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MADRAS RECORD OFFICE

Government of Madras

Judicial DEPARTMENT

G.O. No.

1342

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Dated

22-7-1874 195

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No. 807

FROM

ARTHUR HOWELL, Esq.

Offg. Secretary to the Govt. of India.

TO

THE SECRETARY TO

GOVT. OF MADRAS.

Home Dept.

Judicial.

FORT

the 18 June 1874.

SIR,

THE attention of the Government has been drawn to the proceedings in the case of the Crown Prosecutor in May 1873 and March last under which the Crown Prosecutor has been abolished and replaced by the Advocate General.

Advocate General in Council of the Madras Government of the appointment of Crown

2. The question as to the best mode of conducting the legal business of Government is one of much importance, and is engaging the attention of the Government of India. Any light which the experience of Local Governments can throw upon it will be useful to them.

de of conducting the legal importance, and is engaging the attention of the Government of India. Any light which the experience of Local Governments can throw upon it will be useful to them.

3. From the proceedings before the Court it appears that a case was taken into Court on behalf of the Government, which in the opinion of the Advocate General of Madras was quite unsustainable on the evidence, and which, therefore, it was not creditable to the Government to prosecute. It further appears that the Accountant General had got up the evidence and was actively promoting the prosecution.

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4. Now, according to the experience of the Government of India, the stage at which the greatest weakness is found in the conduct of Crown cases is the stage before they come into Court, when the evidence should be got up and sifted, and its bearings carefully considered. In short, the work principally wanted is that which is done by the Attorney in places where the division of labour between Attorney and Counsel exists. The Attorney will take the advice of Counsel when he finds it necessary, but with him should rest the responsibility of seeing that the case is properly got up for presentation in Court, and of advising his client if from its weakness, its invidiousness, or from any other cause he thinks it should be dropped. If there is any difference between the Crown and private persons in this respect, it is that the Crown wants more of such advice than private persons do.

5. The Government of India do not find that the Government Solicitor intervened in this case except in a formal way, indeed for the purpose only of handing a brief to Counsel. And from the account given by the Advocate General it would seem that the facts elicited in Court respecting the character of the witnesses, and the mode in which their evidence had been originally obtained, came upon him by surprise, and therefore presumably could not have been known to the Government Solicitor or the junior Counsel.

6. It would be an assistance to the Government of India in examining this difficult subject if the Madras Government could inform them, both generally and with reference to the particular case under observation, what views they take on such questions as the following:

- (a) Are they satisfied with the mode in which Crown cases, whether civil or criminal, are presented to the Courts?
- (b) If not, what are the points on which they feel dissatisfied?
- (c) What are the reasons of the Government Solicitor in his objections to Crown cases?
- (d) In the case under observation did the Government Solicitor get up the defence, or did he review the case as a whole, or did he tender any advice to the Government upon it, or did he lay it before Counsel with the view of doing any of these things?
- (e) If not, was it his duty to do any and which of these things, or whose duty is it to advise the Government as to the character and strength of the cases they take into Court, and to see whether they are properly supported by honest evidence?

7. Again, from the same proceedings it appears that in May 1873 the Madras Government were much dissatisfied with the close system of paying a Barrister a fixed salary for the conduct of criminal cases; that they then changed that system for the open one of choosing their Counsel from the Bar at large and paying him by the job; and that they now propose to revert to the close system because on two occasions the Counsel retained in a Crown case was absent at the critical moment being retained also for a private client whom he preferred attending to.

8. With reference to this matter the Government of India would be glad to know—

- (f) What duties it is expected that the Crown Prosecutor shall perform, and whether they are the same that were performed by his predecessors prior to May 1873?
- (g) Whether he is allowed to take private practice?
- (h) If he does, what is there to prevent a collision of duties such as has happened in the case of Counsel retained *pro hac vice*?
- (i) Whether it is possible to retain Counsel on the open system with a distinct intimation that, if they prefer other clients, they will not receive Crown briefs?

I have the honour to be,

S I R,

Your most obedient Servant,

Arthur H. H. H.

Offg. Secretary to the Govt. of India.

justice, and
convention against
the accused persons and procured
a verdict against them - all before
the thing the Fort Solicitor, and in
fulfillment of the Standing Order
being one of the kind.

The accused parties at once retained
Counsel, and it was only here, finding
that they were content every inch of the
ground, that the Acct. Genl. applied
for the services of the Fort Solicitor,
who devoted, as he gave info. has seemed
to know, great care & attention to the
Case, but under the great disadvantages
of his not being able, under the circum-
stances, of handling it as a whole. The Acct.
Genl. & his Asst. were fully misapprehended
the belief that enormous misapprehensions
had been effected & numerous witnesses
were ready to support his view. Perma-
nent it was a plausible prosecution,
though liable in some respects to misdi-
rections, arising out of the indiscreet
zeal as it might be supposed. It was in order
to be made. It was in order to be made.

Mr. John's
able Fort Official,
to officers regard for the interests of
on into a very, possibly hopeless
- thinking in to invest for a
initial, without making all these
- a very indefensible con-
3. The that was made accordingly.
etc. remarks, it is believed, sufficiently
a dispute the Fort Solicitor, and furnish
as definite reply to questions (c) (d) and (e).
to the facts (a) and (b) it was impossible
altogether with a system which
proved before a responsible official
denouncing a prosecution, and
not it been another for conducting it,
he is in a position that his important part of
from which remains under the conditions
officially set out above by the Chief Law
here of the Party. H. E. Ing. rejected,
compare, to a Crown Prosecutor; and as
competent barrister was found, who had
performed similar duties in another pro-
cedure, and was content to accept the post,
has increased labour, at a lower salary
on the gentleman who held the office
4. (If the old footing enjoyed so long.
Cons. The duties of the Crown Prosecutor were
the to (1) in conducting all Fort cases before
the magistrates; (2) conducting all
Ct. most serious cases before the High
Court; (3) acting as junior to the Ad-
all the remaining cases at Sessions.
The duties under (1) are those

need as/and/and, and under
of serious disadvantages of which
not/and/and case for what
striking/and/and.

July 27.

report does not

Crown Cases, Civil or Criminal,
Municipal. In respect of base, it may be
that Civil cases are instituted or

led, as the case may be, by Collectors of
defendants, with the sanction of the 1st of Rev.
in more or complex suits take the
who is of the Govt Pleader, a Barrister,
advised at 500 Rs a month. Where his
doubt is sought in the first instance, he
adv charge of the pleadings in appeal; if any
Lad reaches the High C: Warden is there, arising
and cannot be allowed by law. In Annual
he is allowed to be 1st is well served.

Criminal Cases in the Municipal Court
own is concerned, such as departmental
the relation, Treasury defalcations & the like,
prescribed by the Head of the office concerned
in the assistance of the 1st. Before he
into the 1st, the Magistrate of the district. Instructs
the Pleader who generally acts as Public
the Pleader, or deposes some intelligent officer
provisionally his Assistant) from his enticement
(occasional case. The ordinary fee is 25 Rs.

to criminals, but rarely, the Govt Pleader is sent
(3) to plead or prosecute in Crown cases.
upon his travelling charges and a fee, the
the end of which is fixed by Govt in confidential
and communication with the Solicitor.

Correspondence person appeals to the High
(4)

Shree Govt of India

Home Dept (Judicial)

1. I am directed by Secy. to
re/and/and/and of the 18th June inst.

2. The first mistake made in the
recent proceedings taken by the Accused
against certain subordinates was
that he put the case before the Mag
& procured a Warrant against the
accused persons, before consulting the
Govt Solicitor. It is not, however, to be
assumed that the case was not have
reached the Mag's Court, if the contrary
course had been adopted. The Accused
and his Deputy were fully impressed
with the belief that enormous misappropriations of Govt property had been
effected by the accused, and numerous
witnesses were ready to support his view
of the case. Prima facie it was a plausible
prosecution, though liable in some respects
to various observations, arising out of
the misdeeds exhibited by Messrs
Kassam Singh in its earlier stages.
It was recommended by the Pleader
that the case should be dis
posed of by the Court.

prosecution, not being,
 Adv. Gen's language,
 "a res, with Govt. official not sufficient
 "again for Govt. interests not to go on with
 "a to possibly hopeless case of bringing
 proper insist on a committal, not
 "involving all drawbacks - a very
 indefensible committal was made accord-
 ingly.
 No blame, in the opinion of his Lord,
 attaches to the gentleman who was then
 officiating as Crown Solicitor. On the
 contrary, they have reason to know he worked
 to the gently & intelligently with
 the evidence that was tendered to him.
 It was strongly impugned by the Counsel
 for the defence, but suffered in the opinion
 of the Counsel for the prosecution for a
 committal to the High Court Refrains, and
 ultimately the Magistrate showed that
 he shared his opinion.

To reply, in conclusion, to the specific
 questions put in para 8 - those in para 6
 being sufficiently answered above -
 the duties of the Crown Prosecutor consist (1)
 in conducting all Govt. prosecutions before the Court
 (2) conducting all but the most
 the M. Ct. Refrains (3) acting
 as Genl. in all cases where

and to retain Counsel on the open
 only possible at a greatly
 enhanced expenditure, and under the
 serious disadvantages of which he came
 under a new form of such striking
 illustrations.
 The act of conducting by 26/6/4
 post-prosecutions before
 the Magistrate is an entirely new function.

Not supposed that last
 question be categorically
 replied to. The Govt. of
 India on such advice
 and the result of my
 experience and I do
 not stand that the
 point of weakness &
 there is to have tried
 & strengthen the prosec-
 ution. It is the High
 Court & up country -
 29/6 W.C.
 J. O.S.
 3.7.74

JUDICIAL DEPARTMENT.

THE HON. D. F. CARMICHAEL,

Acting Chief Secretary to Government, Fort St. George,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT.

SIR,

I am now instructed to reply to your letter of the 18th June ultimo, No. 802.

2. With reference to the questions marked (a) to (e) inclusive, regarding the proper functions of the Government Solicitor, and the question whether he discharged them properly in the recent prosecution by the Accountant-General of certain of his subordinates, I am directed to state that (a) the functions of the Government Solicitor are correctly surmised to be those described in (d), viz., to get up the evidence, to review and examine it, to advise that the prosecution be dropped if there is clearly no case, to lay the papers before Counsel if there is doubt in the matter, and finally to instruct Counsel if a prosecution be determined on. In civil cases also his functions are of an analogous character, with the Advocate-General as his standing Counsel.

3. In the case under notice, the gentleman officiating as Government Solicitor was prevented from taking up the matter in this regular way owing to the mistake made by the Accountant-General, who, immediately on learning from his Assistant that misappropriations were suspected, went directly to the Senior Magistrate, laid an information against the accused persons, and procured a warrant against them, all before consulting the Government Solicitor, and in forgetfulness of the standing order regulating matters of the kind. The accused parties at once retained Counsel, and it was only then, finding that they would contest every inch of the ground, that the Accountant-General applied for the services of the Government Solicitor, who devoted, as the Governor in Council has reason to know, great care and attention to the case, but under the great disadvantage of not being able, under the circumstances, of handling it as a whole. The Accountant-General and his Assistant were fully impressed with the belief that enormous misappropriations had been effected, and numerous witnesses were ready to support this view. *Prima facie* it was a plausible prosecution, though liable in some respects to invidious observations, arising out of the indiscreet zeal exhibited by Messrs. Lodwick and Kissun Sing in its earlier stages. It was in cross-examination by the prisoners' Counsel that these witnesses broke down; and the Counsel retained for the prosecution, not being, to use the Advocate-General's language, "a responsible Government official, with sufficient regard for Government interests not to go on with a transparently hopeless case"—thinking proper to insist on a committal, notwithstanding all drawbacks—a very indefensible committal was made accordingly.

4. These remarks, it is believed, sufficiently exculpate the Government Solicitor, and furnish a definite reply to questions (c), (d), and (e). As respects (a) and (b), it was impossible to be satisfied with a system which allowed the Government a responsible official for initiating a prosecution, and denied them another for con-

ducting it, with the result that the conditions pointedly set by His Excellency in Council revised. A competent Barrister was found, who, in the province, and was content to accept a salary than the gentleman who held the position.

5. (f.)—The duties of the Crown Prosecutor now consist (1) in conducting all Government cases before the Town Magistrates; (2) conducting all but the most serious cases before the High Court Sessions; (3) acting as Junior to the Advocate-General in all the remaining cases at Sessions. The duties under (1) are those in addition to his predecessor's duties.

(g.)—He cannot take private business.

(h.)—Answered by (g.)

(i.)—To retain Counsel on the present system is only possible at a greatly enhanced expenditure, and under the very serious disadvantages of which the Accountant-General's recent case furnishes such striking illustrations.

6. The foregoing report does not include Crown cases, Civil or Criminal, in the Mofussil. In respect of these, it may be stated generally that Civil cases are instituted or defended, as the case may be, by Collectors of Districts, with the sanction of the Board of Revenue, who in novel or complex suits take the advice of the Government Pleader, a Barrister, salaried at 500 Rupees a month. Where his advice is sought in the first instance, he takes charge of the pleadings in appeal; and if any suit reaches the High Court he argues it there, drawing the percentage fees allowed by law. The annual returns show that the Government is well served.

Regulation XIV., 1816.

(2.) Criminal cases in the Mofussil in which the Crown is concerned, such as departmental peculation, treasury delinquencies and the like, are worked by the head of the office concerned with the assistance of the Police. Before the Session Court the Magistrate of the District instructs the Pleader who generally acts as Public Prosecutor, or deputes some intelligent officer (occasionally his Assistant) from his cutcherry to conduct the case. The ordinary fee is 25 Rupees.

(3.) Sometimes, but rarely, the Government Pleader is sent up-country to plead or prosecute in Crown cases. He receives his travelling charges and a fee, the amount of which is fixed by Government in confidential communication with their Solicitor.

(4.) Where a convicted person appeals to the High Court by Counsel, and it is thought expedient that the conviction should be supported by Counsel, the Government Pleader appears for the Crown, his fee being fixed at 30 Rupees.

7. In all these cases, the business is conducted without ground for complaint.

I have the honor to be,

Sir,

Your most obedient servant,

OOTACAMUND,
22nd July 1874.

Acting Chief Secretary.

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Original

From Government of
Fort St. George.

G. A. M. L.

Dated 22nd July 1874. No. 1342
Enclosures.
R. Spare copies.

D. No. Progs.
L. No. 1342. No.

1342-74

Crown Prosecutor.—Government of India
informed of the reasons which have led to the ap-
pointment being revived in Madras. Information
in regard to the functions of the Government Soli-
citor also furnished.