediate Action in the Matter (& this has been more or less observable in all Courts in which I have held office) the Case however was invariably very different when the interests of Government were concerned, but if the Zamindars' pleaders had held their situations on the same tenure that the Government Pleader held his, practically almost beyond possibility of removal, free from Check or Control and at liberty to do as little as they pleased, I have little doubt that

their interests would have been no
better looked after than those of
Government, if so well.

Zillah Court
Nellore
3rd February 1866

I have the honour to be
Honorable Sir
Your Most obedt Servt

C W Reilly
Civil Judge

Pro: 27th January 1866 Nos 195-196.

Judicial 1866 Depts

From
The Civil Judge
of Nellore

To The Chief Secry
to Government
Fort St George

Dated 3rd February 1866
Recd 6 " "

No 264.

Stating his opinion
on the point refer-
-red in the order
of Govt dated the
27th Ultimo No 109.
as to the acceptance of the off
of Govt Pleader, in the pro-
-vincial Courts, by Pleader

12.

Gc 13

C 27 Sept
A 4 Sept

Judicial 1866. Department.

No. 1369.

PROCEEDINGS OF GOVERNMENT.

Dated. 1st September 1866
Feb 2025-2097-2155-2574- 2419.
439/67. 543-
813/68.—1982-

Statement of Suits pending and [illegible] in which the Government was a party.

	1864			1865		
	Original	Appeals	Summary	Original	Appeals	Summary
Bellary	"	"	"	"	"	"
Berhampore	9	1	"	5	"	"
Calicut	6	"	"	9	"	"
Chingleput	6	1	"	21	"	"
Chittoor	2	1	"	2	"	"
Coimbatore	2	"	"	4	"	"
Cuddalore	3	1	"	3	2	"
Cuddapah	5	2	"	6	1	"
Guntoor	24	"	"	29	"	"
Madura	12	2	1	3	1	1
Mangalore	21	2	"	14	2	"
Nellore	9	"	"	11	1	"
Nundial	"	"	"	"	"	"
Ootacamund	"	"	"	"	"	"
Rajahmundry	7	"	"	7	"	"
Salem	1	3	1	"	"	"
Tanjore	4	"	"	3	"	"
Tellicherry	9	1	"	4	"	"
Tinnevelly	1	1	"	4	"	"
Tranquebar	1	"	"	"	"	"
Trichinopoly	5	2	"	10	3	"
Vizagapatam	"	"	"	5	"	"

55

Memo of
Insti[illegible]
Civil [illegible]
[illegible]
1864-65

Memo.

Mode of appt.

Regulation XV of 1816 – Section XXXVII, ~~clause~~ 2 – requires the Civil Judge to nominate one of the enrolled Vakeels of the Court for the Office of Govt. Pleader. but under a C. O. of the Sadr Court, the Judge consults the Collector before submitting the nomination for the approval of Govt., who then issue a Sunnud under the signature of the Secy. in the Judicial Dept. to the person appointed

ue of 38
2 A

Vide Clauses 1 & 2
XXXVII of Regn.
XIV of 1816

Remuner:– there is a fixed

they

Cl. 5 Sec XXXVII Reg. X of 1816

Monthly Pay of 21 Rs. allowed by Government. This seems to be a sort of retaining fee; for, besides this, in Civil cases the Government Vakeels are "to be paid the same fees "in causes directed to be "pleaded at the public "expense, as pleaders "employed in causes "between individuals, "& under the same rules "& restrictions" — and the scale of such fees is laid down in section of the Regn. above quoted as follows:—

vide also Sec VII Act I of 1846

If the value of the claim
does not exceed 5000 Rs.
Do exceed 5000 & still
not exceed 20000, but 5000
& on the remr. — 5%
2%
Do exceed 20000 &
not Do. 50000 on 20000 — 2%
& on the remr. — 1%

Do exceed 50000 & still
not do. 80000 on 50000 — 1%
& on the remainder — 1/2%
If the value exceed 80000
the fee to the Vakeel to be 1000 Rs.
which is to be the maximum, whatever the value of the
claim —

The above is the scale to be followed when costs are awarded by the Court. Parties are at the same time at liberty to settle with their Vakeels, by private agreement, the remuneration to be paid for their professional services.

As regards Sessions cases, the Code of Criminal Procedure requires that every Criminal case in the Session Ct. should be conducted by a public prosecutor. The question arose whether this duty should devolve on the Govt. Pleaders etc.

they

Travancore

whether the Magts should employ ~~or~~ prosecute at their discretion ~~in~~ each particular occasion. The latter course was preferred, as it was doubted whether the Govt. Pleaders, as a class, cd. be confidently entrusted with the duty of conducting prosecutions in all cases. Under this system, it is still open to the Magts. to select the Govt Pleader whenever he sees fit. A fee not exceeding 10 Rs is ordinarily allowed for each case. Whenever the Magte. considers a higher fee necessary, he ~~would~~ applies to Govt for sanction, & a such remuneration as seems called for by the circumstances of the case is allowed.

G.O. 9th Feby/63 No 157

Judicial Department.

Memorandum

~~PROCEEDINGS of the MADRAS GOVERNMENT.~~

Hoble C. Collett — dated 10 March 1866.
Mr E.W. Bird Civ. & Ses Judge Tanjore — 6th Feby —
" J.R. Kindersley — Bellary — 5 — —
" C.R. Pelly — Nellore — 3d —

Rev Dept 8 Dec/65
No 2285

N.

In November last, the Government Pleader Mr Dale brought to the notice of Government the very inefficient way in which their Vakeel in the Civil Court of Guntoor had conducted a very important suit in which they were interested and urged the expediency of endeavouring to procure the services of properly qualified persons for the office of Vakeel in the Provincial Courts.

2 The Government referred the subject to the four Judges marginally named requesting them to state whether the best qualified Vakeels of the Courts were unwilling to accept the office of Govt. Pleader owing to the inadequacy of the remuneration assigned to it; and to its precluding them from accepting private practice of a more lucrative character - and also to

G.O. pd Dtd 27 [illegible]/60
No 105

Mr. E. W. Bird, Judge of Tanjore
" C. Collett — Vizagapatam
" J. R. Kindersley — Bellary
" C. R. Pelly — Nellore

8 June/52
No 52 A

to submit any suggestions that might occur to them for making better provision for the interests of Government being more efficiently represented in the Mofussil Courts.

3 The letters above recorded are the replies of the gentlemen consulted.

4 The law (Sec XXXVII Reg XIV of 1816) at present imposes on the Civil Judge the duty of selecting one of the enrolled pleaders of his Court for the office of Government Vakeel - but, under a standing order of the late Sudder Court, he must consult and obtain the concurrence of the Collector before

submitting his nomination to Government who, if they approve, then issue a Sunnud appointing the person during good conduct. and

On occasions of misconduct on the part of the Vakeel thus appointed, it has been necessary that both Judge & Collr. should agree in advising his dismissal should such a course be thought ~~to~~ be required.

5 A Government Vakeel is attached to each of the Civil Courts. the lower Courts have no such Vakeel.

6 The Government Vakeels are remunerated by a fixed salary of Rs 21 per mensem, and the same fees as other Vakeels when costs are awarded by the Court - in suits to wh. the Govt. was a party.

Sec [illegible] Sec 37 Reg XIV of 1816

7 The following is the scale of fees prescribed by ~~Regulation~~ Sup. (Sec 38 Reg XIV of 1816 and Sec 7 Act I of 1846.)

Sec 25 Reg XIV 1816
Sec 7 Act I of 1846

If

45

	Maximum fees.
If the value of the claim does not exceed 5000 Rs - 5% —	250.
From 5000 to 20,000 - 5% on 5000 and on remainder 2% —	550.
From 20,000 to 50,000 2% on 20,000 & on remainder 1% —	700
From 50,000 to 80,000 - 1% on 50,000 & on remainder ½% —	650.
Above 80,000 - 1000 Rs —	1000.

which is in all cases the maximum. Parties however are at liberty to make their own terms with their Pleaders.

8 Mr Collett considers the salary more than sufficient as a mere retaining fee° Mr Bird states that the Govt. Vakeel is "a greatly underpaid officer" and consequently the best qualified Vakeels of his Court cannot be induced to

° but not enough as sole remuneration

to accept the office - Mr. Kindersley deems the present salary generally sufficient for the Civil work (in Bellary very trifling) which devolves on the Govt. Vakeel, and believes the office to be coveted as a distinction - Mr. Pelly has "always found the office sought after." -

9 Thus, the majority of the officers consulted do not support the idea that the salary of the Govt. Vakeel is inadequate for the work to be performed on the Civil side. Whether the holder of the office is a loser by being precluded from

from private practice is at least questionable: he is sure of all the suits in which Government is concerned; and if, in any of these, he receives a smaller fee from Govt. than their opponents would give, his official position - if the selection be so made as to command respect - should, as Messrs. Pelly and Kindersley remark, increase rather than diminish his practice.

10 Mr. Bird suggests, in order to procure a better class of men, that the salary should be raised to 70 Rs per

mensem

mussulman - Mr Collett would abolish the office, or if it be retained, would leave the Collector each year to retain some Vakeel on behalf of Government, paying him down some small retaining fee and agreeing as to the fees to be allowed on any business that may arise. The selection he considers, should be left entirely to the Collector, and at the end of any year the plan of retaining a Vakeel might cease, if thought desirable. Mr Pelly is also of opinion that the

the appointment should be "left entirely in the hands of the Collector of the District, *with power to dispense with the incumbents services when he deems this course advisable*". He attributes the insufficient manner in which the interests of Govt. are looked after to the independent position of its representatives in the Courts - "practically "almost beyond possibility "of removal, free from check or control and at liberty to do as little "as they please."

" There can be little doubt, I think, that

After a careful view of the question I feel that there [illegible] little doubt [illegible] the course advocated by Messrs Collett & Pelly private

that this is the remedy required. I do not see how Govt. can altogether dispense with a Vakeel in the Chief Court of each District, but it is anomalous that the Judge whose duty is merely to decide matters brought before him, should have any, much less such a potential voice as he has, in selecting their representative, and that the latter should, when appointed, occupy so independent a position as he does. I cannot myself see the

the necessity of any law at all on such a subject: the Govt Pleader must of course be one of the Enrolled pleaders of the Court, but in all other respects the Govt should be free to do as they think best for the interests of the State. A legal enactment for the appointment of a Vakeel and none for that of an Advocate General is at least anomalous.

12 It will be necessary however to have a law to repeal the existing law on the subject, and if Govt concur in the views

The wording of Section 67 Civil Code seems clearly to contemplate the appointment of one. I do not therefore understand Mr Collett's remark as to the Govt. choosing to accept service on the Distr. Collector.

WDJ

JP

The Govt. do not see the –

Neither can I see it.

But the law is in existence – Section 38 Regn. 14 of 1816 – and until repealed must, I apprehend, be obeyed. The Circular order of the late Sudder Adawlut Court, making it incumbent on the Judge & Collr. to consult as to the selection of a Pleader, may, however, be held to be obsolete – and it therefore remains with the Govt. to repeal S 38 Regn. 14/16 which ought, I think, to be done at once.

WDJ

Yes – see above. Wh. I had written before coming to this part of the Memo.

WDJ

views of Messrs Collett and Pelly, the Asst. Secy Legislative Department might be instructed to frame a bill for the purpose -

I think so — do J.W.

13 As to whether the nomination and removal of Vakeels should be left entirely to the Collector and whether the tenure should be annual are matters of opinion - I should myself prefer nomination by the Colr. and appointment by Govt during pleasure. The Govt would of course readily attend to a Colr's well founded representations against his Vakeel

the Govt

This seems to me the best course - W

J.W.

Vakeel

Vakeel and the latter would therefore be sufficiently dependent on the former. On the other hand reasonable security in the tenure of office is one of the strongest inducements to able men to enter the service of Govt. and the Sunnud of Govt. would I should think be deemed an honorable distinction.

14 The above remarks apply only to the civil functions of the Govt Vakeels. It will be seen that all the gentlemen consulted, remark strongly on

the inadequacy of the fee usually allowed for conducting criminal prosecutions. The maximum fee without the previous sanction of Government is only 10 Rs.

15 The question of whether the Government Pleader should as a part of his duty conduct all prosecutions was recently considered by Government in communication with the High Court and it was decided mainly in consequence of doubts of the fitness of these Officers

that

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P5

Experience seems to show that 10 Rs. is too little and I believe that in many cases where it has been generally admitted in the Distt. that more should have been paid, no application to Govt. has been made, simply because Magtes are averse to troubling Govt. about trifling matters by special applications. I would raise the fee to 25 Rs. intimating that that sum is to be regarded as a maximum up to wh. the Dist Magte may go when he thinks 10 Rs. not enough. If he deems 25 Rs. insufficient he should submit a special report stating what sum he wd. give & why.

Do

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I am not sure about this. Police Inspectors do a great deal of Public prosecution work & to my mind, even a little of it would be too much. See Mr Collett at para 10 of his letter. I quite agree with him.

that it should be left to the Magistrate's discretion to employ a Prosecutor or the Government Vakeel, on each occasion. Practically it would appear that the duty usually devolves on the latter who is considerably a loser by the arrangement. Mr. Collett states that when he was Judge at Chittoor and Vizagapatam, the Magistrate employed, as public prosecutors, officers from their own establishments in receipt of salaries from 70 to 100 Rs.; and he dwells strongly on the advantages of the plan. The Government could not order this arrangement to be generally carried out without first ascertaining from the Magistracy whether, with the great increase in Criminal prosecutions of late years they could thus depute officers of standing, ability and experience to act as Prosecutors. If they can, the plan might be tried, but I must confess that I do not myself see the advantage of it.

The

Certainly, there are advantages in the plan; but the employt on all occasions, of either the one or the other of one or two known good men, will undoubtedly lead to intrigue & corruption: & if this course be approved & sanctioned, I think great stress shd be laid on the imperative necessity of frequent & totally unexpected changes in the persons deputed by the Magte to officiate as Govt Pros. — WDr

This refce will delay a good deal the settlement of this question. I wd rather not make it, but leave the Magte at liberty to select whom he likes — whether Pleader, servant in his own or his Covenanted Assistants Cutcherry — Police Inspector if he feels he can do so occasionally with advantage or even a private individual aspiring to public employment. — WDr

The Govt Pleader should I think conduct the Criminal prosecutions as a rule, but for special occasions I would allow a Magistrate at his discretion to employ any Officer on his own or his Assts establishment or a Police Inspector but

not an Omeedwar
JP

A Magte may fairly desire to secure convictions: — I see no objection to the connection but if a Magte in any case conscientiously feels that it is a doubtful one, he can also drop it by omitting to bring forward evidence in proof of the charge —

I have suggested 25 Rs as a maximum —

The Government Officer can do no more than the Vakeel could, either in or out of Court, and the employment of the former would I think connect the Magistrate, more than is altogether desirable with prosecutions. I would rather employ the Vakeel as the rule, giving him however proper remuneration. The Magistrate should of course personally communicate with him before hand, or make one of his Assistants do so; but I would not have the

Magistrate

Magistrate's Assistants or officers act as Prosecutors. I presume moreover that under Mr. Collett's plan the Government Vakeel would be free to defend prisoners, this is, I think, a most objectionable arrangement. In Madras, the practice of the Advocate General prosecuting a Government Officer (as in the Pantaloo's recent case versus Mr. Minchin) or not defending a Government Officer is utterly inexplicable to Natives and the effect

as a rule, it could not be carried out - the present order leaves [illegible] of any standing & experience - and prosecutions of the younger men who hang about Head quarters wd be failures.

A On such occasions [illegible] result be a [illegible]

[illegible] employed [illegible] conducting prosecutions

A unnecessarily [illegible] from undertaking defence of Crim[illegible] the most criminal cases [illegible]

effect of the Government Vakeel, paid by Government and holding their sunnud, getting up to defend a Criminal, would have the worst effect. But this is unavoidable on Mr. Collets plan, for it would be unjust not to employ the Government Vakeel ourselves and yet debar him from being employed by others. Moreover the constant presence of the Government Vakeel in Court has its advantages: if as here proposed his relations with the Magistrate

Mr Sim's remarks are no doubt appropriate. But I feel that we ought not to place all our Criminal prosecutions in the hands, & thus at the mercy, of a single man, such as he will be whom it will be necessary to select from the material which now constitutes our Native Bar. Fancy a case such as that of 3 years ago where a Madura Zemindar's sister was charged with murder, & convicted, & hanged - being left entirely with an individual of this class, surrounded by the temptations which the Zemindar's family of celebrity wd undoubtedly have offered to a native so situated.

If the prosecution of Criminal cases be generally are conducted by the Govt Vakeel, he might not unreasonably be prohibited from undertaking the defence of Criminals.

are placed on a proper footing.

16 I would suggest that the Magistrates be now requested to report how far the present fees are adequate or not, and if not, what would be a fair sum to give for cases of the ordinary run. They have had sufficient experience, I should suppose, to form a reliable opinion.

17 Mr. Collett remarks on the degree in which it is to be apprehended, the Subordinate Magistracy are left practically uncontrolled

uncontrolled in the exercise of their powers, merit serious consideration. Ninety per cent of the Commitments, Mr. Collect says, are made by these officers, and Government have no means of knowing how many cases are maliciously taken up but dropped after the disgrace of a trial has been inflicted. It would be well, I think to ask the High Courts opinion on the subject and their suggestions as to the best mode of exercising

are

I would determine this point here - The [illegible] wd. [illegible] 20 Magistrates [illegible] will take some weeks & [illegible] that little good will come of the refce -

As respects the remuneration of Govt. Vakeels for carrying on Criminal prosecutions what the Hon. H D Phillips has proposed seems to me to meet the case and no reference to the Magistrate is necessary.

But I don't see that anything has been settled as to the remuneration of Govt. Vakeels for the performance of Govt. Civil business. It seems to me that the present pay is enough in all Civil Courts in which there is not much Govt. work - but not enough where the Court business is heavy and put on other parties - as in Tanjore. We might settle which Courts fall under this category and consult the presiding Judges as to the rates to be allowed - leaving the pay of the other Govt. Vakeels as it is.

Something of the kind is necessary. I wd. ask the High Court - as here proposed.

an effective control- over
The High Court I understand will not, and the Government cannot supervise the proceedings of the Magistracy. Formerly the Sessions Judges and the Sudr did it-

18 The question of making the Collector's Assistants attend the Courts, is being taken up in the Revenue Department and it needs no notice here-

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Mem: The above is copied from Mr. Ellis' pencil draft recd. by me from him after he left Madras. & therefore is for once circd. without his initials-

7. July 1866.

I hope something will come of this; if it be only to cause the issue of an order that Govt. Courts & Cutcherries shall be opened & attended at fixed hours. At present, the people in the provinces are in some districts subjected to inconvenience, hardship & loss by uncertainty in these respects.

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prosecutors, officers from their own Establishments in receipt of salaries from 70 to 100 Rs, and he dwells strongly on the advantages of the plan. The Govt cannot, however, order this arrangement to be generally carried out. He doubts whether, with the great increase in criminal prosecutions of late years the Magistracy could thus depute officers of standing, ability and experience to act as Prosecutors, without prejudice to their ordinary duties. Besides, the Govt. do not see the advantage of the plan. The Govt. Officer can do no more than the Vakeel could, either in or out of court, and the permission to employ other than Govt. Vakeels has, the Governor in Council thinks, had the effect of connecting the Police more than is altogether desirable with prosecutions. The Govt. would rather employ the Vakeel as the rule giving him, however, proper remuneration, which the Magistrates will be ~~enabled~~ to do, now that they ~~limit~~ have been authorized to pay fees to the extent of 25 without the previous sanction of Govt. The Magistrate should of course personally communicate with ~~him~~ the Vakeel before hand, or make one of his Assistants do so. At the same time, it is not intended to preclude the Magistrates altogether from exercising their

discretion

discretion if, on special occasions, they should deem it advisable to employ any other than the Govt. Vakeel to prosecute a particular case. On such occasions, they will be at liberty to employ any officer on ~~his~~ their own or ~~his~~ their Assistants' establishments, but not any Comadewar.

16 The prosecution of Criminal cases being thus generally left to the Govt. Vakeel the Govt. consider it necessary that the Govt. Vakeel officer should no longer be free to defend Prisoners in Madras ×

Memo: for Orders
by Mr. [illegible]

③

186 . Department.

No.

PROCEEDINGS OF GOVERNMENT

Dated

Press No. 4266, G. M.—12-4-66—500.

Keep with Judicial Pro:
1st September 1866.

1369.

C 7 July
A 31 "
C 31 "
R 3 Augt
C 27
H 14 Septr

69

Judicial 1866 Depts

No. 1369.

Proceedings of the
Madras Government

Dated 1st Septr 1866

~~Fd~~ 2025 - 2097 - 2155 - 2270 -
2323 - 2512 - 2524 - 2675 -
193/67.
201/78

9/4/78
5/7/78
27/12/78
7-10-81
30-6-04
8-1-09
12-3-09
5-5-10
17-6-14
15-5-16

9 to 13.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter:-

From the Hon'ble C. Collett – Here enter 10th March 1866.
— Mr. E.W. Bird Civ. Judge, Tanjore — 6th Feby —
— J.R. Kindersley — Bellary — 5th — —
— C.R. Pelly — Nellore — 3d —

Order thereon 1st Sept. 1866 No. 1369.

G. O. Rev Dep 8 Dec /65
No 2995.

WDM

In November last, the Government Pleader, Mr Dale, brought to the notice of Government the very inefficient way in which then Vakeel in the Civil Court of Guntoor had conducted a very important suit in which they were interested and urged the expediency of endeavouring to procure the services of professly properly qualified persons for the office of Vakeel in the Provincial Courts.

2. The Government referred the subject to the four Judges marginally named, requesting them to state whether the best qualified Vakeels of the Courts were unwilling to accept the office of Govt. Pleader, owing to the inadequacy of the remuneration assigned to it, and to its precluding them from accepting private practice of a more lucrative character; and also to submit any suggestions that might occur to them for making better provision for the interests of Govt. being more efficiently represented in the Mofussil Courts.

G. O. Judl Dept 27 Jany /66
No 105.

Mr. E. N. Bird, Judge of Tanjore.
— C. Collett. — of Vizagapatam
— J. R. Kindersley — Bellary.
C. R. Pelly — Nellore

3. The letters above recorded are the replies of the gentlemen consulted.

4. The law (Sec XXXVII Reg: XIV of 1816) at present imposes on the Civil Judge the duty of selecting one of the enrolled pleaders of his Court for the office of Govt. Vakeel; but, under a standing order of the late Sudder Court, he must consult and obtain the concurrence of the Collector before submitting his nomination to Govt. who, if they approve, then issue a Sunnud appointing the person during good conduct; and on occasions of misconduct on the part of the Vakeel thus appointed, it has been necessary that both Judge and Collector

should agree in advising his dismissal should such a course be thought to be required.

5. A Government Vakeel is attached to each of the Civil Courts:- the Lower Courts have no such Vakeel.

6. The Govt. Vakeels are remunerated by a fixed salary of Rs 21 per mensem, and the same fees as other Vakeels when costs are awarded by the Court, in suits to which the Government is a party.

See Cl 5, Sec 37 Reg. XIV of 1816.

7. The following is the scale of fees prescribed by Law.-

See 25 Reg. XIV of 1816
See 7 Act I of 1846.

	maximum fees.
If the value of the claim does not exceed 5000 Rs - 5 %.	250.
From 5000 to 20,000 - 5 % on 5000 and on remainder 2 %.	550.
From 20,000 to 50,000 - 2 % on 20,000 & on the remainder 1 %	700.
From 50,000 to 80000 - 1 % on 50,000 & on remainder 1/2 %	650.
Above 80,000 - 1000 Rs.	1000.

which flat sum is, in all cases, the maximum. Parties however, are at liberty to make their own terms with their Pleaders.

8. Mr Collett considers the salary more than sufficient as a mere retaining fee, but not enough as sole remuneration. Mr Bird states that the Govt. Vakeel is "a greatly underpaid officer" and consequently the best qualified Vakeels of his court cannot be induced to accept the office. Mr Kindersley deems the present salary generally sufficient for the Civil work

(in Bellary very trifling) which devolves on the Govt: Vakeel, and believes the Office to be coveted as a distinction. Mr. Pelly has "always found the office sought after".

9. Thus the majority of the officers consulted do not support the idea that the salary of the Govt. Vakeel is inadequate for the work to be performed on the Civil Side. Whether the holder of the office is a loser by being precluded from private practice is at least questionable: he is sure of all the suits in which Govt. is concerned; and if in any of these, he receives a smaller fee from Govt

than

than their opponents would give, his official position, if the selection be so made as to command respect, should, as Messrs. Pelly and Kindersley remark, increase rather than diminish his practice.

10. Mr Bird suggests, in order to procure a better class of men, that the salary should be raised to 70Rs per mensem. Mr Collett would abolish the office, or, if it be retained, would leave the Collector each year to retain some Vakeel on behalf of Government, paying him down some small retaining fee and agreeing as to the fees

to be allowed on any business that may arise. The selection he considers, should be left entirely to the Collector, and at the end of any year, the plan of retaining a Vakeel might cease, if its cessation be thought desirable. Mr. Pelly is also of opinion that the appointment should be "left entirely in the hands "of the Collector of the "District, *with power to "dispense with the in-"cumbent's services when "he deems this course "advisable*." He attributes the insufficient manner in which the interests of Govt. are looked after to the independent position of

of its representatives in the Courts,— "practically "almost beyond possibility "of removal, free from "check or control and "at liberty to do as little "as they please".—

11. After a careful consideration of the Question, the Governor in Council thinks there can be little doubt that the course advocated by Messrs. Collett and Pelly furnishes the remedy required. He does not see how Govt. as the law now stands, can altogether dispense with a Vakeel in the Chief Court of each District, but it is anomalous that the Judge whose duty is merely to decide matters

brought before him, should have any, much less such a potential, voice as he has, in selecting the~~ir~~ Govt. representative, and that the latter should, when appointed, occupy so independent a position as he does. The Govt. do not see the necessity of any law on such a subject: the Govt. Pleader must of course be one of the Enrolled pleaders of the Court, but in all other respects, the Govt. should be free to do as they think best for the interests of the State. A legal enactment for the appointment

of

of a Vakeel and none for that of an Advocate General is at least anomalous.

2. It will be necessary however to have a law to repeal the existing law on the subject, and the Assistant Secretary in the Legislative Department will be instructed to frame a bill for the purpose.

13. As to whether the nomination and removal of Vakeels should be left entirely to the Collector, and whether the tenure should be annual are matters of opinion. The Govt. prefer nomination by the Collector

and appointment by Govt. during pleasure. The Government would of course readily attend to a Collector's well founded representation against his Vakeel, and the latter would therefore be sufficiently dependent on the former. On the other hand, reasonable security in the tenure of office is one of the strongest inducements to able men to enter the service of Govt.; and the Sunnud of Govt. would doubtless be deemed an honourable distinction.

14 The above remarks apply only to the civil functions of the Government Vakeels. ~~It will be seen that~~

G.O. 2d Feby /63 No. 157 - p 5

~~That~~ All the gentlemen consulted remark strongly on the inadequacy of the fee usually allowed for conducting criminal prosecutions. The maximum fee payable without the previous sanction of Government is only 10 Rs. This, experience shows, is too little; and the Government are of opinion that the limit may be advantageously raised. They are accordingly pleased to empower Magistrates to disburse fees to the extent of 25 Rs, applying for special sanction, only where a higher sum is considered necessary.

15 The question

of whether the Govt Pleader should, as a part of his duty, conduct all prosecutions was recently considered by Govt, in communication with the High Court, and it was decided, mainly in consequence of doubts of the fitness of these Officers, that it should be left to the Magistrate's discretion to employ a separate Prosecutor or the Govt. Vakeel, on each occasion. ~~and~~ The latter is at times considerably a loser by the arrangement. Mr Collett states that when he was Judge at Chittoor and Vizagapatam, the Magistrate employed, as public prosecutors

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prosecutors, officers from their own Establishments in receipt of salaries from 70 to 100Rs, and he dwells strongly on the advantages of the plan. The Governor in Council cannot however order this arrangement to be generally carried out. He doubts whether with the great increase of criminal prosecutions of late years the Magistracy could thus depute officers of standing, ability and experience to act as Prosecutors, without prejudice to their ordinary duties. Besides, the Govt. do not see the advantage of the plan. The Govt. Officer can do no more than the Vakeel could, either in or out of court, and the permission to employ other than Govt. Vakeels has, the Governor in Council thinks, had the effect of connecting the Police more than is altogether desirable with prosecutions. The Govt. would rather employ the Vakeel as the rule giving him, however, proper remuneration, which the Magistrates will be enabled to do now that they have been authorized to pay fees to the extent of 25 Rs. without the previous sanction of Government. The Magte should of course personally

communicate

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16. The prosecution of Criminal cases being thus generally left to the Government Vakeel, the

Governor in Council considers it necessary that that officer should not be free to defend prisoners. In Madras, the practice of the Advocate General prosecuting a Govt. Officer or not defending a Govt. Officer is utterly inexplicable to natives, and the effect of the Govt. Vakeel, paid by Govt. and holding their Sunnud, and employed generally in conducting prosecutions, ~~getting up~~ ~~to~~ defending ~~a~~ criminals, would certainly be injurious ~~have the desired~~ ~~effect~~. Nor is it unreasonable thus to prohibit the Govt. Vakeel from undertaking the defence of

of criminals when the prosecution of Criminal cases is generally entrusted to him.

17. It remains to consider the question of the renumeration of Govt. Vakeels for the performance of Civil business in which the Govt. is concerned. It appears to the Governor in Council that the present pay is enough in all Civil Courts in which such business is light, but not enough in Courts where it is generally heavy and Govt. are often parties. The Civil Courts at Chingleput, Guntoor, Madura, Mangalore & Nellore

Please see accomp. Memo. of Suits to w. Govt. were parties in 1864 & 65.

appear to come under the latter category, and the Governor in Council resolves to request the presiding Judges of those Courts to state what, in their opinion, would be proper remuneration to Govt. Vakeels for the Civil work they are called upon to perform in their respective Districts. The present salary of 21 Rs will continue undisturbed in the remaining Districts.

18. In conclusion Mr Collett's remarks on the degree in which, it is to be apprehended, the Subordinate magistracy are left practically uncontrolled

uncontrolled in the exercise of their powers, merit serious consideration. Ninety per cent of the commitments, he says, are made by these officers, and Govt. have no means of knowing how many cases are maliciously taken up but dropped after the disgrace of trial has been inflicted. The Governor in Council resolves ~~considers it~~ necessary to request the opinion of the Hon'ble the Judges of the High Court on this subject, and their suggestions as to the best mode of exercising an effective control over the proceedings of the Subte. Magistracy.

A

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19. As the Question of making the Collectors Assistants attend the Courts, which is mooted in the last para of Mr. Colletts letter, is being taken up in the Revenue Department, it needs no notice here.

Honble the Judges of the High Court
All Civil & Ses Judges
All Magistrates
Revenue Departt
Legislative Deptt
Accountant General

despd 6/9/66