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MADRAS RECORD OFFICE.

Government of Madras.

Indivinal DEPARTMENT.

G.O. No.	//	Press ~~Mis.~~
Dated	6 - 1 - 1873.	

Not to be folded or roughly handled

JUDICIAL DEPARTMENT.

No. 11.

To

THE HON. SIR WALTER MORGAN, *Kt.*,
Chief Justice of the High Court of Judicature, Madras.

HONOURABLE SIR,

The resignation by Mr. Mayne of the joint office of Clerk of the Crown and Crown Prosecutor affords an opportunity for reconsidering the present footing of these offices, and the establishment attached to them, in view to effecting a reduction of expenditure which appears feasible without impairing efficiency. His Excellency the Governor in Council desires to avail himself of this opportunity, and I am, therefore, directed to request your opinion on the following suggestions.

2. As at present constituted, the appointments entail the following charges on the State:—

		Monthly.			Yearly.
		RS.	A.	P.	RS.
Clerk of the Crown and Crown Prosecutor		1,000	0	0	12,000
Deputy	do.	175	0	0	2,100
Manager		105	0	0	1,260
Deputy Manager		70	0	0	840
Writer		28	0	0	336
Do.		17	8	0	210
Do.		10	8	0	126
Four Peons		28	0	0	336
Total	...	434	0	0	5,208
Grand Total	...	1,434	0	0	17,208

The yearly charge is Rupees 17,208, which appears to the Government to be altogether disproportionate to the duties devolving on the Department, now that the work of the sessions has been so materially reduced by the extension of the Town Magistrates' powers under Madras Act VIII. of 1867—a still further extension of which seems contemplated by the Supreme Government.

3. In their Proceedings of 24th February 1863, the Government approved the union of the offices of Clerk of the Crown and Crown Prosecutor, and in those of 30th April 1863 the salary attached to the joint office was fixed at Rupees 1,000 monthly, on the assumption that on the officer holding the joint appointment would devolve the duty of appearing on behalf of Government at the hearing of appeals in criminal cases; but on the representation of Sir C. Scotland that this would involve the relinquishment by the holder of all private practice in criminal matters, the requirement was not insisted on.

4. It, however, appears from Mr. Ritchie's letter of 10th December 1872 that you propose to impose this among other new duties on the future holder of the

office. It would appear that Sir C. Scotland's original opinion, as expressed in his letter of 27th November 1862, was in favour of this course, although he subsequently modified it.

5. The duties of the Clerk of the Crown, as specified in Act XIII. of 1867, are the receiving, and, if necessary, amending indictments in committed cases, and the preparing and maintaining the jury lists. Sir C. Scotland described the office as corresponding on the criminal side with that of the Registrar on the civil side. As Crown Prosecutor Sir C. Scotland contemplated that he should afford advice in cases of importance or difficulty to the Town Magistrates in committable cases (and also to Magistrates elsewhere if required); decide upon witnesses and evidence to be adduced and take means for ensuring their attendance or production, and afterwards appear at the trial and conduct the prosecution; or if the Advocate-General prosecuted, then appear and assist as his junior. He was also to argue sessions cases reserved for the opinion of the High Court. Sir C. Scotland went on to say that his opinion was in favour of requiring of the Crown Prosecutor the further duty of appearing for the prosecution in criminal appeals on the appellate side, and of advising Government in Mofussil prosecutions. When, however, the Government assumed that this would be one of the duties of the holder of the joint office, Sir C. Scotland, as already stated, objected, and his objection was allowed. According to Mr. Ritchie's letter it is now proposed to attach this duty to the office, together with that of conducting Government cases in the Police Courts and prosecutions for offences against public justice and other offences when directed by the High Court, and investigations and charges against European British subjects in the Mofussil when required by Government.

6. It appears to the Governor in Council that, unless much of this duty has hitherto been performed by the Crown Prosecutor, his office, which is not properly speaking a ministerial one, must have been in great measure a *sinecure*. The Government learn that, on the average of the last four years, the number of session cases in which he prosecuted was 53½, or fourteen at each session, and they presume that these include most of the cases in which the High Court would have appeared that he should appear.

7. It appears to the Governor in Council that for the work now devolving on the Clerk of the Crown as such and his establishment, the following scale of establishment and monthly remuneration would be sufficient:—

Clerk of the Crown	Rs.
Manager	300
One Writer	70
Two Peons	25
	14
Total	409

with an annual allowance of Rupees 400 to defray the cost of employing temporary clerks during the sessions.

Had Counsel been employed and fees paid for the average number of prosecutions conducted by the Clerk of the Crown as Crown Prosecutor, the cost to the State would probably have averaged not more than Rupees 4,500 yearly, and this charge would probably decrease as the work at sessions is diminishing. Assuming that the union of the two offices renders the employment of a Deputy Clerk of the Crown indispensable, the Government consider that his retention would do away with the necessity for employing a Manager.

8. On the whole then it appears to the Governor in Council that the two offices of Clerk of the Crown and Crown Prosecutor with establishment should not entail on the State a larger annual charge than Rupees 10,168, as shown below:—

	Monthly.
Clerk of the Crown	Rs. 300
Deputy Clerk of the Crown	175
Writer	25
Two Peons	14
Crown Prosecutor	300
	814
	12
	Yearly 9,768
Temporary establishment at Sessions	400
	Yearly total 10,168

The appointment of Deputy Clerk of the Crown is, in the opinion of Government, a superfluity entailed by the union of the offices of Clerk of the Crown and Crown Prosecutor, so as to allow the holder of the joint office to appear and plead during sessions; but its retention may be justified by the reduction of the remuneration assigned to the office of Crown Prosecutor below the estimated average cost of employing Counsel to prosecute in cases in which the duty is not of sufficient importance to call for the services of the Advocate-General. A saving of upwards of Rupees 7,000 yearly would be effected by the proposed arrangement, and the total scale of remuneration appears to Government ample to secure efficiency whether the union of the offices of Clerk of the Crown and Crown Prosecutor be maintained or otherwise. In the event of a separation, the total might perhaps be somewhat differently distributed with advantage, the post of Deputy Clerk of the Crown being abolished, and an Office Manager substituted on pay.

9. I am to request that you will favour Government with your opinion on the above suggestions.

I have the honour to be,
Honourable Sir,
Your most obedient servant,

FORT ST. GEORGE,
6th January 1873.

Chief Secretary.

I think that we should take advantage of Mr. Mayne's retirement from the office of Clerk of the Crown and Crown Prosecutor. to consider whether a considerable economy cannot be effected with respect to these offices. —

The first step appears to me to be to separate the two offices.

The Clerk of the Crown is a purely ministerial officer of the Court. — and his business is to prepare the indictments at the Sessions wear in the jury — see that

Govt. of 1873

JUDICIAL.

To
The Hon. Sir W. JORDAN, Kt.,
Chief Justice of the High Court
of Judicature,
Madras.

Printed by Messrs.

Reed.

G. O., Cal. January 1873, No. 11.

JANUARY.
NO. 10.

Attesting the Govt. Justice respecting the present footing of the offices of Clerk of the Crown and Crown Prosecutor, and the establishment attached to them, in view to effecting a reduction of expenditure.

9-8-88-1

14/4/88

witnesses are in attendance
 in it. The work at the
 sessions now that the Magistrate's
 powers have been extended
 is very light and I think
 that a salary of 300 Rs. for the Clerkship of the Crown
 would be gladly accepted
 by qualified persons as a
 sufficient salary.

There was an objection in the
 union of the offices of Clerk
 of the Crown & Crown Prosecutor
 when the criminal business
 at the sessions was heavy.
 The union gave a salary of
 1000 Rs. ^{plus} was insufficient to
 secure the services of an

Clerk of the Crown. 300
 Manager 70
 370 p.m.

add temporary
 clerks to be hired during
 sessions - 400.

$370 \times 12 = 4440 + 400 = 4840.$
 or in round numbers — 5000.

eminent lawyer like Mr. J.
 S. Mayne.

Sir Colley Pitt-Rivers
 contemplated the separation
 of the two offices. but in
 that case he considered that
 the Advocate General should
 nominate the Crown Prosecutor
 Respecting to the question of
 economizing in the office
 of Clerk of the Crown - I

have conferred with Mr.
 Pitt-Rivers the Govt. Minister
 who considers that in the
 two offices being separated
 the work of the Clerk of
 the Crown could be efficiently
 performed at the cost of
 Rs. 5000 ^{maximum} as marginally
 indicated.

The present cost of the Clerk
Whitman and establishment
is Rs. 11,200. 0. per annum
as indicated marginally.
in detail.

Sir Alley Scotland acknowledged
 that should the office of Clerk
 of the crown be separated
 from that of Crown Prosecutor

A deputy clerk of the crown
would not be required, but
~~hesitated~~ but he hesitated
to carry out this suggestion

out of consideration for the
present incumbent. who was
not then entitled to a pension
Even if this claim is admitted

the proposed establishment incurred by the salary of a deputy - in which case no manager would be required. would annually amount

Clerk of the Court	500
By do.	175
Manager	105
By Manager	70
1 st Writer	28
2 do	17 -
3 do.	10 -
4 pers at 7.	28.

934.0

per meum

2 11,208.0 per annum.

500
500
500

11203
-5000
-1700
-1208

404
967/40

to 6260. instead of 5000
as shown above.

without the retention of the
deputy the saving proposed

will be \$208 per annum

if the deputy is retained

his savings will be 49481

her amman.

If it be objected that the

Salary of 300 per annum

Salary of 500/-
is insufficient to secure

the exercise of a competency

professional man, I

performed
2nd Lieut. Hugh M. Pritchard

U. S. Senator and M.

the first place

Handley

I think he must
all do a certain

La capitale de

Ken. J. P.

are both willing to undertake the duties of the office under the proposed salary and office allowance.

As regards the Crown
Prosecutor. I would have
the Govt give its cases
to any barrister it pleases,
either continuously, to
the same ^{man} or with occasional
change, & pay in fees
for the work actually
performed. - instead
of paying a fixed
salary. -

Leadon

The paper marked A shows the number of cases during the last few years, in which the Crown Prosecuted - by the Clerk of the Crown -

The average number of
cows yearly was $53\frac{1}{2}$
and the animal cost
would have been if
cows had been

employed about 4528
per annum
or 394 Rs. per mensem
instead of 6000 Rs. per
annum ^{now} paid or 500 Rs.
per mensem.

per men em: $\frac{1}{2}$ annum
 saving 141.2 N per ~~man~~ ^{annum}

The first solicitor
~~the~~ will be
 given a letter
 & a name or two
 at least
 J. D.

4620/6
10

But this saving will
probably be larger than
I have indicated, as the
tendency is for the business
on the original criminal
side of the High Court
to decrease.

Under the proposed
arrangements there
will be a saving by
the reparation of the
offices of Clerk of the
Crown & Crown
Prosecutor of between
6500 & 7000 Rs. per
annum. Which it

very desirable in the
present condition of the
Madras Bar that
the Govt should be unperturbed
in the matter of its
own prosecutions & I
would for the present
prefer the system under
which the Govt
would distribute the
criminal briefs under
general instructions
from Govt. But if
it is considered better

to employ the same
 barrister & continue the
office of Crown Prosecutor
 then a further saving
 might be affected
 for the Sub-pleader
 would be glad to
 do the work on a
 fixed salary of
 300 P. a month.
 But I prefer paying
 each person for the
 work done & it saves
 any claim for pension

~~But I prefer~~
~~paying each person~~
~~for the work done~~
~~and it saves~~
~~any claim for pension~~
 But I prefer
 paying each person
 for the work done
 and it saves
 any claim for pension
 Not

hereafter. -
 We cannot interfere
 in the right of the
 Chief Justice under
 the Letters Patent.
 Sec 8 to nominate
 a competent person
 to the office of Clerk
 of the Crown - it being
 a ministerial office of
 the Court. but we
 can interfere as to
 the amount of salary
 which we are prepared
 to sanction.

This is also
 that I am

The Crown Prosecutor is
an officer of the Court
& not a ministerial
officer of the High Court
and regarding his
office, it does not appear
to me competent for
the Chief Justice to
interfere.

I would suggest that
these arrangements should
be communicated to
the Chief Justice & that
he be asked if he
has any objection

and is not
satisfied

to make. Letting him
clearly understand
that the Govt cannot
sanction a larger
expenditure than
in all
6260 per annum for
the office of clerk of
the Crown to be
reduced on the retire-
ment of the present
deputy clerk - to 5000
N. per annum. -
and that they do not
propose to consent

The
 as to the union of the
 & two offices.
 Under any circumstances
 I think we should not
 neglect to make
 this saving on the
 retirement of the
 present incumbent
 but the arrangement
 has the additional
 advantage that
 it will prevent the
 nomination of Mr

A.

	Cases in which Anna Coxaster has acted	Fees payable if briefs had been given to counsel on behalf of person A
<u>1869.</u>		
1 st term	19	1661. 8
2 nd do	13	1137. 8
3 rd do	13	1137. 8
4 th do	16	1400
	<u>61</u>	<u>5336. 8</u>
<u>1870</u>		
1 st term	11	962. 8
2 nd do	17	1497. 8
3 rd do	10	875.
4 th do	8	700.
	<u>46</u>	<u>4035. 0</u>
<u>1871</u>		
1 st term	30	note
2 nd do	12	Fees not entered
3 rd do	17	in information given
4 th do	11	to me, incumbent
	<u>70</u>	<u>6090</u>
<u>1872</u>		
1 st term	9	787. 8.
2 nd do	6	525.
3 rd do	17	1497. 8.
4 th do	5	437. 8.
	<u>37</u>	<u>3247. 8</u>

... Tarrant is a considerable
office - which has

... has no claim. &

... which is to be continued

... MR

... should be

... R. 8.

The extension of the jurisdiction

of the Magistrate having

greatly reduced the work

of the Crown Prosecutors &

Clerk of the Crown, & the

fact are found to be

in view whether any reduction

of the kind of time is feasible in
consequence.

I am not in favor of en-
trusting our Criminal Prosecutions
to Lawyers engaged for the "job"! I
think the tendency of that kind
of arrangement will be to secure
convictions at any price - the whole
will chiefly depend on the lawyer's
anxiety to make a good thing of it.
I am sure that if we were to
trust the matter to the public
credit and the public interest
and hope that if they were
convicted I would not care they
will let us in the future. The

2
I am deeply sorry to hear that
it had for
some time been his intention
to leave the country on
vacation.
I am sure that he will be
correct to go to the
Crown Prosecution Office
should consider the various
interests involved in
the case and be kindly con-
sidered - Ex: Dr. Criminal
Prosecution at Country - He
should then find in the
proposition in regard to the

that we may be free to adopt
whatever may seem best for
the public service.

As regards the warrant
I would leave him out of all
consideration in the question before
us being one which we must
have taken up under any
circumstances & irrespective
of him. The statute before
us clearly gives the apprehension
to the Chief Justice - and we

3/ cannot be free to compare
him with the other
qualifications of his
previous processes the question
of his actual qualifications
as to the law of the land. The
Committee decided to the question
of the law of the land
the law of the land - how we
the meaning of the word of the
qualifications - and we
are not warranted in so.

- giving necessary notice to
the Chief Justice.

Also I would to the
fact is to inform the Chief
Justice that he can do
the point to be brought
before highly biased view & its
establishment not being the
the first and most of the
harm to and against his
dignity - and any statement
in the matter will be

great advantage of having a trial
when at all times in the fact
that no measure has been
subjected to a criminal
action - quite as much as in
entering a final trial. I think
this does it can be better
turned by entering the fact
to the man - who is can be
truly interested. I think this
is a more dignified procedure
for a pit. I am therefore of opinion
this question -

that there is nothing objectionable
in the union of the offices
of Crown Prosecutors & Clerk of
the Crown. In other words
in fact.

And therefore I would
limit our present intention
to reducing the salary of
the combined officer - and
the cost of the Bill is not.

I should here mention
that the course of a Bill

he may be disposed to offer?

I.D.S.

Pending reply he may let
us know what we should
infer from his present
contents on dictating by
lawyers.

The proposition of Mr. Morgan mentioned
yesterday seems to have an important bearing
on this question. It appears probable

that we should gain effect & greater
saving by leaving the two offices as at
present united, if that is to imply
that extra for which we now pay
in the Magistrate's office to be dealt
with as Sir W. Mayne suggests them
by separating them. And if no saving
could be effected in the separation, I am
on the whole inclined against it, and
not disposed to take the course proposed
by Sir W. Mayne.

H. D. P. M. M.
S.O.

31
Madras 11 November 1872

My dear Huddleston

As Mayne's departure is now
at hand, and the question of the Clerkship to the
Crown will shortly be before the Government, I
feel it right to bring to His Excellency's notice
some matters in connection with this appoint-
ment, in which the interests of Government
seem to me at present to suffer.

The work of the Clerk of the Crown has,
owing to the extended jurisdiction conferred on
Magistrates

§
Magistrates of Police by Act VIII of 1864 (Madras),
become almost nominal; and another cause
which has tended to the same result is a tra-
dition of the office, which assigns to the Advocate
General the entire and exclusive charge of all
criminal breaches of Trust by a Public Servant;
bribe cases, Murders. Thus, practically, all cases of
the slightest difficulty or importance are thrown en-
tirely on my hands, while the clerk of the Crown con-
fines his labors to a set of petty prosecutions, which
ought really never to come into the High Court at all.

The consequence is that Government not only
keeps

[The page contains approximately 10 lines of extremely faint, illegible handwriting.]

35
keeps up the clerk of the Crown and his establishment
for doing next to nothing, but is driven, when serious
cases arise, to secure additional assistance from the Bar.
At the present moment I have a heavy forgery case
on hand, which it would be impossible, on grounds of
physical fatigue alone, that any one barrister should
satisfactorily attend to. I have received no assistance
from the clerk of the Crown, and I am even expected,
Mr. Pritchard tells me, to conduct such cases through
all their stages in the Court of the committing ma-
gistrate. I spent two entire days at this work at a time
when I had at least two Government references of
considerable

considerable importance on my hands. I would venture with great respect to submit that, as this work could be perfectly well discharged by a Police officer or Pleader, it is not good economy to take the Advocate General from other duties to attend to it; nor is it I believe, the usual course for an Advocate General to be expected to appear in Criminal cases except at the Trial itself.

At any rate it is not for the interest of Government that, when an important case, such as the present, is on hand, the Advocate General should be deprived altogether of the assistance of his official

ficial colleague.

I shall not, I hope, be suspected of wishing to shirk any work that the Government is pleased to call upon me to perform; but I am anxious to perform it to the best advantage, and the present distribution of labor does not tend in this direction. I would venture therefore to solicit that, for the future, the Clerk of the Crown should be expected to take a responsible part in all prosecutions, leaving the Advocate General the right to appear in such cases as the Government thought of sufficient importance to render this necessary, or that

at

12. What I at present propose in this respect is, that the present clerk of the crown should be appointed to the office of "Crown Prosecutor" if willing to undertake personally to discharge the additional duties of the office - But if his acceptance of the office should not be feasible, then I propose to appoint another qualified professional Gentleman. In the latter event, the clerk of the crown would be required to forward all depositions without delay to the "Crown Prosecutor" whose duty it would be upon receiving the depositions, to consider them and to communicate with the clerk of the crown either in consultation or otherwise, any opinion or suggestion he might think called for, as to the frame of the indictment to be prepared by the clerk of the crown, or the conduct of the case generally. It would also be his duty occasionally to afford advice in cases of importance or difficulty to the Magistrate at the Presidency Town, and to the Magistrates elsewhere, if required, in cases that may be committed for trial to the High Court, and to decide upon the Witnesses and evidence to be adduced, and when necessary to take proper means for securing the attendance of any witness, or the production of any evidence, either through the Crown Office, or otherwise, and afterwards to appear at the trial, and to conduct the Prosecution in person, in which the Advocate General

General appears to ~~proceed~~ on the part of the Govern-
ment and then if the Advocate General desires it,
he should appear as his junior and assist in the
conduct of the Prosecution. He would also be requir-
ed to argue any case reserved from the Sessions
for the opinion of the High Court. Should the present
Clerk of the Crown undertake the duties of Crown
Prosecutor, the same observations will apply to his
additional duties, except as regards forwarding
the depositions from the Crown Office. The nomi-
nation to the appointments when a distinct one,
should, I intend rest with the Advocate General.
I have had under consideration the propriety
of attaching to the office of Crown Prosecutor, the fur-
ther duty of appearing for the Prosecutions in Cri-
minal Petitions in the appellate side of the Court,
and of advising the Government in prosecutions
in the refusal duties now resting on the Govern-
ment Pleader, and my opinion is in favour of
this being done; but as I am not aware what
arrangements the Government may have in view
as regards the office of "Government Pleader"
I cannot satisfactorily do more at present than
state my opinion with a view to further consideration.

13. Then, as to the change I propose in the clerk of
the Crown Office. There is at present Deputy Clerk
of the Crown, and this as a distinct office, and

by Government I think, may be done away with,
if the clerk of the Crown does not also hold the office
of Crown Prosecutor, but not at present. I think
having due regard to present interests and with
the other arrangements I have made that this
change ought not to take place through the Crown
Prosecutor be a distinct appointment, whilst
the present incumbents hold the offices held
the offices of Clerk and Deputy Clerk of the Crown,
should the appointments to the two offices of Clerk
of the Crown and be hereafter distinct, and the
office of Deputy cease, it will be advisable to
transfer the duty of preparing and drafting all
indictments to the Crown Prosecutor.

Memo.

There is no special provision of law in regard to the appointment of clerk of the Court, and Crown Prosecutor in the High Court.

2. Clause 8 of the Letters Patent, constituting the Madras High Court provides generally for the appointment of the Ministerial officers of the Court. It empowers the Chief Justice from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor in Council to appoint so many of such clerks and other Ministerial officers as shall be found necessary.

(for the administration of justice & the due execution of all powers and authorities granted & committed to the said High Court, and requires that every such appointment shall be forthwith submitted to the approval of the Governor in Council, and shall be either confirmed or disallowed by the Governor in Council. It also directs that all such clerks & ministerial officers shall have and receive respectively such reasonable salaries as the Chief Justice shall from time to time appoint for each office & place respectively, and as the Governor in Council, subject to the control of the Governor General in Council, shall approve of.

x Page of Govt. of 8th January 1864 p. 25.

1. Registrar, Appellate Side.
2. Dy Registrar Do.
3. Registrar, Original side.
4. Clerk of the Crown.
5. Commissioner and
Saxling officer.

3. The rules have been prescribed by this Government under the provision of the clause above quoted. In 1864 the Government intimated to the Chief Justice that nominations made by him to officers on the Establishment of the High Court, with the exception of those noted in the margin, need not be reported for the approval of Government. This may be regarded as a rule within the meaning of the above clause.

4. The only enactment in force having reference to the offices of Clerk of the Crown, and Crown Prosecutor in the High Court, is "The High Courts Criminal Procedure Amendment Act XIII of 1865".

5. Section 2 of this Act

Provides that when any person is committed for trial before the High Court, the Committal Magistrate shall together with all examinations, informations, bailments and recognizances now required to be delivered to such Court, deliver to the Clerk of the Court a written instrument of charge stating for what offence such person is so committed.

Section 4 enacts that "the Clerk of the Crown shall peruse & consider the charge, and may, if he consider it necessary or expedient so to do, amend, alter or add to the same."

Under sections 12, 15 & 16, the Clerk of the Crown is required

to prepare lists of persons qualified and liable to serve as special and common jurors. And Section 2 of the Act defines "Clerk of the Crown" as including, besides such officer, a Crown Prosecutor & any officer specially appointed by the Civil Government to discharge the functions given by this Act to the Clerk of the Crown, in respect of any sittings of a judge or judges of the High Court in a place other than the usual place of sitting.

- (1) Report of Madras Law Commission of 1859 para 19.
- (2) Proceedings of Govt 3^d Decr 1862 Nos 18 & 19.
 - (a) Chief Justice's letter paras 11, 12, 21 & 22.
- (3) Pro. of Govt 21st Feb 1863 Nos 182-186.
 - (a) Honble Mr Dyce's Minute paras 3 & 30.
 - (b) Letter to Chief Justice para 3 clause 3 & para 18.
- (4) Progs of Govt 30th April 1863 Nos 261-266.
 - (a) Chief Justice's letter para 5.
 - (b) Honble Mr Dyce's Minute para 17.
 - (c) Order of Govt. para 3.
- (5) Progs of Government 23rd May 1863 Nos 195 & 197.
 - (a) Chief Justice's letter paras 2, 5 & 7.
 - (b) Honble Mr Dyce's Minute, paras 3 & 8.
 - (c) Order of Government, para 2.

6. The Report in the margin contains the correspondence which has already taken place on the subject of the duties of the Clerk of the Crown and Crown Prosecutor.

7. The Judicial Commission in

in para 19 of their Report
states as follows:

x Madras Jsd^L Commisⁿers
report of 1859 para 19.

We think that a Public
Prosecutor ought to be ap-
pointed. Judge after
Judge on the Bench of
the Supreme Court, has
complained of the improp-
riety of being called
upon to conduct the whole
trial, both for the prose-
cution and defence. The
duties of a Public Pro-
secutor would be to advise
Magistrates, and to conduct
prosecutions at the Bar
of the High Court, reserving
to the Advocate General
the power of appearing
in cases in which he
deems it necessary to do

so. When the Advocate
General appears, the
Public Prosecutor, who
should be a Barrister,
will be his junior. The
Magistrates in the inter-
ior should have the

power of consulting this
Officer upon such points
of Criminal Law as pre-
sent difficulty, but it
should not be part of
his duty to conduct pro-
secutions in the Courts
in the Interior. This office
may be conveniently
united to that of Clerk
of the Crown, an officer
who is always a barrister.
Many failures of justice
now occur from the want
of preparation of cases;
and, as a Native Bar
grows up, we look to
the period in which
every district shall
contain an officer with
duties analogous to
those here described.

Chief Justice's Letter
(para 12) recorded
in Privy's J. 3^d Dec.
1862.

8. In 1862 the late
Chief Justice Sir Collyer
Scottland, in submitting
a scheme of the Provin-
cial Establishment

required for the High Court, proposed that the offices of Clerk of the Crown and Crown Prosecutor should be held jointly by the then holder of the former office. His intention, in the event of the latter office being held by another person, was to appoint a qualified professional gentleman of standing and experience to fill it and to assign to him the following duties, viz: (1) to consider all depositions and to communicate to the Clerk of the Crown, either in consultation or otherwise, any opinion or suggestion he might think called for as to the frame of the indictment to be prepared by the Clerk of the Crown, or the conduct of the case generally.

* Chief Justice's letter (para 5) mentioned in Proc. of Govt. 30 April 1863.

Ⓟ The duty of perusing the papers connected with cases committed for trial & of considering & if necessary, altering the instruments of charge - is now required by law to be performed by the Clerk of the Crown. - (s. 4 Act XIII of 1865).

(2) to occasionally afford advice in cases of importance or difficulty to the Magistrates at the Presidency Town, and to Magistrates elsewhere, if required, in cases that might be committed for trial to the High Court.
(3) to decide upon the witnesses and evidence to be adduced, and when necessary to take proper means for securing the attendance of any witness or the production of any evidence, either through the Crown Office or otherwise; and afterwards to appear at the trial & himself conduct the prosecution in Court, except in cases in which the Advocate General appears to prosecute on the part

of the Government.
And then, if the Advocate General desires
it to appear as his
junior and assist
in the conduct of the
prosecutions; and
(4) to urge any case
reserved from the Sessions
for the opinion of the
High Court.

The salary proposed
by Sir Colley Scotland, if the two
offices were held together, was
Rupees 11,500 per annum or Rs 971
per month. If the Crown Pro-
secutorship were made a
distinct office, then the Clerk
of the Crown was to receive Rs 650
per month, and the pay of the
Crown Prosecution, as a separate
office, to be Rupees 5000 per annum
or Rs 416 per month. In the
latter case the office of the
Depy Clerk of the Crown (which

a salary of Rs 175 per month is
now attached) was not to be
filled up on a vacancy occurring.

Sir Colley Scotland also
intended that the nomination
to the office of the Crown Prosecutor
should rest with the Advocate
General.

Pass of Govt, 30th April 1853 para 3.

Sir J. Pycroft's minute (para 17)
recorded in the above
Copy.

9. In passing orders on the
Chief Justice's scheme, the Govt.
directed (as Mr J. D. Mayne was
proposed to be appointed to act
as Clerk of the Crown) that the
two offices should, for the time,
be conjoined, and fixed a salary
of Rs 1000 per mensem for the
same, upon the understanding
that the arrangement should
be open to revision at any
future time in connexion with
any rearrangement of the
duties and salaries of the
Govt. Law officers. It was
originally

+ Please see issue
of "Herald" Times
of 26 Oct 12
Vol 1872.

originally intended by Govt
that the duty of appearing
in behalf of the Government
on the hearing of appeals in
criminal cases preferred to the
Criminal side of the Appellate
Court, should devolve on the
holder of the united offices in
his capacity of Crown Prosecutor;
but Sir Colley Scotland having
objected to this, the Government
desisted to his objections and
stated that other arrange-
ments would be made for
the performance of the duty
in question.

10. The duties of the
Advocate General, as detailed
in para 17 of the minute of
Mr Sydney Smyth, late Advocate
General, which is appended
to

G.O., 23rd May 1863, No 796.

* This duty is now performed by the
Govt Pleader, who (besides his
salary of Rs 500 per mensem)
is allowed a fee of Rs 30 for
appearance in each ^{criminal} case -
(G.O. 17th Dec 1869, No 2004.)

59 155
to the report of the Madras
Judicial Commissioner of
1859 (page 33), are as follows -
"The Advocate General
has not only to conduct every
Government case in the Supreme
Court, advise on and prepare all
appeals at Home, draw all
Acts &c, required by the
Madras Government, advise
the Commisary General, the
Collector of Sea Customs, the
Superintendent of Marine and
the Accountant General in
all legal questions arising
in their respective Departments
(which moreover must generally
be answered at once, to
prevent Government from
becoming liable to actions),
defend the Collector of Madras
in all Police cases, advise the
Public

* The drafting of
Acts is now the
duty of the Asst
Secy, Legal Dept.

Robert Walker Esq. the Milt.
Secretary to Govt. on all questions
(and they are not few) arising
out of the Administration
of Military Estates and the
Judge Advocate General of
the Army and Adjutant
General on all questions about
Courts Martial, construction
of the Mutiny Act and statutes
of War and legality of Milt.
orders to prosecute in all
cases of life and death and
other cases of public importance
and to act in all Commissions
issued by order of Government
where his aid is required and to
advise Govt. generally upon
all questions referred to him
and all questions of Milt. law
and discipline.

+ it is supposed
+ This duty now devolves on
the newly created office of
the new Judge Adv. General
in Bengal.

Memo. on the
Appointment of
Clerk of the Court
and Crown Prosecutor

Dep't 7-10th 5
of the copies

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Judicial Dept.
No 11

To The Honble Sir W. Morgan M.
Chief Justice of the High Court
of Judicature, Madras.

Honble Sir,

The resignation by Mr.
Morgan of the joint office
of Clerk of the Crown
and Crown Prosecutor
affords an opportunity
for reconsidering the
present footing of these
offices and the Estab.

I think in this letter
should go to the
Register as reply
to the Register's letter
Sir Walter has not
and does not put him
Self. J. S.

blushment attached to
them in view to effecting
a reduction of expenditure
which appears feasible
without impairing effi-
ciency. His Excellency
the Governor in Council
desires to avail himself
of

note by the Hon. The Justice of the Peace
is to advise the Hon. Justice of the Peace
and the Hon. Justice of the Peace

The right Hon. Mr. Dickson
was addressed to the
Ch. J. L.H.

of this opportunity, and
I am therefore directed to
request your opinion on
the following ~~remarks~~ ^{suggestions}

2. As at present con-
stituted the appointments
entail the following charges
on the State.

	Monthly Rs	Yearly Rs
Clerk of the Crown & Crown Prosecutor	1000	12000
Deputy Do	175	2100
Manager	105	1260
Deputy Do	70	840
Writer	28	336
Do	17 8	210
Do	10 8	126
4 Peons	28	336
	434	5208
Grand Total	1434	17208

The yearly charge is
Rs. 17208, which appears
to the Govt to be altogether
disproportionate to the
duties devolving on the
department, now that
the work of the Sessions
has been so materially
reduced

reduced by the extension of
the Town Magistrates' powers
under Madras Act VIII. of
1867, a still further ex-
tension of which seems
contemplated by the Supreme
Government.

3. In their Proceedings
of 24 February 1863, the
Govt approved the union
of the offices of Clerk of
the Crown and Crown Prose-
cutor, and in those of
30 April 1863 the salary
attached to the joint office
was fixed at Rs. 1000
monthly on the assumption
that on the officer holding
the ^{joint} appointment would
devolve the duty of appear-
ing on behalf of Govt
at the hearing of Appeals
in criminal Cases; but
on the representation
of

of Sir C. Scotland that this would involve the relinquishment by the holder of all private practice in Criminal matters; the requirement was not insisted on.

4. It however appears from Mr. Ritchie's letter of 10 Decr 1872 that you propose to impose this among other new duties on the future holder of the office. It would appear that Sir C. Scotland's original opinion as expressed in his letter of 27 Novr 1862 was in favor of this course, although he subsequently modified it.

5. The duties of the Clerk of the Crown as specified in Act XIII of 1865 are, the receiving and, if necessary, amending

67 6
amending indictments in committed cases and the preparing and maintaining the Jury lists. Sir C. Scotland described the office as corresponding on the Criminal side with that of the Registrar on the Civil side. As Crown Prosecutor Sir C. Scotland contemplated that he should afford advice in cases of importance or difficulty to the Town Magistrates in Commissible Cases (and also to Magistrates else where if required) - decide upon witnesses and evidence to be adduced and take means for ensuring their attendance or production, and afterward appear at the trial and conduct the prosecution - or if the Advocate General prosecuted

prosecuted, then appear
and assist as his junior.
He was also to argue Sessions
Cases reserved for the opi-
nion of the High Court.
Sir C. Scotland went on to
say that his opinion was
in favor of requiring of
the Crown Prosecutor the
further duty of appearing
for the prosecution in
Criminal appeals on the
Appellate Side, and of
advising Govt in refusal
prosecutions. When however
the Govt assumed that
this would be one of the
duties of the holder of
the joint office Sir C. Scotland,
as already stated, objected,
and his objection was
allowed. ^{According to Mr. Ritchie's letter} It is now
proposed to attach this
duty to the office, together
with that of conducting
Govt.

69 R
Govt. Cases in the Police
Courts and prosecutions
for offences against public
justice and other offences
when directed by the High
Court, and investigations
and charges against Euro-
pean British subjects in
the Mofussil when referred
by Govt.

It appears to the
Governor in Council that
unless much of this duty
has hitherto been performed
by the Crown Prosecutor, his
office which is not properly
speaking a ministerial
one must have been in
great measure a secure.
The Govt. learn that on
the average of the last 11
years, the number of Session
cases in which he pro-
secuted was $53\frac{1}{2}$, or 11 at
each Session, and they
presume

premise that these include
most of the cases in which
the High Court would
have desired that he
should appear.

7. It appears to the
Governor in Council that
for the work now devolving
on the Clerk of the Crown
as such and his Estab-
lishment, the following
scale of Establishment and
Monthly remuneration would
be sufficient.

Clerk of the Crown	300
Manager	70
1 writer	25
2 Peons	114
	<u>409</u>

with an annual allow-
ance of Rs 400 to defray
the cost of employing
temporary clerks during
the Sessions. Had Council
been employed and fees
paid

paid for the average
number of prosecutions con-
ducted by the Clerk of
the Crown as Crown Pro-
secutor, the cost to the
State would probably
have averaged not
more than Rs 4500 yearly,
and this charge would
probably decrease as the
work at Sessions is
diminishing. Assuming
that the union of the two
offices renders the employ-
ment of a Deputy Clerk
of the Crown indispensable,
the Govt. consider that
his retention would do
away with the necessity
for employing a Manager.

8. On the whole then
it appears to the Governor
in Council that the two
offices of Clerk of the
Crown and Crown Prosecutor
with

with Establishment should
not entail on the State
a larger Annual charge
than Rs 10,160, as shown
below

	Monthly
Clerk of the Crown	Rs 300
Deputy " " "	175
Writer	25
2 Peons	14
Crown Prosecutor	300
	814
	12

Temporary Assist at Sessions 400 yearly

10,160 yearly total.

The appointment of Deputy
Clerk of the Crown is in
the opinion of Govt. a
superfluous entail by
the union of the offices
of Clerk of the Crown
and Crown Prosecutor, &c.
as to allow the holder
of the joint office to
appear and plead during
Sessions; but its retention
may be justified by
the

3
The reduction of the remunera-
tion assigned to the
office of Crown Prosecutor
below the ^{estimated} ~~established~~
average cost of Employing
Counsel to prosecute
in Cases in which the
Duty is not of sufficient
importance to call for
the services of the Advocate
General. A saving of
upwards of Rs 7,000 yearly
would be effected by
the proposed arrangement,
and the total scale of
remuneration appears to
Govt. ample to secure
efficiency whether the
union of the offices of
Clerk of the Crown and
Crown Prosecutor be main-
tained or otherwise. In
the event of a separation,
the total might perhaps
be somewhat differently
distributed

distributed with advantage.
9. I am to request
that you will favor
the Government with your
opinion on the above
suggestion.

[Signature]

The post of Dr. fl. of the pr.
being abolished. &
an Officer named for
substituted on less
pay.

Fort St. George.
6 January 1873.

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1871-1872
1872-1873
1873-1874

9-10-11

Julius 1873-1874

9-10-11

9-6th June 1873-