

(1) Number of pages 48
(2) Date of repair 13.6.41
(3) Initials of the Referencer GA

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 2965	Press Mis.
Dated 18-12-1877.	

Not to be folded or roughly handled

N^o 971.

From
Charles Sanderson Esq^{re}
Solicitor to the Government of India

To
Ernest Barclay Esq^{re}
Government Solicitor,
Madras.

Dated, Fort William, the 7th November 1877

Sir,

I have the honor to acknowledge the receipt of your letter N^o 471 dated the 29th ultimo, asking me whether the Government of this Presidency allows me to retain Attorney's fees recovered by me in suits and other matters in which Government are parties to, or are interested, and stating the fees you refer to are generally costs awarded against parties who bring suits against Government, and which are dismissed with costs either payable by the parties themselves, or from funds in court, and in reply thereto, I beg to state that I am always allowed to retain these costs.

I have the honor to be

Sir,
Your most Obedt. Servt.
/signed/ Chas. Sanderson
Solicitor to the Govt. of India.
/True copy/

Ernest Barclay
Government Solicitor

N^o 509.

75

Madras, 13th November 1877.

From
Ernest Barclay
Government Solicitor
Madras.

To
The Chief Secretary to Government
Fort St. George.

Sir,

In continuation of my letter to Government dated 5th November 1877, N^o 486, I have the honor to forward herewith copy of a letter received by me from the Solicitor to the Government of India dated 7th November 1877, N^o 971 in answer to my letter to him on the subject of the Order of Government dated 20th October 1877, N^o 2505, - Judicial Department.

I have the honor to be,

Sir,

Your most Obedient Servant,

Ernest Barclay

Government Solicitor.

Enclosure in letter
from the Government
Solicitor, to the Chief
Secretary to Government -
sent to Fort St. George, dated
13th November 1877, N^o 509.

Encl. N^o 509/177

N^o 903 of 1877.

Bombay 2nd November 1877.

From Henry Cleveland Esquire
Off^r. Solicitor to Government
Bombay
To Ernest Barclay Esquire
Government Solicitor
Madras.

Sir,
I have the honor in reply to your letter N^o 472 of the 29th October last to state that it has always been the practice in the office of the Solicitor to the Government of Bombay for the Government Solicitor to be paid his costs in all cases where costs are awarded to Government and recovered. An instance occurred only the other day where a petition was presented to the Court praying for an order that certain monies in the hands of Government might be paid to the petitioner. The Court in its order directed the Government Solicitor's costs as between Attorney and Client to be paid out of the fund, and these will be paid to me as soon as the bill has been taxed.

2. It is not. I would submit, within the power of Government, (as regards the Solicitor to the Government of Bombay) to disallow such costs. Both the present and former Solicitor to Government (Mr. Bickersteth) and I believe his predecessors were appointed to the office and accepted it upon the condition that such costs should be received by them. In the Government Solicitor's office in Bombay there is no separate allowance.

c 14-11.

Judicial Mag. Dept.
From the Government Solicitor
Madras
To the Chief Secretary to Govt
of Madras
Dated 13th November
1877.

(In Official Secy)

N^o 3527
of 1877.
Enclosure 1.

Forward copy of letter from the Solicitor to the Government of Madras dated 13th November 1877 to the Chief Secretary to Govt of Madras in the subject of the order of Government dated 25th October 1877. N^o 3527. Enclosure 1.
H. C.

cc

allowance made for office establishment and if he were not to be allowed to receive such costs he could not possibly do the work in his office upon his present salary.

3. I shall be happy to afford you any further information in my power which you may require.

I have the honor to be,

Sir,

Your most Obedient Servant,

/ Signed / Henry Cleveland
Officiating Solicitor to Government.

/ True copy /

Augustus B. Bailey

Government Solicitor.

N^o 486.

Madras, 5th November 1877.

From Ernest Barclay
Government Solicitor
Madras.

To The Chief Secretary to Government
Fort St. George

Sir,

With reference to my letter to Government dated 2nd November 1877, N^o 484, I have now the honor to forward herewith copy of a letter received by me from the Acting Solicitor to the Government of Bombay dated 2nd November 1877, N^o 903, in answer to my letter to him on the subject of the Order of Government dated 20th October 1877, N^o 2505, Judicial Department.

I have the honor to be,
Sir,

Your most Obedient Servant,
Ernest Barclay
Government Solicitor.

Enclosure in letter
from the Government
Solicitor, to the Chief
Secretary to Government,
Fort St. George - dated 5th November 1877, N^o 486.

L. B. 5th Nov. 34 21/77

Jan 26 1897. Dep't of
State & War Office. Sec'y
The Government & Officer
The Chief of Division to Gen'l
Gen'l H. George

Dated 5th
Rec'd 6.30 of members

No. 1
Dec 26. 1896.
Dec 26. 1896.

Transmitted a copy of a
letter from the J. P. King
Gen'l. Secretary, Bombay,
in answer to his letter to
begin on the subject of
the Order of the 1st of Dec
20 October 1897, of No. 2505.
Judicial Department.

Madras, 2nd November 1877.

From

Ernest Barclay
Government Solicitor
Madras

To

The Chief Secretary to Government
Fort St. George,

Sir,

1. I have the honor to acknowledge receipt of the Order of Government Judicial Department, dated 20th October 1877 N^o 2505.

2. As directed by that Order I have paid into the Bank of Madras to the credit of Government the sum of Rupees 3778.15.8 being Rupees 2129- the balance in my hands on the 31st March last and Rupees 49.8- since received by me on Government account. I have now no money of Government in my hands and Government owes me money for fees I have advanced in matters in which Government is concerned, but which not yet being closed I am as yet unable to send in bills for, as the fees may be recovered from the parties in the matters in which the disbursements have been made by me. I shall therefore be glad if Government will pass an Order for the Accountant General to make me the permanent advance of Rupees 200 for contingencies as suggested in the 7th para. of his letter to Government

ment dated 22nd May 1877 N^o 204.

3. I do not think any Rules are necessary to regulate the payment by me into the Bank of Madras of all sums recovered by me on behalf of Government. If Government will pass an order to that effect, I think that will be sufficient.

4. With reference to the concluding paragraph of the Accountant General's letter I have the honor to point out that that Officer is mistaken in supposing that the full amount of taxed costs in suits in which Government is a party, is recovered from Government when the amount cannot be recovered from the other parties to the suit. The practice is and has been as long as I have been in the Government Solicitors Office now nearly eighteen years, and I believe the same practice prevailed for many years before, that where in causes in Court, costs are awarded to Government against the opposite party, and are recovered the fees of the Government Counsel and Solicitor are paid to those officers. Where however costs are not awarded to Government in such cases, or are not recovered Government pays no fees to either Counsel or Solicitor, but merely the Court fees and other disbursements made by the latter in the Cause. These fees are debited to Government in the Government Solicitors annual account, which is checked by the Registrar.

of

16-19
of the High Court and certified to as correct by him. With reference to the practice I have the honor to refer Government to the letter from the Secretary to the Government of India to the Chief Secretary to this Government dated 4th October 1859 N^o 2029, and set out in the proceedings of this Government, Judicial Department under date 2nd November 1859. In that letter the Secretary to the Government of India forwarded an extract from a paper submitted by the then Advocate General of Calcutta explaining the duties which the Government Law Officers are required to perform, and the principles by which they should be guided, and stated that he was directed to forward the same with a request that it might be accepted as a general standard by which any questions which should arise between the local Government and the Government Law Officers might in future be tested.

5. In the paper submitted by the Advocate General of Calcutta he stated that the Law Officers are paid exclusively by salary, the only exceptions being first, that where in causes in Court, costs are awarded to the Government against the opposite party and are recovered, the fees of the Government Counsel and Solicitor are paid to those officers

and

and secondly, that where upon Deeds or Bonds of Indemnity granted to Government by third persons unconnected with it, the cost of preparing the instruments properly fall upon and are paid by such third persons, to fees of the Solicitor and Counsel for the preparation and settlement of such Instruments are received by them. The letter from the Secretary to the Government of India with the extract forwarded therewith were by Order of Government under date 2nd November 1859 N^o. 1471 communicated to the Government Solicitor and Advocate General of Madras. -

The only other document I have heard of relating to the remuneration of the Government Solicitor and Advocate General is a Public Despatch of the Honorable the Court of Directors dated 27th June 1804. This Despatch is mentioned in an Order of Government, Financial Department, dated 20th October 1877 N^o. 2553 and reference is made in such last mentioned order to the above mentioned proceedings of Government of 2nd November 1859. - Until the Order of 20th October 1877 N^o. 2553 I had never heard of the Despatch of 27th June 1804 and I have never seen a copy of that document.

In

21
4. In face of the letter from the Secretary to the Government of India to the Chief Secretary to this Government dated 4th October 1859, the paper submitted by the Advocate General of Calcutta, and the proceedings of this Government Judicial Department of 2nd November 1859, I beg to submit that the Advocate General and the Government Solicitor are entitled to retain their fees in Causes in Court to which Government is a party where costs are awarded to Government in such Causes, and are recovered.

It has been the practice of my office to enter the full amount of costs recovered in the Government Solicitors account with Government and then to debit Government with the Advocate General's and Solicitors fees, but inasmuch as such fees are not really recovered on behalf of Government, I propose for the future simply to credit Government with the out fees paid by me and recovered.

I have the honor to be,
Sir,

Your most Obedient Servant
Ernest Harcourt
Government Solicitor.

Brook DEPARTMENT.

No. 902

Fort Saint George,
Accountant General's Office,
5th November 1877.

FROM THE ACCOUNTANT GENERAL
TO THE GOVERNMENT OF MADRAS,

TO THE *Chief Secretary to Government*

SIR,

I have the honor to request that I may be furnished for the information and guidance of this Office, with para 135 of the Public Despatch of the Honorable the Court of Directors dated 27th June 1804, as well as the Proceedings of this Government in the Judicial Department N^o 1471 dated 2^d November 1859 and its annexure, also Copy of letter from the Secretary to the Gov^t of India N^o 2029 dated 14th October 1859, under which, the Government Solicitor informs and he retains costs awarded to Government and recovered by him from parties in proceedings against Government.

I have the honor to be
Sir

Your most obed^t servant

W. P. P. P.
Accountant General

Comp^d M. L.

30/3/392
24/7/392
11.5.392
23-2-435

*Indic 1877. Demand
from Gov^t Office. Copy
of the Government Solicitor
of Madras
to the Chief Secretary to Gov^t
Fort St. George*

*Recd 23 November
1877
of 24/84.
Acknowledged receipt
of the Order of Gov^t -
-ment. Judicial Department
-ment dated 20-10-1877
1877 of 2505 and subse-
quent Gov^t in the sub-
ject of the Government
Judicial Office to the Chief
Secretary dated 22-11-
1877 of 204.*

2945
18-12-1877

PROCEEDINGS of the MADRAS GOVERNMENT.

READ the following letters: -

From the Govt. Solicitor, 2nd Nov 1877, No. 484.

From the Accountant General, 5th Nov 1877, No. 486.

From the Accountant General, 13th Nov 1877, No. 509.

From the Accountant General, 6 Nov 1877, No. 902.

I think that the papers... The payment by the Govt. Solicitor into the Treasury of all public moneys in his hands, as now reported, is approved, and in future, the same laid down by G.O. 20 Oct 1877, No. 2505 in this Dept, will be strictly followed: that is, the Govt. Solicitor will pay immediately into the Treasury all moneys coming into his hands on behalf of Govt; & to recomp. himself for Court charges & other expenses paid out of pocket, & for all disbursements made by him on the public account, he will submit bills for the sanction of Govt.

2. The Accountant Genl

ACCT. GENL. OFFICE, MADRAS.

No. 902

FROM

THE ACCOUNTANT GENERAL, MADRAS.

To the Govt. Secy to Govt.

For 8th Dec 1877

Dated 6th Dec 1877
Recd. 7th Dec 1877
Ans'd.

Subject.

Regulating the payment of

with copies of certain orders which the Govt. Solicitor intimates he retains copy made to Govt. & returned by him for filing in the Secy to Govt's office.

3. The Govt cannot admit that the Govt Solicitor is entitled to any costs allowed to Govt. He is fully paid for his services by the salary. That he draws from the State. The proposition of a fixed salary to the Govt Solicitor, in lieu of fees as between client and attorney in all matters & proceedings undertaken for or on behalf of Govt, emanated with the Govt Solicitor himself. In his letter of the 3^d March 1803 addressed to Lord Elgin's Govt, Mr. Robert Orme, the then Govt Solicitor, submitted the proposition in these words:—"The recent increase of business requiring my attention

not to be
 that the for granted
 him - a first salary as
 George's salary of \$100
 per month in full of
all demands (19 March
 1803) having reported that
 he had the for granted
 received the first salary
 as being in full of all
 a Charles Madison
 D. description of the
 to the C. in a letter

The amount.
 (Aug. & Sept. 1803 -
 Dec. 27 June 1804)
 I think from these papers
 given Mr. Baines acct. in
 his letter of 15 Apr. 1805
 to the Anti-Slavery Socy. (Aug. & Sept.
 1805 pp. 12 public) of great value
 placed in his personal interview
 on the subject with Lord
 Selkirk. That the intention
 of Gov. was to place our
 Sol. on the same footing
 as the Sol. at Antigua -
 i.e. for his salary at the
 rate of £500 per year he had
 to thank Gov. from Gov.
 by way of purchase. It is
 conceivably not probable
 that he recd. from the C.
 as credit towards him from
 parties such. The total
 of receipts on D. the amount
 has calculated is
 £1,100 - 10 - 6

as Solicitor for the Knibb Company induces me to submit, for the consideration of your Lordship in Council, the propriety of placing me in the same footing as the Solicitor at Calcutta, by allowing me a monthly salary, in lieu of all fees & charges whatever, except for those sums I may actually pay out of pocket - to counsel, to the Officers of the Court, and for other necessary expenditures." In the last paragraph of that letter, Mr Orme further wrote - "Should your Lordship in Council think proper to allow a salary, in lieu of all fees and charges, I only request such monthly allowance as shall be considered a fair remuneration for my assistance, and as will induce me to set aside my other professional business, when occasion shall require me to devote the whole of my attention to the concerns of the Knibb Company; and although I am well informed that the Solicitor at Calcutta receives a monthly salary of Rs 2441.13., besides other advantages, I leave it to your Lordship in Council to form such a comparative allowance

as the business and duties of the
Solicitor at Madras may be con-
sidered to bear to those at Calcutta.
The Govt. Solicitor was informed in
reply, by a letter addressed to him
by the Secretary to Govt in the
Public Dept dated 19 March 1803,
No 217, that the Govt in Council
was pleased to grant him "a fixed
salary as Company's Solicitor
of Pagodas 350 per month in full
of all demands"; and in their Pub-
lic Dispatch dated 9 May 1803, No
6, paragraph 90, the Govt reported
the proceeding for the approbation
of the Honble Court of Directors.

4. It was in reply to this
report, that the Govt received
the orders of the Honble Court,
as conveyed in paragraph 135 of
their Public Dispatch dated 27
June 1804, of which Mr. Barclay,
the present Govt Solicitor, states
he never heard until receipt by
him of A.O. 20 Oct/yy, No 2555 in
the Financial Dept. That paragraph
runs as follows:- "Having perused the
letter from the Company's Solicitor
referred to, we shall, for the present,

Respectfully request that the
Honble Court of Directors
will direct the Govt to pay
to the said Mr. Barclay
the sum of Pagodas 350 per month
as a fixed salary. I think this is
clear. But the salary was
intended to be "in full of
all demands".

all demands as Govt
did not bind itself to
the Govt for the office
parties. I had perused
Govt's demand on
Govt. & this view is sup-
ported by Govt's appearance
have been hit by the in-
variable practice here
as well as at Calcutta
from long in regard to the
Adv. Gen. & the Govt
Solicitor.

In 20 years
Barclay for making

any change within
the subject for the
consider that it is
binding upon the Govt
with the terms heretofore
fixed. & the Govt
B. the office has been
higher. Well: & would
it be confined to the
Govt's app. only. & the
Honble Court of Directors
is open to the question
of the remuneration of
the Govt's and Officers
of the Govt's office.
I think any such
suggestion is altogether
dismissed as
mischievous and
unjust. There is an old point
in law I disagree with
the proposal in the
draft. It is that the
Govt. B. in the required
to pay for the work of the
Treasury and families
and on acct. of Govt.
While he is & continues
to be the largest current

acquiesce in your resolution for
granting to that officer a fixed
salary of Pagodas 350 per men-
sum, in full of all fees and
charges whatever. And they re-
quested to be furnished with an
account of the fees & charges, ^{paid} to the
Govt for five years previous to the
adoption of this resolution. That
the Govt Solicitor was fully made
aware of the terms upon which the
Honble Court of Directors assented
to the fixed salary, being paid
to him, is clear from the letter ad-
dressed by Mr. Orme (the Govt
Solicitor of the day) to the Secy
General dated 15 April 1805, which
letter was laid by the latter
officer before the Govt. After stating
the receipts of his Office on which he
based his proposition for a fixed sa-
lary, Mr. Orme in the third pa-
ragraph of that letter made as
follows:- "I have been led to state
thus much from having seen a
copy of the paragraph in the
General letter from the Honble
Court of Directors on the subject
of my allowance, from which it
would seem that that Honorable

charges whatever. The Govt cannot admit that he is entitled to retain the fees in causes to which they are parties where costs are awarded to them in such causes and are recovered. All such fees must be paid into the public treasury and carried to the public account; to re-comp. the Govt for the expense undergone by them in maintaining their law officer. The practice hitherto followed by the Govt Solicitor, as disclosed in Mr. Bouchey's letter of the 2^d Novr, has been unauthorized & in contravention of the conditions of the office. It will be immediately discontinued; and the principles here laid down will be strictly followed for the future.

6. For the sake of ready reference, copy of the former correspondence referred to in these Proceedings will be furnished to the Accountant Genl & to the Govt Solicitor.

W.S.
C.C.

As regards the payment of all receipts into the Treasury at once, I would also ascertain the practice in Calcutta & Bombay & then decide.

I will pass the order on the first point now & reserve the other - I will not discuss Mr. Orms' letter - let the Acct General raise that point - I will merely continue the practice
21/11 1861

To
The Govt Solicitor
Act General.

9.11.77

I think we have been some time in the service - I think since the 1st of Jan of this year I have been doing the same & I am not getting any the less of it. I would surely need the report of payment - & I think that all the points given - without dividing any further payment - I am not at all sure that

He. Geo. Wright
and his signature
The 14

PROCEEDINGS of the MADRAS GOVERNMENT.

READ the following letters; -

From the Govt Solicitor, Madras, 2^d Nov/77, N^o 484.
 From _____ do _____ 5 Nov/77, N^o 486.
 From _____ do _____ 13 Nov/77, N^o 509.
 From the Accountant General, 6 Nov/77, N^o 902.

It is observed that, in compliance with G.O. 20th Oct/77, N^o 2505, the Govt Solicitor has paid into the public treasury the sum of Rs 3778.5.8 belonging to Govt, which remained in his hands at the date of his letter.

2. The Accountant Genl is authorized to make to the Govt Solicitor a permanent advance of 200 Rs, which the latter may re-comp by minor abstracts as often as may be needed.

3. His Grace the Govt in Council is not disposed to make

*Received by the
 Accountant General
 on 11/11/77
 2/11/77
 Charge is to be taken*

Oct. of 1877 Madras.

Dated	}	187, No.
Recd.		
Nos.		

any change in what appears
to have been the long stand-
ing practice in Madras, as
well as in Calcutta and in
Bombay, for the Govt law
officers to retain the fees which
may be awarded by the Comrs
against, & recovered from, third
parties in suits in which the
Govt are interested.

4. Copy of the papers noted
in the margin will be furnish-
ed to the Accountant General,
in compliance with his request.
W.S.

Para 135 of Public Despatch from the
Hon: Chf Directors, 27 June 1884;
G.O. 2 Nov^r 1859, 1:1471, Jud^g, and
papers recorded therein.

To
The Govt Solicitor
Accountant General.

33

Handwritten notes:
 1. Copy of Govt. Law
 2. Copies of the
 3. copies of the
 4. copies of the

Nos. }
 Dated }
 Recd. }
 187, No.

Govt. of 1187 } Madras.

Handwritten: C. M. S.

Handwritten: C. M. S.

Handwritten:
 10/11 Dec 177
 Re 29/5-

Sectt. II-8 (b) -29,004-16-1-1

Handwritten: 19-8-2

NOTES.

Page 43

U.O. NOTE

No.3013 B-1 Law(General) dated 15-8-22

Reference:- Correspondence ending with the Advocate General's opinion No.418 dated the 2nd June 1922 regarding fees payable to the Government Solicitor.

--
 The following revised draft of rules which the Government propose to issue to regulate the duties of, and the fees payable to the Government Solicitor is sent to the Advocate General for opinion as to whether it covers all cases and whether any further rules are required.

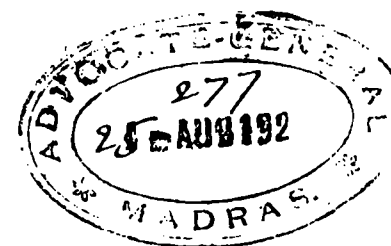
M.S.K.
 14-8-22
 P.S.R.
 14-8-22

R.V.K. 14-8-22
 R.R.R. 15-8-22

To The Advocate-General, Madras
 (with copy of the proposed rules)

Forwarded to the Advocate-General, Madras
 (By order)
 Solicitor.

Handwritten signature: M. M. S.
 Superintendent.



502.
 Submitted to the Secretary
 Law/General Dept. with
 the remarks of the Adv. Genl
 28/8/22

Land. be m

45

70284.

From the acct Feb 16 to Nov 1777 No 908.

18 Dec 77 Es 2943-

18 Dec 1848
It is to be regretted that, by an oversight,
the off^r's letter of 22^d May last No 204
was disposed of, without a reference
being made to the Gov^t Sol^r, the officer con-
cerned. The Genl^l has now recommended
he make, with Mr Barclay's explana-
-tion before him; & this force resolves
to revert to the old system; it being clear
that by acting on the off^r's suggestions
the Gov^t will impose on their Sol^r a serious
loss. The officer to pay for & turn into the
Treasury all moneys rec^d on acct of
Gov^t, while he is to continue to make
large current disbursements on their
account - rec^d a ^{very} permanent contingent
advance, wh^{ch} can only be recouped by the
submission of adjusted bills with vouchers -
can manifestly have no other result; es-
pecially as, owing to his fixed salary, the Sol^r
is not in the same position towards Gov^t as
he is towards private clients, in whose case he
can charge for any temporary accommodation.

2. With reference to the other question raised in Mr Barclay's letter, it was not the intention of Govt in G.O. 20^E & Co. List No 2553, to deny the claim of their law offices to their fees in any suit where costs are awarded by the court & paid by the opposite party, & are recovered. The contrary practice is distinctly sanctioned in the Order of the S.P. quoted by Mr Barclay; it is shown by two letters handed in.

3. These orders, which is certified true acc. H.C., are the standing ones on the subject & are correctly quoted by the Solicitor. The paper on which they are embodied is of an older date than mine, lying quite aside of the office's functions.

C.O. 25 Oct/17
7202575

→ To require

Govt. Solicitor. 3
Accountt. Genl. 6

afp

ply him but as it is unnecessary
to bring on record, to prevail upon
Culver as at present.

A cannot be committed to his office.

For E. L. L. - passing on
his mode of accounting, & on the
question of new officers' fees in
certain cases.

30.4.55. H ✓

7.7.56 D5 ✓