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MADRAS RECORD OFFICE

Government of Madras

Judicial

DEPARTMENT

G.O. No. 1309
B.P. No.Press
~~Mis.~~*Original*Dated 18th May 1886.Not to be folded or roughly handled*Restored on 27.6.66*

18TH MAY 1886, No. 1309, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following papers :—

G.O., dated 20th April 1885, No. 1022, Judicial.

G.O., dated 28th August 1885, No. 2279, Judicial.

READ—also the following papers :—

From R. S. BENSON, Esq., Acting Registrar of the High Court of Judicature at Madras, to the Chief Secretary to Government, dated Madras, 2nd October 1885, No. 2712.

In G.O., No. 2279 (Judicial), dated 28th August 1885, the Government ask whether, in the opinion of the High Court—

- (1) there is any legal or other objection to the revival of the office of Government Pleader in each district;
- (2) it is advisable that that appointment should be combined with that of Public Prosecutor in each district, in the event of the latter being appointed.

2. In reply, I am directed to transmit the accompanying transcripts of the minutes recorded by the Honorable the Officiating Chief Justice and Judges of the Court, from which it will be observed that, while holding somewhat divergent views on the second question submitted for their consideration, they are unanimously of opinion, as regards the first question, that there is no legal objection to the revival of the office of Government Pleader in each district.

ENCLOSURES.

NOTE.—The minutes are transcribed, for convenience of reference, in the order of the dates on which they were written.

The Officiating Chief Justice.—I do not see any legal objection to appointing the same professional man to be Government Pleader and also Public Prosecutor. The Government Pleader, I understand, would be the person to advise Government in civil cases and appear for Government in civil cases.

As the civil cases in which Government appear are not very many, I think the best course is, to employ a professional man in each case.

I doubt if the remuneration per month considered to be sufficient in 1866 would be sufficient to secure the services of the best man, now. If an inferior man was appointed to act, at a salary per month, Government would be at a disadvantage in their civil litigation.

As to prosecutions, I do not think the fact of the Government Prosecutor not being the best man, or even his being an inferior man, is of much consequence, because the police and magistrates investigate the evidence, before the case is presented for trial. But in a civil case the professional man employed for Government has to examine documents and sift evidence, to be afterwards presented to the judge.

15th September 1885.

Mr. Justice Muthusami Aiyar.—I do not think there is any objection to the revival of the office of Government Pleader or to its union with that of Public Prosecutor. The union of the two offices would add to the remuneration of the incumbent, and would thereby enable Government to secure the services of the best man available at the local bar. The selection will be made from pleaders and they will be entrusted with cases to which Government is not a party, if they are good men. As the salary which may be fixed will be, though moderate, a permanent addition to what they may earn by their practice, it will be, I believe, an inducement to the best pleader in the local bar seeking for the appointment.

16th September 1885.

Further papers

C.O. No. 2371, Home 4 12/1/1947

Mr. Justice Parker.—I do not see any legal objection to joining the two offices of Public Prosecutor and Government Pleader, and the union of the two, together with the prestige that will attach to the united office, will make the office acceptable to the best pleaders. At present, the fees given by Government in session cases are low, and it pays best to accept a brief against Government. If the more lucrative work of Government Pleader is attached to that of Public Prosecutor, it becomes worth the while of a first-class man to take up sessions work.

The Officiating Chief Justice observes that the civil cases in which Government appear are so few that it would be better to employ a professional man in each case as it arises. I do not quite agree in this. The cases in which the Secretary of State in Council is a party are very few indeed, but the cases in which the Collector appears as Agent of the Court of Wards in the management of estates all over the country are very numerous. In Tanjore, there were several such estates under the Collector, as well as the Palace estate, which is under the Collector as receiver. These, notably the Palace estate and the Guntracottah and Ukkadai estates, were constantly engaged in litigation, and I found that the selection of pleaders to conduct their cases in court was virtually left to the Collector's sheristadar. The result was that cases were constantly entrusted to gentlemen whose only claim to distinction—or to notoriety—was their friendship with that official, and, consequently, pleaders were appearing for trust estates whom private parties habitually refrained from employing. With regard to the Tanjore Palace estate, which is under the court, I fit it my duty to speak to the Collector about the class of vakils employed.

If there were a Government Pleader, all such work would fall into his hands, and it is convenient to know for certain who is going to represent the Government in such suits.

When the vakil who had for many years conducted sessions cases at Tanjore recently retired from practice, one of the High Court pleaders enjoying a large practice there declined to take up the work except temporarily to oblige the Collector on the ground that it did not pay him to devote time and trouble to comparatively unremunerative session cases, when the more paying civil work out of the Collector's office passed into others' hands.

I would recommend that the two appointments be combined.

18th September 1885.

Mr. Justice Handley.—There is no legal objection that I know of to the revival of the office of Government Pleader in each district, and I think it is very desirable. The existence of a competent legal practitioner in each district with whom the officers of Government and, in particular, the Government Pleader, Madras, can correspond upon the subject of suits in which Government is interested, is, I think, a distinct advantage. And I think the office may conveniently be joined with that of Public Prosecutor, and in that way the services of the best practitioners are more likely to be secured. But I would suggest that in both cases the remuneration be by fees and not by a fixed salary. The fees in civil cases might be the regulation fees, and in criminal cases a uniform fee to be fixed by Government. By payment by fees, the remuneration is much more proportional to the work done, and it has this advantage over a salary, that it cannot be attached, as the latter can, for the debts of the employé.

21st September 1885.

Mr. Justice Hutchins.—There is certainly no legal objection to the revival of the office of Government Pleader, but I see very little use in it. The old salaries attached to the office have already been appropriated to other purposes. They should not be revived, in my opinion, for I entirely agree with Mr. Justice Handley that the payment should be by fees. There is no doubt that Government can command almost the best talent at the local bars for the office of Public Prosecutor remunerated as at present, if it is an understood thing that, so long as the work is properly conducted, the Collector will give his civil briefs to the same practitioner. I do not recommend the revival of the office, because I think this arrangement is the most satisfactory one which can be made. Before the office was abolished, many of the Government Pleaders were old vakils who had given up private practice and who, though very estimable old gentlemen and probably leading men in their day, had failed to keep pace with the times. There was always a difficulty in getting rid of such people and the same difficulty may occur again, if care is not taken to guard against it by some such arrangement as I have suggested.

23rd September 1885.

From W. DUNBAR BLYTH, Esq., Under-Secretary to the Government of Bengal, Judicial department, to the Chief Secretary to the Government of Madras, dated Darjeeling, 14th October 1885, No. 2143 J.D.

I am directed to acknowledge the receipt of your letter, No. 2280 A., Judicial, dated the 20th August 1885, requesting to be furnished with information as to the

arrangements at present in force in Bengal in respect of the appointment and remuneration of Public Prosecutors and Government Pleaders.

2. As regards the appointment of these officers, I am to state, for the information of the Right Honorable the Governor in Council, that, under section 57 of the old Code of Criminal Procedure (Act X of 1872), all Government Pleaders in the Lower Provinces were appointed to be *ex-officio* Public Prosecutors in the districts in which they may, for the time being, hold their office, and that it was not, therefore, necessary to take any action under section 492 of the new code of 1882. Prosecutions in sessions trials in Bengal are ordinarily conducted by the Government Pleaders, and as all Government Pleaders in the Lower Provinces had been appointed *ex-officio* Public Prosecutors before the introduction of Act X of 1882, there was, with reference to section 2, clause 2, of that Act, no occasion for making any further arrangements under section 270.

3. Referring to the question of remuneration, I am to say that in those districts of these provinces where there is a judge's court at the head-quarters of the district, the salary of the Government Pleader is fixed at Rs. 50 per mensem; while at those stations where there are no judge's courts, the Government Pleader is allowed a salary of Rs. 30 only. The salary allowed to a Government Pleader is regarded as a retainer only, and he receives, besides, a fee for actual attendance in criminal cases. The Superintendent and Remembrancer of Legal Affairs, Bengal, is allowed a certain discretionary power in awarding fees to Government Pleaders in criminal cases. The general practice is to allow a Government Pleader, when employed upon criminal business either in the magistrate's or judge's court, the usual fee of Rs. 16 per diem. In the district of the 24 Pergunnahs, a special rate of Rs. 32 per diem is allowed.

From C. G. W. MACPHERSON, Esq., C.I.E., Under Secretary to Government, Bombay, Judicial department, to the Chief Secretary to the Government of Madras, dated Bombay Castle, 20th October 1885, No. 7308.

I am directed to acknowledge the receipt of your letter, No. 2280, dated the 28th August last, requesting to be furnished with information as to the arrangements at present in force in this Presidency in respect of the appointment and remuneration of Public Prosecutors and Government Pleaders.

2. In reply, I am desired to forward to you, for submission to the Government of Madras, a copy of the rules regarding the remuneration and duties of the law officers of this Government.

ENCLOSURE.

RULES regarding the remuneration and duties of the Law Officers of Government, published with Government Notification, No. 5756, dated 15th September 1882, as amended by Government Notifications, Nos. 1578, 4161 and 5804, dated respectively the 6th March, 20th June and 22nd August 1883.

III.—Remembrancer of Legal Affairs.

20. The salary of the Remembrancer of Legal Affairs is Rs. 2,000 per month, rising by annual increments of Rs. 100 to Rs. 2,500. He is entitled besides to travelling allowance at the usual rates when required to travel, and may, with the sanction of Government, employ such establishment as he thinks necessary, at a cost not exceeding Rs. 200 per month.*
21. It is the duty of the Remembrancer of Legal Affairs to superintend and advise on the conduct of all litigation arising originally in the mofussil in which the Government or Government officers are concerned or interested, in accordance with the rules prescribed in this behalf.

* His head-quarters are Poona until Government otherwise direct. (G. R. 3274, dated 5th June 1879, J. D.)

22. All the Government Pleaders throughout the presidency, including the Government Control of Government Pleaders vested in him. Pleader in the High Court, and all Public Prosecutors, except the Public Prosecutor for Bombay, are under his direct control and supervision, and all communications concerning the law business, or the subordinate Law officers of Government in the mofussil, are to be made to Government through him.

23. The Remembrancer of Legal Affairs is appointed under section 492 of the Criminal Procedure Code *ex-officio* Public Prosecutor for the presidency of Bombay except Sind and the city of Bombay. He will appear personally only in such cases as he deems it desirable that he should himself prosecute, or as the Government from time to time direct him to prosecute.

24. It shall be the duty of the Public Prosecutor for the Presidency to prosecute in any criminal case before the High Court in which that court on its Appellate Side may think it expedient to require an appearance to be made on behalf of the Crown. In any such case, the Public Prosecutor may, at his discretion, appear by the Government Pleader. If he thinks the case a fit one for the employment of special counsel, he will report it to Government for orders, or in emergent cases may act in anticipation of such orders.

25. Except as is otherwise provided in Rules 15 and 19, the employment of special counsel, when necessary, on behalf of Government, in any case, whether civil or criminal, which arises originally in the mofussil, and the settlement of their fees, is also a part of the duties of the Remembrancer of Legal Affairs; and, subject to the orders of Government, he is to exercise a control over all expenditure incurred on account of law charges, in connection with both civil and criminal cases in, or arising in, the mofussil.

26. Government Pleaders, or local officers, who desire to engage special counsel for any case, should communicate with the Remembrancer of Legal Affairs before doing so, informing him, in criminal cases, of the nature of the case, and of the evidence to be brought forward, and stating, in every case, when and where the hearing of trial will take place, how long it is likely to last, and what pleader or other counsel they wish to employ, and at what rate they propose to remunerate him. If there is not time for this communication to be made before the date fixed, or likely to be fixed, for the hearing or trial of the case, the court or magistrate should be asked to adjourn it, or to fix the date in the first instance at a sufficient distance of time to enable the officer concerned to obtain sanction for the employment of special counsel. The Remembrancer of Legal Affairs, if he thinks the case a fit one for the employment of special counsel, will submit the application for the orders of Government, but in emergent cases may act in anticipation of such orders.

27. The Remembrancer of Legal Affairs is bound to advise Government on all legal questions in connection with the administration of public affairs, or arising out of the acts of Government officers or public servants in the mofussil, which may be referred to him by Government. This duty extends to Government business of all kinds, and in all departments, whether under the Supreme or Local Government.

28. Rule 17, which applies to references for the advice or opinion of the Solicitor to Government, or of the Advocate-General, is to be held applicable, as far as may be, to all such references to the Remembrancer of Legal Affairs, but the Remembrancer of Legal Affairs will, in this as in all other branches of his duties, himself ordinarily perform all the usual work of a solicitor.

29. Heads of Departments in the mofussil may make direct references to the Remembrancer of Legal Affairs for advice or opinion only in respect of suits or other civil proceedings which are actually pending, and in which Government is concerned or interested, and of criminal proceedings which are actually pending. References on general questions, or in regard to proceedings other than the above, should be submitted to Government, who will call for the Remembrancer of Legal Affairs' report, or not, as they deem fit.

In the case of reference to the High Court under the Stamp Act, the Remembrancer of Legal Affairs will ordinarily decide whether or not the Government Pleader in the High Court need appear on behalf of Government. Whenever he has any doubt, he should take the special orders of Government.

30. Municipalities must, as a general rule, be left to defend the legality of their own proceedings, and are not entitled to the advice of the Government Law Officers. But in cases of special importance, or difficulty, a reference may be made to Government to obtain the opinion or advice of the Remembrancer of Legal Affairs for the guidance of Municipalities in their proceedings, or in the defence of actions which have been brought against them, or with which they are threatened.

31. It is also the duty of the Remembrancer of Legal Affairs to advise Government in accordance with the rules* prescribed in this behalf in Government Resolution, No. 6889, dated 17th November 1876, Judicial department, in the matter of all proposals to appeal, under section 417 of the Criminal Procedure Code, against the acquittal of accused persons.

32. It is also the duty of the Remembrancer of Legal Affairs to draw Bills embodying such proposals for legislation as may be sent to him for the purpose from any of the executive departments of Government.

33. Bills so drawn will, in the first instance, be regarded merely as drafts intended to facilitate the further discussion of the proposed measure in the executive department of Government for which they have been prepared or with such persons as that department may think it desirable to consult.

34. If it should ultimately be determined to proceed to legislation, the draft prepared by the Remembrancer of Legal Affairs will be returned to him; and it will be his duty to revise the draft embodying in it all the provisions held to be necessary or desirable, and to finally mould the Bill in the shape in which it should be introduced into the Legislative Council, adding to it the usual Statement of Objects and Reasons. He will then cause the Bill to be printed under his supervision, and submit it to the department for which it has been prepared.

35. The Remembrancer of Legal Affairs is bound also to bring to the notice of Government from time to time all new enactments which require the issue by Government of rules, orders, bye-laws, or notifications, or which involve any change in any existing rules, orders, bye-laws, or notifications, and on receipt of the necessary instructions, to draft all such rules, orders, bye-laws, or notifications, as it may be necessary to issue, for the approval of Government. And all rules, orders, bye-laws, or notifications which it is at any time proposed to issue in the name of the Governor in Council in virtue of any power derived from any legislative enactment should be forwarded to the Remembrancer of Legal Affairs in order that he may revise the same before they are issued with a view to legal precision and correctness.

36. The Remembrancer of Legal Affairs is to submit an annual report for the calendar year to Government, detailing the general results of the civil litigation in the mofussil in which Government or Government officers were concerned, and of the criminal prosecutions, if any, in which special measures may have been taken on behalf of Government to secure conviction, and

* The following are the rules referred to:—

I. Every proposal to appeal under section 417 of the Criminal Procedure Code must be forwarded by the officer making it to the head of his department, who, if he concurs in it, shall submit it with his own opinion to Government, through the Legal Remembrancer.

II. The Legal Remembrancer, after calling for all information or papers that he may deem necessary to enable him to arrive at a correct opinion, shall forward the correspondence to Government, together with a report, stating his opinion, and, if he advises an appeal being made, the principal grounds on which he suggests its being based.

III. If Government sanction the appeal copies of the correspondence and of the Legal Remembrancer's report will be forwarded direct to the Government Pleader in the High Court from the Secretariat, with a copy of the Government Resolution empowering him to file the appeal.

IV. The appeal will then be drawn up by the Government Pleader in accordance with the orders of the Court, and after consultation with the special counsel, if any, whom Government authorize him to retain for the case.

V. Neither the grounds of appeal nor the arguments in support of the appeal at the hearing need be limited to those stated in the Legal Remembrancer's opinion. The Government Pleader or other counsel will be at liberty to exercise his own discretion as to the manner in which the appeal should be conducted, subject only to any special reservations which may be made in the Government Resolution sanctioning the appeal.

VI. As soon as Government have sanctioned the institution of an appeal it will be the duty of the Legal Remembrancer and of the local officer who proposed the appeal to forward to the Government Pleader direct without delay all the material papers in their possession relating to the case.

VII. As soon as the appeal has been decided the Government Pleader will inform the Legal Remembrancer of the result. If a written judgment is recorded by the Court he will obtain with as little delay as possible two copies of it, and forward one to the Legal Remembrancer and one with the papers to the officer who proposed the appeal.

VIII. The result of the appeal will be specially reported to Government by the Legal Remembrancer only in such cases as appear to him to be important. As a general rule it will suffice if the different cases and their results are mentioned in his annual report to Government. The officer who proposed the appeal need not communicate its result to Government.

bringing to the notice of Government all such other matters of interest in connection with their legal affairs as he may think necessary. To enable him to prepare this report the Remembrancer of Legal Affairs may call upon local officers of every department to furnish him with such information as he deems necessary.

Government Pleaders and Public Prosecutors.

"Government Pleader" defined.

37. The term "Government Pleader" includes—

- (1) The Government Pleader in the High Court;
- (2) District Government Pleaders; and
- (3) Subordinate Government Pleaders (of whom one will be nominated for every Subordinate Judge's Court or Small Cause Court not situated at the head-quarters of a District Government Pleader).

The term "Public Prosecutor" means any person appointed by Government under section 492 of the Criminal Procedure Code to be Public Prosecutor for a district or a division of a district or for a specified class of cases in a district or division of a district; and it also includes the Government Pleader in the High Court for the purposes mentioned in rule 47 of these rules, and any person appointed by a District or Sub-divisional Magistrate for the purposes mentioned in rule 50 of these rules.

"Public Prosecutor" defined.

38. The salary of the Government Pleader in the High Court is Rs. 300 per month. The salaries of the District Government Pleaders are as follows:—

Ahmedabad	..	..	..	..	} Each Rs. 125 per month.
Surat	..	..	..	..	
Thána and Kolába	..	..	..	..	
Poona	..	..	..	..	
Kaira	..	..	..	..	} Each Rs. 35 per month.
Broach	..	..	..	..	
Ratnágiri	..	..	..	..	
Kánara	..	..	..	..	
Ahmednagar	..	..	..	..	} Each Rs. 20 per month.
Dhárwár	..	..	..	..	
Kaládgi	..	..	..	..	
Belgaum	..	..	..	..	
Sátára	..	..	..	..	
Sholápur	..	..	..	..	
Násik	..	..	..	..	
Khándesh	..	..	..	..	

39. (1) Subject to the provisions hereinafter contained, all Government Pleaders are entitled to the usual fees allowed by the Courts according to law as costs in each civil cause in which they are engaged.

Fees in civil cases.

(2) In cases in which a reference is made to the High Court under the Stamp Act, and in which the Government Pleader in the High Court is instructed to appear on behalf of Government, he shall be entitled to a fee of thirty rupees.

(3) In cases in which a reference is made to a Civil Court under section 15, Act X, of 1870, the fees shall be calculated on the amount of compensation tendered by the Collector under section 11 of the Act, or, if no claimant attended pursuant to the notice mentioned in section 9, on the amount of compensation which the Collector, under section 18, shall have declared himself willing to give to the parties.

(4) In inquiries under the Indian Treasure Trove Act, 1878, the Government Pleaders, when they appear on behalf of Government, are entitled to the usual fees calculated on the value of the share of the treasure to which Government may lay claim, subject to any increase that may be sanctioned by Government in particular cases.

(4-a) A Government Pleader employed by a Conservator of Forests in an appeal under section 16 of the Indian Forest Act, 1878, shall receive, for each case, a fee of Rs. 10, subject, by order of the Remembrancer of Legal Affairs, to diminution to a sum not less than Rs. 5 and to increase to a sum of not more than Rs. 30.

(5) Whenever two or more officers of Government may be parties to the same suit, they shall, ordinarily, all be represented by the Government Pleader, who shall alone conduct the suit, and shall receive but one fee for it; but if special circumstances render it expedient to appoint more than one pleader for the conduct of any such case, and whenever it seems necessary to adopt

pleadings involving several lines of defence, or separate answers differing in substance, a second pleader may be appointed, with the approval of the Remembrancer of Legal Affairs, or a separate fee may be awarded to the Government Pleader by the Remembrancer of Legal Affairs for each separate defence.

(6) In cases of unusual importance, or difficulty, or in which marked industry or ability has been displayed, the Remembrancer of Legal Affairs is empowered to grant to a District Government Pleader a further special remuneration not exceeding Rs. 100 for each case. Special remuneration in excess of Rs. 100 may be granted only with the sanction of Government.

40. The Government Pleader in the High Court is also entitled to a fee of thirty rupees for every criminal case in which he actually appears: provided that any person appointed by Government to be Public Prosecutor for the purposes mentioned in rules 47 and 48 of these rules, during the unavoidable absence of the Government Pleader, or for any other special reason, shall be entitled to the same remuneration.

41. District Government Pleaders and Public Prosecutors are entitled to a fee of Rs. 10 per diem for every day that they are actually engaged in criminal business either in the Sessions Court or in any Magistrate's Court at head-quarters.

In cases of unusual importance, or difficulty, or in which marked industry or ability has been displayed, the Remembrancer of Legal Affairs is empowered to increase this fee to an amount not exceeding Rs. 25 per diem. A higher fee than Rs. 25 per diem may be granted only with the sanction of Government.

42. If the Government Pleader in the High Court is required, under rule No. 52, to appear in any case in the mofussil, he is entitled to a fee of Rs. 150 per diem for every day that he is necessarily absent from Bombay. This fee is inclusive of travelling and all other expenses.

43. If a District Government Pleader or Public Prosecutor is required under rule 53 to proceed to Bombay, he is entitled to a fee of Rs. 25 for every day that he is necessarily absent from his station, and to his actual travelling expenses to and from Bombay, and to his actual expenses for hire of conveyances whilst in Bombay; and if he is required to appear in any case in any Court situated elsewhere than at his head-quarters, he is entitled to a fee, to be fixed by the Remembrancer of Legal Affairs, according to the circumstances of each case, but not exceeding Rs. 50 per diem, for each day that he is necessarily absent from his head-quarters. This fee is inclusive of travelling and all other expenses.

44. A District Government Pleader or Public Prosecutor leaving the head-quarters of his district or division on duty, for which duty he receives no fee in addition to his pay, is entitled to travelling allowance either at Rs. 3 a day for the period of his absence from head-quarters, or at 4 annas per mile travelled otherwise than by railway, and at 1½ annas per mile by railway.

Alibág, Broach, and Kaira shall, for the purposes of this and of the last preceding rule, be deemed to be the head-quarters of the districts of Kolába, Broach, and Kaira respectively: provided that no travelling allowance shall be admissible under this rule for journeys on duty between any of the above places and Thána, Surat, and Ahmedabad respectively, and that nothing in the latter part of rule 43 applies to appearances in any Court situated in the three last-mentioned places.

45. It is the duty of Government Pleaders to appear on behalf of Government, or of any Government officer, in any suit or other civil proceeding to which Government are a party, or the institution or defence of which is undertaken by Government, or in any suit or other civil matter, in which Government requires their services, whoever the nominal party on whose behalf they are called on to appear may be, if Government determine that the case is one in which they have such an interest as to render it advisable that it should be conducted on their behalf.

46. Whenever special counsel is employed by the Remembrancer of Legal Affairs, under rule 25, in Bombay for any case to be heard either in Bombay or in the mofussil, the Government Pleader in the High Court shall take (under instructions from the Remembrancer of Legal Affairs) the usual steps for retaining such counsel. The counsel's brief will be prepared, for any case to be tried in Bombay, by the Government Pleader in the High Court, and for any case to be tried in the mofussil by the Government Pleader of the district, or by the Public Prosecutor of the district or division in which the case is

to be tried; and, in the latter case, the brief, when prepared, will be forwarded by the District Government Pleader, or the Public Prosecutor to the Government Pleader in the High Court for submittal to the counsel.

47. The Government Pleader in the High Court is appointed Public Prosecutor for the purpose of presenting appeals to the High Court in cases of acquittal on behalf of Government under section 417 of the Criminal Procedure Code, and for the purpose of appearing for the prosecution in criminal appeals heard before the High Court under section 423 of the said code, and for the Crown in other criminal cases which come before the High Court on its Appellate Side under the provisions of the Criminal Procedure Code.

48. The Government Pleader in the High Court, as Public Prosecutor on the Appellate Side of that Court, must appear for the prosecution, if called upon, in any criminal case from the mofussil which comes before that Court on that Side.

He will ordinarily so appear:—

- (a) in every case submitted to the High Court under section 374 of the Criminal Procedure Code for confirmation; and
- (b) in every appeal against an acquittal; and
- (c) in every case submitted to the High Court under section 307 of the Criminal Procedure Code, and in every appeal against a conviction heard by it under section 423 of the said code, if in such case or appeal the accused person (or when there are several accused persons, any one of them) is represented by counsel, whether a barrister or a pleader;
- (d) in any criminal case in which he may be specially instructed to appear by the Magistrate of a district or by the Remembrancer of Legal Affairs; and
- (e) in any criminal case in which the High Court or a Division Court desires him to appear or intimates its opinion that he ought to appear.

49. Notices of commitments under section 218 of the Criminal Procedure Code will be given to the District Public Prosecutors [who will ordinarily conduct the prosecution in every trial before Courts of Session in accordance with section 270 of the Criminal Procedure Code, and appear for the prosecution at the hearing of any appeal before those Courts when counsel, whether a barrister or pleader, appears for the appellant or when they are specially instructed by the District Magistrate so to appear. When so required by the Magistrate of the district, or by the Remembrancer of Legal Affairs, it is their duty also to conduct the prosecution in any trial before a Magistrate.

50. When, under section 492 of the Criminal Procedure Code, a Magistrate of the district, or, subject to his control, a Sub-Divisional Magistrate appoints any person in the absence of the Public Prosecutor or when no Public Prosecutor has been appointed to be Public Prosecutor for the purpose of conducting the prosecution in any trial before the Court of Sessions, such person shall be entitled to the same remuneration as would be payable under rule 41 of these rules.

But no such person shall be appointed by a Magistrate of the district without the concurrence of the Remembrancer of Legal Affairs, and if, for special reasons, a higher rate of remuneration than the above is deemed necessary for the person whom it is proposed to appoint, the sanction of Government must be obtained, through the Remembrancer of Legal Affairs, before any liability is incurred.

51. When the Public Prosecutor for the Presidency, or special counsel, appears for the prosecution in any case before the High Court, or any Sessions Court, the Government Pleader or Prosecuting Pleader will appear also and assist, or instruct the Public Prosecutor or special counsel, as may be necessary.

52. The duties of the Government Pleader in the High Court are ordinarily restricted to that Court, but it is his duty, also, whenever his services can be spared without inconvenience to that Court, and the Remembrancer of Legal Affairs so requires, to appear in any case, whether civil or criminal, in any Court in the mofussil.

53. Similarly District Government Pleaders' duties are ordinarily restricted to the Courts at the head-quarters of the district for which they are appointed, and Public Prosecutors' duties are ordinarily restricted to the Sessions Courts to which they are respectively appointed; but

Duty of Government Pleader and Prosecuting Pleader when the Public Prosecutor or special counsel appears

Government Pleaders in the High Court may be required to appear in the mofussil.

District Government Pleaders and Public Prosecutors may be required to proceed to Bombay, or to appear in other Courts than those at the head-quarters.

when so required by the Collector or Magistrate of the district, or by the Remembrancer of Legal Affairs, they will appear in any case in any court in the said district, or proceed to Bombay to instruct counsel, or to assist at the hearing or trial of any case in the High Court, or for any other such purpose: provided that in the case of Public Prosecutors such requisitions shall be confined to criminal cases.

54. The duties of Subordinate Government Pleaders are limited to appearing on behalf of Government in the courts for which they are respectively appointed in any suit or other civil matter in which the District Government Pleader would appear if such suit or matter arose in any Court at the head-quarters of the district. They are to be subordinate to the respective District Government Pleaders, and whenever a District Government Pleader appears in any court in which there is a Subordinate Government Pleader, the latter will appear with him as junior pleader.

55. It is the duty of the Government Pleader in the High Court to advise District officers only in respect of any proceedings, whether civil or criminal, which he has or may have to conduct on behalf of Government, but his duties as hereinbefore described extend to Government business in all its departments, whether under the Supreme or Local Government.

56. It is the duty of the District Government Pleaders to advise all local officers not only in respect of any proceedings, whether civil or criminal, which they may have to conduct on behalf of Government or of any such officer, but also, to the best of their ability, on all legal matters which any such officer may refer to them concerning any Government business of any kind or in any department, whether such department be under the Supreme or Local Government.

Duties of Subordinate Government Pleaders.

Duties of Government Pleader in the High Court as adviser of Government officers.

District Government Pleaders' duties as advisers of Government officers.

From the Accountant-General, dated 18th November 1885, No. I.B.E.—200.

From the Accountant-General, dated 26th January 1886.

From the Accountant-General, dated 5th February 1886, No. I.A.C.Z.—18.

ORDER—dated 18th May 1886, No. 1309, Judicial 1.

The Governor in Council has recently had under his consideration the desirability of appointing Public Prosecutors in the several districts of the presidency in accordance with the provisions of section 492 of the Code of Criminal Procedure.

2. The Judges of the High Court are of opinion that the appointment of a Public Prosecutor is desirable and that there exists no legal objection to the revival of the office of Government Pleader, in combination with that of Public Prosecutor.

3. His Excellency the Governor in Council, on a consideration of these opinions and after a perusal of the foregoing papers relating to the practice in other presidencies, is pleased to sanction the appointment of a Public Prosecutor and Government Pleader jointly in each district. The nomination will vest in the Collector and Magistrate of the district, who should consult the District Judge before submitting his nomination to Government. The joint appointment of Government Pleader and Public Prosecutor will be made for the term of three years or until further orders. Nominations should be submitted by all Collectors and District Magistrates without unnecessary delay.

4. For the purpose of fixing the remuneration of the Government Pleader and Public Prosecutor, the districts of the presidency have been divided into three classes, as shown in the list attached to these proceedings, according to the average fees paid during the last four years, and His Excellency the Governor in Council resolves that the following monthly retaining fee shall be assigned to the joint office of Government Pleader and Public Prosecutor in each district, namely, Rs. 50 in the districts included in the first class, Rs. 30 in those included in the second, and Rs. 20 in those contained in the third class. Such monthly retaining fee will be in lieu of the old monthly fee of Rs. 21, if such is still paid in any district, and will be in addition to fees paid for the conduct of civil and criminal cases. The Honorable the Judges of the High Court will be requested to inform the Government whether any scale of fees for Government

Pleaders in civil cases can be laid down. With regard to the fees for the conduct of criminal cases, the fees now sanctioned by the marginally-noted orders will continue to be paid, but the Government will not in future be prepared to sanction any amount in excess of Rs. 50 per case except in very special circumstances. The Government Pleader and Public Prosecutor will also be expected to afford officers of Government extra-judicial legal advice whenever required to do so.

5. The Public Prosecutors to be appointed in each district in accordance with these proceedings will be additional to the Government Pleader, Madras, who has been appointed Public Prosecutor for the whole presidency outside the town of Madras by G.O., dated 27th March 1886, No. 820.

6. The monthly retaining fee will be debited as at present under the head "Law Charges—Contingencies."

(True Extract.)

E. F. WEBSTER,
Chief Secretary.

To the Departments of the Secretariat.
 „ the Honorable the Judges of the High Court, with C.L.
 „ all Collectors and District Magistrates.
 „ all District and Sessions Judges.
 „ the Accountant-General.

Copy to the Government Pleader and Public Prosecutor, Madras.

APPENDIX.

Districts.						Monthly retaining fee or salary.
Tinnevely	..	..	..	..	..	Class 1, Rs. 50 per mensem.
Madura	..	..	..	..	..	
Malabar	..	..	..	..	..	
Tanjore	..	..	..	..	..	
Bellary	..	..	..	..	..	
Godavari	..	..	..	..	..	Class 2, Rs. 30 per mensem.
Salem	..	..	..	..	..	
North Arcot	..	..	..	..	..	
South Canara	..	..	..	..	..	
Ganjam	..	..	..	..	..	
Cuddapah	..	..	..	..	..	Class 3, Rs. 20 per mensem.
South Arcot	..	..	..	..	..	
Vizagapatam	..	..	..	..	..	
Trichinopoly	..	..	..	..	..	
Nellore	..	..	..	..	..	
Coimbatore	..	..	..	..	..	Class 3, Rs. 20 per mensem.
Kurnool	..	..	..	..	..	
Chingleput	..	..	..	..	..	
Nilgiris	..	..	..	..	..	
Kistna	..	..	..	..	..	Class 3, Rs. 20 per mensem.
Anantapur	..	..	..	..	..	

11-10-90

Govt. of (1886) Madras.

JUDICIAL.

Issued

Recd.

Encl.

G.O., 18th May 1886, No. 1309.

MAY.

Public Prosecutor and Government
Pleader.

Sanctioning with remarks the appointment of
a — jointly in each district of this presidency,
the Collector and Magistrate, in consultation with
the District Judge, submitting his nomination to
Government.

Jul 18/86
note for test copy 13
The Chief Secretary
has altered the draft
rather freely, but
while doing so he has
omitted to strike out
certain portions
he clearly intended
to omit. I have
have excised with
black lead.

Please, that the
draft be sent to
H.M. for approval.
I see the ^{has} ~~is~~ taken
into Council, but
the draft is from
circular in Council.
But the circulation
rule is that where
two or more draft
have not the
draft is ^{transferred}
those votes, and be
submitted to H.M.

Please let
me see a
proof of
the draft. If I
can see, we had
better submit to
him in proof.

18/5

Ind (G.O. 1309 of 1886)
18/5/86

All communications to Government should give the Number, Date, and Subject of any previous Correspondence, and be addressed to the Secretary of the Department concerned.

Judicial DEPARTMENT.

No. 2143 J.D.

From

W. Dunbar Chyffh Esqre

Under-Secretary to the Govt. of Bengal;

To

The Chief Secretary to the Government of Madras

Darjeeling, the 14th October 1885.

Sir,

I am directed to acknowledge the receipt of your letter No 2280. A Judicial dated the 28th August 1885, requesting to be furnished with information as to the arrangements at present in force in Bengal in respect of the appointment and of Public Prosecutors and Government Pleaders.

As regards the appointment of these officers I am to state, for the information of the Right Hon'ble the Governor in Council that, under Section 57 of the old Code of Criminal Procedure (Act 2 of 1872) all Government Pleaders in the Lower Provinces were appointed to be Exc-officio public prosecutors in the district in which they were, for the time being, holding their office, and that it was not, therefore, necessary to take any action under Section 492 of the new Code of 1882. Prosecutions in Session trials in Bengal are ordinarily conducted by the Government Pleaders, and as all Government Pleaders in the Lower Provinces had been appointed Exc-officio public prosecutors before

introduction of Act 3 of 1882, there was with
reference to Section 2 clause 2 of that Act, no
provision for making any further arrangements
under Section 270.

Referring to the question of remuneration
to say that in those districts of these
places where there is a Judge's Court at the
quarters of the District, the salary of the
Government Pleader is fixed at Rs 50/- per mensem;
at those stations where there are no Judges
Courts, the Government Pleader is allowed a
salary of Rs 30/- only. The salary allowed to a
Government Pleader is regarded as a retainer,
and he receives besides, a fee for actual
attendance in criminal cases. The Superintendent
Remembrancer of Legal Affairs, Bengal is
vested with a certain discretionary power in
allowing fees to Government Pleaders in criminal
cases. The general practice is to allow a Govern-
ment Pleader, when employed upon criminal
business either in the Magistrate's or Judge's
Court, the usual fee of Rs 16/- per diem. In the
District of the 24 Pergunnas, a special rate
of Rs 32/- per diem is also

I have the honor to be,

Your most obedient servant.

Under Secy to the Govt of Bengal

N^o 7308 of 1885

Judicial Department,
Bombay Castle,

20th October 1885

From,

C. G. W. Macpherson, Esq. B.L.S.

Under Secretary to Government,
Bombay.

To, The Chief Secretary to the
Government of Madras,
(Judicial).

Sir,

I am directed to acknowledge
the receipt of your letter N^o 2286, dated
the 28th August last, requesting to be
furnished with information as to the
arrangements at present in force
in this Presidency in respect of the
appointment and remuneration of
Public Prosecutors and Government
Pleaders.

In reply I am desired to
forward to you for submission to the
Government of Madras a copy of
the Rules regarding the Remuneration
and

86
Duties of the Law Officers of
this Government.

I have the honor to be,

Sir,

Your most obedient Servant.

Edw Manners

Under Secy to Government.

3949
1954

Mr
for Bombay

20.10.85
24.10.85
Indo one

1309/18/86

Information ref
appts & remuneration
of Public Prosecutors
& pleaders.

Enclosure to High
County letter of 2 Oct,
1883
No 2712 -

Not 36

Judicial CURRENT NO. 394

From

Bengal Govt
No 2143

No.

Dated 14 } Oct 11
Received 23 }
Enclosures —

SUBJECT.

Regarding remuneration of
Public Prosecutors and
Govt Pleaders.

To be

Has
26/11

For

CURRENT NO. 3681

Judicial { 1885. } Department

No.

FROM

THE REGISTRAR OF THE HIGH COURT
OF JUDICATURE AT M. DRAS,
Appellate Side.

Dated 2nd October 1885
Received 5th October 85

No. 2712.

Enc: one

Forwarding, with
reference to 20728 Aug 85,
No. 2279 (Judicial), a
transcript of the minutes
recorded by the Hon^{ble}
the Judges stating that
there was no legal objection
to the revival of the
office of Govt. Reader
in each District

the but full state.
of expenditure for
March 1885 / put up /
he shows only an prob. in
under. the under
officer - in Rs. 500 p.m.
but in order to remove
any doubt and conf.
I am herewith to say
he stated in the draft
order that the present
retaining fees are to be
in substitution of any
fee of a similar char.
as that may be present
be paid in any dist.
for the conduct of civil
cases.

W. Dawes.

Is the sanction of Engrs
necessary?

Please put the

H. I think not. It is
intended that these places
are to be poth be built in
a fixed form established
then the sanction of Engrs
may be required with
reference to 15. Rule 5 of
Ch 33 of the Account Code
under which "as class or
grade of officers can be
created" without previous
sanction. But as it is
intended to keep the
allowances as retaining
free only and as the
men entertained will
not be entitled to pen
under Sec 63 of the Food
Pen. Code, the sanction
of Engrs does not seem
necessary.

order it is thought that
the words "claiming fees"
should be used instead
of the word "monthly
Salary" and that the
act ^{be} directed to
classify the expen-
ture under "Law charges",
"Contingencies" and not
"establishment." The
present sanction will
during the current year
involve an expenditure
of perhaps \$5,000.

2. The bill is...

3/19
I have marked in the file of
all the papers that relate
to the abolition of the
office of prob. The order of
the pay returns assigned
to them - Mr. Maclean's
Halt. compared with the

No. 1951



24
Publ. DEPARTMENT.

33

Official Memorandum.

Dated the 17th November 1885.

The auct. publ. is requested
to expedite submission
of an statement called
for in J.P. 28th Aug '85,
No. 2279.

HAS
13/xi.

Aut. publ.
13/xi

Copy to be sent to
the P. & L. A. C. Secy.
to be sent to the
Secy. to the Govt.
for the P. & L. A. C. Secy.

return received fr. the auct.
publ. of the publ. distributed
in civil suits, does not seem
supported. For with the excep-
tion of the Dist. Court the
act of the rule, the other Dist.
Should show an annual ex-
penditure of an excess of
Rs 252. but there are many
Districts in the state. Such
do not approach these
figures at all. The practice
probably is continued in
some Districts informally
and the expenditure debited
under 'contingencies' or
some such head.

Book DEPARTMENT.

Fort St. George,

Accountant-General's Office,

18th November 1885.
JBE
No. 200

From

H. J. Hogston Esq.
ACCOUNTANT-GENERAL

TO THE GOVERNMENT OF MADRAS,

To

THE Chief Secretary
to Government
Judicial Department,
Fort Saint George.

SIR,

With reference G.O. Judicial No. 2277
dated 28th August 1885 and Reminders No. 1961
dated 17th November, I have the honor to forward
a statement showing the Fees paid to Messrs
for conducting Criminal cases from 1880-81 to
1884-85. The statement with regard to civil
cases is not yet ready, as replies have not been
received from all Collectors and Heads of
Departments to whom references had to be
made, as complete information on the subject
was not available in this Office.

I have the honor to be,

Sir,
Your most obed^t servant

H. J. Hogston

Accountant-General

13

Statement Showing the Fees paid to Pleaders for Conducting Criminal cases from 1880-81 to 1884-85. 31

Districts	1880-81	1881-82	1882-83	1883-84	1884-85
Ganjam	1182	1259	2060	1285	2161
Vizagapatam	1930	(a) 1555	1330	1746	1275
Godavari	2471	1860	1230	1285	1091 12
Kistna	6137	1165	770	875	545
Nellore	1920	2005	910	(c) 1380	725
Cuddapah	1350	1650	1480	1490	1810
Anantapur	"	"	1130	990	555
Bellary	2255	25136	3638	1500	1940
Kurnool	955	670	12978	11128	1140
Madras	"	"	"	704	"
Chingleput	975	830	(c) 765	11964.1	990
North Arcot	2960	1844	(c) 2205	1930	1310
South Arcot	1010	1035	1055	1465	615
Tanjore	2235	2183	2226	27228	2535
Trichinopoly	1910	1570	1435	990	1385
Madurai	2790	2240	1090	3180	1150
Tinnevely	1300	1700	2050	2645	2145
Coimbatore	12012	1100	(c) 1068	1238	(c) 1266
Nilgiri	320	225	245	175	8592
Salem	3030	(c) 1950	(c) 192013	1350	2170
South Canara	1390	1828	1420	1760	1165
Malabar	1875	2610	3255	2845	2045
Travancore	"	50	"	"	"
Presidency Audit	(c) 1290	(c) 3420	(c) 3450	(c) 4500	(c) 3810
	30	90	90	390	120
Total	35,0229	49,3726	54,2455	40,0758	33,3321

(a) Fees paid to Govt pleader in Singham Lukshumaji's case under Govt. Endorsement
Judicial St. 1959 dated 5th December 1881
(b) S. — S. — in Salem riots case under G.O. dated 1st December 1882
(c) S. — S. — in other cases.

Fort Saint George
Accountants Office
18th November 1885

St. J. J. J.
Accountant General

Aug 22 1872

1872

Judicial (1835) DEPARTMENT. 4322

From

THE ACCOUNTANT-GENERAL,
Madras,

To

THE Chief Secy. B. Govt.
Judicial Deptt.

No.

Dated

Received

26/11/85 } November 1885.
No. 11/12/85
Received 11/12/85
11-11-85

Subject.

Forwards a statement showing
the fees paid to Pleaders for
conducting Criminal Cases
from 1880-81 to 1884-85 and
states that the statement
in the regard to Civil cases
is not yet ready:-

27 Judicial Deptt
4/12

18/12/85

Om No 2185 of 21/12/85

The Accountant General
is requested to expedite^{submitting}
of the statement called for
in G.O. 28 August 1885, No 2279,
showing the fees disbursed
to counsel for conducting
Govt. cases in each district
annually during the last
five years in civil cases.

HAS
18/12

Statement showing the Fees paid to Pleaders for conducting Civil cases on behalf of Government in each District of the Madras Presidency from 1880/81 to 1884-85. 43 (2)

Districts	1880-81	1881-82	1882-83	1883-84	1884-85
Ganjam	249 15 9	20 15 "	22 8 4	31 11 7	374 11 "
Vizagapatam	" " "	171 14 "	" " "	40 2 "	*38 3 7
Godavari	74 4 5	149 " 7	212 9 6	2054 1 4	900 13 3
Kistna	51 1 7	193 10 9	80 8 4	88 12 7	102 2 6
Nellore	51 6 "	13 10 1	*10 3 7	19 6 "	16 10 4
Cuddapah	191 12 "	" " "	183 4 6	235 11 5	37 8 "
Anantapur	" " "	" " "	89 9 "	430 1 6	167 " "
Bellary	97 1 "	220 12 "	" " "	76 " "	*44 2 "
Kurnool	" " "	" " "	254 7 3	*20 " "	" " "
Chingleput	237 6 6	151 13 "	65 5 4	93 4 5	81 9 7
North Arcot	*128 9 6	141 11 11	*35 13 10	72 6 9	389 " "
South Arcot	481 7 6	1010 7 5	671 11 5	196 " 9	788 15 4
Tanjore	131 3 7	*215 2 6	132 " "	*10 15 10	732 8 " "
Trichinopoly	27 5 2	8 7 3	*213 5 7	122 12 2	20 7 6
Madura	97 " "	1265 4 10	628 14 9	4164 7 6	521 " 4
Tinnevely	*409 8 8	874 12 "	1720 11 6	2929 15 "	673 2 4
Coimbatore	727 15 "	*1000 " "	*1000 " "	69 8 2	160 8 "
Nilgiri	Statement not yet received				
Salem	*1186 12 3	*1124 12 7	2 2 10	61 5 4	243 13 11
South Canara	326 11 2	" " "	" " "	470 " 10	576 10 1
Malabar	776 9 7	274 11 8	392 7 6	676 15 4	123 " 5
Travancore	*1000 " "	" " "	" " "	" " "	*377 " 3
Presidency Town	175 " "	210 " "	175 " "	262 8 9	*175 " 7
Total.	*3152 8 "	*1035 14 10	*3373 12 "	*8016 1 9	*4395 " 7

* Fees paid to Government Pleaders, Madras.
+ These amounts include Court costs as well as Pleaders' Fees. Particulars as to the amount that should be taken to each head, are not available.

Fort Saint George,
Accountant-General's Office,
26 January 1886.

J. H. Logan

Accountant-General.

To The Secretary to Government Judicial Deptt.
with reference to G.O. No. 2279 dated
29th August 1885.

Just 27/1/1886

3 leading

CURRENT NO. 37

The Rect General

27/1/1886

Recd 25/1/1886

Averages worked out.

Fees paid to Pleaders in Criminal Cases.

	R.	A.	P.
1880-81	35022	9	-
1881-82	49372	6	-
1882-83	54248	5	-
1883-84	40078	8	1
1884-85	33332	14	-
	212040	10	1

deduct.

Madras.	70	1	-
Travancore.	50	-	-
Puzay Town.	17190	-	-
Govt Pleaders.	34555	-	-
	51865	4	-

51865	4	-
51760183	6	-
21132037		
1211525		
127		R.

Civil Cases.

1880-81	10262	12	8
1881-82	8880	4	1
1882-83	9447	3	7
1883-84	20692	4	3
1884-85	11135	14	-
	60410	6	7

deduct

Puzay Town.	20970	13	2
Govt Pleaders.	4413	4	2
	25384	1	4

25384	1	4
5138034	5	3
2217007		
121350		
29		

Assay Criminal fees & month	127
Civil	29
	R. 156

Wheatley

*From the District
General*

No. 30
18

30

495

Supplemental Statement Showing the fees paid to Pleaders
for conducting Civil Cases, on behalf of Court in the Nilgiri
District from 1881-82 to 1884-85.

District	1881-82	1882-83	1883-84	1884-85
Nilgiri	635 ..	744 75	830 4 ..	821 .. 3
Total	635 ..	744 75	830 4 ..	821 .. 3



H. H. H. H.
H. H. H. H.
Accountant General

Fort Saint George
Secy Genl's office
5th February 1886
J. H.

To

The Secretary to Government Judicial
Department in continuation of
this office No. 30 dated 26th
January 1886.

1886-87

29/3

FOR ORDERS.

This correspondence regarding public prosecutors and Government pleaders originated with a letter from the District Magistrate of Malabar, dated the 9th March 1853, in which he informed Government that the Session Judge of South Malabar felt the want of a public prosecutor and requested that under Section 492 Cr.P. the Government would be pleased to make such appointment. In reply it was intimated that since the repeal, by Act 2 of 1867, of Section 37 of Madras Regulation 14 of 1816 no appointments of Government Pleaders or Public Prosecutors have

L.O. 20-4-55
cor.

been made and that

is a total of Rs 156. -

the High Court
regards the question
submitted to them for
opinion, are unanimous
in considering
that there is no legal
objection to the removal
of the office of Govern-
ment pleader; and
as regards the advisability
of combining that office
with the office of public pro-
secutor, three of the
Judges (Chief Justice,
Muthusami Sivar, J.,
and Parker, J.) express
themselves in favor of
the suggestion. Mr Handley,
it is also of the same
opinion but suggests
that payment should
be by fees and not by
fixed salary, the fees in
civil cases being the
regulation fees and in
criminal

36

Letter fr. Bengal
Es. 20.85
7300.

criminal cases a unifor-
m fee to be fixed by Government.
Mr Hutchins, J., agrees
with Mr Justice Handley
as to mode of payment
but sees little use in re-
moving the office of
Government Pleader,
as, in his previous memos
he had also expressed his
self against the appoin-
ment of public prosecutors.

In Bengal, it appears
that prosecutions in discri-
mination are ordinarily con-
ducted by Government
pleaders who have also
been appointed ex-officio
public prosecutors in the
districts in which they hold
office. -
The fees are regulated at
a retainer fee of Rs 50 per
month if there is a Judge's
Court at head quarters
of the district, and Rs 30
where there is no Judge's

a Court. Rs 16 per diem
when employed upon
a criminal business either
in the Magistrates' or
Judges' Court. - A special
rate of Rs 32 per diem is
allowed
in the district of the 24
Pergunnahs. -

a In Bombay there are
- both Government Pleaders
and public prosecutors,
of the duties of the former
being restricted to the courts
at the head quarters of the
district for which they are
appointed, and the duties
of public prosecutors being
restricted to the Sessions
courts to which they
are respectively appointed.

a There are also subordinate
Government pleaders
(para 54). -

a The district Government
pleaders are required to
advise all local officers
in respect of any pro-
ceedings, civil or

FOR ORDERS

para 53 of the rules

54 - - -

56 - - -

para 49 of rules

38 & 39. - - -

or criminal, which they
may have to conduct on
behalf of Government
or of any such officer. 5
The duties of public pro-
secutors are to conduct
the prosecutions in every
trial before Courts of Session
in accordance with Sec 127
C.P.C. and to appear
for the prosecution in
any appeal before those
Courts when Counsel
appears for the appellant
or when specially instructed
by the District Magistrate
to appear. - The Salaries
of Government Pleaders
are fixed per month and
range from Rs 125 to Rs 200
and, in addition, the
usual fees allowed by
the Courts according
to law as to costs in each
civil cause in which
they are engaged
and for prosecutions in
criminal cases in which
they are entitled.

entitled to a fee of Rs 10
per diem, for every day
that they are actually
engaged and in special
cases, the Legal Revenue
officers may raise it to
Rs 25; and a higher fee
than Rs 25 may be
granted with the sanction
of Government.

para 41 of rules.

There is thus a considerable balance of
opinion and evidence in favour of the
appointment of a Govt Prosecutor and of
a Govt Pleader in all Districts: almost
the only dissenting opinion is Mr Justice
Hutchins.

As regards cost, the Acct Genl shows that
the average cost under the present system
is Rs. 127 ^{p.m.} for criminal cases + Rs. 29 p.m.
in civil cases, or a total of Rs. 156 per
mensem. The Distl Magts. whose opinions
are recorded in G.O. 28 Aug 85 - put the
probable cost of the Public Prosecutor,
at Rs. 150, Rs 75, and Rs. 150 p. m.
respectively. The only difficulty arises
from the fact of the great differences in the
averages of certain districts - thus, on
the criminal side - during four years - Kistna
spent ^{in fees} on an average Rs. 66 per m, Nilgiris
Rs. 30 p.m. S. Arcot Rs 87, while Vizagapatnam
cost Rs 130. (or including a big special case Rs. 355)
Bellari cost Rs 177. Tanjore 198. Malabar 211.

therefore, a general fixed rate of
4/3 p. salary for the Presiding magt
contemplates, in some dists.

vide detailed calculations
on separate paper.

per district

see sec. 38 of their
Rules.

The divergence between these scales of expend-
ture, (which of course are derived from fees alone)
in different districts shows that it would
be ~~impossible~~ ^{advisable} to adopt a uniform fixed salary
for the whole Presidency. Thus, the Distl Magts
consulted, appear - as above stated - to have con-
templated the appointment of a public prosecutor
on a fixed salary of Rs. 150 per mensem in each
district. This would be ~~impracticable~~ ^{advisable}, for it
would result in the Public Prosecutor being
considerably overpaid in some districts e.g.
the Kistna, + much underpaid in others such
as Tanjore, Bellary + Malabar.
It is therefore submitted that the method said
to be in force in Bombay should be adopted
namely that the districts of the Presidency
should be divided into two or three classes
for each class of districts, a fixed monthly salary
should be laid down for the Public Prosecutor +
Govt Pleader, and in addition that officers
would be paid the usual fees allowed by Courts
for each civil cause in which he was engaged, and
would be paid for criminal cases according to
a scale of fees prescribed by Govt. The result
would be that the Govt Pleader + Public Prosecutor
would draw the fixed monthly salary, as a sort
of ~~retainer~~ ^{allowance} for which he would be bound to
give all extrajudicial legal assistance required
by the Distl Authorities - and he would be able
to earn fees in proportion to the work which
he might actually conduct in Court.
This was the plan formerly in force in this
Presidency - vide G.O. 18th Sept. 1864. The fixed
salary was then Rs. 21 per mensem, plus fees.
It seems probable that a rather larger sum
would have to be adopted in the districts wherein
the legal work is heavy. In Bombay in 4
districts, the fixed salary is Rs 125 p.m.: in 4
districts Rs 35 p.m. and in 8 districts Rs 20
p.m. The details of the sum to be paid in each

class of district may be fixed later. probably Rs. 50, Rs. 30, and Rs. 20 would be considered adequate for the heaviest, medium, & lightest district respectively.

As regards the question of combining the office of Govt Pleader and Public Prosecutor, it is submitted that there will be more probability of a good man being obtained if the two offices are combined.

It is further submitted that the Collector should nominate the person to be appointed, after communication with the Dist. Judge. The decision should be with the Collector, but the opinion of the Dist. Judge would be useful & should be obtained.

It is also to be considered on what terms or for what period, the appointment should be made. In any case it would be held only during the pleasure of Government, but it might both act as a spur to the officer holding the appointment and obviate Mr. Justice Hutchins' objections to the scheme, if the appointment were made for 1 or 3 years only, subject to renewal. If the orders are passed on these suggestions, the several Collectors can then be called on to submit names for appointment, and the districts can be classified on the basis of the actual average fees of ~~the~~ past years, the scale of fees being as so determined.

24/5/86

57/3/86

The appointment of Mr. N. G. G. is in favor of the union of the Govt. Pleader and Public Prosecutor with the public prosecutorship. Mr. Hutchins' line of argument is that it would be better to have the Govt. Pleader and Public Prosecutor as a separate branch of the service.

1. W. make it permanent subject to Rs 55 salary

The question is now ripe for disposal. The note should be put into type for circulation to the Districts for their consideration.

Perhaps the Hon. Mr. J. S. will record his views. I am in favor of the appointment of Government Pleaders and

Prosecutors to be paid by retaining fees in civil & criminal cases with which they deal on behalf of Govt.

The appointments to be during the pleasure of Govt. & the nomination to rest with the Collector District Judge & District.

The scale of retaining fees suggested in the note seems appropriate. A list of districts should be drawn up showing the scale suitable for each.

Query whether a set of rules should be drawn up for the guidance of these officers?

23.3.86

Appoint of Public Prosecutors
+ Govt Pleaders

A. A.

JUDICIAL DEPARTMENT.

NOTE FOR ORDERS.

This correspondence regarding Public Prosecutors and Government Pleaders originated with a letter from the District Magistrate of Malabar, dated the 9th March 1885, in which he

G.O., 20th April 1885, No. 1022. informed Government that the Ses-

sion Judge of South Malabar felt the want of a public prosecutor, and he requested that under section 492, Criminal Procedure Code, the Government would be pleased to

make such appointment. In reply it was intimated that since

the repeal, by Act II of 1867, of section 37 of Madras Regulation 14 of 1816, no appointments of Government Pleaders or Public Prosecutors have been made, and that according to existing practice the Collectors appointed pleaders *pro re nata*. The Government, however, determined now to refer the matter to the Judges of the

Chingleput.
Madura.
Salem.

High Court and to three selected District Magistrates for their opinion as to the desirability of appointing public prosecutors, and the probable relative cost of the proposed and existing practices.

The replies to this reference are recorded in G.O., 28th August 1885, No. 2279. The Officiating Chief Justice, after stating the law on the subject, said he thought the Government ought to make such an appointment, because—

- (1) it is the clear intention of the legislature that public prosecutors should be appointed;
- (2) no one but a public prosecutor can withdraw a case under section 494, Criminal Procedure Code.

Mr. Muthusami Aiyar, J., and Mr. Brandt, J., concurred in this opinion. Mr. Hutchins, J., on the other hand, was of opinion that the necessity for the appointment was not made out, for, though the person appointed by the Magistrate to conduct the prosecution was not empowered absolutely to withdraw so as to

C. 5/3.
R. 24/3

entitle the accused to an acquittal under section 494, he might examine the 1st witness briefly and then inform the court that he would not call any further evidence, when the same result would follow as if a public prosecutor, appointed by the Government, had withdrawn from the prosecution under section 494, Criminal Procedure Code.

In regard to these remarks, the Officiating Chief Justice observed that this course did not, in his judgment, meet the legal requirements of section 494, but was only a substitute for the regular and legal course pointed out by the Act, and that taking sections 492, 493, and 494 together, the intention of the legislature is clear that public prosecutors should be appointed.

The three District Magistrates who were consulted were unanimous as to the appointment in question being desirable.

On consideration of these replies, the High Court was next requested to state whether they saw

G.O., 23th August 1885,
No. 2279.

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 appointment to be combined with that of public prosecutor. The Accountant-General was also directed to furnish a statement showing the fees disbursed annually for conducting Government cases, civil and criminal, in each district for the last five years, and the Governments of Bombay and Bengal were requested to furnish information as to the arrangements at present in force in their presidencies in respect to the appointment and remuneration of Public Prosecutors and Government Pleaders. These

papers are now pending the consideration of Government. From the figures furnished by the Accountant-General, it appears that the average expenditure per district per month in remunerating persons appointed to prosecute criminal cases is Rs. 127 per mensem and in civil cases Rs. 29, making a total of Rs. 156.

The High Court, as regards the question submitted to them for opinion, are unanimous in considering that there is no legal objection to the revival of the office of Government Pleader; and as regards the advisability of combining that office with the office of public prosecutor, three

of the Judges (Chief Justice, Muthusami Aiyar, J., and Parker, J.,) express themselves in favor of the suggestion. Mr. Handley, J., is also of the same opinion, but suggests that payment should be by fees and not by fixed salary, the fees in civil cases being the regulation fees and in criminal cases a uniform fee to be fixed by Government. Mr. Hutchins, J., agrees with Mr. Justice Handley as to mode of payment, but sees little use in reviving the office of Government Pleader, as, in his previous Minute, he had also expressed himself against the appointment of public prosecutor.

In Bengal, it appears that prosecutions in Session trials are ordinarily conducted by Government Pleaders who have also been appointed *ex-officio* public prosecutors in the districts in which they hold office.

Letter from Bengal, dated 20th Oct. 1885, No. 7308.

The fees are regulated as follows:—
A retaining fee of Rs. 50 per mensem if there is a Judge's Court at head-quarters of the district, and Rs. 30 where there is no Judge's Court. Rs. 16 per diem when employed upon criminal business either in the Magistrate's or Judge's Court. A special rate of Rs. 32 per diem is allowed in the district of the 24 Pergunnahs.

In Bombay there are both Government Pleaders and Public Prosecutors, the duties of the former being restricted to the courts at the head-quarters of the district for which they are appointed, and the duties of public prosecutors being restricted to the Sessions Courts to which they are respectively appointed. There are also subordinate Government Pleaders (paragraph 54).

Paragraph 53 of the rules.

Paragraph 54 of the rules.

The district Government Pleaders are required to advise all local officers in respect of any proceedings, civil or criminal, which they may have to conduct on behalf of Government or of any such officer. The duties of public prosecutors are to conduct the prosecutions in every trial before Courts of Sessions in accordance with section 270, Criminal Procedure Code, and to appear for the prosecution in any appeal before those courts when counsel appears for the appellant or

Paragraph 56 of the rules.

Paragraph 49 of rules.

when specially instructed by the District Magistrate to appear. The salaries of Government Pleaders are fixed per month and range from Rs. 125 to Rs. 20, and, in addition, the usual fees

Paragraphs 38 and 39 of rules. allowed by the courts according to law as

to costs in each civil cause in which they are engaged, and for prosecutions in criminal cases in the mofussil they are entitled to a fee of Rs. 10 per diem for every day that they are actually engaged, and in special cases the Legal Remembrancer may raise it to

Paragraph 41 of rules. Rs. 25; and a higher fee than Rs. 25 may be granted with the sanction of Government.

There is thus a considerable balance of opinion and evidence in favor of the appointment of a Government Prosecutor and of a Government Pleader in all districts: almost the only dissenting opinion is Mr. Justice Hutchins.

As regards cost, the Accountant-General shows that the average cost under the present system is

Vide detailed calculations on separate paper. Rs. 127 per mensem per district, for criminal cases and Rs. 29 per mensem per district, in civil cases or a total of Rs. 156 per mensem per district. The District Magistrates, whose opinions are recorded in G.O., 28th August 1885, put the probable cost of the public prosecutor at Rs. 150, Rs. 75, and Rs. 150 per mensem respectively. The only difficulty arises from the fact of the great differences in the averages of certain districts, thus, on the criminal side—during four years—Kistna spent in fees on an average Rs. 66 per mensem, Nilgiris Rs. 30 per mensem, South Arcot Rs. 87, while Vizagapatam cost Rs. 130 (or including a big special case Rs. 355), Bellary cost Rs. 197, Tanjore Rs. 198, Malabar Rs. 211.

The divergence between these scales of expenditure (which of course are derived from fees alone) in different districts shows that it would be inadvisable to adopt a uniform fixed salary for the whole presidency. Thus, the District Magistrates consulted, appear, as above stated, to have contemplated the appointment of a public prosecutor on a fixed salary of Rs. 150 per mensem in each district. This would be inadvisable, for it would result in the

49
8
73/53
public prosecutor being considerably overpaid in some districts, *e.g.*, the Kistna, and much underpaid in others, such as Tanjore, Bellary, and Malabar.

It is therefore submitted that the method said to be in force in Bombay should be adopted,

See sections 38 and 39 of their rules.

namely, that the districts of the presidency should be divided into two or three classes: for each *class* of districts, a fixed monthly salary should be laid down for the Public Prosecutor and Government Pleader, and, *in addition*, that officer would be paid the usual fees allowed by courts for each civil cause in which he was engaged, and would be paid for criminal cases according to a scale of fees prescribed by Government. The result would be that the Government Pleader and Public Prosecutor would draw the fixed monthly salary, as a sort of retaining fee, for which he would be bound to give all extra judicial legal assistance required by the district authorities; and he would be able to earn fees in proportion to the work which he might actually conduct in court.

This was the plan formerly in force in this presidency—*vide* G.O., 1st September 1866, No. 1369. The fixed salary was then Rs. 21 per mensem, *plus* fees. It seems probable that a rather larger sum would have to be adopted in the districts wherein the legal work is heavy. In Bombay, in four districts, the fixed salary is Rs. 125 per mensem; in four districts Rs. 35 per mensem, and in eight districts Rs. 20 per mensem. The details of the sum to be paid in each class of district may be fixed later, probably Rs. 50, Rs. 30 and Rs. 20 would be considered adequate for the heaviest, medium, and lightest districts respectively.

As regards the question of combining the office of Government Pleader and Public Prosecutor, it is submitted that there will be more probability of a good man being obtained if the two offices are combined.

It is further submitted that the Collector should nominate the person to be appointed, after communication with the District Judge. The decision should be with the Collector, but the opinion of the District Judge would be useful and should be obtained.

It is also to be considered on what terms or for what period the appointment should

The majority of the High Court are in favor of the revival of the Government Pleadership, and see no objection to the union of that office with the Public Prosecutorship. Mr. Hutchins alone objects on the score that it would be very little use to revive the Government Pleadership, and thinks that Government would be best served by a continuance of present arrangements.

(Intld.) W.

Ind. No. 1309
27/18 May 186
Desp 5/6/86

The Collectors of *K*
The District Magistrates of

27/53
Anantapur.
North Arcot, Chittoor.
South Arcot, Cuddalore.
Bellary.
South Canara, Mangalore.
Chingleput, Saidápet.
Coimbatore.
Cuddapah.
Ganjam, Chatrapur.
Godávari, Cocanada.
Kistna, Masulipatam.
Kurrúool.
Madras (when necessary).
Madura.
Malabar, Calicut.
Nilóiris, Ootacamund.
Neore.
Salem.
Tanjore.
Tinnevely..
Trichinopoly.
Vizagapatam.

be made. In any case it would be held only during the pleasure of Government, but it might both act as a spur to the officer holding the appointment, and obviate Mr. Justice Hutchins' objections to the scheme, if the appointment were made for one or three years only, subject to renewal. If orders are passed on these suggestions, the several Collectors can then be called on to submit names for appointment, and the districts can be classified on the basis of the actual average fees of past years, the scale of fees being also determined.

A. G. C.,
5-3-86.

A list of districts, divided into 3 classes according to average fees of last 4 years is put up.

D.P.
1.4.86.

I agree. I the removal of the office of your Pleader & to the appointment of Public Prosecutors being joined thereto - the appointments be held during the pleasure of Govt. 15/4.
At the rate of retaining fee proposed in the note

I would make it permanent, subject to the fifty-five years' rule. (Intld.) W.

The question is now ripe for disposal. The note should be put in type for circulation to His Excellency and the Hon. Mr. Sullivan. Perhaps the Hon. Mr. Webster will record his views.

I am in favor of the appointment of Government Pleaders and Prosecutors to be paid by a retaining fee, plus fees in the civil and criminal cases with which they deal on behalf of Government.

The appointments to be during the pleasure of Government and the nomination to rest with the Collector-District-Magistrate.

The scale of retaining fee suggested in the note seems appropriate. A list of districts should be drawn up showing the scale suitable for each.

Query whether a set of rules should be drawn up for the guidance of these officers? (Intld.) C. G. M.
23-3-86.

As requested by Mr. Minister they to state my opinion on this subject. Unless a Public Prosecutor is appointed in the several districts we shall continue to be without the power of withdrawing a case from the Sessions when there is evidently for the coming against accused person. This practical inconvenience has been brought to the notice of G.O. by various officers of experience & its existence is recognized by the High Court. I think therefore that the Govt. should exercise its power to appoint Public Prosecutors. With respect to the objection raised by Mr. Hutchins that once appointed it will not be so long that they & he are not for a year (say five) renewable if it is quite satisfied with the results they have achieved.

duties connected to him.
 They should be remunerated by
 the Magistrate of the District,
 & their remuneration should
 take the shape of fees in
 preference to a fixed salary.

I would further advise
 Public Prosecutors to be
 Govt Pleaders on the Civil side
 of the District Courts.

I do not think it would be
 wise to attempt to frame rules
 in the guidance of these officers,
 it is exceedingly difficult
 to do so, and in any set of
 circumstances, omitted from
 rules - Public Prosecutor
 has failed in his discharge
 his duty would plead the
 omission as an excuse for
 failure. None of his order
 intelligence we may very
 reasonably expect. Such full
 officers are not likely to go
 astray while they have
 Magistrate of the District
 Judge of the Court of Session
 as guides.

10/4. The last order of the
 Government in this matter
 is dated 11th April 1886.
 It is a very good one.

Detailed in Council
 20/4/86. Appr the for
 three years or until further
 orders. in which report
 the order is not given.

20/4/86
 12/4

No. 75 H. 1309
 27/10/86

District and Session
 Judge of

- North Arcot, Chittoor.
- South Arcot, Cuddalore.
- Bellary.
- South Canara, Mangalore.
- Chingleput.
- Coimbatore.
- Cuddiapah.
- Ganjam, Berhampore.
- Godavari, Rajahmundry.
- Kistna, Masulipatam.
- Kurnool.
- Madura.
- North Malabar, Tellicherry.
- South Malabar, Calicut.
- Nellore.
- Nilgiris, Ootacamund.
- Salem.
- North Tanjore, Tanjore.
- South Tanjore.
- Tirunelveli, Karaikal.
- Trichinopoly.
- Vizagapatam.

nomination will rest in the ⁶⁷Collector and Magistrate of the District, who should invariably consult the District Judge before submitting his nomination to Government. The joint appointment of Government Pleader and ~~and~~ Public Prosecutor will be made for the term of three years or until further orders, and Public Prosecutors will be appointed under the provisions of sec. 492 of the Criminal P.C. Nominations should be submitted by all Collectors and District Magistrates without unnecessary delay.

4. For the purpose of fixing the remuneration of the Govt Pleader and Public Prosecutor, the districts of the Presidency have been divided into three classes, as shown in the list attached to these Proceedings, according to the average fees paid during the last 4 years, and H.E. the Govt in Council ^{resolves} ~~determines~~ that the following monthly retaining fee shall be assigned to the joint office of Govt Pleader and Public Prosecutor in each District, namely, Rs. 50/- for the districts included in the first class, Rs. 20/- for those included in the second class, and Rs. 10/- for those included in the third class.

and Rs. 20 in those contained in the third class. Such retaining fee will be in lieu of the old monthly fee of Rs. 21, if such is still paid in any district, and will be in addition to fees paid for the conduct of civil and criminal cases. The Hon: the Judges of the High Court will be requested to inform the Government whether any scale of fees for Govt Pleaders in Civil cases can be laid down. With regard to the fees for the conduct of criminal cases, the fees ~~at present~~ sanctioned by the marginally cited orders will continue to be paid, but the Government will in future be prepared to sanction any amount in excess of Rs. 50 per se except in very special circumstances. The Govt Pleader & Public Prosecutor will also be expected to afford officers of Govt extra-judicial legal advice whenever required to do so.

5. The Public Prosecutors be appointed in each District in accordance with these Proceedings will be additional to the Govt Pleader ^{who} has been appointed

The Dept of the Secretariat 22
The Hon: the Judges of the
High Court with 6 L 6
The Collector & Magistrate
The District & Sessions Judges
The Accountant General. 6
Copy to the Govt Pleader 3
& Public Prosecutor,
Madras

Public Prosecutor for the whole
Presidency outside the town of
Madras by G.O. 27th March
No. 820

b. The monthly retaining fee will
be debited ^{as at present} ~~under~~ under the
head "Law Charges, Contingencies."

Deposits 87/6

Deposits
87/5.

Note. This is an important order.
and there are several doubtful points:

(1) the proposed scale of monthly retaining fees will produce a clear increase of expenditure of Rs. 8000 p.a. It is desirable that this should be met by reducing the fees, & for this reason, it is proposed to get the help of the High Court in fixing a scale of fees in civil cases. & to keep down the fees in criminal cases is a maximum of Rs 50 per case.

They will see it in our monthly Vol. (2) it is submitted for consideration whether copy of these proceedings should go to India. It does not

3). In the new Manual of
administⁿ vol. i. pp 204 & 281. it is
stated that Govt- Pleaders are still
retained on Rs 21 per mensem in
all D^s but 4 or 5. It is not known
on what information this statement
is based, but it is believed to be
incorrect. indeed, it is proved to be
incorrect by the acct^l Genl's returns,
for Rs 21 p. m w^l amount to Rs 252
p. a. in each Dist^r whereas many fall
much below that figure. In case
however the monthly Rs 21 is still
paid in any D^s, the order has been
expressly referred to order.

vide 9.0.25 Oct 73. no. 2176

if fees paid to the prob. Pleader. ^{Moder have been excluded.}
 & includes fees and cost. ^{Particulars under each item are with}
 available. ^{fees paid as in the case of the Solicitor}
 if ~~loss~~ with evidence ^{of} ~~expenses~~ ^{fees}

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20. 6. 29. 34

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Public Prosecutor and
Government Pleader

fructum with regard
the appointment of a
specially in each district of
this Presidency, the collector
and Magistrate, in con-
sultation with the District
Commissioner, his name
Government,

ORDINARY

not

18-5

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Public Prosecutors
Government Plea

Sanctioning with
the appointment
Society in each
this Presidency, to
and all agents
later in with the
submitting his
Government.

4-1-40

10-2-194