

(1) Number of pages 62

(2) Date of repair 27-11-45

(3) Initials of the Referencer —

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 2279-2280-A Press
Mis. —

Dated 28-8- 1885.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

READ—the following papers:—

From the District Magistrate of Salem, to the Chief Secretary to Government, dated Salem, 9th May 1885, No. 1042.

I have the honor to reply to G.O., dated 20th April 1885, No. 1022, Judicial, requesting my opinion as to the desirability of appointing public prosecutors and the probable relative cost of the proposed and existing practices.

2. First, in regard to the relative cost. In some districts the maximum fee of Rs. 25 is paid to the vakil employed to prosecute at the sessions in every case irrespective of its importance, simply to secure one of the best vakils at the bar. This is the practice I found existing in this district, and I have not disturbed it. The total cost incurred by way of fees during the five years* from 1880 to 1884 is Rs. 10,135, or on an average Rs. 2,027 a-year, or Rs. 169 a-month.

	RS.
* 1880	2,670
1881	1,950
1882	2,065
1883	1,250
1884	2,200
Total ..	10,135

3. I have no hesitation in saying that at least as good if not a better man could be got if the appointment carried Rs. 150 a-month and was held during Government pleasure. The relative cost of the existing and proposed systems would, as regards this district, then be slightly in favor of appointing public prosecutors on fixed salaries. The fees on the civil side only average Rs. 75 a-year and may be omitted from consideration in calculating the public prosecutor's emoluments.

4. I would advise therefore the appointment of public prosecutors under section 492, Criminal Procedure Code, for the following reasons:—

- (a) The cost would, if anything, be less than at present.
- (b) The provisions of the Criminal Procedure Code regarding public prosecutors could be given full effect to, and not remain a dead letter.
- (c) The interests of Government and the public would be better served, and the appointment would be more eagerly sought after if it were made permanent *during Government pleasure*, and with a fair salary attached to it.

5. The Collector should have the nomination.

(Signed) G. McWATTERS,
District Magistrate.

From the District Magistrate, Chingleput, and Acting Director of Revenue Settlement and Agriculture, Madras, to the Chief Secretary to Government, dated Madras, 15th May 1885, No. 1405.

I have the honor to submit the opinion called for in G.O., Judicial department, No. 1022, dated 20th ultimo.

2. I consider that the law distinctly contemplates the appointment of public prosecutors in all Sessions Courts.

3. There can, I think, be no doubt whatever that it is only a public prosecutor appointed by the Governor-General in Council, or the Local Government, who can legally act under section 492, Criminal Procedure Code, and withdraw a case. I am further of opinion that the only person who can of right, under section 423, Criminal Procedure Code, be heard in support of an appeal, is a public prosecutor so appointed, and I am convinced that if any Sessions Judge refused to allow a vakil appearing under section 494, Criminal Procedure Code, to withdraw a case or declined to hear one appearing under G.O., Judicial department, No. 2899, dated 30th October 1883, the result of a reference to the High Court would be that the Judge would be supported.

4. Hitherto, Sessions Judges have, as far as I know, allowed what I believe to be illegalities in the direction indicated above, but the Acting Sessions Judge of South Malabar has now taken a view of the law different from that hitherto accepted, and there is no knowing when other judges may not follow his example. I consider therefore that Government should, if they think Mr. Stokes wrong, take the opinion of the High Court by referring the case alluded to by him in the letter embodied in the proceedings of Government quoted above, or else appoint public prosecutors, and, holding the opinion of the law that I do, I advocate the latter of these two courses.

5. I do not think that it will, from the financial point of view, be of much moment whether a vakil is permanently retained and appointed public prosecutor, or whether the existing practice is retained.

6. I have, through the courtesy of my *locum tenens* in the Chingleput district, obtained some figures regarding the fees paid in past years for prosecuting cases, and the result is as follows.

7. In 1871, the average monthly expenditure on this account was Rs. 65; in 1872, Rs. 79; in 1873, Rs. 69; in 1874, Rs. 79; and in 1875, Rs. 56. During the period embraced by these years, the old system of paying a special fee, not exceeding Rs. 25 for each sessions case, to the Government Vakil who received a permanent retainer of Rs. 21 per mensem, was, I believe, in force. He had for this retainer to transact all miscellaneous business for Government without extra fee, but he received the fees allowed by the court in civil cases.

In 1881, the average monthly expenditure on fees for criminal work—including appearances to support cases in appeal—was Rs. 75; in 1882, Rs. 70; in 1883, Rs. 76; and in 1884, Rs. 97. This last year, it may be observed, was an exceptional one, as there was a series of five trials in which extra fees were paid. The average for the four years—a period during which there was no regularly appointed or paid Government Vakil—may be fairly set down at Rs. 75 per mensem; that from 1871 to 1875 inclusive, can be taken at Rs. 65. But to this must be added half the retaining fee then paid—say, in even figures Rs. 10—which would give a monthly average of Rs. 75.

From this it would appear, certainly as far as the Chingleput district is concerned, that the cost of the old and present system was the same.

8. I think that for Rs. 75 a-month, including, of course, the recess, good vakils could, in these days of competition, be found willing enough to take the work of public prosecutor. In some of the larger and more troublesome courts a superior man might, perhaps, ask more; but I consider that the sum mentioned by me would be fair enough.

(Signed) J. F. PRICE,
District Magistrate, Chingleput, and
Ag. Dir. of Rev. Sett. and Agriculture.

From the District Magistrate, Madura, to the Chief Secretary to Government,
dated Madura, 26th May 1885, No. 23.

In reply to G.O., dated 20th April 1885, No. 1022, Judicial, calling for my opinion on the desirability of appointing public prosecutors in district courts, and as

to the probable relative cost of the proposed and existing arrangements, I have the honor to submit the following for the consideration of Government.

2. The history of the creation and abolition of the office of Government Pleaders, who were also public prosecutors, is briefly told in paragraph 1 of the above Government order. It will be seen that there is a consensus of opinion on the part of Judicial officers consulted in G.O., dated 1st September 1866, No. 1369, which preceded the repeal of Regulation XIV of 1816, and in the papers referred to in paragraph 2 of the Government order under reference, as to the permanent value of the services of the public prosecutor, whatever differences of opinion might exist as regards the other functionary—the Government Pleader. It will be seen that this consideration has materially influenced Government in raising the maximum fee

* G.O., dated 1st September 1866, No. 1369.

† „ dated 10th April 1877, No. 914.

(payable without previous sanction of Government) which was originally Rs. 10 to Rs. 25* and then to Rs. 50.†

3. The public prosecutor has been looked upon as an indispensable factor in the results of criminal trials before the Sessions Court, both before and after Act II of 1867, which repealed section 37 of the Madras Regulation XIV of 1816. One of the main causes that led to the repeal of section 37 of Regulation XIV of 1816, and to the consequent abolition of the appointment of Government Pleader, was that the District Judge had a potential voice in making the appointment; and it was considered anomalous that the District Judge, whose duty it was merely to decide matters brought before him, should have anything to do with the Government representative. With the abolition of the office of Government Pleader under Act II of 1867, the public prosecutor ceased to have any statutory existence, as in the nature of things, the functions of the latter were combined with those of the former, but this state of things could not continue long. With the increase and complexity of work, the status and powers of the public prosecutor became more clearly defined. The power of selection was given to the Collector and Magistrate of the district,

‡ Section 60 of Act X of 1872.

§ Section 61 of do. of do.

|| Section 235 of do. of do.

„ 270 of do. of 1882.

¶ „ 423 of do. of do.

subject of course to the sanction of Government. The public prosecutor was allowed ‡ to plead in all courts in cases under his charge without any written authority; the power § of withdrawing from the prosecution of any person in sessions cases was given to him; the conduct || of trials before the Courts of Sessions was entrusted to him; and he is now under Act X ¶ of 1882

the only person whom the Sessions Court is bound to hear in support of convictions in appeals to the Court of Sessions.

4. The services of the public prosecutor in the direction above indicated must often be brought into requisition, in the Courts of Sessions, all over the presidency; and if Government withhold their sanction to the appointment of any one as public prosecutor, these powers, or a major portion of them, must be, and, in fact, are tacitly assumed and acquiesced in, in districts where the mass of criminal work before the Courts of Session is so important and heavy as to necessitate a frequent resort to such powers.

5. I trust that the above remarks will serve to show that the public prosecutor is a necessity of the times; that it is desirable that he should be formally appointed; and that, in doing so, Government will only be legalizing an existing practice.

6. Even from a financial point of view, the proposal is a gain so far as this district is concerned. It has been the practice in this district to pay a fee of Rs. 20 to the public prosecutor for each sessions case of ordinary importance. This rate was obtaining in this district before I came to it, and as I found that it was not excessive, I continued the rate. On examining the statistics for the past five years, I

find that the Public Prosecutor has been making on an average, in round figures, Rs. 170 a-month as shown in the subjoined statement :—

Years.							Number of Sessions cases.	Amount paid as per treasury account.	Amount passed for payment.	
								RS.	RS.	
1880	..	..	..	..	..	..	135	2,120	2,720	
1881	..	..	..	..	..	..	82	1,850	1,640	
1882	..	..	..	..	..	..	107	2,490	2,380	
1883	..	..	..	..	..	..	84	1,640	1,760	
1884	..	..	..	..	..	..	69	2,680	1,540	
							Total .. 5)	477	10,780	10,040
							12)	95	2,156	2,008
								8	179	167

7. The duties of the Public Prosecutor in this district are by no means easy, considered in respect both of the quantity and quality of work required of him, and unless the remuneration is sufficiently high, it will not be possible to secure really competent men. The table gives, on an average, Rs. 170 a-month, but I think that a permanent salary of Rs. 150 a-month will be sufficient, considering the present glutted state of the legal market. With the additional remuneration of the Government Pleadership proper, it will not be difficult to secure the services of one of the best of the local bar. The work of the Government representative is not exclusively confined to cases before the Courts of Sessions. (Sometimes cases of importance come before full-power Magistrates. Motions of a miscellaneous character have to be made or opposed before the courts. Last year the Public Prosecutor had to be sent to Madras to instruct the Government Pleader there, in the matter of prosecuting the appeal against the acquittal of the Saptur Zemindar by the local Sessions Court. Government incur costs in all these matters, whereas with a paid Public Prosecutor, these will be saved.

8. Besides, the proposal would place the Public Prosecutor under the more effectual control of the Magistrate of the district, and would lead to a more satisfactory performance of the work to be done.

9. To sum up. I recommend the appointment of Public Prosecutors on a fixed salary instead of adhering to the present practice of appointing a Pleader *pro re nata* :—

Firstly.—because, the condition of the times and the state of the law have rendered such an appointment necessary.

Secondly.—Judging from the conditions of this district the proposal would be economical.

Thirdly.—By giving more effectual control to the District Magistrate it tends to the more satisfactory despatch of public business.

Fourthly.—It saves the Treasury officer from frequent payments and adjustment of accounts.

(Signed) C. S. CROLE,
District Magistrate.

From the Deputy Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated Madras, 18th July 1885, No. 1963.

With reference to G.O., dated 20th April 1885, No. 1022, Judicial, requesting the High Court to favor Government with its opinion as to the desirability of appointing Public Prosecutors in Sessions Courts and the probable relative cost of the proposed and existing practices, I have the honor to forward, herewith, transcript of the minutes recorded by the Officiating Chief Justice, the Hon. Mr. Justice Muthusami Aiyar, Mr. Justice Hutchins, and Mr. Justice Brandt.

2. I am to add that the late Chief Justice had no time to record his opinion, but Mr. Justice Brandt understood him to say that he was in favor of the appointment of Public Prosecutors.

(Signed) W. MORGAN,
Deputy Registrar, Appellate Side.

ENCLOSURE.

Officiating Chief Justice.—The code contemplates that there shall be a Public Prosecutor in cases tried by a jury and other cases not tried by jury—section 494. To that Public Prosecutor the important duty is assigned of considering whether a case ought to be withdrawn, and if he thinks it ought, then to apply to the court for consent to do so. It seems to me that the meaning of the Act is that such a Public Prosecutor should be appointed.

Section 492 is, no doubt, not in terms obligatory on the Government in any class of cases.

But taking sections 492, 493, 494 together, I think it is the clear intention of the legislature that Public Prosecutors should be appointed.

For Sessions if there is no Public Prosecutor appointed, or, in his absence, the District Magistrate may appoint any other person, not of less rank than Assistant District Superintendent of Police, to be Public Prosecutor for a particular case.

I am of opinion that such person, so appointed by the District Magistrate, would not have power, under section 494, to withdraw by consent of the Judge. That section only authorizes the Public Prosecutor, appointed by the Governor-General or local Government, to withdraw.

Mr. Justice Hutchins' suggestion does not, in my judgment, meet the legal requirement of section 494; but it is, as I understand it, only a substitute for the regular and legal course pointed out by the Act.

It works where there is no objection made to it, but I cannot see that it is the regular or legal course.

I think the Government ought to appoint Public Prosecutor.

Mr. Justice Muthusami Aiyar.—I would also recommend the appointment of Public Prosecutors, at all events, in all the important districts in this presidency. This class of officers is indispensable in all Sessions cases in which the accused claims to be tried. Otherwise, Sessions Judges would have practically to do the work both of the Prosecutor and the Judge, unless the District Magistrate appoints a Public Prosecutor for each Sessions instead of for special cases only. We have had Government Pleaders for sixty years in this presidency and they acted also as Public Prosecutors, and at the same time adequately protected the interests of Government in civil suits. It is true that there were instances in which the Government Pleader was not the best Pleader available at the local bar, and that in civil suits of importance, in which Government was concerned, it was found necessary at times to provide counsel specially from Madras. Seeing that public interests of considerable importance may occasionally be involved in particular suits, the appointment of the Government Pleader, attached to the High Court or of the Advocate-General, to protect those interests in special cases cannot be altogether avoided under any system. Having regard, however, to the progress of education and to the preference which educated men generally have for the judicial service, I may add that it would at present be by no means difficult to secure for a reasonable remuneration the services of a competent Pleader who would sufficiently protect in the most full the interests of the public and Government in most of the criminal and civil cases. There may be districts in which the criminal work is so light that Government may not consider it necessary to appoint a Public Prosecutor, and it was probably on this ground that the Code of Criminal Procedure left the appointment to the discretion of Government. Such districts are, however, as far as I am aware, very few in this presidency. I would therefore follow the practice in Bengal, and recommend the appointment of the same persons as Public Prosecutors and Government Pleaders for all districts in this presidency, at all events for those districts in which their services are considered necessary.

Mr. Justice Hutchins.—As at present advised, I do not agree with the Sessions Judge of South Malabar that he was bound to hear the cases throughout because there was no Public Prosecutor appointed by the local Government so as to be competent to withdraw from the prosecution. The person appointed by the Magistrate to conduct the prosecution was a Public Prosecutor according to the definition and had the conduct of the case. He was not empowered absolutely to withdraw so as to entitle the accused to an immediate acquittal under section 494, but he might have examined the first witness briefly and then informed the court that he would not call any further evidence, when, no doubt, the result would have been the same, and very little time would have been wasted. This was the course I always followed at Madura, and it appears to me perfectly legal and very convenient.

I also think that an analogous course might be followed in the cases other than Session trials, to which reference has been made by Mr. Justice Brandt.

I do not understand that we are asked to express an opinion with regard to the propriety of re-establishing Government Vakils for civil cases.

On these grounds, it does not appear to me that any necessity for the appointment of Public Prosecutors by Government has been made out, and I may say that the present system worked extremely well at Madura, and the vakil, who practically conducted all Government business as well as the criminal prosecutions, had this stimulus to good work that he knew any negligence would at once deprive him of his most profitable practice. The system also had this advantage that when there were two Session Courts sitting, the cases referred to the Assistant Sessions Judge were easily entrusted to another vakil. Possibly, however, this might be met by the definition which says, that any person acting under the directions of a Public Prosecutor is himself a Public Prosecutor.

At the same time I am of opinion that Public Prosecutors might easily be appointed by Government without additional expense. In nearly all districts the work really goes to but one man, and he would readily accept the honorary title on the same terms as at present as to remuneration. Only, of course, it would be more difficult to get rid of him if he became remiss or otherwise misconducted himself.

Mr. Justice Brandt.—The proceedings of Government referred to in the G.O., of the 20th April 1885, No. 1022, Judicial, have not, it seems, been communicated to the court, and I am not aware what reasons influenced the Madras Government in deciding not to appoint any Public Prosecutors in this Presidency.

There are cases in which it is certainly desirable that the officer appointed to conduct a criminal prosecution in a Session Court should have power to withdraw from the prosecution with the consent of the court.

There may be, and occasionally is, on the face of it no sufficient evidence. It is open, no doubt, to the Judge in such cases to make a reference to this court with a view to having the commitment quashed, but this imposes on this court labor which may be quite uncalled for and necessitates delay during which the accused cannot be set free; or the Judge can, and indeed must, according to the letter of the law, if he does not refer to this court, take the evidence for the prosecution, and examine the accused (section 342, Criminal Procedure Code) and then, "if the court considers that there is no evidence," record a finding or direct return of a verdict of not guilty (section 289). But this is in some cases a mere form involving waste of time and money. I myself once had a case in which, even if all the facts alleged had been proved, there could not have been a conviction, but to save the delay of a reference, I went through the form of recording the evidence, &c., and recorded a finding under section 289.

Since I have been in this court, I have known certainly two, if not three, cases in which a Session Judge has allowed a case to be withdrawn, being under the impression that the Pleader appointed as Prosecutor for the occasion had power to withdraw, and in none of these cases would it have been improper to allow it if the Prosecutor had been invested with the necessary power.

I have further to observe that the powers with which Public Prosecutors are invested under section 493 may occasionally be exercised with advantage in cases other than Session cases, e.g., in the conduct of preliminary investigations; in serious and doubtful cases; in cases tried by Magistrates; and in appeals in support of convictions.

I am then in favor of the appointment of Public Prosecutors, properly so called, under chapter XXXVIII, Criminal Procedure Code.

(True Copies.)

MADRAS,
18th July 1885.

(Signed) W. MORGAN,
Deputy Registrar, Appellate Side.

ORDER—dated 28th August 1885, No. 2279, Judicial.

The Accountant-General will be requested to furnish a statement showing the fees disbursed to counsel for conducting Government cases in each district annually during the last five years in (1) civil and (2) criminal cases.

2. The Honorable the Judges of the High Court will be requested to state whether there exists, in their opinion, any legal or other objection to the revival of the office of Government Pleader in each district; and, if not, whether they would recommend that that appointment be combined with that of Public Prosecutor in each district, should a decision to appoint Public Prosecutors be arrived at.

(True Extract.)

E. F. WEBSTER,
Chief Secretary.

To the Accountant-General.
" Honorable the Judges of the High Court, with C.L.

LETTER—to the Secretary to the Government of Bombay, Judicial Department, dated Ootacamund, 28th August 1885, No. 2280, Judicial.

I am directed to forward copies of the Proceedings of Government, marginally noted, regarding the proposed appointment of Public Prosecutors and Government Pleaders in the districts of this Presidency, and to request that this Government may be furnished with information as to the arrangements at present in force in the Bombay Presidency in respect of the appointment and remuneration of these officers.

E. F. WEBSTER,
Chief Secretary.

LETTER—to the Secretary to the Government of Bengal, Judicial Department, dated Ootacamund, 28th August 1885, No. 2280-A., Judicial.

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E. F. WEBSTER,
Chief Secretary.

Exd. T. O'Connor.

JUDICIAL.

Recd.

Encl.

AUGUST.

Calling for a return of the fees disbursed to counsel for conducting Government cases in each district annually during the past five years in civil and criminal cases, and inquiring of the High Court if there is any objection to revive the office of Government Pleader in each district, or whether that appointment may be combined with that of Public Prosecutor in each district, if it be decided to make the latter appointment.

No 1042

Salem District Magistrate's Office
Salem 9th May 1885

From
The District Magistrate
of Salem.

To
The Chief Secretary to
Government
Judicial Department
Madras—

Sir,

I have the honor to reply
to G. O. dated 20 April 1885 No. 1022
Judicial requesting my opinion as
to the desirability of appointing
Public Prosecutors and the
probable relative cost of the
proposed and existing practices.

2. First in regard to the relative
cost. In some Districts the
maximum fee of 25 Rs. is paid

to the vakil employed to prosecute at the Sessions in every case irrespective of its importance, simply to secure one of the best vakils at the Bar. This is the practice I found existing in this District and I have not disturbed it. The total cost incurred by way of fees

during the five years from 1880 to 1884 is Rs: 10,135 or an average 2027 Rs: a year or Rs: 169 a month.

1880	—	2670
1881	—	1950
1882	—	2065
1883	—	1250
1884	—	2200
		<u>10,135</u>

3. I have no hesitation in saying that at least as good if not a better man could be got if the appointment carried 150 Rs: a month and was held during Government pleasure. The relative cost of the existing and

and proposed systems would as regards this District, then be slightly in favor of appointing Public Prosecutors on fixed salaries. The person on the Civil side only averages 75 Rs: a year and may be omitted from consideration in calculating the Public Prosecutors' emoluments.

4. I would advise therefore the appointment of Public Prosecutors under section 492 Criminal Procedure Code for the following reasons.

(a) The cost would if anything be less than at present.

(b) The provisions of the Criminal Procedure Code regarding Public Prosecutors could be given full effect and not remain a dead letter.

(C) The interest of Government
and the public would be
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5 The Collector should have
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I have the honor to be,

Sir,

Your most Obedient Servant,

Wm. W. W.
District Magistrate

Judicial Department.

From the Collector

and District Magistrate,

Salem.

To The Chief Secretary to Govt.
of Fort St. George

Dated 9th May 1883

No. 1042

Subject.

Replying to G.O. dated
20th April 1883 No 1022,
Judicial, regarding
the desirability of ap-
pointing Public Prose-
cutors &c - -

Remt to other

10/5

11/5

17/5

No 1405

Madras 15th May 1883

From

J. F. Price Esq.

District Magistrate, Chingleput, and

As Director of Rev. Settlement and
Agriculture, Madras

To The Honorable E. F. Webster,

Chief Secretary to Government -
Judicial Department

Sir,

I have the honor to submit the
opinion called for in G.O. Judicial Depart-
ment No 1022 dated 20th ultimo

2. I consider that the law distinctly
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Government should, if they think it wrong, take the opinion of the High Court by referring the case alluded to by him in the letter embodied in the Proceedings of Government quoted above, or else appoint Public Prosecutors and holding the opinion of the law that I do, I advocate the latter of these two courses.

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7. In 1871, the average monthly expenditure on this account was Rs 65; in 1872

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and in 1875, Rs 56. During the period em-
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But to this must be added half the re-
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From this it would appear, certainly as
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enough.

I have the honor to be

Sir,

Yours Most Obedient Servant

District Magistrate, Chingleput &
Off. Director of Rev. Sett. & Agriculture

CURRENT NO. 1842.

From

J. F. Price Esq.,
District Magistrate, Chingle
and Acting Director of Revenue
Settlements & Land Revenue

To

The Chief Secretary
of Government.
Judicial Department.

Dated. 15th
Despd. 16th } May 1885.
Received. }
N^o 1405

Subject.

Submitting his opinion called
for in G.O. N^o 1022, dated
20th April 1885. Judl. Dept.
on the entertainment of
Public Prosecutors in all
Session Courts.

68

Madura Dist Magistrate's office
26th May 1885 N^o 23

From

C. P. Gerole Esquire
District Magistrate
Madura.

To

The Honorable E. F. Webster
Chief Secretary to Government.
With the Governor
Stonehouse Hill.

Sir,

In reply to G.O. dated 20th April 1885,
No 1022 Judicial, calling for my opinion on
the desirability of appointing Public Prosec-
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probable relative cost of the proposed and
existing arrangements I have the honor
to submit the following for the Consider-
-ation of Government.

2. The history of the creation and
abolition of the office of Government
Pleaders, who were also public prosecutors
is briefly told in para 1 of the above
Government Order. It will be seen that
there is a consensus of opinion on the part
of judicial officers consulted in G.O. dated

dated 1st September 1866 to 1869 which preceded
the repeal of Regulation XIV of 1816 and
in the papers referred to in para 2 of
the G.O. under reference, as to the perma-
nent value of the services of the Public
Prosecutor, whatever differences of opinion
might exist as regards the other functionary -
the Government Pleader. It will be seen
that this consideration has materially
influenced Government in raising the
maximum fee (payable without pre-
vious sanction of Government) which
was originally Rs 10 to Rs 25 and then
to Rs 50.

* G.O. dated 1st Sept 1866
* 1866 to 1869
* G.O. 10 April 1877
No 914.

3. The Public Prosecutor has been
looked upon as an indispensable factor
in the results of Criminal trials before
the Sessions Court, both before and after
Act II of 1867, which repealed Section
37 of the Madras Regulation XIV of 1816.
One of the main causes that led to the
repeal

70² 5
repeal of Section 37 of Regulation XIV of
1816 and to the consequent abolition of
the appointment of Government Pleader,
was that the District Judge had a
potential voice in making the appoint-
ment, and it was considered anomalous
that the District Judge, whose duty it was
merely to decide matters brought before him,
should have anything to do with the Govern-
ment representative. With the abolition
of the office of Government Pleader under
Act II of 1867, the Public Prosecutor ceased
to have any statutory existence, as in
the nature of things; the functions of the
latter were combined with those of the
former, but this state of things could
not continue long. With the increase and
complexity of work, the status and powers
of the Public Prosecutor became more clearly
defined. The power of selection was given
to the Collector and Magistrate of the Dis-
trict, subject of course to the sanction
of

The Public Prosecutor
of Government. ⁽¹⁾ He was allowed to plead ⁽¹⁾ Sec 60 of Act II of 1873
in all Courts in Cases under his charge. ⁽²⁾ Sec 61 D. D.
without any written authority; the power
of withdrawing from the prosecution
of any person in Sessions Cases was given ⁽³⁾ S. 235 D. D.
to him; the conduct of ⁽³⁾ S. 270 Act II of 1882
trials before the
Courts of Sessions was entrusted to him, and
he is now under Act I of 1882 the only person
whom the Sessions Court is bound to hear
in support of Convictions, in appeals to
the Court of Sessions. ⁽⁴⁾ S. 423 D. D.

4. The services of the Public Prosecutor
in the direction above indicated must often
be brought into requisition, in the Courts
of Sessions, all over the Presidency; and if
Government withhold their sanction to
the appointment of any one as Public
Prosecutor, these powers, or a major portion
of them, must be, and in fact, are tacitly
assumed and acquiesced in, in Districts
where the mass of criminal work before
the Courts of Session, is so important and
heavy.

heavy is to necessitate a frequent resort
to such powers.

5. I trust that the above remarks will
serve to show that the Public Prosecutor
is a necessity of the times, that it is de-
sirable that he should be formally
appointed, and that in doing so, Govern-
ment will only be legalizing an existing
practice.

6. Even from a financial point of view,
the proposal is a gain so far as this Dis-
trict is concerned. It has been the practice
in this District to pay a fee of Rs 20, to
the Public Prosecutor for each Sessions case
of ordinary importance. This rate was ob-
taining in this District before I came to
it, and as I found that it was not
excessive, I continued the rate. On
examining the statistics for the past 5
years, I find that the Public Prosecutor
has been making on an average in round
figures Rs 170 a month, as shown in the
Subjoin

Subjoined Statement.

Years	No of Sessions Cases	Amount paid as per Treasury Account	Amount passed for payment	Remarks
1880	135	2120	2720	
1881	82	1850	1640	
1882	107	2490	2380	
1883	84	1640	1760	
1884	69	2680	1540	
Total	5	477	10780	
	12	95	2156	
		8	179	

6. The duties of the Public Prosecutor in this District are by no means easy, considered in respect both of the quantity and quality of work required of him, and unless the remuneration is sufficiently high, it will not be possible to secure really competent men. The table gives on an average, Rs 170 a month, but I think that a permanent salary of Rs 150 a month present will be sufficient, considering the glutted state of the legal market. With the additional remuneration of the Government Pleaders. proper, it will not be difficult to

to secure the services of one of the best of the local bar. The work of the Government representative is not exclusively confined to cases before the Courts of Session. Sometimes cases of importance come before full-blown Magistrates. Motions of a miscellaneous character have to be made or opposed before the Courts. Last year the Public Prosecutor had to be sent to Madras to instruct the Government Pleader there, in the matter of prosecuting the appeal against the acquittal of the Saptar Geminadar by the local Session Court. Government incur costs in all these matters, whereas with a paid Public Prosecutor, these will be saved.

7. Besides, the proposal would place the Public Prosecutor under the more effectual control of the Magistrate of the District, and would lead to a more satisfactory performance of the work to be done.

8. To sum up - I recommend the appointment

appointment of Public Prosecutors on a fixed salary
instead of adhering to the present practice
of appointing a Pleader pro tem.

Firstly because - The Condition of the
times and the state of the law, have
rendered such an appointment necessary.

Secondly - Judging from the Conditions
of this District the proposal would be
economical.

3^{rdly} - By giving more effectual control
to the District Magistrate, it tends to the
more satisfactory despatch of public
business.

4^{thly} - It saves the Treasury Officer
from frequent payments and adjustment
of accounts.

I have the honor to be

Sir,

Your most obed^t. Serv^t.

C. L. 1756

District Magistrate.

2675

CURRENT NO.

(1835) DEPARTMENT.

FROM
THE DISTRICT MAGISTRATE,
MADURA.

No. 23

ENCLOSURE.

Dated 26th May 1885
Received

No.

SUBJECT.

Recommending the
appointment of Public
Prosecutors on a fixed
salary instead of adhering
to the present practice of
appointing a Pleader pro
tempore.

To be laid before
the Council

No. 1728



DEPARTMENT.

Official Memorandum.

Dated the 24th June 1885.

With reference to
letter from this Department
of 20th April 1885 No. 1023,
the undersigned is directed
to request that the Regs.
of the High Court will ^{be good enough}
invite the attention of the
Hon. the Judges to the
papers therewith forwarded
regarding the appointment
of Public Prosecutors.

To the Regs of the High Court.

100
Court

100
100
100

No 1963 100
High Court of Judicature,
Madras, 18th July 1885.

From
W. Morgan Esquire,
Dy. Registrar of the High Court
of Judicature at Madras.

To
The Honorable E. F. Webster,
Chief Secretary to
Government.

Sir,
With reference to G. O. dated
20th April 1885, No 1022, Judicial,
requesting the High Court to favor
Government with its opinion as to the
desirability of appointing Public Prose-
cutors in Sessions Courts and the
probable relative cost of the proposed
and existing practices, I have the honor
to forward herewith transcript of
the

the minutes recorded by the Officiating
Chief Justice, the Honorable Mr Justice
Muthusami Sivar, Mr Justice Hutcheson
and Mr Justice Brandt.

I am to add that the late
Chief Justice had no time to record
his opinion but Mr Justice Brandt
understood him to say that he
was in favor of the appointment of
Public Prosecutors.

I have the honor to be,

Sr.

Your most obedient servant,

M. Sivar

Dy. Registrar,
Appellate Side.

(Enclosure to the High Court letter No. 1963
18-7-85)
37 11/12
Officiating Chief Justice:- The
code contemplates that there
shall be Public Prosecution in
cases tried by a Jury and other
cases not tried by Jury. Section
494. So that Public Prosecution
the important duty is assigned
of considering whether a case
ought to be withdrawn and
if he thinks it ought, then to
apply to the Court for consent
to do so. It seems to me that
the meaning of the Act is
that such a Public Prosecution
should

should be appointed.

Section 492 is no doubt
not in terms obligatory on the
Government in any class of cases.

But taking Sections
492, 493, 494 together I think
it is the clear intention of the
Legislature that Public Prose-
cutors should be appointed.

For Sessions, if there is no
Public Prosecutor appointed
or in his absence, the District
Magistrate may appoint
any other person, not of less
rank than Assistant District
Superintendent

Superintendent of Police to be Public
Prosecutor for the particular case.

I am of opinion that such person
so appointed by the District Magistrate
would not have power under Section
494 to withdraw by consent of the
Judge. That Section only authorizes
the Public Prosecutor appointed by
the Governor General or Local Govern-
ment to withdraw.

Mr Justice Hutchins sugges-
tion does not, in my judgment,
meet the legal requirement of
Section 494, but it is, as I under-
stand it, only a substitute for
the regular and legal course
pointed out by the Act.

It works where there is no
objection made to it but I
cannot

cannot see that it is the regular
or legal course.

I think the Government
ought to appoint Public Prosecutors.
Mr Justice Krishna Rao:- I
would also recommend the appointment
of Public Prosecutors at all events,
in all the important districts in this
Presidency. This class of officers is
indispensable in all Sessions cases
in which the accused claims to be
tried. Otherwise Sessions Judges
would have practically to do the
work both of the prosecutor
and the Judge, unless the
District Magistrate appoints
a Public Prosecutor for
each Sessions instead of for
special

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special cases only. We have had
Government Pleaders for 60 years in
this Presidency and they acted also as
Public Prosecutors and at the same
time adequately protected the interests
of Government in civil suits. It is
true that there were instances in which
the Government Pleader was not
the best Pleader available at the
local bar and that in civil suits
of importance in which Government
was concerned, it was found necessary
at times to provide counsel specially
from Madras. Seeing that public
interests of considerable importance
may occasionally be involved in
particular suits, the appointment
of the Government Pleader attached
to the High Court or of the Advocate
General to protect those interests
in special cases cannot be altogether
avoided under any system. Having
regard, however, to the progress
of education and to the preference
which educated men generally

have

have for the judicial service,
I may add that it would at
present be by no means difficult
to secure for a reasonable re-
-muneration the services of a
competent pleader who would
sufficiently protect in the
Prosecution the interests of the public
and Government in most of the
criminal and civil cases. There
may be districts in which the criminal
work is so light that Government
may not consider it necessary
to appoint a Public Prosecutor
and it was probably on this ground
that the Code of Criminal Procedure
left the appointment to the discretion
of Government. Such districts
are, however, as far as I am
aware, very few in this Presidency.
I would therefore follow the
practice in Bengal and recommend
the appointment of the same persons
as Public Prosecutors and

Government

15/14/81
Government Pleaders for all districts
in this Presidency at all events for
those districts in which their services
are considered necessary.

Mr. Justice Hutchins.:- As at present
advised, I do not agree with the Sessions
Judge of South Malabar that he was
bound to hear the cases throughout
because there was no Public Prosecutor
appointed by the local Government
so as to be competent to withdraw from
the prosecution. The person appointed
by the Magistrate to conduct the prosecu-
-tion was a public Prosecutor according
to the definition and had the conduct
of the case. He was not empowered
absolutely to withdraw so as to entitle
the accused to an immediate acquittal
under section 494, but he might
have examined the 1st witness briefly
and then informed the Court that he
would not call any further evidence,
when no doubt the result would
have been the same and very little

time

time would have been wasted. This was the course I always followed at Madurai and it appears to me perfectly legal and very convenient.

I also think that an analogous course might be followed in the cases other than session trials to which reference has been made by Mr. Justice Brandt.

I do not understand that we are asked to express an opinion with regard to the propriety of re-establishing Government Vakhils for civil cases.

On these grounds, it does not appear to me that any necessity for the appointment of Public Prosecutors by Government has been made out and I may say that the present system worked extremely well at Madurai and the Vakhil, who practically conducted all Government business as well as the criminal prosecutions,

had

45
had this stimulus to good work that he knew any negligence would at once deprive him of his most profitable practice. The system also had this advantage that when there were two session courts sitting, the cases referred to the Assistant Sessions Judge were easily entrusted to another Vakhil. Possibly however this might be met by the definition which says that any person acting under the directions of a Public Prosecutor is himself a public prosecutor.

At the same time I am of opinion that Public Prosecutors might easily be appointed by Government without additional expense. In nearly all districts the work really goes to but one man and he would readily accept the Honorary title on the

same

same terms as at present as to remuneration. Only of course it would be more difficult to get rid of him if he became remiss or other-wise misconducted himself.

Mrs. Justice Braidt. - The Proceedings of Government referred to in the G. O. of the 20th April 1885, No 1022, Judicial, have not, it seems, been communicated to the Court, and I am not aware what reasons influenced the Madras Government in deciding not to appoint any Public Prosecutors in this Presidency.

There are cases in which it is certainly desirable that the officer appointed to conduct a criminal prosecution in a Session Court should have power to withdraw from the prosecution

prosecution, with the consent of the Court.

There may be, and occasionally is, on the fact of it no sufficient evidence. It is open, no doubt, to the Judge in such cases to make a reference to this Court with a view to having the commitment quashed, but this imposes on this Court labour which may be quite uncalled for and necessitates delay during which the accused cannot be set free, or the Judge can, and indeed must, according to the letter of the law, if he does not refer to this Court, take the evidence for the prosecution, and examine the accused (Section 342, Criminal Procedure Code), and then, "if the Court considers that there is no evidence," record a finding or direct return of a verdict of not-guilty (Section 289). But this is in some cases a more

form

form involving waste of time and money.
I myself once had a case in which, even
if all the facts alleged had been proved
there could not have been a conviction,
but to save the delay of a reference I
went through the form of recording
the evidence &c and recorded a finding
under Section 289.

Since I have been in this Court
I have known certainly two, if not
three, cases in which a Session Judge
has allowed a case to be withdrawn,
being under the impression that the
pleader appointed as Prosecutor for the
occasion had power to withdraw, and
in none of these cases would it have
been improper to allow it if the Prosecutor
had been invested with the necessary
power.

17
I have further to observe that the
powers with which Public Prosecutors
are invested under Section 493 may
occasionally be exercised with advantage
in cases other than Session cases, e.g.
in the conduct of preliminary investi-
gations in serious and doubtful
cases; in cases tried by Magistrates;
and in appeals in support of conviction.

I am then in favor of the appoint-
ment of Public Prosecutors, properly
so called, under Chapter ~~XXXVIII~~, Cri-
minal Procedure Code.

(True copies)

High Court of Judicature,
Madras, 18th July 1885 - }

J. Morgan
Sd/- Registrar,
Appellate Side.

CURRENT NO.

Judicial { 1885. } Department

No.

From

THE REGISTRAR OF THE HIGH COURT
OF JUDICATURE AT MADRAS,
Appellate Side.

Dated

Received

18 July 1885

No. 1963

Enc:

one

Forwarding transcript
of the minutes recorded
by the several Honble
Judges regarding the
appointment of Public
Prosecutors in Sess.
Courts, &c.

From

Judicial DEPARTMENT.

No.

Current Nos. 1928, 1822, 1717.
2567.

FOR ORDERS.

The opinions expressed
by the Officers consulted
are entitled to every consi-
deration.

The particular question
was as regards Public Prosecu-
tors but at the same time
the views of the Honble
Judges on the question of the
appointment of Public Prosecutors.

The correspondence
shows that this was the
arrangement sanctioned
in 1855 (G.O. 1855 No. 1300
Judicial).

Since then the views
of the Honble Judges have
undergone a decided change. viz.

G.O. 21 May 1875 No. 1198
11 July 1877 No. 1634
11 March 1878 No. 513
25 Oct 1878 No. 2176
12 May 1879 No. 1099.

Government leaders
were & he objected (1) because
there was no statutory pro-
vision for them (2) because

The replies from the Hon. the Judges of the
High Court, and from the 3 selected
Dist. Magts. on the question of the appoint-
ment of Public Prosecutors under the Code
of Crim. Procedure, have been received.

The 3 Dist. Magts. (Messrs. Cole, Price, &
McWatters) agree in recommending
that a Public Prosecutor be appointed
in each District. Their reasons are:-

- that this measure will carry
out the intention of the legislature,
& enable the legal withdrawal of a
case under S. 494 C.C.P.
- that the cost will be no greater, if
not less than at present
- that the Dist. Magt. will have better
control over the Magist.

It is noticeable that the Dist. Magts. of
Salem & Madras agree in fixing Rs. 50
p.m. as the proper pay for a Public Prosecu-
tor & whereas, in Chingleput, Mr. Price
considers Rs. 75 sufficient. Both figures
are based on actuals of past years, &
show that no general scale of pay could be
fixed for all Districts.

In the High Court, the officiating Chief Justice,
Messrs. Dyer, J. & Brand, J. are in
favour of the appointment of a
Public Prosecutor. They proceed chiefly
on the legal point, that under C.P. 494,
no one but a Public Prosecutor can
withdraw a case.

Mr. Justice Hutchins remarks that
there is a perfectly legal way out of the
supposed difficulty under C.P. 494.

made out to the
of Public Prosecutor - The
will apparently continue
to apply each officer.
A.P.P. apply under sec
104 is the only officer
appointed by the
from the prosecution and
person - failing him
sent out part to the
of records in the
recalled by his notice
provisions. I do not the
thought to apply there
in selected districts and
others - if a change
in the existing practice
be made it should be
applied over the whole
Province. Best regards
to you and the
yours truly
J. H. [Signature]

The appointment of
The Principal

Jud. Department.
PROCEEDINGS OF THE MADRAS GOVERNMENT.

again 80.
Read the following
20 April 1858 No. 1022 Jud.
Read Jud. Cas. 2567-1928
1822. & 1717.

Order 28 August 1858 No. 2277

The Accountant Genl.
will be requested to furnish
a statement showing the
fees disbursed to Counsel
for conducting Govt cases
in each district annually
during the last five years
in (1) civil and (2)
criminal cases.

2. The Hon the Judges
of the High Court will
be ~~furth~~ requested
to state whether there
exists in their opinion
any legal or other objection

Order 28 August 1858 No. 2277

1858
1858

to the revival of the office
of Gov Pleader in each
district; and if not,
whether they would re-
commend that that
appointment be combined
with that of Public Pro-
secutor in each district,
should a decision to ap-
point Public Prosecutors
be arrived at.

To the Honble Judge
of the High Court of the
Bengal.

No 2280 of 28 August 1885.

Deposited 2 Progs.
12/9

The Secy to Govt.
Jud. Dept, Bombay

Sir,

I am directed to

forward copies of the
Proceedings of Govt Man-
-ginally noted regarding

of 20 April 1885 No 1022 Jud.
Aug 1885 No.

1908

the proposed appointment
of Public Prosecutors and
Gov Pleaders in ^{the districts of} this
Presidency, and to request
that this Government
may be furnished with
information as to the
arrangements at present
in force in the Bombay
Presidency in respect of
the appointment and
remuneration of these
Officers.

No 2280 A

Similar letter to the
Govt of Bengal.

Deposited 2 Progs.
12/9

at No.

177

1920

2067

Order 50
2 { Letter 5-30 ea
Collection 20

N.B.—
A = Print in full.
B = Not to be printed.
P = Print abstract only
Q = Print heading only
E = Print, but not for

16-7-76

24/10/83 ✓
14-2-85 ✓

26-8-72 ✓

27-4-76 ✓

30-10-76

8-5-80

25-2-84 BIL

29/8/85
18/10/85

PRESS.

Ind DEPARTMENT.
 G.O. DATED 28 Aug 78
 No. 2279/80 -

First copy sent to Press. 31/1

Returned for signature. 8/9/85

Despatched in print. 1/12/9

[Despatch Abstract.]

*At present, Callous for a return of the
 is counsel for conducting proceedings
 are distributed in each of the Districts, through the
 1000 copies in each of the Districts, and the
 the High Court of Justice is a copy of the
 the office of the High Court in each of the
 that the High Court is combined with
 that of the High Court in each of the
 is intended to make the latter appointment*

✓