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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	<u>36-37A</u>	<u>Press</u> <u>Mis.</u>
Dated	<u>2 - 5 -</u>	<u>1873</u>

Not to be folded or roughly handled

2nd May 1873.

No. 30. Read the following letter from H. WIGRAM, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 24th February 1873, No. 416:—

I am directed by the Chief Justice to acknowledge the receipt of your letter, dated 6th January 1873, Judicial Department, No. 11, requesting his opinion on certain suggestions for reducing the expenditure in connexion with the offices of Clerk of the Crown and Crown Prosecutor.

2. In reply, I am to state that, whether the change be in the direction of a reduction of expenditure, as suggested by His Excellency in Council, or an enlargement of the present duties of the offices as previously proposed by the Chief Justice, he concurs in thinking it expedient (now that a vacancy in the joint offices has occurred) to re-consider the footing on which these offices and the establishment attached to them stand.

3. The salary of the Clerk of the Crown before the year 1863 when the office was joined to that of Crown Prosecutor was 7,800 Rupees per annum, or 650 Rupees per mensem. To the Crown Prosecutor it was then contemplated to assign a monthly salary of 500 Rupees, but eventually the salary of the united offices was fixed at 1,000 Rupees. The monthly salary of 300 Rupees is now (upon considerations of diminished duties, and also apparently of the non-performance of certain duties pertaining to the Crown Prosecutor's office) suggested as a fair remuneration for the work of each office.

4. In your letter under acknowledgment it is stated that the number of prosecutions at the sessions has not, on the average of the last four years, exceeded fourteen at each session; and, adverting to certain new duties which the Chief Justice proposed to assign to the offices, it is said 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 a great measure a sinecure." The Chief Justice observes that the work has certainly diminished in quantity, but that the kind of work to be done and the qualifications for its due discharge remain the same; and, further, that it is a misapprehension to suppose that the duties assigned to the Crown Prosecutor when the joint office was created have not been performed, or that the further duties which the Chief Justice proposes to assign to his nominee are included among the former. The conduct of preliminary investigations before the Police Courts and of criminal appeals before the High Court in certain cases has hitherto formed no part of the duties assigned to the Crown Prosecutor, and the Government is now put to charges in respect of this work which might be saved. The duty of appearing on behalf of the Government at the hearing of appeals in criminal cases, which it was proposed in 1863 that the Crown Prosecutor should undertake, may, in the opinion of the Chief Justice, now fairly be required of him whatever difficulties may have hindered the former holder of the office from the performance of this duty. According to the present proposal the appointment will in reality, it is anticipated, carry with it duties more onerous than those contemplated in 1863, when the present salary was assigned to the joint office. But if only the present duties of these offices are to be performed, and a reduction of expenditure is deemed necessary, it will be possible to effect in due

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time a more considerable reduction than the Government propose. On a re-arrangement of the duties of the Registrar the work now done by the Clerk of the Crown might well be added to the Registrar's duties, and the post of Deputy-Clerk of the Crown together with the establishment altogether dispensed with. The Chief Justice does not anticipate that any increase to the Registrar's establishment beyond the employment of an additional writer would in consequence be necessary. The duties of the Crown Prosecutor might be assigned to the Advocate-General, or an Advocate of the Bar might be employed in each particular case to prosecute. The latter course is not one which approves itself to the Chief Justice for adoption, but he is of opinion that a severance of the united offices of Clerk of the Crown and Crown Prosecutor as soon as practicable is desirable.

5. The present establishment consists of persons of whom more than one has been in the public service for upwards of twenty years, and it would not be just to dismiss those persons at once. If it is deemed necessary to secure a reduction of expenditure the change may be effected gradually and as opportunity offers. The Chief Justice would prefer to maintain for the present the existing offices of Clerk of the Crown and Crown Prosecutor with the addition of new duties such as those indicated in Mr. Ritchie's letter, and those which at the first creation of the office of Crown Prosecutor were intended to be assigned to this office. If after a year's experience these duties should be found not to justify the present remuneration, the question of reduction may again be considered. The question of the additions to, and alterations of, the establishment of the High Court on its Original Side, proposed by Sir Colley Scotland, may also at the same time be conveniently dealt with.

No. 37. MINUTE by the Hon. R. S. ELLIS, C.B., dated 29th March 1873.

In a memorandum which I had the honour to circulate to my colleagues in December last, I brought to their notice the opportunity afforded by Mr. Mayne's retirement for considering the existing arrangements in connexion with the offices of Clerk of the Crown and Crown Prosecutor, which up to the present time had been united in the person of Mr. Mayne.

2. I proposed that for the future a salary of 300 Rupees per mensem, and an establishment costing about 116 Rupees per mensem, would suffice for the work performed by the Clerk of the Crown, or, say, 5,000 Rupees per annum, effecting thereby a saving of about 6,208 Rupees per annum on the present expenditure. I arrived at these conclusions after consultation with the Government Solicitor, Mr. Prichard.

3. As regards the office of Crown Prosecutor, I proposed that the Government, through the Government Solicitor, should be free to select for the prosecution of its cases any Barrister, usually employing the same Barrister as Junior Counsel to the Advocate-General, but leaving the Government free in particular cases to select any member of the Bar. This arrangement, taking the average number of cases yearly at 53½, and making allowance for a writer and a couple of peons to be added to the establishment of the Government Solicitor, when required during sessions, would have resulted in a saving of about 1,000 Rupees yearly, so that the total saving under my suggestions would eventually have been between 7,000 and 8,000 Rupees

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per annum. I say about. The actual saving would have been 7,208 Rupees, supposing the average of cases to be maintained which is improbable, as, with the increased powers now conferred on the Town Magistracy, there is a tendency to a decrease in the number of these cases.

4. My colleagues doubted the expediency of my suggestion of paying for the Crown prosecutions in the manner I proposed, and inclined to having a separate officer as Crown Prosecutor. While on this subject, I may mention that this question came, not long ago, under the consideration of the Bombay Government, and I quote the opinion of the Government Solicitor, in consultation with the Advocate-General of Bombay:—

“I have to report that in the opinion of the Honourable the Advocate-General, in which opinion I entirely concur, it is not desirable that the present plan of engaging Counsel for the prosecution of any case, when the Government Solicitor deems it necessary, should be superseded in favour of the plan of having a second standing Counsel on a fixed salary.

“The appointment of a second standing Counsel presents no apparent advantage, while it might, under some circumstances, be productive of considerable disadvantage. Under the existing system the whole talent of the Bar is available for prosecutions, and special abilities may be applied to particular cases. With a second standing Counsel the whole talent of the Bar, with the exception of the Honourable the Advocate-General and one other Barrister, would be arrayed against the Crown, and cases might arise in which this would be detrimental to Government as well as to public interests. On the other hand, the existing system, while free from the disadvantages above referred to, possesses also the advantage of being calculated to advance the general efficiency of the Bar as a body, which advantage would be in a great measure lost by the establishment of a second standing Counsel.”

5. I have ventured to quote these opinions in support of my own view in case my original suggestions should commend themselves to my colleagues after considering the reply of the Chief Justice, to whom the general question of reducing the cost of the two officers of Clerk of the Crown and Crown Prosecutor was referred by the Government on the 6th January last.

6. In his reply, dated the 23rd February 1873, Sir W. Morgan has gone fully into the subject referred to him, and I am gratified to find that, in the permanent arrangements which the Chief Justice proposes, he admits most of the conclusions at which I arrived in the memorandum which I submitted to my colleagues in December last.

7. The Chief Justice admits that the present is a favourable opportunity for considering the future status of the offices of Clerk of the Crown and Crown Prosecutor.

8. His Lordship admits also that the work of the offices has diminished in quantity, and he concurs in my suggestion that it is desirable that, as soon as possible, the offices of Clerk of the Crown and Crown Prosecutor should be disunited.

9. I had hardly hoped that I should on the main question have received so large an amount of support from the Chief Justice.

10. The Chief Justice indeed goes, and I dare say quite rightly, much further than I ventured in the economy he proposes, for he would do away with the offices as separate charges altogether, assigning the duties of Clerk of the Crown to the Registrar of the High Court on the Original Side, and the duties of Crown Prosecutor to the Advocate-General.

11. But, and in this I am compelled very respectfully to dissent from the Chief Justice, this reform is postponed indefinitely, and he would, for the present, keep the offices united in the person of the gentleman temporarily appointed to them; so that, although in the distant future a much larger saving than I contemplated is promised, matters are to be practically allowed to remain as they are.

12. The reasons assigned for what appears a somewhat inconsistent course of action are—

(1.) The vested interests of more than one official of the establishment.

(2.) The possibility of getting additional duties performed by the holder of the united offices at the present rate of pay.

13. As regards the first of these reasons, the only official who is, I believe, entitled to special consideration is the Deputy Clerk of the Crown. His case, for I believe he is not entitled to pension, can be treated specially by retaining him in his present post until some other appointment can be found for him, which would somewhat reduce the immediate saving. The other employes of long service who have claims to consideration are, I believe, all entitled to pension and would come under the special provision of the Pension Rules applicable to employes whose appointments are abolished.

14. I propose to enter into a somewhat more detailed examination of the other justification for delaying a reform which, it is admitted, is desirable, and for postponing a considerable saving of State expenditure. I leave aside the office of Clerk of the Crown, regarding which it is difficult for the Government actively to interfere, as it is a ministerial office of the High Court, with the remark that, in the opinion of the Chief Justice, the duties can be assigned to the Registrar of the High Court in the Original Side, and that, under these circumstances, the present moment would, in my opinion, seem very favourable for the abolition of an office which appears to the Chief Justice himself to be no longer required to be held as a distinct office. If we wait until the temporary occupant has remained a considerable time in the office, we shall be met in future by the first reason assigned by the Chief Justice against taking action in the reform of the united offices—"the vested interests of an official."

15. As regards the duties of Crown Prosecutor I incline to the eventual reform indicated by the Chief Justice. I would assign the duties of the office to the Advocate-General, but I would not delay action. I would do this at once, and in the following manner.

16. I take for granted that the office of Advocate-General is sufficiently well remunerated to give the Government the right to the chief portion of that officer's time, and that, provided sufficient assistance is given to the Advocate-General, he should be required at once to undertake the additional duties which the Chief Justice proposes eventually to assign to him.

17. Indeed, it would appear from the letter addressed on the 11th November last by Mr. Cunningham to the Chief Secretary that the present duties of the Crown Prosecutor are almost nominal; that all the important cases which come before the High Court on the criminal side are thrown entirely on the Advocate-General; and that the Crown Prosecutor confines his labours to a set of petty prosecutions which the Advocate-General asserts should never come into the High Court at all. So that, as pointed out by Mr. Cunningham, the Government not only keeps up the office of Crown Prosecutor and his establishment for doing next to nothing, but is driven when serious cases arise to secure additional assistance from the Bar.

18. Thus the Advocate-General is expected to conduct important cases in their preliminary stage before the Police Magistrates, as well as to appear in his more natural sphere of duty before the High Court.

19. If we accept Mr. Cunningham's description of the present system, it is evident that, in proposing that the duties of Crown prosecutions should be attached to his office with the aid of Junior Counsel, I am imposing little or no new responsible work on him, while I am affording him very substantial assistance in discharging his duties before the High Court and absolute relief from all ordinary duties beyond its precincts. The Junior Counsel will watch cases before the Magistrate, conduct the prosecutions of all unimportant cases before the High Court, and assist the Advocate-General as his junior in all the more important cases in which as at present he conducts prosecutions before the High Court.

20. I have calculated that, supposing the services of a Junior Counsel are entertained in every case in which there is a Crown prosecution, and that he is paid on the scale of fees prescribed for Junior Counsel, viz., Rupees 52-8-0 on each brief, the total amount of such fees will not exceed Rupees 3,600 per annum.

21. Thus under the arrangement which I will call temporary, that is, until the Government have the Chief Justice's own scheme of organization before them, I venture to think I have shown that the duties of Clerk of the Crown can be efficiently performed at an annual expenditure of 5,000 Rupees, while the duties of Crown Prosecutor can be imposed on the Advocate-General with the aid of a Junior Counsel at a cost not exceeding Rupees 3,600 per annum, or, say, a total of Rupees 8,600 per annum instead of as at present an expenditure of Rupees 17,208.

22. It only remains for me to notice the other duties which *ad interim*, and as a justification for delaying the submission of his permanent scheme of reform, the Chief Justice proposes to assign to the gentleman holding the joint offices of Clerk of the Crown and Crown Prosecutor.

23. I venture to think that the Chief Justice cannot have had any returns of the amount of work involved in these proposals when he laid them before Government, for when examined carefully it will be seen that, except the work which I have sketched out for the Advocate-General's junior, the other additions which are supposed to justify the delay in making a perfectly feasible saving are in reality so trifling as not to be deserving of consideration. I will take them *seriatim*—

1st.—The duty of conducting preliminary investigations in Police Courts in cases in which the Government are concerned.

This is properly the duty of a well-paid Officer—the Government Secretary. These are very few in number, and where that Officer requires assistance he

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would, as I have shown, have at hand, the Advocate-General if the case was of serious importance, or otherwise the Advocate-General's junior. A return appended shows that the assistance of Counsel in these investigations before the Police Courts was required by the Government Solicitor in only one case (the great Note Forgery Case) during the last three years.

2nd.—The duty of appearing in support of convictions in criminal regular appeals in the High Court when the Court directs Counsel to be employed.—This, as well as the duty of appearing under the order of the Government, is part of the function and emolument of the Government Pleader, that Officer being entitled to a fee of Rupees 30 on each such appearance. A return appended shows that this twofold duty has involved the Government Pleader's appearance in only three cases (at a cost of Rupees 90) in 1871, and in four cases (at a cost of Rupees 120) in 1872.

These too scanty fees are the perquisites of the Government Pleader, and should not be withdrawn from that Officer.

3rdly.—The conduct of investigations and charges in the districts against European British subjects *when his services are required by Government*.—The duty of prosecuting cases in the Mofussil formed part of the duty and profit of the Government Pleader up to the 1st January 1873, the preliminary investigations only have been held in the Mofussil in these cases, the trial being reserved for the High Court. A return from the Government Pleader shows that, during the past four years, the Government has not in a single case of a European British subject required the attendance of the Government Pleader at the preliminary investigation, and it may be safely asserted that his services will rarely if ever be required at the trials which henceforward will be held in the Mofussil instead of before the High Court.

For under the new law all offences which cannot be adequately punished by one year's imprisonment or fine or both must still come for trial before the High Court.

So that it is only for minor offences that the Sessions Courts will exercise jurisdiction over European British subjects, and it is absurd to suppose that in such cases the Government would ever send up an Officer specially to prosecute. Thus this new duty which is to be assigned to the holder of the joint offices of Clerk of the Crown and Crown Prosecutor is like the others *nominal* and not real.

24. In conclusion, I would earnestly press on my colleagues to leave the office of Clerk of the Crown undisturbed till they have the complete scheme of the Chief Justice for the reorganization of the office of Registrar on the Original Side of the Court before them, when it is to be hoped it may be abolished. In the meantime, the Chief Justice should be informed that the total cost including establishment is to be reduced to 5,000 Rupees per annum. The reform of the office of Crown Prosecutor the Government have in their own hands. I strongly recommend that the general duties be assigned to the Advocate-General with the assistance of a Junior Counsel such as I have above indicated.

29th March 1873.

(Signed)

R. S. ELLI

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STATEMENT.

Fees paid by Government for Police Court Cases during the years 1870, 1871, and 1872.

	RS.	A.	P.
31st August 1870.—To Mr. James Carr for Counsel and Attorney's costs in the case of the Collector of Sea Customs <i>vs.</i> G. Narasimooloo Chetty...	122	8	0
1st September 1871.—For summons from the Town Police Court in the case of the Collector of Sea Customs <i>vs.</i> Casavooloo Chetty...	2	0	0
1872.—To Mr. Miller for appearing at the Royapettah Police Court in the case of Regina <i>vs.</i> Seetaram and Padmanabha, paid on different dates about the end of the year ...	787	8	0
Total ...	912	0	0

The Advocate-General does not seem to have appeared in any Police case without fee and instructed by the Government Solicitor in the years 1870 and 1871. In October 1872 he appeared without fee and instructed by the Government Solicitor at the Royapettah Police Court in the case of Regina *vs.* Seetaram and Padmanabha, and this seems to be the only case in which he did so appear in 1872.

RETURNS.

Return of the Amount of Fees received by the Government Pleader for appearing before the High Court, Appellate Side, in Criminal Appeals for the years 1871 and 1872, by order of Government, or direction of the High Court.

	RS.
1871.	90
1872.	120
Appeared in four cases, at Rupees 30 each ...	120
Total ...	210

Return of Number of Appearances by Government Pleader in preliminary investigations in the Mofussil in cases of British subjects and Fees received for same in the years 1869, 1870, 1871, and 1872.

None.

No. 37-A. ORDER THEREON, 2nd May 1873, No. 692.

The Governor in Council is glad to find that the Chief Justice concurs in the proposal to separate the office of Clerk of the Crown from that of Crown Prosecutor, which is not a ministerial post, and he considers that the measure should be carried out with as little delay as possible.

2. The Chief Justice is of opinion that, on a re-arrangement of the duties of the Registrar on the Original Side of the High Court, the work now done by the Clerk of the Crown might well be added to the Registrar's duties, and the post of Deputy-Clerk together with the establishment altogether dispensed with, one writer being added to the Registrar's establishment.

3. The Governor in Council considers that the present moment, when the subject is held only on a temporary footing, is a most favourable one for carrying out the reform which commends itself to the Chief Justice, but all

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That the Government will at present require is that the cost of the Clerk of the Crown and his establishment shall be reduced to Rupees 5,000 per annum pending the submission by the Chief Justice of his scheme for the re-organization of the office of Registrar on the Original Side of the Court.

4. As regards the office of Crown Prosecutor the Governor in Council is of opinion that it may with advantage be at once placed on an entirely different footing, the duties which the Chief Justice would assign to it being apportioned to the Advocate-General with the occasional assistance of a junior Counsel engaged for each case, to the Government Pleader, and to the Government Solicitor.

5. The prosecutions which have hitherto been conducted at sessions by the Crown Prosecutor appear to have been of a petty character, such as should not properly come into the High Court at all. The more important cases are always entrusted to the Advocate-General himself, and the Government are satisfied that, with the aid of a junior retained for each particular case, the whole of the Government prosecutions in the High Court may well be conducted by the Advocate-General. The junior Counsel will watch the case before the Magistrates, conduct the prosecution before the High Court when the case is unimportant, and assist the Advocate-General as his junior in all the more important cases of which that officer would as at present take charge. The Government estimate that, supposing the services of a junior Counsel to be retained in every Crown prosecution, and that he is paid at the prescribed rate for junior Counsel of Rs. 52-8-0 on each brief, the total annual charge to the State will not exceed Rupees 3,600 yearly, which, added to the sum of Rupees 5,000 for the Clerk of the Crown and his establishment, will aggregate a total charge of Rupees 8,600 yearly instead of Rupees 17,208 now paid. As the number of prosecutions before the High Court is likely to decrease in consequence of the more extended powers conferred on the Police Magistracy the saving will eventually be still larger. The main advantage secured by the proposed change is that the Government will be free to select from the whole of the Bar the junior who shall conduct or aid the Advocate-General in conducting the Crown prosecutions, and, although they would anticipate that the services of the same Barrister would generally be retained, the freedom of choice would be manifestly attended with sensible advantage.

6. The other duties which the Chief Justice would assign to the Clerk of the Crown as Crown Prosecutor, pending the reform which he approves but would defer in consideration of vested interests, are—

1st, the conduct of preliminary investigations in the Police Courts when Government interests are involved.

2nd, to appear and plead in support of convictions in criminal regular appeals when the High Court directs Counsel to be employed.

3rd, the conduct of investigations and charges in the districts against European British subjects when his services are required by Government.

7. As regards the first of these duties the Government observe that it properly appertains to the Government Solicitor, who on the Government plan could always secure the services of Counsel as required, and has those of the Advocate-General at hand for cases of serious importance.

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2nd May 1873.

From information before Government it appears that the assistance of Counsel in such investigations before the Police Courts was required by the Government Solicitor in only one case in the last three years.

8. The duty of appearing in criminal appeals to support convictions when required by the High Court or directed by Government is one of the functions of the Government Pleader, who is entitled to a fee of Rupees 30 for each such appearance. He was so employed in only three cases in 1871, and in four cases in 1872.

9. Up to 1st January 1873 the trial of all European British subjects for offences committed in the Mofussil was reserved for the High Court, and during the last four years the Government has not in a single instance found it necessary to employ the Government Pleader in the exercise of his official functions at the preliminary investigations in the districts.

Under the new Code of Criminal Procedure all offences which cannot be adequately punished by one year's imprisonment or fine or both must still come for trial before the High Court, so that it is only for minor offences that the District Courts will exercise jurisdiction over European British subjects, and it is not to be supposed that in such cases the Government would find it necessary to depute an officer specially from Madras to prosecute.

10. Thus it would appear that the new duties which the Chief Justice would assign to the Clerk of the Crown as Crown Prosecutor pending the re-constitution of the office which he approves, do not in reality form any sufficient justification for the longer maintenance of the joint office on its present expensive footing, and the Governor in Council, therefore, resolves that the arrangements above indicated for the performance of the duties of the office of Crown Prosecutor shall have effect from 1st June next, from which date also the total charge on account of the Clerk of the Crown and his establishment must be brought within Rupees 5,000 yearly.

(Signed) W. HUDLESTON,
Chief Secretary.

Ed. J. Wright.



Bombay
Jan^y 24. 1873.

My dear Sir,

Your letter of the 20th Nov^r 1872 was sent to me by the Chief Secretary with a request that I would furnish you with the information you required. I now do so and I greatly regret that owing to press of work & severe indisposition which confined me to my house for a fortnight so considerable a delay should have occurred in replying to your letter.

The Gov^t. Solicitor at Bombay is also Public Prosecutor (he is not designated Crown Prosecutor) and his duties are detailed in the Resⁿ. of this Gov^t. in the Sec^y. Dep^t. No. 1224 of April 17. 1862 & its accompaniments (a copy of which is forwarded).

The practice in Bombay in prosecuting Gov^t. cases, in which are included not only Criminal, but also Civil and Revenue cases.

Original

10-1-76
Bolt. of 1873 31100000.

JUDICIAL.

To

THE HON. THE ACTING CHIEF JUSTICE,
AC., AC., AC.

Dated May, 2nd.

Recd.

G. O. 2nd May 1873, N^o 632.

MAY.
Nos. 33-37-A.

Passing orders on the subject of separating the
Office of the Clerk of the Crown and Crown
Prosecutor and of the cost involved by the arrange-
ment.

but also cases taken up by the Public Prosecutor under the instructions contained in the Resⁿ previously referred to is as follows: the Public Prosecutor conducts the case in the Police Court and, if it is of sufficient importance or in any case if the prisoner is defended by Counsel in the High Court, instructs Counsel to conduct the case in the High Court. In other cases he leaves the case to be conducted in the High Court by the Clerk of the Crown who is a barrister & who assists the Court at the sittings in all minor cases & indeed in many important cases also when no Counsel are engaged for the defence, by conducting the necessary examination of the witnesses.

The Gov^t Solicitor & Public Prosecutor, here has never yet had occasion to instruct Counsel to appear in the Police Court but in case of sickness or unusual pressure of work he might be obliged to instruct Counsel to conduct in the Police Court the preliminary investigation - a most important portion of a

criminal proceeding.

In minor cases the Public Prosecutor instructs the Advocate General (who receives no fee for his brief in such cases) and a Senior Counsel (usually the Legal Remembrancer who does receive fees with his help in such cases) to conduct the prosecution for the Crown. In other cases he uses his own discretion in the selection of Counsel but rarely if ever instructs more than one Counsel in each case. It occasionally happens that special instructions are issued that certain cases should be prosecuted by the Gov^t Law Officers. In such cases the Public Prosecutor instructs the Advocate General & as a rule the Legal Remembrancer also.

Five criminal Sessions are held every year in Bombay. The duties of the Public Prosecutor in regard to them are various. He not only conducts himself the preliminary investigation in many of the cases before the Bombay Police Magistrate



15

but in addition he advises Municipal Magistrates (on their application) as to cases which they are about to commit to the High Court, and also generally, and when copies are supplied in sufficient time from the Office of the Clerk of the Crown he examines the depositions in all cases committed to the High Court and whenever he perceives links in the evidence to be wanting he causes these omissions to be supplied, if possible, before the trial.

I enclose a statement obtained from the Office of the Govt. Solicitor & Public Prosecutor showing the number of cases at each Sessions held since May 1862 in which Counsel have been instructed to prosecute on behalf of the Crown, the amount of the fees paid to Counsel at each Sessions, & the amount of the other charges incurred by the Public Prosecutor in connection with the cases tried at the Sessions. The "petty charges". It will be observed are sometimes very considerable. These charges consist for the most part of the sums paid for copying depositions which of course vary according to the length of the evidence in each case - a matter which it may be

added has often no relation whatever to the importance of the particular case.

I have now, I think, furnished you with information on all the points referred to in your letter, but if you require any further or more detailed information I shall be most happy to supply it.

Yours very truly,

John Nugent.

I find on inquiry that G.R. No. 1224 of 1862 & its accompanying documents are not yet ready, we have no spare copies of them & they will have to be copied by hand. I will however send them to you tomorrow if they are ready by then & if not by Monday at the latest.

Yours

Demi officials from
the Under Secretary
to the Govt of Bombay.
d/ 24 & 25 Jan/3

Bombay
Procedure.

21/1/33

19
My dear Sir.

Herewith I beg to send you
copies of the Res: & correspondence referred
to in my letter to your address of yester-
day's date.

Yours very truly

W. J. C.

Bombay }
Jan. 25. 1933 }

No 329 of 1867. 21
Judicial Department
To, The Secretary to the Government
of India
Sir,

With reference to the Resolution of the Government of India, Home Department, No 1731, dated the 21st Feb 1866, on the subject of a proposal for increasing the salary of the Government Solicitor in this Presidency, I am desired to state that Her Majesty's Secretary of State for India with his Despatch No 37 of the 4th June last transmitted to this Government copy of his Despatch No 23, dated the 4th Idem, to the address of the Government of India, in which he left the question to be settled between the Government of Bombay and the Supreme Government.

2. As no further communication on the subject has been received from the Government of India, it is presumed that they expect to receive proposals from this Government, and I am desired therefore to submit the following remarks for consideration.

consideration.

3 From the 4th para. of the Despatch above specified it appears that the Secretary of State conceived the great want in Bombay to be, that of Counsel "to conduct the prosecution in cases in which some legal difficulty arises, or in which Explanations are required for the jury, and especially in cases in which prisoners are defended by Counsel," and, in the 5th para. he proposed to meet this want by assigning to a Barrister the duty of conducting prosecutions on a salary of about Rupees 250 a month.

4 I am desired to state however that in fact this is not the want that has been chiefly felt here. The Government Solicitor has always had authority in cases prosecuted on behalf of Government, to engage a Barrister, whether as junior to the Advocate General, or instead of the Advocate General when the circumstances were not such as to call for the appearance of that officer. During the 5 years ending with 1865, such cases averaged 18 in each year, the average expenditure on such cases was Rupees 148-5-3, and the

the average monthly cost to Government was Rupees 222-7-4. In addition to this however the Clerk of the Crown, in cases of which the Government Law officers have not taken cognizance, has been in the habit of retaining, under instructions from the Presiding Judge, Counsel for the prosecution, when the prisoner is defended by Counsel, and for the defence in serious cases in which the prisoner has not retained counsel for himself. The average fees so paid by the Clerk of the Crown out of the Fine Fund of the High Court has amounted to Rupees 118-8- monthly. If that be added to the average of the fees paid by the Government Solicitor as stated above, namely Rupees 222-7-4, the total monthly average will be about Rupees 340.

5 These arrangements, however, do not in the opinion of the Honble the Governor in Council, meet the real want out of which the demand for a Public Prosecutor has arisen. That want is partly described in para 5 of the Secretary of State's Despatch, as, preparing and watching the

the case against the accused, drawing the brief, and taking care that the necessary witnesses are in attendance. These services are designated as "Ministerial" and about Rs 250 is mentioned as a suitable remuneration for their performance. But there is another duty of a Public Prosecutor which remains to be fulfilled; and that is the originating of prosecutions against offenders who, from the low public feeling which prevails in an Indian Community on the subject of crime, are likely otherwise to escape prosecution altogether. This want is recognized in para. 5 of the Government of India's Resolution under reply; and it appears to His Excellency in Council that the duty of watching the occurrences of the day for the purpose of taking care that no serious crime shall pass unnoticed would be very moderately remunerated by an addition of Rs 250 per mensem to the salary suggested by the Secretary of State for the Ministerial duties before alluded to.

This

6. This Government would, therefore, make it the duty of the Public Prosecutor, to prepare and watch prosecutions in trials before the High Court, to draw the briefs, to take care that the necessary witnesses are in attendance; to communicate with and advise Magistrates, in respect to cases to be committed for trial in the High Court, to originate prosecutions against offenders, who would otherwise be likely to escape prosecution altogether; and to bring to the notice of Government any special circumstances connected with any trial which seem to require the attention of Government.

7. Under a more regular system of official prosecutions the cases in which it would be necessary to engage Counsel other than the Advocate General, would probably be more numerous than at present. It has consequently been doubted, whether the existing system of engaging separate Counsel for each case should be followed under the altered circumstances, or whether a fixed

Salary

Salary of say Rupees 300 per mensem
should be assigned to some Junior
Paravatter as an Assistant to the
Advocate General.

8. In order as far as possible
to remove doubts on this point,
His Excellency in Council requested
the Government Solicitor to answer
the following questions:

1. Whether he was prepared
to undertake the duties of Public
Prosecutor on the enlarged salary
of Rupees 2500 per mensem, and

2. Whether he considered
after consulting the Hon'ble
the Advocate General, that
it was, or was not, desirable
that the present plan of
engaging Counsel for the prome-
tious of any case, at the
discretion of the Government
Solicitor, should be superseded

in favor of the plan of
employing a 2^d Standing Counsel
on a fixed salary? and; If the
latter plan should be preferred,
whether a salary of Rupees
300 per mensem would be
sufficient?

The

9. The Government Solicitor has
reported that he is prepared to under-
take the duties of Public Prosecutor,
on the increased salary of Rs 2500
per mensem, subject to a clear under-
standing on the following points:

1. That the office of Public
Prosecutor will be distinct from
that of Solicitor to the Government.

2. That the prosecutions
which it will fall within the
scope of the Public Prosecutor's
duties to originate will be such
only as he may be directed
to originate by any Judge or
Magistrate; or such as, by reason
of there being no private person
or public body on whom the
duty of originating them should
more properly fall, or on any
other account, the Public Prosecutor
shall in his discretion consider
should be originated by him
in his public capacity.

10. In reply to the 2^d of the
questions put to him, he has
stated as follows:

I have the honor to say that,
after obtaining further statistics
or

as to the amount of fees paid
by Government in respect of cri-
minal prosecutions during the
last five years, and consulting
with the Honble. the Advocate
General, I have to report that
in the opinion of the Honble
the Advocate General, in which
opinion I entirely concur, it is
not desirable that the present
plan of engaging Counsel for the
prosecution of any case, when
the Government Solicitor deems
it necessary, should be superseded
in favor of the plan of having
a Standing Counsel on a fixed
salary.

In advancing the above
opinion it is presumed that
the duties to be undertaken
by the Standing Counsel
would be simply those at
present discharged by Counsel
in those cases in which they
are engaged to act as junior
Counsel with the Honble. the
Advocate General, with the addition
that the Standing Counsel
might, in important cases, be
required

required to attend at the Police Court
to conduct the Prosecution. This
being so, the appointment of a
Standing Counsel presents no
apparent advantage, while it
might under some circumstances
be productive of considerable
disadvantage. For example, the
Contingency might arise of his
presence being urgently required
in the High Court and in the
Police Court at the same moment.
Again, under the existing system
the whole talent of the bar is
available for prosecutions, and
special abilities may be applied
to particular cases. With a
Standing Counsel, the whole talent
of the bar, with the exception
of the Honble. the Advocate
General and one other barrister,
would be arrayed against the
Crown, and cases might arise
in which this would be detri-
mental to Government, as well
as to public interests.

On the other hand, the
existing system, while free
from the disadvantages above
referred

referred to, proposes also the
"advantage of being calculated to
advance the general efficiency of
the bar as a body, which advantage
would be in a great measure
lost by the establishment of a 2^d
Standing Counsel.

The disadvantages above pointed
out would not be avoided by the
"appointment of the most experienced
Counsel at a high salary to fill
the office."

11. If the Government Solicitor
be now appointed Public Prosecutor
on a total salary of (Rs. 2000 + 500) Rs. 2500
per annum, and if no arrangement
be made for the appointment of a
2^d Standing Counsel, it will be
necessary to define clearly the
relative functions of the Clerk
of the Crown, the Public Prosecutor
and the Solicitor to Government
as representing the Advocate
General.

12. In so doing, it is proposed
that regard should be had to the
following principles:
The Clerk of the Crown
to

to forward to the Public Prosecutor
in every case, copy of the charge
and of the depositions received
from the Committing Magistrate;
to retain Counsel for the defense
in cases such as those wherein
he has heretofore retained such
Counsel; and to instruct Counsel
for the prosecution only in cases
wherein the accused person
is defended by Counsel, while
Counsel for the prosecution has
not been retained by the Public
Prosecutor.

"The Public Prosecutor to
retain Counsel for the Prosecution,
at his discretion, in any case in
which copy of the record is forwarded
to him by the Clerk of the Crown."

"The Government Solicitor
to retain Counsel, as at present,
in cases which are prosecuted
by the Law Officers of the Govt.
The Govt. Solicitor in such cases, to obtain
copies of the documents from
the Public Prosecutor."

13. With these remarks I am
to request the sanction of the
Government of India to the
arrangement

arrangement just proposed.

Bombay 29th January 1867
I have the honor to be &c.
W. Wedderburn
Atty Secy to Govt.

N^o 2002.

33

Extract from the Proceedings of the Government
of India in the Home Department under date
the 26th February 1867. -

Read again the Resolution of the 21st February
1866, N^o 1731 and the correspondence noted
thereon regarding the proposed appointment
of a Public Prosecutor in Bombay, and the
assignment of the duties of the office to the
Government Solicitor of that Presidency,
with an increased salary. -

Read the Dispatch of the Secretary of State, N^o
23 dated the 14th June 1866, on the above
subject. -

Read a letter from the Government of Bombay,
N^o 319 dated the 29th January 1867. -

Resolution. -

The Government of Bombay in a letter N^o
3007 dated the 13th September 1865 defined the duties
of the proposed new office of Public Prosecutor
as follows -

(1) To revise all cases committed to the High Court by Mofussil Magistrates, so as to ensure the cases coming before the High Court in a complete shape.

(2) To give general advice to Magistrates at a loss about any matter in connection with their duties.

(3) To appear as counsel in the prosecution of such criminal cases as would not naturally be taken up by the Advocate General.

2. These duties the Government of Bombay proposed to assign to the Government Solicitor with an additional remuneration of Rupees 500 per month, a sum which had been recommended in a previous letter dated the 29th April.

3. On the receipt of this proposal the Bombay Government was asked "what is the lowest salary for which an efficient Government Solicitor who would undertake criminal business can be obtained."

4. The Bombay Government replied that as the Government Solicitor must give his whole

whole time and attention to Government work, Rupees 2500 per month was the lowest salary of an efficient officer.

5. This reply was understood to mean that, for Rupees 2500 per month, an efficient Solicitor could be obtained at Bombay, who would be competent to conduct the civil business of his appointment, would look after all cases at the Bombay Sessions, particularly those from the Mofussil, and would enquire into the cases of, and, "if he thinks there is evidence," would prosecute all persons whose prosecution is recommended by any Judge of the High Court.

6. On the above apprehension, the salary of Rupees 2500 per month for the office was recommended to the Secretary of State.

7. The Secretary of State in his Despatch No. 23, dated the 4th June 1866, approved of the proposed appointment and of the salary to be attached to it, if the office of Public Prosecutor and Government Solicitor were conjoined. He raised difficulties, however, as to this conjunction, but after offering certain suggestions in paragraphs

paragraphs 3 to 5, he left the final disposal of the matter in the hands of the Government of India -

8. The Government of Bombay now propose that the Government Solicitor be appointed Public Prosecutor on a total salary of Rupees 2500 per mensem, that is to say, on a salary of Rupees 2000 as Solicitor, and of Rupees 500 as Public Prosecutor, the offices though combined in the same person being distinct, and that he be entrusted with the following duties in his capacity as Public Prosecutor viz:-

- "To prepare and watch prosecutions
- "in trials before the High Court, for
- "draw the briefs, to take care that the
- "necessary witnesses are in attendance,
- "to communicate with and advise
- "Magistrates in respect to cases
- "to be committed for trial in
- "the High Court to originate
- "prosecutions against offenders
- "who would otherwise be likely to
- escape

"escape prosecution altogether, and to

"It is understood that the Bombay Government bring to the desire to adopt Mr. Hearn's description of these notice of Govern- prosecutions: "that the prosecutions which, it ment, any will fall within the scope of the Public Pro- "special cir- secutor's duties to originate, will be such only "cumstances. as he may be directed to originate by any "connected with Judge or Magistrate, or such as, by reason "any trial which of there being no private person or public body "seem to require the on whom the duty of originating them should "attention of more properly fall, or on any other account, the Public Prosecutor shall in his discretion consider should be originated by him in his public capacity." - Government."

Government."

10. The Government of India approves of the proposals of the Government of Bombay, and sanctions the union of the offices of Government Solicitor and Public Prosecutor at Bombay, with a salary of Rupees 2500 per mensem.

11. The Governor General in Council approves also of the principles laid down by the Government of Bombay in paragraph 2 of the present letter for regulating the relative functions of the Clerk of the Crown, the Public Prosecutor and the Solicitor to Government as representing the Advocate General. -

Copy of the above Resolution, and of
the papers quoted in the preamble, forwarded
to the Financial Department with reference
to the communication of that Department,
No. 1115, dated 5th March 1866 for final
sanction and further orders -

(True Extract)

Signed C. C. Bayley

Secretary to the Government
of India -

Appointments,
Bombay
Public Prosecutor at.

No. 1224 of 1867.

Judicial Department

Bombay Castle 17th April 1867.

Subject.	Resolution of Government.
Endorsement from the Under Secretary to the Govt of India, No. 3280, dated 30 th March 1867, forwards copy of the Resolution of the Government of India in the Financial Department, confirming the Resolution of that Government in the Home Department, authorizing the union of the offices of Government Solicitor and Public Prosecutor at Bombay, with a salary of Rupees 2,500 per mensem.	Copy of this Resolution and letter to which it is a reply should be sent to the Government Solicitor, the Advocate General, and the Chief Justice and Judges of the High Court, and copy of the Resolution, with extracts of such portion of the letter as are necessary to explain it, should be sent to the Senior Magistrate of Police, Bombay, and the Clerk of the Crown, and the appointment of a Public Prosecutor should be notified. A circular should also be sent to the several Magistrates, directing their attention to the appointment of a Public Prosecutor, intimating that one of his duties will be to communicate with and advise Magistrates as to the cases to be committed to the High Court, and requesting them, when necessary, to communicate direct with the Public

Public Prosecutor who should be
informed that this has been done.

Signed W. Wedderburn.
Acting Under Secretary to Govt.

To,

The Government Solicitor (With copy of the Resolution and of
Government letter N^o 319 of 29th
January 1867.)

The Advocate General (With -Do- (By letter))

The Chief Justice and Judges of the High Court. (-Do-)

The Senior Magistrate of Police, Bombay. (With copy of the Reso-
lution and extract paragraph 42 of Govt.
letter N^o 319 of 29th January 1867)

The Clerk of the Crown (With -Do-)

The District Magistrates.

43

Andras 7th March 1873

Dear Mr. Under Secretary

The following is the information
asked for in your note of the 3rd inst.

Fees paid by Govt. for Police Court cases during
the years 1870. 1871. & 1872

1870

August 31. To Mr James Farr for Counsel & Attorney's
costs in the case of the Collector of Sea
Customs v P. Narasimachari Chetty

No. 122.. 8.. -

1871

Sept 1. For Summons from the Town
Police Court in the case of the
Collector of Sea Customs v

1872

P. Narasimachari Chetty 2 .. - -
To Mr Miller for appearing at the
Rozapattan Police Court in the
case of Reg. v Sutarani Madam
- ablu. P. on different dates
about the end of the year 787.. 8.. -

1871 .. - -

The Advocate General does not seem to have
appeared in any Police case without fee &
instructions by the Govt. Solicitor in the years

276

Put
in

Statement

47

Sessions	Number of Cases	Costs of Prosecution				Total
		Counsel Fees	Incidental expenses on account of witnesses	Fetty Charges		
17 th May 1867.	3.	1125				
	4.	600	1.	"	12. 8.	
	5.	750	1.	"	1. 8.	
	24.	475	"	"	14.	2491.
1868	1.	780	2.	"	380 11.	
	2.	300	"	"	14.	
	3.	420	"	"	85.	
	4.	810	3.	"	900	
	5.	360	5.	"	22 8.	11081. 3.
	37.	2670	1.	"	1402 3.	
1869	1.	660	4.	"	67 8.	
	2.	480	"	"	145. 4.	
	3.	360	3.	"	928. 14. 7.	
	4.	450	2.	"	"	
	5.	540	"	"	"	3636 10. 7.
	31.	2490	"	"	1141. 10. 4.	
1870	1.	1515	5.	"	516.	
	2.	600	5.	"	34. 8.	
	3.	870	3.	"	18. 8.	
	4.	495	8.	"	11. 8.	
	5.	570	"	"	32.	4678. 8.
	36.	4050	"	"	612. 8.	
1871	1.	1215	16.	"	151. 4.	
	2.	1035	"	"	110.	
	3.	1470	1.	"	124.	
	4.	240	2.	"	21.	
	5.	690	1.	"	25.	5085. 1.
	34.	4650	"	"	431. 4.	
1872	1.	270	4.	"	"	
	2.	90	"	"	4.	
	3.	330	"	"	12. 12.	
	4.	600	"	"	28.	
	5.	660	"	"	16.	2010. 12.
	18.	1950	"	"	60. 12.	

Average of Cases in each year.

30.

Average of one years expense

21983 5.7
3663. 14. 3.

No 416

From

49
H. Wigram Esquire,
Acting Registrar of the High Court
of Judicature at Madras.

To

The Honorable W. Huddleston,
Chief Secretary to
Government.

Honorable Sir,

I am directed by the Chief
Justice to acknowledge the receipt
of your letter dated 6th January
1873, Judicial Department, No 11,
requesting his opinion on cer-
tain suggestions for reducing
the expenditure in connection
with the offices of Clerk of the
Crown and Crown Prosecutor.

In reply I am to state that
whether the change be in the
direction of a reduction of ex-
penditure as suggested by His
Excellency in Council or an
enlargement of the present duties

of the offices as previously proposed by the Chief Justice he concurs in thinking it expedient now that a vacancy in the joint offices has occurred to reconsider the footing on which these offices and the establishment attached to them stand.

The salary of the Clerk of the Crown before the year 1863 when the office was joined to that of Crown Prosecutor was 7,800 Rupees per annum or 650 Rupees per mensem. To the Crown Prosecutor it was then contemplated to assign a monthly salary of 500 Rupees; but eventually the salary of the united offices was fixed at 1000 Rupees. The monthly salary of 300 Rupees is now (upon considerations of diminished duties and also apparently of the non-performance of certain duties pertaining to the Crown Prosecutor's office) suggested as a fair

2
remuneration for the work of each office.

In your letter under acknowledgment it is stated that the number of prosecutions at the Sessions has not on the average of the last four years exceeded fourteen at each Session and adverting to certain new duties which the Chief Justice proposed to assign to the offices it is said 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 a great measure a sinecure." The Chief Justice observes that the work has certainly diminished in quantity but that the kind of work to be done and the qualifications for its due discharge remain the same and further that it is a misapprehension to suppose that the

1 duties assigned to the Crown
2 Prosecutor when the joint office
3 was created have not been per-
4 formed or that the further duties
5 which the Chief Justice proposes
6 to assign to his nominee are
7 included among the former.

8 The conduct of preliminary
9 investigations before the Police
10 Courts and of Criminal Appeals
11 before the High Court in certain
12 cases has hitherto formed no
13 part of the duties assigned to
14 the Crown Prosecutor and the
15 Government is now put to
16 charges in respect of this work
17 which might be saved. The
18 duty of appearing on behalf of
19 the Government at the hearing
20 of appeals in Criminal Cases
21 which it was proposed in 1863
22 that the Crown Prosecutor should
23 undertake may in the opinion
24 of the Chief Justice now

not be done

by the
Crown Prosecutor

done by the
Reader at the Court
£2 20 in 1871
£3 20 in 1872
Average per annum 185
per session 18 8 11

be required of him whatever dif-
ficulties may have hindered
the former holder of the office
from the performance of this duty.
According to the present proposal
the appointment will in reality,
it is anticipated carry with it
duties more onerous than those
contemplated in 1863 when the
present salary was assigned
to the joint office. But if
only the present duties of these
offices are to be performed
and a reduction of expenditure
is deemed necessary it will be
possible to effect in due time
a more considerable reduction
than the Government propose.
Upon a re-arrangement of the
duties of the Registrar the work
now done by the Clerk of the
Crown might well be added
to the Registrar's duties and the
post of Deputy Clerk of the Crown

together with the reestablishment altogether dispensed with. The Chief Justice does not anticipate that any increase to the Registrar's reestablishment beyond the employment of an additional writer would in consequence be necessary. The duties of the Crown Prosecutor might be assigned to the Advocate General or an Advocate of the bar might be employed in each particular case to prosecute. The latter course is not one which approves itself to the Chief Justice for adoption but he is of opinion that a severance of the united offices of Clerk of the Crown and Crown Prosecutor as soon as practicable is desirable.

The present reestablishment consists of persons of whom more than one has been in the

55.4
public service for upwards of 20 years and it would not be just to dismiss those persons at once. If it is deemed necessary to secure a reduction of expenditure the change may be effected gradually and as opportunity offers. The Chief Justice would prefer to maintain for the present the existing offices of Clerk of the Crown and Crown Prosecutor with the addition of new duties such as those indicated in Mr. Ritchie's letter and those which at the first creation of the office of Crown Prosecutor were intended to be assigned to this office. If after a year's experience these duties should be found not to justify the present remuneration, the question of reduction may again be considered.

The question of the additions
to and alterations of the sta-
tute book of the High Court
on its original side proposed
by Sir Colley Scotland may
also at the same time be con-
veniently dealt with.

High Court of } I have the honor to be,
Judicature, Madras, }
24th February 1873. }
Honorable Sir.
Your most obed^t servant,

Twissan

Acting Registrar,
Appellate Side.

Return of the amount of fees
received by the Genl. Pleader for
appearing before the High Court
Appellate side in Criminal Appeals
for the years 1871-72 by Order
of Genl. in direction of the High Court.

1871 Rs a.o
appeared in 3 cases at Rs 30 - - - 90 - -

1872
appeared in 4 cases at Rs 30 - - - 120 - -

J. W. Hamblin
Genl. Pleader

Govt Pleader.
for appearing in Criminal
Appeals - direction of
Govt of High Court
7/1/72

Minute by Mr. R. D. [unclear]

In a Memorandum
which I had the honor to
circulate to my colleagues
in December last, I brought
to their notice the opportunity
afforded by Mr. Mayne's
retirement for considering
the existing arrangements
and he are bound in connection with the
offices of Clerk of the Crown
and Crown Prosecutor, which
up to the present time
had been united in the
person of Mr. Mayne.
I proposed that for
the future a salary of 300
pounds per annum and an
establishment

L. D.

26/4/173 67/4/73
C 4/173

establishment costing about
116 Rupees per mensem would
suffice for the work performed
by the Clerk of the Crown,
or say 5000 Rupees per annum,
effecting thereby a saving of
about 6200 Rupees per annum
on the present expenditure.

I arrived at these conclusions
after consultation with the
Court Solicitor Mr Prichard.

As regards the
office of Crown Prosecutor I
proposed that the Court through
the Court Solicitor should be
free to select for the pro-
secution of its cases any
barrister, usually employing
the same barrister as Junior
Counsel to the Advocate
General, but leaving the
Court

I would at once adopt

the course which he

thinks proper - namely
to transfer to the

Advocate General, as the
Junior Counsel, the
duties hitherto performed
by the present Crown
Prosecutor -

It is now also that
we ought to call the
attention of the High
Court to the statement
of the Chief Justice that
the work performed by
the Clerk of the Crown

almost annual,
and ~~in his opinion~~ that
the duties of the
Office should be
transferred to
the High Court
Judicial side -

As regards the Junior
Counsel, who is to
assist the Advocate
General, I
perceive the
appointment desirable
in each case of the
Junior Counsel.

67 2
Court free in particular cases
to select any member of
the bar. This arrangement,
taking the average number
of cases yearly at 53 1/2 and
making allowance for a
writer and a couple of
persons to be added to the
establishment of the Court
Solicitor, when required during
sessions, would have resulted
in a saving of about 1000
Rupees yearly, so that the
total saving under my sug-
gestions would eventually
have been between 7 and 8000
Rupees per annum. I say
about - The actual saving
would have been 7200 Rupees
supposing the average of
cases to be maintained
which is improbable as with
the

the increased powers now
conferred on the Town
Magistracy, there is a ten-
dency to a decrease in the
number of these cases.

My colleagues
doubted the expediency of
my suggestion of paying
for the Crown Prosecutions
in the manner I proposed,
and inclined to having a
separate officer as Crown
Prosecutor. While on this
subject I may mention
that this question came,
not long ago, under the
consideration of the Bombay
Court, and I quote the
opinion of the Court Solicitor,
in consultation with the
Advocate General of Bombay.

"I have to report that
in the opinion of the Honble
the

employed would be
considered more
economical than
the appointment of
a person permanently
employed for that purpose.
If not, I shall be
rather inclined to
prefer the latter
arrangement.

12

the Advocate General, in
which opinion I entirely concur,
it is not desirable that
the present plan of engaging
Council for the prosecution
of any case when the Court
Solicitor deems it necessary,
should be superseded in
favor of the plan of having
a 2nd standing Council,
on a fixed salary.

"The appointment of a
2nd standing Council pre-
sents no apparent advan-
tages, while it might, under
some circumstances, be
productive of considerable
disadvantages. Under the
existing system the whole
talent of the bar is available
for prosecutions, and special
abilities may be applied
to particular cases. With
a

a 2nd Standing Council,
the whole talent of the bar
with the exception of the
Honble the Advocate Genl.
and one other barrister,
would be arrayed against
the Crown, and cases might
arise in which this would
be detrimental to Govt. as
well as to public interests.
On the other hand, the existing
system, while free from
the disadvantages above
referred to, possesses also
the advantage of being
calculated to advance
the general efficiency of
the bar as a body, which
advantage would be in
a great measure lost by
the establishment of a
2nd Standing Council.

71 4
I have ventured
to quote these opinions in
support of my own view in
case my original suggestions
should commend themselves
to my colleagues after —
considering the reply of the
Chief Justice to whom the
general question of reducing
the cost of the two offices of
Clerk of the Crown and
Crown Prosecutor was re-
ferred by the Govt. on the
6th Jan^y last.

In his reply
dated the 23rd Feb^y 1873, — Sir
W. Morgan has gone fully
into the subject referred to
him, and I am gratified
to find that in the perma-
nent arrangements which
the

the Chief Justice proposes,
he admits most of the
conclusions at which I
arrived in the Memo: which
I submitted to my colleagues
in December last.

The Chief Justice
admits that the present is
a favorable opportunity for
considering the future
status of the offices of
Clerk of the Crown and
Crown Prosecutors.

His Lordship

admits also that the work
of the offices has diminished
in quantity and he concurs
in my suggestion that it
is desirable that as soon
as possible the offices of
Clerk of the Crown and
Crown Prosecutors should
be discontinued.

I

73 5
I had hardly
hoped that I should see the
main question have received
so large an amount of
support from the Chief
Justice.

The Chief Justice
indeed goes, and I dare
say quite rightly, much
further than I ventured
in the economy he proposes,
for he would do away
with the offices as separate
charges altogether, assigning
the duties of Clerk of the
Crown to the Registrar
of the High Court on
the original side, and the
duties of Crown Prosecutors
to the Advocate General.
But, and in this
I am compelled very res-
pectfully to dissent from
the

to the Chief Justice, this reform
is postponed indefinitely,
and he would, for the
present, keep the offices
united in the person of
the gentleman temporarily
appointed to them - so
that, although in the
distant future, a much
larger saving than I con-
templated, is promised,
the matters are to be practi-
cally allowed to remain
as they are.

The reasons assign-
ed for what appears a
somewhat inconsistent
course of action are -

1. - The vested interests
of more than one official
of the Establishment.
2. - The possibility of
getting

getting additional
duties performed by the
holder of the united
offices at the present
rate of pay -

As regards the
first of these reasons, the
only official who is, I
believe, entitled to special
consideration is the deputy
Clerk of the Crown. His
case, for I believe he is
not entitled to pension,
can be treated specially
by retaining him in his
present post until some
other appointment can be
found for him, which would
somewhat reduce the im-
mediate saving. The
other employees of long
service who have claims
to consideration, are, I
believe

believe, all entitled to pen-
sion and would come
under the special provision
of the Pension Rules, appli-
cable to employees whose
appointments are abolished.

I propose to
enter into a somewhat
more detailed examination
of the other justification
for delaying a reform
to which, it is admitted, is
desirable, and for post-poneing
a considerable saving of
State expenditure. I leave
aside the office of Clerk
of the Crown, regarding
in which it is difficult for
the Court actively to interfere,
as it is a ministerial
office of the High Court,
with the remark that in
the opinion of the Chief
Justice

in my opinion

Justice the duties can be
assigned to the Registrar
of the High Court in the
Original Side, and that,
under these circumstances,
the present moment would
seem very favorable for
the abolition of an office
which appears to the Chief
Justice himself to be
no longer required to be
held as a distinct office.
If we wait until the
temporary occupant has
remained a considerable
time in the office, we
shall be met in future
by the 1st reason assigned
by the Chief Justice against
taking action in the reform
of the united offices - "the
needed interests of an official."
As

As regards the duties of Crown Prosecutor I incline to the eventual reform indicated by the Chief Justice. I would assign the duties of the office to the Advocate General, but I would not delay action, ^{I would} ~~would~~ do this at once, and in the following manner.

I take for granted that the office of Advocate General is sufficiently well remunerated to give the holder the right to the chief portion of that officer's time, and that provided sufficient assistance is given to the Advocate General, he should be required at once to undertake the

79-8
the additional duties which the Chief Justice proposes eventually to assign to him.

Indeed, it would appear from the letter addressed on the 11th November last by Sir Cunningham to the Chief Secretary, that the present duties of the Crown Prosecutor are almost nominal. That all the important cases which come before the High Court on the criminal side are thrown entirely on the Advocate General, and that the Crown Prosecutor confines his labors to a set of petty prosecutions which the Advocate General asserts

asserts should never come
into the High Court at
all - So that, as pointed
out by Mr. Cunningham,
the Court not only keeps
up the office of Crown
Prosecutor and his establish-
ment for doing next to
nothing, but is driven
when serious cases arise
to secure additional assis-
tance from the Bar.

Thus the Advo-
cate General is expected
to conduct important cases
in their preliminary stages
before the Police Magistrates
as well as to appear in
his more natural sphere
of duty before the High
Court.

If

9
If we accept
Mr. Cunningham's descrip-
tion of the present system
it is evident that in pro-
posing that the duties of
Crown prosecutions should
be attached to his office
with the aid of Junior
Counsel, I am imposing
little or no ^{responsible} new work
on him while I am afford-
ing him very substantial
assistance in discharging
his duties before the High
Court and absolute relief
from all ordinary duties
beyond its precincts. The
Junior Counsel will watch
cases before the Magistrates,
conduct the prosecutions of
all unimportant cases before
the High Court and assist
the

the Advocate General as
his junior in all the
more important cases in
which, as at present he
conducts prosecutions before
the High Court.

I have calculated
that supposing the services
of a junior ^{Counsel} are entertained,
in every case in which
there is a Crown Prosecu-
tion, and that he is paid
on the scale of fees pres-
cribed for junior Counsel,
namely Rupees 52-0-0 on
each brief, the total amount
of such fees will not ex-
ceed Rupees 3600 per
annum.

Thus under the
arrangement which I will
call

10
call temporary, that is until
the Court have the Chief
Justices' own scheme of
organization before them,
I venture to think I have
shown that the duties of
Clerk of the Crown can be
efficiently performed at an
annual expenditure of
5000 Rupees, while the duties
of Crown Prosecutor can be
imposed on the Advocate
General with the aid of a
junior Counsel at a cost
not exceeding 3600 per annum,
or say a total of Rs 8600
per annum instead of as
at present an expenditure of
Rupees 17,200.

It only remains
for me to notice the other
duties which "ad interim" and
as

as a justification for de-
laying the submission of
his permanent scheme of
reform, the Chief Justice
proposes to assign to the
gentleman holding the
joint offices of Clerk of
the Crown and Crown Pro-
secutor.

I venture to think
that the Chief Justice can-
not have had any returns
of the amount of work involved
in these proposals, when he
laid them before the Court, for
when examined carefully it
will be seen, that except the
work which I have sketched
out for the Advocate General
of junior, the other additions which
are supposed to justify
the delay in making a
perfectly

perfectly feasible saving
are in reality so trifling
as not to be deserving of
consideration. I will take
them seriatim.

1st The duty of conducting
preliminary investigations
in Police Courts in cases
in which the Court are
concerned.

This is properly
the duty of a well paid
officer the Court Solicitor.
These cases are very few
in number and where that
officer requires assistance he
would, as I have shown,
have at hand the Advocate
General if the case was of
serious importance or other-
wise the Advocate General's
junior. A return appended
shows

shows that the assistance of Counsel in these investigations before the Police Courts was required by the Court Solicitor in only one case (the great Rate Forgery Case) during the last three years.

2^d The duty of appearing in support of convictions in Criminal Regular Appeals in the High Court, when the Court directs Counsel to be employed. This, as well as the duty of appearing under the order of the Court, is part of the function and emolument of the Court Pleader, that officer being entitled to a fee of Rs 30 on each such appearance. A Return appended shows

shows that this two-fold duty has involved the Court Pleader's appearance in only three cases - (at a cost of Rs 90) in 1871 and in four cases (at a cost of Rs 120) in 1872.

— These too scanty fees are the perquisites of the Court Pleader and should not be withdrawn from that officer.

3^d The conduct of investigations and charges in the districts against European British Subjects, when his services are required by Court. — The duty of prosecuting cases in the Mofussil formed part of the duty and profit of the Court Pleader up to the 1st Jan^y 1873, the preliminary investigations only

only have been held in
the Infirmary in these cases.
the trial being reserved
for the High Court. A
Return from the Lord Pleader
shows that during the past
four years the Lord has
not in a single case of
a European British Subject
required the attendance of
the Lord Pleader at the
preliminary investigation
and it may be safely asserted
that his services will rarely
if ever be required at the
trials which henceforward
will be held in the Infirmary
instead of before the High
Court.

For under the
new Law all offences which
cannot

89 73
cannot be adequately punished
by one years imprisonment
or fine or both must still
come for trial before the
High Court.

So that it is
only for minor offences that
the Sessions Courts will
exercise jurisdiction over
European British Subjects,
and it is absurd to suppose
that in such cases the
Lord would ever send up
an officer specially to prose-
cute. Thus this new duty
which is to be assigned to
the holder of the joint offices
of Clerk of the Crown and
Crown Prosecutor is like the
others nominal & not real.

In conclusion
I would earnestly press on
my

my colleagues to leave the
office of Clerk of the Crown
undisturbed, till they have
the complete scheme of the
Chief Justice for the re-
organization of the office
of Registrar on the original
side of the Court before
them, when it is to be
hoped it may be abolished.
In the meantime, the Chief
Justice should be informed
that the total cost inclu-
ding Establishment is to
be reduced to 5000 Rupees
per annum. The reform
in the office of Crown Pro-
secutor the Court have in
their own hands. I strongly
recommend that the general
duties be assigned to the
Advocate

Advocate General with
the assistance of a junior
Counsel such as I have
above indicated

R S Ellis

March 29. 73.

Statement

Fees paid by Court for Police Court cases
during the years 1870. 1871. and 1872.

31st August 1870. - To Mr James Carr for
Counsel & Attorney's
costs in the case of the
Collector of Sea Customs
V. L. Narasimmoos Chetty. Rs 122.0-

1st September 1871. - For Summons from the
Town Police Court in the
case of the Collector of Sea
Customs V. Casaroots Chetty. 2-0-

1872. To Mr Miller for appearing at
the Poyapettah Police Court in
the case of Ray V. Sektaram
& Paramanabha, paid on
10th of Feb about the end

787-0-0
Rupees 912-0-0

9/1

The Advocate General does not seem to have appeared in any Police case without fee and instructed by the Court Solicitor, in the years 1870 and 1871. In October 1872 he appeared without fee and instructed by the Court Solicitor at the Royapet Police Court in the case of Reg: v Sektaram & Padmanabha and this seems to be the only case in which he did so appear in 1872.

Returns.

Return of the amount of fees received by the Court Pleader for appearing before the High Court Appellate side in Criminal Appeals for the years 1871-72 by Order of Court or direction of the High Court.

1871.

Appeared in 3 cases at Purses 30 — Rs 90 —

1872.

Appeared in 4 cases at Purses 30 — Rs 120 —

Purses 210 —

Return of number of appearances by Court Pleader in Preliminary Investigations in the Mofussil in cases of British Subjects and fees received for same in the years 1869, 1870, 1871, 1872.

None.

Judicial 1872 kept.

N^o 830

Dated 29th March 1873.

S. O. no. 692

S. O. no. 692

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from

the Registrar High Court

dated 24th February 1873.

7 Minutes by the Honble Mr. Justice, C. S. 27 March 73

Order thereon Obtained. 2 May 1873. No 692

The Governor in Council is glad to find that the Chief Justice concurs in the proposal to separate the office of Clerk of the Crown from that of Crown Prosecutor which is not a Ministerial post, and he considers that the measure should be carried out at once. The Chief Justice is of opinion that on a rearrangement of the duties of the Registrar on the

MS C
H
I. O. S.

with as little delay as possible.

Judicial 10.11
the Original side of the High Court the work now done by the Clerk of the Crown might well be added to the Registrar's duties and the post of Dy. Clerk together with the establishment altogether dispensed with. one writer being added to the Registrar's establishment.

2 The Governor in Council considers that the present moment, when the appointment is held only on a temporary footing, is a most favorable one for carrying out the reform which commends itself to the Chief Justice; but all that the Govt. will at present require is that the cost of the ^{clerk of the} Crown & his establishment shall be reduced to Rs. 5000 per annum

placed on an entirely different footing.

97-6
annum pending the submission by the Chief Justice of his scheme for the reorganisation of the Office of Registrar on the Original side of the Court.

3 As regards the Office of Crown Prosecutor the Governor in Council is of opinion that it may with advantage be at once ~~abolished~~ the duties which the Chief Justice would assign to him & apportioned to the Advocate General with the occasional assistance of a Junior Counsel engaged for the case, to the Govt. Pleader & the Govt. Solicitor.

4 The prosecutions which have hitherto been conducted at Sessions by the Crown Prosecutor appear to have been of a petty character

character such as should
not properly come into
the High Court at all.
The more important cases
are always entrusted to
the Advocate General
himself and the Govt.
are satisfied that with
the aid of a junior
retained for each particular
case, the whole of the Govt.
prosecutions in the High
Court may well be
conducted by the Advocate
General. The junior counsel
will watch the case before
the Magistrates, conduct
the prosecution before the
High Court when the case
is unimportant, & assist
the Advocate General
as his junior in all the
more important cases
of which that officer
as at present would
take

99 7
take charge. The Govt.
estimate that supposing
the services of a junior
counsel ~~will be~~ retained
in every Crown pro-
secution & that he is
paid at the prescribed
rate of Rs. 52-8-0 and
each brief, the total
annual charge to the
State will not exceed
Rs. 3600 yearly which
added to the sum of
Rs. 5000 for the Clerk
of Crown this establish-
ment, will aggregate
a total charge of
Rupees 8600 yearly
instead of Rs. 17208
now

the now paid. As the
number of prosecutions
before the High Court is
likely to decrease in
consequence of the
more extended in-
fluences conferred on
the Police Magistrate
the saving will
eventually be still
larger. The main
advantage secured
by the proposed
change is that
the Government will
be free to select from
the whole of the
Bar the junior who
shall conduct or aid
the

the Advocate General in
conducting the Crown pro-
secutions, and altho they
would anticipate that
the services of the same
Barrister would generally
be retained, the freedom of
choice would be manifestly
attended with sensible
advantage.

5 The other duties which
the Chief Justice would
assign to the Clerk of the
Crown as Crown Prosecutor,
pending the reform which
he approves but would defer
in consideration of vested
interests, are
the conduct of preli-
minary investigations in
the Police Courts when
Govt interests are involved

2. To appear and plead
in support of convictions in
Criminal regular appeals
when the High Court directs
Counsel to be employed.

3. The conduct of investi-
gations and charges in the
districts against European
British subjects when
his services are required
by Government.

As regards the first
of these duties the Government
observes that it properly
appertains to the Government
Solicitor, who as the Govt
plan could always secure
the services of Counsel as
required and has those of the
Advocate General at hand
for cases of serious importance.

From information
received and reported

before Government it appears
that the assistance of Counsel
in such investigations
before the Police Courts
was required by the Govt
Solicitor in only one case
in the last 3 years.

7. The duty of appearing
in Criminal appeals to
support convictions when
required by the High Court
indicated by Government
is one of the functions of the
Government Pleader who is
entitled to a fee of Rs 30
for each such appearance.

There was no employment in
only three cases in 1871
and in four cases in 1872.

8. Up to 1st January 1873
the trial of all
European

European British subjects
for offences committed
in the Mofussil was reserved
for the High Court, and
during the last four years
the Government has not in
a single instance found
it necessary to employ
the Government Pleader
in the exercise of his official
functions at the preliminary
investigations in the District.
Under the new Code of
Criminal Procedure all
offences which cannot be
adequately punished by
one year imprisonment
or fine or both must
still come for trial before
the

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the High Court: so that
it is only for minor
offences that the District ^{Courts}
will exercise jurisdiction
over European British
subjects, and it is not to be
supposed that in such
cases the Government
would find it necessary
to depute an officer spe-
cially from Madras to
prosecute.

Thus it would appear
that the new duties which
the Chief Justice would
assign to the Clerk of the
Crown as Crown Prosecutor
pending the re-constitution
of the Office which he

approves

approved - do not in reality
form any sufficient justifi-
cation for the longer
maintenance of the joint
office on its present expensive
footing - and the Governor
in Council therefore resolves
that the abolition of the
Office of Crown Prosecutor
in the High Court shall ^{for} the performance of the
duties of the Office of Crown
Prosecutor
have effect from 1st June
next from which
date also the total charge
on account of the Clerk of Crown
and his establishment must
be brought within £5000
yearly.

The Hon. the Chief Justice with
Accountant General and
Advocate General
for the Chamber

9-10-91 ✓
 18-1-96 ✓
 7-5-08 ✓
 28-8-13 ✓
 13-12-17 ✓
 1-1-18 ✓

10/1/04 ✓

Pro 2 May 1873

Bout. of 1873 *Elm*

To

Dated *2-5-73*
 Recd. 1873 No. 692

13 Mos. 1873

Inde original