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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 2032-33 Press
Mis

Dated 6.9 - 18 87.

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6TH SEPTEMBER 1887, No. 2032, JUDICIAL.

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

READ—again G.O., dated 16th June 1887, No. 1291, Judicial.

READ—also the following papers:—

From A. P. MACDONNELL, Esq., C.S., Secretary to the Government of India,
(Home Department—Judicial), to the Chief Secretary to the Government of
Madras, dated Simla, 30th May 1887, No. 886.

With reference to paragraph 2 of the despatch from the Government of Madras
to Her Majesty's Secretary of State, No. 7 (Judicial), dated the 8th March last, I am

directed to request that the suggestion
made in paragraph 31 of the enclosed
* Paragraphs 30 to 35 of Note F.C.—23, dated 22nd February 1887. extract * from a Note by the Finance
Commissioner with the Government of

India for the reduction of the salary of the Advocate-General, Madras, to Rs. 1,500
per mensem may be considered by the Madras Government in connection with the
existing vacancy in that office, and that the Government of India may in due course
be informed of the conclusion which may be arrived at on the point.

2. I am also to transmit a further extract † from the same note containing a
proposal to the effect that the rate of com-
mission now admissible to the Official
Trustee, under section 11 of Act XVII of

1864, in the case of estates situated in the mofussil, should be raised by an amendment
of the law, and that the post of Official Trustee should be amalgamated with other
cognate offices, namely, those of Administrator-General, Official Receiver, and Official
Assignee. The Governor-General in Council will be glad if, after consulting the
Honorable the Chief Justice and Judges of the High Court at Madras, the Governor
in Council will favor the Government of India with his opinion on the subject.

3. I am further to intimate that it has been recommended by the Finance Com-
missioner with the Government of India that in future appointments to the posts of
law officers of Government, as well as to those of Official Trustee, Official Assignee,
&c., should be made for a limited period only, say five years, and not as now in
permanence, it being urged that this will protect Government interests from loss in
case it is found that the selection made does not turn out a satisfactory one, or in case
the official selected deteriorates in capacity to carry on the duties of the post. Before
coming to a decision on this point, the Governor-General in Council considers it
desirable to invite an expression of the views of the Government of Madras thereon.

4. Lastly, I am to inquire, with reference to paragraphs ‡ 16 and 17 of the Finance
Commissioner's Note, whether, in the
opinion of the Honorable Judges, the
existing arrangements for the conduct of
criminal prosecutions in the High Court at Madras on behalf of the Crown are
satisfactory.

ENCLOSURE.

Extract paragraphs 30 to 35, 27 to 29, and 16 and 17 of Note No. F.C.—23, dated 22nd
February 1887, by the Finance Commissioner with the Government of India.

30. The Advocate-General performs all the duties of an Advocate in cases in the High
Court in which the Government is concerned,
or in which it directs him to appear on behalf
of its officers. He advises the Government and heads of departments, and is consulted by the

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Government Solicitor and the Government Pleader when desired. He gives opinions on all questions submitted for his opinion by the Government Solicitor. He appears in all civil suits and appeals in which the Government or its officers are concerned, and prosecutes in all criminal cases in the High Court which involve a capital charge or which affect the revenue. He has, *ex-officio*, superintendence of all litigation connected with public charities. He advises on all pending legislation, and, as a member of the Legislative Council, assists as a member of the Select Committee when required.

The following is the work done by the Advocate-General in 1885:—

References for opinion	79
Bills in which services were rendered in the Legislative Council	5
Committee to consider Malabar Land Tenures	1
Prosecutions at Criminal Sessions	5
Appearances at Police Court in respect of assessment of Government property by Municipality	1

No fee is in any case payable to the Advocate-General except where Government recovers costs from the opposite party.

31. The Advocate-General does not appear to have been engaged in any civil litigation during the year; the opinions given are fewer than in the case of Bombay and Calcutta. On the other hand, the services rendered in the

Legislative Council are specified as a material portion of the Advocate-General's work, and we have no means of comparing the amount of time and labor thus given with that given by the other Advocates-General. If Bills are long and troublesome, and the Advocate-General is expected to assist in framing them, to serve on Select Committees, and to take charge of the measure in its legal aspects, the amount of labor may be very considerable. We recommend, however, that, on the occurrence of the next vacancy, the question of a reduction of the Advocate-General's salary be considered. If it is considered that Rs. 2,000 per mensem is sufficient for Bengal, then Rs. 1,500 would appear to be an ample salary in the case of Madras. It must, however, be kept in view that the Bar is so small and the professional position of Barristers so seriously injured by the right conceded to Pleaders and Vakils of practising on the Original Side, that it may not improbably happen that the incumbent of the post may have to look mainly to his official income, and the Government might have difficulty in finding a competent and experienced Barrister ready to occupy the post on a lower salary than the present. This, we think, can be decided only when the time arrives and by those who are better acquainted with the local circumstances of Madras than we can pretend to be.

32. The duties of the Government Solicitor are to advise Government in cases in which the opinion of the Advocate-General is not required; to obtain the Advocate-General's opinion when required; to prepare conveyances, contracts,

&c., for Government; to furnish the Crown Prosecutor with a brief in cases in which he has to appear in Police cases, viz., cases in which the prosecution is instituted or carried on by orders of Government; to appear at the Police Court and instruct the Crown Prosecutor in such cases; to supply the Advocate-General with briefs in the cases in which he prosecutes, and to attend in Court at the trial of such cases; to institute, defend, and conduct all civil suits by and against Government, or, when Government sanction has been obtained, its servants. He also advises, when required, on pending legislation, and conducts inquiries into applications by parties to sue *in forma pauperis*, and appears in wreck inquiries to watch the case on behalf of Government.

Work done by Government Solicitor.

33. The work done for Government by the Government Solicitor in 1885 was as follows:—

Advising Government in cases in which the Advocate-General's opinion is not required	161
Preparation of cases for opinion of Advocate-General	42
Preparation of conveyances, contracts, &c.	66
Prosecution of Police cases, personally (1), or through Crown Prosecutor (6)	7
Preparation of briefs, &c., for Advocate-General	8
Appearances in Small Cause Court on behalf of Government	7
Conduct of Civil suits on behalf of Government or Government servants	14
Advising on pending legislation	2
Examination into title of claimants of lost promissory notes	3
Recovery of money for Government otherwise than by suit	29
Conduct of inquiries into applications to sue <i>in forma pauperis</i>	24

34. The salary of the Government Solicitor is Rs. 14,700, and he receives Rs. 600 for his establishment. The amount is moderate as compared with the salaries in the other presidencies, and the work done is large; we do not therefore feel called upon to make any suggestions as to reductions.

Recommendation as to future remuneration.

35. The salary of the Government Pleader is Rs. 500 per mensem. His duties are (1) to appear in any Civil or Criminal Court in the Presidency when specially directed by the local Government; (2) to appear on the Appellate Side of the High Court when instructed by Government to do so in all civil appeals in which Government or Government officials are interested; (3) to appear in all criminal appeals before the High Court in support of convictions, or in miscellaneous criminal matters when directed by Magistrates or heads of departments, or in appeals from acquittals when directed by the Government; (4) to advise Government and the Board of Revenue and heads of departments on legal questions arising in the mofussil. The Government Pleader gets a fee of Rs. 175 per diem in the first case, the regulation fee in the second case, a fee of Rs. 30 in the third case; in the fourth case he gets no special remuneration. The amount of work done in 1885 was as follows: He appeared in 16 civil appeals (head 2), in 202 criminal appeals and 18 appeals against acquittals (head 3), and he gave 30 opinions, and prepared 7 plaints and written statements under head (4). For his appearance in criminal appeals, he received Rs. 6,600. The amount received in civil appeals has not been reported. It seems to us that for his attendance in Court he is sufficiently remunerated. Looking at his salary of Rs. 500 as a general retainer, and as remuneration for the work done under head (4), the salary does not seem excessive as compared with the salary of Rs. 300 paid to the Government Pleaders at Calcutta and Bombay, where there are Legal Remembrancers and the class of work shown under head (4) does not exist.

27. The Official Trustee is appointed under Act XVII of 1864. He may accept all trusts other than those of a religious nature at the request of parties in the case of new trusts and by summary order of the Court or by decree

Duties of the Official Trustee.

in the case of existing trusts. Mr. J. F. Fergusson, in a letter dated 1st December 1886, informed the Finance Committee that he has now 345 trusts in his charge, and that this may be taken as the average number, which he is called upon to manage. The average number of new trusts annually received for the last ten years has been 14, and the number of trusts annually made over or distributed during the same period has also been 14. The average annual expenditure incurred has been Rs. 6,525, and the average net commission received by the Official Trustee has been Rs. 11,543, in addition to which he is allowed by the Chief Justice to make a charge of Rs. 1,000 per annum against a fund styled the Audit Fund for what are termed schedule and audit charges. This grant is allowed on the recommendation of the Auditors (the Comptroller-General and Assistant Comptroller-General), and is, the Official Trustee informs us

(a) See letter of 30th December 1886.

(a) absorbed by special expenses incurred in connection with the audit. The rate of commission fixed by section 11 of Act XVII of 1864 for the three Official Trustees at the three presidencies is as follows:—

A commission of one-half per cent. on all capital moneys received and on all such moneys invested.

A commission of two and-a-half per cent. on all rents collected or dividends and interest received.

28. In a memorandum supplied to us on 30th December 1886, Mr. Fergusson makes the following observations:—

Suggestion by Official Trustee.

The difficulty of working the Official Trustee's Act (Act XVII of 1864) to the advantage to which it might be worked appears to the writer to arise in this way.

Under section XI of the Act, the Official Trustee is entitled to certain remuneration on trusts made over to him by "the Court." This remuneration is of itself very low, but in cases where only Government securities or landed property situate in Calcutta are concerned, it is fairly remunerative for the work to be done in such cases. Section XII, however, of the Act defines the expenses and charges to be covered by the remuneration provided by the section XI, and not only that, but it goes on to say (see last sentence of section XII): "The commission of the Official Trustee is intended to cover all the expenses and risk and responsibility of management, collection, and distribution." Now it is confidently, but respectfully, submitted that to manage mofussil estates, and to undertake the "expenses and risk and responsibility of management, collection, and distribution of such estates on a commission of 2½ per cent. on all rents collected" (see last paragraph of section XI of the Act) would be simply an act of folly, as the business could not be managed on the terms stated.

Hence it is that certain estates (notably the estate of the late Honorable P. C. Tagore) are held by the incumbent of the office of Official Trustee for the time being as Receiver, but not in his office of Official Trustee; and on the death or removal of the Official Trustee, the property of such trusts would not vest in the successor of the Official Trustee under section XVII of the Act.

It may be said that under section IX of the Act, the Official Trustee is entitled to such remuneration as he shall be declared entitled to receive under the deed appointing him trustee, and may therefore make his own bargain; but the trusts lastly referred to (*i.e.*, trusts in regard to mofussil estates held by him as Receiver) are not new but existing trusts, and therefore come under section X, and not under section VIII of the Act. Moreover, even in the case of new trusts of the description now under consideration, it is difficult, in the face of the rate of remuneration provided and laid down under section XI of the Act, to get settlers to agree under section IX to a higher rate of remuneration than provided by section XI. The writer is at present engaged in a discussion on this very subject with regard to a proposed trust of a large mofussil estate, of which it is desired that he should undertake the trusteeship as Official Trustee.

We think that the question thus raised should be considered, and the Act, if necessity be shown, amended.

29. On the one hand, if the commission allowed be too low to cover the necessary expenditure and give a fair remuneration, it should be raised. On the other hand, it seems anomalous that the Official Trustee should decline to take charge of an estate as Official Trustee, and be at liberty to take charge of it as Receiver, and thus to claim a higher commission than would be permissible to him as Official Trustee. We have recommended elsewhere that, in the case of a new incumbent, the Official Trustees should not be allowed to take Receiverships, and also that the post should be amalgamated with the other posts, the work of which is closely akin to that of this office. These are the post of Administrator-General, Official Receiver, and Official Assignee. If, however, no such change is made, we recommend that, whenever the income of the office becomes sufficient to make it worth while, the Official Trustee should be paid partly by commission and partly by salary. If the Act were altered so as to provide an adequate remuneration, and the zeal of the Official Trustee stimulated by a reasonable share of the commission, it is not, we think, impossible that the sphere of his operations might be greatly enlarged, and that a considerable income might in course of time be earned by the State. The same proposals apply to the Official Trustees in Madras and Bombay, and need not be separately repeated. The work there is much lighter. The Official Trustee, Bombay, receives only from one to two estates a year, and his average commission since 1880 has been Rs. 1,615. The Official Trustee in Madras has received three trusts a year on an average since 1878, and his average commission has been Rs. 2,830.

Work of Standing Counsel.

16. The work done by the Standing Counsel in 1885 was as follows:—

Cases at the Sessions	40
Insolvency opposed	1
Appearances in applications to sue <i>in forma pauperis</i>	20
Appearances in connection with suits	3
Papers drawn or settled in Civil cases	12
Opinions in connection with civil suits	13
Opinions in connection with criminal suits	7
Deeds settled	4

Apart from the Sessions cases, the largest number of cases in which the Standing Counsel appeared was, it will be seen, in inquiries as to the right to sue *in forma pauperis*. The question has been raised in the Finance Committee's Note on the Calcutta High Court whether these inquiries, which are of an extremely simple character, involving hardly any other point than whether the petitioner is possessed of Rs. 100, might not advantageously be disposed of by the Registrar or other person appointed by the Court. We think that the conduct of such an inquiry before such a tribunal as a High Court Judge, conducted by an officer of the status of the Standing Counsel, is an unnecessarily expensive proceeding. All that can be necessary in such a case could apparently be done before the Registrar by the Government Solicitor, if the Code so permitted.

The Standing Counsel's work may, therefore, be divided into—

- (1) his work in the High Court as Crown Prosecutor or in connection with civil suits, or insolvency and pauper cases;
- (2) his work in chambers, in giving opinions on cases and settling deeds.

17. There is no Standing Counsel in Bombay or Madras, and we believe that the work of the first class is there done by the Clerk of the Crown or Crown Prosecutor and the Advocate-General, and that of the second class by the Government Solicitor and the Advocate-General.

The question, therefore, naturally arises why the same arrangement should not be sufficient in Calcutta.

The foregoing letter will be communicated to the Honorable the Judges of the High Court in continuation of G.O., dated 16th June 1887, No. 1291, Judicial, with the request that the Government may be favored with an expression of the opinion of the Honorable the Judges on the several points referred to by the Government of India.

(Signed) H. E. STOKES,
Ag. Chief Secretary.

5th July 1887.

To the Honorable the Judges, with C.L.

From E. B. POWELL, Esq., Acting Government Pleader, to the Chief Secretary to Government, dated Madras, 8th July 1887, No. 313.

In reference to the Proceedings of Government noted in the margin, I have the honor to submit the following reasons why the proposed changes in the character of the office of Government Pleader appear to me to be inexpedient.

2. There is an objection to the Advocate-General and the Government Pleader sharing one set of chambers, and it rests principally on the inconvenience those two offices will suffer, inasmuch as neither of them will be able to conduct his private work or see his clients and attorneys with any degree of privacy. The objection will be apparent to anyone who has himself been a practising Barrister.

3. The proposal to discontinue furnishing the Government Pleader with copies of criminal records, and to require him to make his own notes from the original records, is open to much more serious objection. In the large majority of criminal cases in which the Government Pleader appears, it is essential that he should have before him, when arguing the case, the complete record. It not unfrequently happens that a Vakil who appears for an accused person reads from some papers supplied to him by his client which purports to be a copy of the proceedings, but is altogether incorrect. It is the duty of the Government Pleader to check any such inaccuracies and bring them to the notice of the Court; but how is it possible for him to do so unless he is provided with a copy of the record. In many cases the accused (appellant) is unrepresented. In such cases the Court expects the Government Pleader to be prepared to read the evidence or give any information regarding the case that may be required by the Court.

4. Moreover, when there is a press of work, it would be impossible for the Government Pleader to act upon notes or have the records copied by one or even two copyists.

5. During the last vacation, I had to come down from Coonoor to appear in support of the convictions in 19 criminal cases which were fixed for the 1st June. The Court was occupied during the 1st and 2nd June in disposing of the cases. Many of them were appeals against convictions for murder, in which the records were very voluminous. It would, I think, have been impossible for any man to have taken notes of those cases sufficient to have enabled him to do his work efficiently. But a still stronger and more striking instance of the impossibility of acting upon notes has occurred more recently. I was engaged the whole of yesterday in arguing an appeal against an acquittal. The accused, 8 in number, were charged with murder before the Sessions Court of Salem and acquitted principally on the ground of the variations made by the witnesses in their statements before three Courts. The witnesses were 24 in number, and there were 22 exhibits put in by the prosecution and 28 for the defence, which latter consisted of depositions given before two other Courts. It was absolutely essential, therefore, that I should have before me, not only for my own information, but to refer to in Court every one of those depositions. Judgment has not been delivered, but I apprehend the Court will convict 5 out of the 8 accused of murder, and I attribute the conviction principally to the fact that the whole record had been printed and I was enabled to show the Court without much difficulty that the alleged variations were not variations at all or that they were immaterial. The

printed record consisted of 152 pages. If, instead of having been supplied with a printed copy, I had had to depend on a copyist; the manuscript copy would have contained about 600 pages, representing about $2\frac{1}{2}$ months' work for one copyist at the rate allowed by the High Court, viz., 7 pages a day or 210 a month. One copyist would, under such circumstances, be utterly unable to supply me with the copies I would require.

6. As regards the proposal of the Government to cut down the salary of the Government Pleader by one-half, it is not altogether becoming in one holding the office to give an opinion as to the value of his services, but I desire to bring to the notice of Government that the Government Pleader is bound to be in close attendance on the Court if a single criminal case is in the list. His absence owing to an engagement on the Original Side would never be accepted as an excuse by the Court. The Chief Justice is very strict in insisting on criminal cases coming on in their order in the cause list and in proceeding with a case even though the counsel for the accused is absent in another Court *a fortiori*; the absence of the Government Pleader in another Court would never be accepted as an excuse. Consequently, the Government Pleader has to give up more or less private work lest it should interfere with his public duties, and I presume the salary he receives ought to compensate him for such losses. To assure the Government that this is a real and not an imaginary objection on my part, I may mention that only yesterday I received a brief with the Advocate-General in the case of *Champion versus Oakes* which was heard to-day, and returned it because it might interfere with my presence in the other Court where there were some criminal cases posted.

7. When the office of the Government Pleader was first established, the criminal work did not interfere at all with that officer's undertaking any amount of other work. The Appellate Court seldom heard criminal cases more than once a week, and the same strictness was not observed as now regarding the despatch of criminal work.

8. No one except a person in the habit of attending the High Court can have any idea to what an extent the work of the Government Pleader has increased. Practically, he is prevented from undertaking any other work.

9. Taking into consideration all these circumstances, I respectfully submit, for the consideration of Government, that the salary is at present inadequate if that salary was a fair remuneration at the time the office was instituted.

From J. H. SPRING-BRANSON, Esq., Public Prosecutor and Crown Prosecutor, to the Chief Secretary to Government, dated Madras, 18th July 1887.

In compliance with the order of Government, dated the 16th June 1887, No. 1291, Judicial Department, calling upon me to show cause why the arrangements contemplated for reducing the charges connected with the law officers of Madras should not be introduced, and confining myself to the office of Crown Prosecutor, I have the honor to submit the following observations.

1. I agree in thinking that the Crown Prosecutor should conduct the prosecution in all cases, without exception, committed to the High Court for trial at the Sessions; but I respectfully submit that the work now done by the Clerk of the Crown should not be thrown upon the Crown Prosecutor.

2. The work now done by the Crown Prosecutor cannot be fairly gauged by the average number of days each Sessions may last, or by the average number of cases in which he may have to appear. Such a criterion omits the important element of time spent out of Court in the preparation of the work for the trials. That time must be added to the time occupied in Court, and must be deducted from the time which would otherwise be available for private practice.

3. Cases are committed to the Sessions even after Sessions have commenced, and in such cases the Crown Prosecutor has considerable difficulty in making himself acquainted with the facts of such cases in time for the hearing, because he is occupied all day in Court in the discharge of his duties there. He would have no time for

settling indictments in cases committed after the commencement of the Sessions. As an instance, I may mention a case which was committed to the last Sessions so late that there was no time, even with the present establishment, to get ready for trial. That case had to be postponed till the next Sessions.

4. Not unfrequently the Clerk of the Crown has to attend on the Judges who preside at Sessions in order to obtain instructions or to make communications. It seems to me most undesirable that that duty should be thrown on to the Crown Prosecutor. He should not even appear to have an advantage over the counsel for the defence. It is most undesirable that the native public should suppose that the Crown Prosecutor had the "ear of the Court" when the accused or their counsel had not.

From the Hon'ble J. H. SPRING-BRANSON, Acting Advocate-General, to the Chief Secretary to Government, dated Madras, 18th July 1887.

In compliance with the order of Government, dated the 16th June 1887, No. 1291, Judicial Department, calling upon me to show cause why the arrangements contemplated for reducing the charges connected with the law officers of Madras should not be introduced, and confining myself to the office of Advocate-General, I have the honor to submit the following observations.

1. *Duties.*—Under the proposed changes "the Advocate-General will be relieved from all charge of Sessions work, except in cases of exceptional importance which may be specially deputed to him by Government. On the other hand, the thirty cases of advice called for by the heads of departments and Government devolving on the Government Pleader, will be transferred to the Advocate-General, who will also be required to give the Government Pleader his advice in all difficult cases whenever applied to."

The suggested relief is right in principle, but slight in amount. The additional duties cast upon the Advocate-General, on the other hand, will be very considerable. The "statement of work done" given in the table printed in the order, dated 16th June 1887, No. 1291, Judicial, excludes the important elements of the time and labor spent by the officers mentioned upon the "work done." Every professional man knows that the time and labor spent in Court during the conduct of a suit are trifling in comparison with the time and labor spent out of Court in the preparation for the hearing. The time and labor spent upon a judgment or an opinion cannot be gauged by the number of "folios" contained in that judgment or opinion. The mere number of cases disposed of during a given period by a given Court is not a reasonable criterion of the actual work done by that Court in that time.

In addition to the opinions, the Advocate-General has to write when called upon to do so by the Government of Madras and heads of departments; he has also to advise as to Bills of the Government of India sent to him for his opinion by the Government of Madras. As an instance, I may refer to the draft Bill on the subject of actionable wrongs. That subject is a very extensive one, and the expenditure of time in perusal and consideration of the draft Bill was very great. To illustrate further the pressure upon the time of the Advocate-General, I may mention that I have been obliged to ask Government to relieve me of the duties of Public Prosecutor for the town of Madras and of Crown Prosecutor, which I consented to perform as a temporary measure to help Mr. W. Grant. I have been compelled by want of time to get members of the profession to appear for the Public Prosecutor in appeals from the convictions and sentences of the Presidency Magistrates.

If the suggested changes take place, the duties of the Advocate-General will be considerably increased. If the duties of the Advocate-General be increased, the time at his disposal for his private practice will be proportionately decreased, and this is a most important consideration when we turn to the subject of the salary attached to the office.

2. *Salary.*—No pension is attached to the appointment. The holder of the office has to trust to his profession for a living. "Time is money" to him. I trust any member of the Bar, who has the honor conferred upon him of being appointed the

Advocate-General, would most earnestly desire to perform the responsible and arduous duties of that office to the best of his ability. If, however, his salary as Advocate-General be cut down, in justice to himself he must take up so much professional work as will, with his salary, prevent his being a loser in a pecuniary point of view by holding the appointment. That professional work will occupy a considerable amount of his time. The more of that time he is compelled to devote to his private practice, the less can he devote to his official duties. It seems to me to be most undesirable to place any man in such a dilemma.

Another matter in this connection requires attention. There are certain cases which the Advocate-General cannot take up in consequence of his official position. The same cause practically debar him from appearing in some Courts open to other members of his profession. It is undesirable that any departure be made from the hitherto accepted practice that the Advocate-General should not appear in relatively insignificant cases, or at all in original suits without a junior to assist him. That practice has the effect of considerably reducing the number of cases in which the Advocate-General is retained. Moreover, the position the Advocate-General ought to occupy, as the chief legal adviser to Government and the head of the Bar to which he belongs, can hardly be treated as a "negligible factor."

3. As to the chambers provided for the Advocate-General, I beg leave to point out that those chambers are by no means large, and that it is impossible for him to share them with any other member of the profession. My own books form a large and rapidly increasing library. Official records and books take up much space in addition, and those records and books yearly increase in numbers. There is no room for the office establishments, private and official, of the Government Pleader and the Advocate-General in the rooms now occupied by me.

By the letter from the Court of Directors, dated the 7th November 1827, an allowance of Rs. 200 per mensem was sanctioned to defray the expenses of the Advocate-General's establishment. It appears from the letter, dated 23rd May 1859, from the then Advocate-General to the Civil Auditor, that chambers were provided for the Advocate-General in November 1836, and that Rs. 85 per mensem were deducted from the allowance of Rs. 200, thus reducing that allowance to the sum of Rs. 115 at present received. That allowance goes to pay a clerk, peons, punkah-puller, sweeper, and scavenger, and also to meet contingent expenses, as no "contingent allowance" is given to the Advocate-General. As Advocate-General, I have only one clerk who draws Rs. 80 per mensem. Mr. D'Sena has been in the office for many years and thoroughly understands the work. "Confidential" communications are sometimes made to the Advocate-General, and it is important that his clerk should be one who can be thoroughly trusted not to divulge such communications. I think therefore that it would be a mistake to lose Mr. D'Sena's services and to substitute for him some untried and unknown though cheaper man.

From H. T. ROSS, Esq., Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to Government, dated Madras, 20th July 1887, No. 1872.

I am directed to reply to G.O., No. 1291, Judicial, dated 16th June 1887, reviewing the arrangements contemplated for reducing the charges connected with the law officers in Madras, and to reference, dated 5th instant, on Judicial No. 2476 of 1887, communicating certain points referred by the Government of India in connection with the same subject.

2. As regards the proposal to abolish the office of Clerk of the Crown and to divide his work between the Crown Prosecutor and a Deputy or Assistant Registrar of the High Court, I am to remind His Excellency in Council that the very strong objections entertained by the Honorable the Judges to abolishing the office of Clerk of the Crown have already been fully stated in paragraph 7 of my letter, No. 512, dated the 3rd March last. The Chief Justice and Judges, with the greatest respect for His Excellency the Governor in Council, beg to protest against the abolition of the office. The Deputy and Assistant Registrars have, in the opinion of the Court,

sufficient duties to perform; and I am to intimate that, under these circumstances, the Honorable the Chief Justice cannot assent to any portion of the Clerk of the Crown's duties being undertaken by either of the officers specified. The experiment of having a portion only of the duties in question performed by the Deputy Registrar, Appellate Side, was some years ago tried and abandoned, as it was found to result in serious inconvenience to the Court. I am to add that the proposal to abolish the office of Clerk of the Crown raises the question of law whether the Government can, in the manner proposed, abolish an office for the performance of the duties of which the Chief Justice has appointed an officer under section 8 of the Letters Patent of 1865, and whose appointment has received the approval of Government.

3. As regards the division of work which it is proposed to make between the Advocate-General and the Government Pleader, the Honorable the Judges have nothing to say; but the suggestion that these officers should share the same chambers is one which is not suitable to the positions of the officers as such or as counsel employed by the public.

4. The proposal to discontinue furnishing the Government Pleader with copies of criminal records, save such as are printed and such as he can obtain with the assistance of a clerk on Rs. 15 per mensem, and to require him to make his own notes from the original records, is, in the opinion of the Honorable the Judges, calculated to prejudice most seriously the efficient discharge of that officer's duties. It is imperatively necessary, in the interests of justice, that in criminal appeals the Government Pleader should be in a position to afford the High Court the valuable assistance which his possession of copies of the record at present enables him to give; and if, in any case, for want of such copies, the Government Pleader is not properly instructed, it will be the duty of the Court to postpone such case until he is able to obtain copies. It is hardly necessary to point out the delay and interruption of business which the present proposal is thus calculated to cause at a saving to the State of the small sum of Rs. 1,300 per annum.

5. In the case of the Official Trustee, I am to remark that the need for altering the present rate of remuneration is not apparent in Madras, where it has not been suggested that the fees are insufficient.

6. In reply to the inquiry in paragraph 4 of letter No. 886, dated 30th May 1887, from the Government of India, I am to state that, in the opinion of the Honorable the Judges, the existing arrangements for the conduct of criminal prosecutions in the High Court on behalf of the Crown are satisfactory.

7. It is not within the province of the High Court to discuss the terms of remuneration to be settled between Government and their law officers; but the argument that if Rs. 2,000 per mensem is considered a sufficient salary for the Advocate-General in Bengal, Rs. 1,500 should suffice in Madras, is one to which, in the peculiar circumstances of Madras, the Honorable the Judges find themselves unable to subscribe. It has to be remembered that the Bar at Madras is small, and that the Vakils get a large percentage of the practice. It is important that Government should have a first-rate adviser as Advocate-General, and it may be that, in a place where the prospects of receiving other fees are less, a higher rate of remuneration is necessary to secure the services to Government of a first-rate Barrister. From this point of view, it might be advisable to give the Advocate-General quite as high a salary in Madras as in Calcutta.

8. In connection with the salary of the Government Solicitor, it is observed that in paragraph 34 of the Note of the Finance Commissioner, communicated with the Chief Secretary's letter of the 5th instant, the amount of that salary is described as moderate as compared with the salaries in other Presidencies and the work done as large; and seeing that no necessity for reduction in this direction is apparent to the Finance Commissioner, it may be doubted whether His Excellency the Governor in Council will press for such reduction. The suggestion that the Government Solicitor's work might be reduced by issuing to heads of departments instructions calculated to result in fewer references than at present being made to that officer does not commend itself to the Honorable the Judges. From their experience it appears doubtful whether such references are, as a rule, not made too infrequently, and it is very

desirable that they should not be deferred until too late to avoid complications which might otherwise have been prevented.

9. Generally, as regards the proposed reductions of salaries now paid to the law officers, it appears to the Honorable the Judges that any measures calculated to render such appointments unattractive to the best men available in the profession cannot fail to prejudice the efficient performance of the legal business of the Government. And as to the suggestion that the law officers should be appointed for limited periods of, say five years, the High Court is not aware that the Government has hitherto had any reason to regret the appointment of their law officers without any such qualification as is now suggested as to length of tenure of office, and the Honorable the Chief Justice and Judges have doubts as to the advisability of making any change in this respect.

From W. MORGAN, Esq., Acting Government Solicitor, to the Chief Secretary to Government, dated Madras, 21st July 1887, No. 375.

I am in receipt of G.O., dated 16th June 1887, No. 1291, Judicial, and am obliged for the opportunity which has been given to me, before final orders are passed on the subject, to show cause why the arrangements contemplated therein should not be introduced.

2. I first have to call attention to an error in the statement in paragraph 1 of the order to the effect that "in addition to their fixed salaries each of the foregoing officers has chambers provided for him in the High Court," and beg to call your attention to the fact that though this is correct so far as the other law officers are concerned, it is not so in the case of the Government Solicitor, as he pays Rs. 50 a month rent for which no allowance has apparently been made.

3. Government also appear to be under some misapprehension as to the nature and extent of the work performed by this office, and I propose therefore to follow the remarks made in paragraph 6 of the Government Order in reference to the different items shown in paragraph 1 of the order.

4. With reference to the cases under item No. 1 "advising Government and heads of departments" it is stated in paragraph 6 of the Government Order that these "may probably be greatly reduced in number." The figures given are in respect of the year 1885, and I have now gone through the books for 1886 and for the first half-year of 1887, and find that the average is quite equal to the number given in the table, viz., 161 opinions per annum. It must also be remembered that there are numerous occasions upon which officers of Government come into the office and obtain an opinion without there being anything in my books to show that this has been done, so that it may fairly be taken that the number of cases upon which the Government Solicitor advises is somewhat larger than that mentioned.

5. With reference to cases under item No. 2 "acting as the channel of communication between the Advocate-General and Government," it is stated that these are "purely formal." This is not quite correct. It has always been considered apart of the duty of the Government Solicitor to go through the papers submitted to the Advocate-General and also to peruse and, to a certain extent, check his opinion in order to see that the reference has been fully answered and that nothing has inadvertently been omitted. The opinion has then to be copied by this office, signed by the Government Solicitor, and sent in to Government.

6. With reference to cases under items 5 and 6 "appearing and advising as to civil proceedings" and "appearing in the Small Cause Court" it is stated that the Government Solicitor "gets fees in case of success." This is true; but, owing either to the fact that the Courts are not generally disposed to give costs in favor of Government, knowing their Solicitor has a monthly salary, or that the parties litigating with Government are parties of no substance, or that Government have issued orders that costs shall not be asked for, as in the case of the suit by the Zemindar of Palkonda, I find by reference to my books that during the year 1885 Rs. 253-8-0 only was recovered by the Government Solicitor under this head, and during the year 1886 and the first-half of the year 1887, nothing at all.

7. I also wish to call attention to the fact that, with reference to cases under item No. 5, which are referred to in the table as "appearing or advising as to civil proceedings" ten out of the fourteen cases represent High Court suits which were contested to final hearing.

8. With reference to cases under item No. 7 "preparing or revising pleadings" it is stated that these "cannot give much trouble." A reference to the table will show that I had no pleadings to prepare or revise other than those in High Court suits, so that the reference to this item is evidently a mistake, and the remark can hardly be intended to apply to either items 8 or 9 which are specifically referred to.

9. With reference to cases under item 8, which are referred to in the table as "preparing or revising tenders, security bonds, &c.," I would submit that the description is hardly an adequate one of the work involved. The item includes the preparation of eighteen conveyances or leases which, in addition to the actual preparation of the document, necessitated inquiries into title more or less complicated, and in reference to many of the other documents, such as indemnity bonds, they involved an inquiry into the position of the parties giving them, and occasionally the preparation of affidavits and declarations in support of the claim.

10. With reference to the cases under item No. 9, viz., "recovering sums due to Government," it is stated (if I am right in concluding that the remarks upon item No. 8 are intended to apply to item No. 9) that these "rarely involve more than writing a letter of demand." This is hardly so, as in most cases several letters of demand have to be written, and in very many cases the matter is one of disputed account which requires considerable correspondence before it is brought to a conclusion.

11. With reference to cases under item No. 10 (I presume the remarks upon item No. 9 are intended to apply to this item), it is said the Government Solicitor has "nothing to do." This also is hardly correct. In the first instance I receive notice that the application to appear in *forma pauperis* is to be made, I then make inquiries through some of my clerks as to the position of the applicant, and when it appears to me necessary I attend the hearing and cross examine the witnesses. After the suit has been disposed of, I have to search the record and take a note of the decree passed, and subsequently I have to ascertain whether as a fact anything is recovered under the decree, so that if anything is so recovered the Government fees may be paid thereout. During the course of the year ending the 1st instant, I find that I recovered Rs. 404-4-0 on behalf of Government from paupers who had been allowed to file suits without paying institution or other court fees.

12. I have recently gone through the Government work performed by this office during the last six months, i.e., between the 1st January and the 30th ultimo, and find that (notwithstanding two months out of the six were occupied by the vacation) there were 79 cases for opinion; in one of them, for example, that of the claim of the late contractor W. South against the Bellary-Kistna State Railway Company for Rs. 20,000, I had a file of 270 papers given to me to go through, and had several lengthy attendances upon the officials of the company and to make numerous complicated and intricate calculations; again in a case relating to a claim against Government in respect of funds belonging to the estate of the late Major Dickson, which funds have been in the hands of the Accountant-General for many years, I have had to investigate the alleged descent of the present claimants from the year 1809, and to go through and advise upon numerous declarations, precognitions, birth, and baptismal certificates, and other documents.

13. During the same six months I have also had to prepare 67 conveyances, leases, bonds, contracts or agreements (the two former class of cases involving inquiries into title); amongst these were the lease of the Tekady Forest which had to be revised some three or four times, and in respect of which I had several attendances at the Board of Revenue office, and the agreement between the Cuddapah-Nellore State Railway and the South Indian Railway for the working of the former line by the latter, and which also involved several long attendances on the officials of the railway.

14. With reference to the last item, Government will observe that the number of documents prepared by this office in the first six months of 1887 amounts to within two of the total of documents prepared for the whole year 1885.

15. I also desire to call the attention of Government to the fact that the table contained in the first paragraph of the Government order does not embrace anything like *all* the work which has to be done by this office. In addition to recovering sums of money due to Government, I have to call upon parties to comply with their contracts, to execute documents, to repair houses leased by Government, and to do certain acts required by statute, such, for instance, as under the Company's Act, where I have had as many as forty and fifty notices at a time to send out calling upon parties to file balance sheets and other documents required by the Act.

16. There are also other matters necessitating my attendance in Court, such as cases where deposits made by Government servants have been attached in a suit; in many of these cases I have to realise the Government securities which have been lodged, and pay the sale-proceeds into Court or to the parties.

17. Again there are cases between the Municipality and Government relating to the assessment of Government buildings which recently have been somewhat numerous, and which in almost every case are made the subject of appeal to the High Court.

18. In addition to the above there are other miscellaneous matters, such as the inquiry into the People's Park Fire, in which I was absent from office for six entire days and a portion of nine further days, without receiving any extra remuneration therefor, notwithstanding that the Coroner, the Crown Prosecutor and each of the Jury were paid for their services; wreck inquiries, and inquiries such as I was recently requested to make by the Collector of Chingleput into the alleged malpractices of certain parties in connection with several High Court suits since the year 1862, involving attendances upon the Registrar of the Court, searching records, &c., and prosecutions under the Company's Act; of these latter I have at the present moment 20 on hand, in each of which an application has been made for a summons necessitating a separate trial of each case.

19. I would also call attention to the fact that during the last year eight bills have been submitted to me for my opinion, some of which, such as the "Civil Wrongs Bill" and the "Bankruptcy Bill" were of great importance and also very voluminous, and required considerable time to be expended upon them before it was possible to express any opinion upon their provisions, or even to see how far such provisions differed if at all from the existing law.

20. A good deal of the above miscellaneous work I am afraid I omitted to mention in my letter to Government, No. 364 of the 26th August 1886, when asked to send in an account of the work performed by this office, but this was owing to the fact that mine is only an acting appointment, and also to the fact that the managing clerk who attended almost exclusively to this department was at the time ill and absent from office.

21. The principal matter, however, to which I wish to call the attention of Government is the question of establishment. Out of the five law officers of the Crown the Government Solicitor is the only one that has no establishment whatever allowed, and I feel quite confident that this fact must have been lost sight of by Government when considering the proposed reduction in his pay.

22. The establishment of the Government Solicitor is really that of the firm of Barclay and Morgan, which consists of three European Assistants, whose salaries collectively amount to Rs. 1,200 per month, and an establishment of clerks, amounting to Rs. 900 per month; I have recently made calculations to ascertain as far as possible what proportion of the above is fairly chargeable to Government work, and I have no hesitation in stating that during the 20 months that I have held the acting appointment at least Rs. 600 per month has been represented by Government work. This of course is in addition to my own time. In support of this statement I may mention that the Government Solicitor has for many years been in the habit of paying out of his salary to the firm, of which he is a member, the sum of Rs. 300 per month in respect of the services of the clerks belonging to the firm, which sum was admittedly

far below the amount which such services actually cost the firm, but was accepted for certain reasons which it is unnecessary to enter upon here.

23. In further proof of the correctness of this statement I have made inquiries of the two leading firms in Madras, viz., Messrs. Wilson and King and Messrs. Branson and Branson, and have ascertained that the establishment of the former firm (whose business is almost as much as that of the firm of Barclay and Morgan) amounts to Rs. 410 per month, and that of the latter firm (whose business is if anything of a more extensive character than that of the firm of Barclay and Morgan) to Rs. 600 per month. In the case of both the above firms the partners are the same in number as in that of Barclay and Morgan.

24. From the above it will be seen that the difference between the cost of the establishment of the firm of Barclay and Morgan and of the other two firms is approximately between 1,700 rupees and 1,500 rupees per month, so that in estimating Rs. 600 per month only as the value of the work performed for Government by the establishment of Barclay and Morgan, I am well within the mark.

25. As an example of the establishment which is required in order to do the Government work and of the way in which it is done, I trust I may be pardoned for mentioning an opinion which was sent in by Mr. Barclay to the late Secretary to Government, Public Works Department, in respect of a claim by a contractor for over Rs. 30,000 which was reduced by Mr. Barclay to Rs. 2,528-6-2, and which latter sum was, I believe, subsequently accepted by the contractor; this opinion took a clerk 23 days to copy, and a further 23 days to enter in the Government letter book, and I leave it to Government to form their own idea as to the time it must have taken their Solicitor to peruse the papers and to draft the above opinion, if it took a clerk over three weeks to copy it. I take the liberty of enclosing the draft of this opinion for reference and return. I see that in the Government order on the case No. 2851 of 30th November 1885 Mr. Barclay's opinion is referred to as follows, "the Government Solicitor has reviewed in a most thorough and complete manner all the transactions between the Executive Engineer and the contractor and in an exhaustive report in which every detail has been carefully sifted has given his opinion," &c. I may also mention that on several occasions, when deeds have been required at a few hours' notice, such as in the case of the transfer of the Civil Service Fund to Government, my clerks have been employed all night long copying the deeds, without any extra expense to Government, though they had of course to be paid for such extra work by my firm.

26. In order also to show how Government benefit by having the services of a large and efficient establishment attached to the office of their Solicitor, I may mention that about 12 months ago, owing in great measure to the enormous extent to which the Government work had increased, I found it necessary to engage the services of a short-hand writer at a cost of Rs. 150 per month. During the hearing of the application *in re* Mr. Eardley Norton and Mr. H. E. Sullivan, I was directed to obtain for Government a short-hand writer's report of the proceedings. This I had done by the firm's short-hand writer, but at no expense to Government.

27. I feel confident that, after the above explanation, Government will see that if any reduction at all is made in the salary of the Government Solicitor he will not be fairly and adequately remunerated for the work and services performed.

28. I am also confident that it would be impossible for Government to obtain the services of a Solicitor of any standing at a lower salary than the present one, or to have their work done more economically under any other system. The cost of the 67 documents prepared during the last six months, if charged for at Solicitor's ordinary rates, would average between Rs. 150 and Rs. 200 each, and, if calculated at the lower of the above rates, these 67 deeds alone would cost Government Rs. 10,050, which is almost three-fourths of the Government Solicitor's pay for the entire year.

29. I observe that in paragraph 6 of the above Government order Government state that "the attention of heads of departments will be called to the necessity of discontinuing unnecessary reference to the Government Solicitor which the Government have reason to believe are made in many cases." My experience has been that

the number of cases in which unnecessary reference is made to me are but very few indeed, but that the number of cases in which no reference at all is made until a certain amount of mischief has been done are very many, and in the interests of Government I would suggest that the departments should not be checked in submitting all matters for the opinion of the Government Solicitor as soon as ever they are in any way contentious, or in any case relating to the construction of legal documents.

30. I am of course aware that a certain amount of outside business follows the appointment of Government Solicitor, though I presume Government would hardly take this into consideration in fixing his remuneration; at the same time, however, it must not be forgotten that the fact of his acting for Government debars him from acting against Government and in cases where the interests of Government may possibly conflict; for instance, I have been credibly informed that had it not been for the fact of a member of my firm being the Government Solicitor and that it was anticipated that the interests of the Government and of the Madras Harbour Board might at times conflict, my firm would have been appointed Solicitors to the Board, which I need hardly say is now, and will be in the future, a still more remunerative appointment.

31. I think it is very possible that Mr. Barclay may be able to add to this letter and show further cause against the proposed reduction, and may be in possession of information to show what proportion of Rs. 1,225, the permanent pay of the office, was originally supposed to represent the cost of establishment, as to which I am of course ignorant; I would therefore suggest that, as he is returning to Madras in the first week of September next, the matter may be allowed to remain open until his return.

From K. BROWN, Esq., Secretary to the Madras Bar, to the Chief Secretary to Government, dated Madras, 3rd August 1887.

I have the honor to forward to you, for the consideration of His Excellency the Governor in Council, a copy of a memorial unanimously approved and adopted for this purpose by a recent meeting of the Madras Bar.

From the Members of the Madras Bar, to His Excellency the Governor in Council.

9. The High Court of Madras has consisted of a Chief Justice and four Puisne Judges since a short time after its creation. A calculation made by Mr. Justice Innes, on the basis of the statistics of the years 1877 to 1880, displayed the fact that the work of the High Court Judges of Madras exceeded that of the High Court Judges of Calcutta, Bombay, and Allahabad, by 50 per cent., 100 per cent. and 30 per cent. respectively. Since the last mentioned date the total number of suits, petitions, appeals, &c., instituted in the Madras High Court has increased by about 30 per cent.; and the arrears of work (taking cases of all sorts into consideration), which amounted on the 1st January 1881 to 1,545 reached on 1st January 1887 the enormous sum of 2,314. Starting from the assumption, (which, however, the above figures show to be untenable,) that the Madras High Court was strong enough to perform its work with due deliberation and efficiency seven years ago, it is abundantly plain that for the public now to require the appointment of one additional Judge is to demand a measure of very scant justice both to itself and to the Judges of its Court of highest jurisdiction. The five Judges of the High Court last year disposed, on an average, of nearly 837 cases each, and in spite of this high rate of work the arrear of that year alone (apart from the accumulation of cases remaining from former years) amounted to 651, to dispose of which, at the existing rate of work would alone occupy the whole time of an additional Judge for more than three-fourths of a year. But as has been seen there in fact remained at the end of the year an arrear of 2,314 cases, to dispose of which, supposing that figure to be stationary, would occupy the whole time of one Judge for 2½ years. This regard being had to the increasing number of suits annually instituted, it is clear that the addition of one Judge, working at the present annual rate, would not meet the requirements of the Court. In order to supply a standard of comparison with the present average rate of judicial work, it may be pointed out that, in the years included in Mr. Justice Innes' calculation above referred to, the

average rate per Judge was less, by more than 137 cases *per annum*. The present average rate is, it is true, exceeded considerably by the average rates attained in 1883 and 1884, which amounted to slightly more than 1,000 cases *per Judge*, but that rate of work is beyond all doubt inconsistent with efficiency of the highest degree, and involves an excessive strain on the Judges. The High Court Bench, with its present numerical strength, cannot justly be called upon for more work than was accomplished last year.

10. The serious effect of the block in the business of the High Court is well illustrated by detailed statistics of its work on the Original Side. In 1881, 411 benches were engaged on 163 days on this side of the Court; the corresponding figures for 1885 were 267 and 177, and for last year 157 and 128. The duration of suits from institution to decree in 1881 amounted to 163 days and 120 days for contested and uncontested suits respectively; and the corresponding figures for 1886 were 299 days and 165 days. The arrears on this side of the Court amounted to 221 for 1881, 226 for 1885 and 301 for last year; and on the 1st of April 1887 the arrears amounted to no less a total than 321. The total number of suits instituted, which the year before had reached the number of 518, only amounted in 1881 to 494, in 1885 to 318, and last year they had further fallen to the total of 292. These figures show clearly that the Presidency Town has in some measure lost confidence in the High Court and has learnt to recognise the fact that litigation in that Court has become and is increasingly becoming a matter of infinite delay and vexation. No doubt Act XV of 1882 served to diminish the number of litigants having a right to look to the High Court for a fair and speedy trial of their causes; but the effect of that Act on the number of suits instituted is scarcely appreciable. The downward tendency of the number of suits instituted had already thoroughly set in,—nor indeed can this be a matter of surprise, seeing that less and less judicial time was being devoted to the litigation of the Presidency Town and that arrears of work were, as it would seem recklessly, allowed to accumulate. Further it will be remembered that litigation begun on the Original Side of the Court is occasionally renewed on the Appellate Side where the average tendency of regular appeals was in 1885 no less than 272 days, and is now, necessarily from the increase in the arrears above noted, very much longer.

11. It becomes obvious from the above facts that if the functions of the High Court are to be discharged in a manner satisfactory both to the public and the Judges themselves, a sixth Judge must be added to the Bench; and it has already been demonstrated that such an addition would not suffice unless the average rate of judicial work were at the same time raised. The expectation that these objects would be attained and the efficiency of the administration of justice kept up the while to its present standard, by an appointment made from among the District Judges, appears from the records of judicial work in the mofussil not likely to be realised. No doubt the District Courts may continue to produce from time to time as heretofore two Judges worthy from their learning and experience to occupy seats on the High Court Bench. But that a heavier demand cannot and wisely be made on them, becomes evident from the consideration, *inter alia*, of the manner in which their work stands the revision of the Appellate Court. In the various regular Civil Appeals which their work stands the revision of the Appellate Court. In the various regular Civil Appeals from the decrees of the District Court disposed of by the High Court in 1885, only 48 per cent. of the original decrees were allowed to stand. Further, the facts that District Judges have generally only a short and often intermittent experience of judicial work, that apart from such experience they have enjoyed but little legal training, and in particular that few of them have any considerable experience of Mercantile and Maritime cases (such as constituted a large proportion of the work of the High Court on its Original Side when litigation in that Court was a matter of less delay) all point to the same conclusion.

12. The facts stated in the last three paragraphs require no comment. They clearly point to the imperative necessity of some step being taken by Government in the interests of the public to remedy the state of affairs which they disclose as existing in the High Court. They have led your memorialists irresistibly to the conclusion that the High Court Bench must be strengthened by the permanent appointment of at least one additional Judge, especially in order that litigation arising in the Presidency Town should receive the attention, which from its importance it deserves. And your memorialists are strongly of opinion that the interests of the Local Mercantile Community would best be consulted, and the efficiency and expedition of the work of the Court would best be promoted by the appointment of a Judge who should be a professional lawyer of experience in the practice of the profession.

MINUTE.

Law Officers.—In a former minute I made certain proposals for the reduction of the cost of our law officers. These were accepted provisionally and we have now before us some alternative suggestions by the Finance Committee and the views of the High Court, as well as the arguments *contra* of the law officers themselves. I will take up the several officers in the same order as before.

Clerk of the Crown.—Paragraph 7 of their former letter, which is referred to by the High Court, does not at all answer, or even apply to, my proposal to divide his duties. That proposal was contingent on the original work being greatly reduced, when, as I showed in my minute on the High Court, the Deputy and Assistant Registrars will not have arduous work. I was a member of the Court in 1885, when, on Mr. Tarrant's death, the two posts of Crown Prosecutor and Clerk of the Crown were severed and the latter conferred on Mr. Justice Kernan's son; the so-called "serious inconvenience" would not apply to the present proposal. It is but natural that the abolition of the office should be resisted, but, unless there is something in the legal objection, I have no doubt that it should be insisted on as soon as the scheme regarding the original civil jurisdiction can be brought into effect. As regards that objection I must see the papers of 1862, when a similar argument was maintained by Sir Colley Scotland but overruled, and also the Letters Patent. These can be sent to me while this minute is in circulation.

Some trifling objections have been raised by the Crown Prosecutor—(1) settling indictments is no great matter and very few cases are committed after a session has commenced. Mr. Branson lays stress on the necessity of the Prosecutor preparing his cases carefully—it can then add but little to his work to revise the Magistrates' indictments. When he has no time for this, he cannot have time to prepare the case, and then, as he himself shows, he can get an adjournment; (2) Mr. Tarrant, as Crown Prosecutor, not as Clerk of the Crown, used often to attend on the Judge to obtain instructions or make communications. I agree that this is not desirable, but the difficulty is at once removed by making the Registrar, as Clerk of the Crown, the medium of all communications which cannot be made in open Court.

Crown Prosecutor.—Both in this capacity and as Advocate-General Mr. Branson suggests that his work out of Court has been overlooked. This is not at all the case. We were and are perfectly aware that every practitioner must prepare his cases before he can be in a position to put them before a Court. But for this consideration, and the fact that I was proposing some slight additions to his work, I should probably have thought him overpaid. He accepts, as correct in principle, the proposal that he should prosecute in murder and other cases hitherto reserved for the Advocate-General. This will add but little to his work, which is of the same character, but relieves the Advocate-General of a very uncongenial duty.

Government Pleader.—The principle that he should be regarded as an Assistant to the Advocate-General for the mofussil business has been accepted, and many of my remarks here must apply to the Advocate-General also.

My suggestion as to their *chambers* has been misunderstood. Of course it was never supposed that both could occupy one room. The Advocate-General has two rooms, and the late Advocate-General lent one of them to a friend. I cannot understand therefore how it can be "impossible to share them with any other member of the profession." Perhaps Mr. Branson had better be asked by a demi-official note to explain. The second room should be allotted to the Government Pleader, and when a new Court is built, a similar arrangement should be made.

I also adhere to my opinion that their *establishment* should be joint. I recognise the expediency of keeping at least one good confidential clerk, but the Government business before the Advocate-General requiring to be kept confidential cannot possibly occupy all such a clerk's time, and it would be economical that he should have charge of the Government Pleader's confidential work also. If this principle is accepted, it might be left to the two officers in consultation to propose such a joint establishment as may be really necessary for the Government work.

The Government order was not submitted to me in draft, and one or two inaccuracies have crept into it. The only one of importance is that it proposes to transfer 37 cases of "advice" and "pleadings" from the Pleader to the Advocate-General, whereas I had merely remarked that this might be done if on the whole it should be thought that the former officer should be abolished. My final proposal amounted to no more than this, that in difficult cases it should be recognised as the duty of the Pleader to seek, and the Advocate-General to afford, advice and assistance. This is even now done to some extent and the principle is accepted. Another error in the

Government order relates to the Pleader's remuneration for work up-country. He gets Rs. 175 a day for civil work, and not only for criminal prosecutions.

Now as to his pay. I thought his fixed salary, or retaining fee, might be reduced from Rs. 500 to Rs. 250. Mr. Powell now states that no one, not in the habit of attending the High Court, can have any idea how his work has increased of late years. Of course I had been in that habit and was well aware of the increase, but it has been in criminal work only, and as he receives a special payment for each criminal case, his argument does not hold good that the salary, if fair before, must now be inadequate; it is at least doubled by the extra fees. But on the other hand the work is much more than doubled and the criminal business is, as he points out, of a very pressing nature. Bearing this in mind, and the Finance Committee's remark that even Rs. 500 does not seem excessive as compared with Calcutta and Bombay, I would not now reduce his salary below Rs. 350.

Then there are the charges for copies as to which my proposal appears to have been misapprehended both by Mr. Powell and by the High Court. I should be the last person to ask any Advocate to undertake to plead a case without the necessary papers, and I certainly never thought of guarding myself against the imputation of wishing to withhold a copy of papers which had been printed! But his charges for copies were increasing at such a rapid rate that some check seemed necessary, and my proposal was simply to revive the old practice, under which he was allowed to take notes from the original record before going into Court, and to give him over and above that a special copyist for cases where this could not be managed. Mr. Powell says this will not do, and though the instance he gives has no application—because the whole record was printed and he would of course have a copy of all printed matter—it certainly does seem necessary that he should have a tolerably full copy of the record if the Judges rely on him to "check inaccuracies" of statement on the other side. But as his copies are made for the benefit of the Court and of the public, I think they should be furnished on plain paper and charged in the Court's contingent bill only at the actual cost. At present a vast quantity of stamped papers are used on his behalf, and of course a quarter share of the cost goes to "Imperial." I shall be quite satisfied if the Pleader only asks for copies which seem really necessary, and if the Registrar is instructed to furnish them as cheaply as possible, debiting the cost of printed copies to the Court's Printing Fund and that of other copies in his contingent bills.

Advocate-General.—Some of my remarks under the Government Pleader refer to the Advocate-General also. It only remains to consider if his salary must still be Rs. 2,187½. The Finance Committee suggest Rs. 1,500, but they seem to have had no data beyond the fact that Rs. 2,000 is considered sufficient in Bengal. I proposed Rs. 1,800 which has since been reported to the Secretary of State as the probable pay. I have not, as supposed, added anything material to his work, but on the contrary I have relieved him of some troublesome sessions cases. Nothing in Mr. Branson's remarks has led me to modify my proposal.

Government Solicitor.—Mr. Morgan, as I expected, has made out a long and plausible case, but the only important fact brought to notice is that the Government Solicitor actually pays his firm Rs. 300 out of his own salary for the use of the establishment. The Finance Committee say he gets Rs. 600 a year for establishment, but they appear to have confused him with the Government Pleader.

As Mr. Morgan points out, the Government order misstates the figures, quoting my remarks as to (7), (8) and (9) without noticing the alteration of those figures in the previous table to (8), (9) and (10). As to (7) and (8) these are of course exceptional cases which entail trouble, but my remarks are true generally. As to (2) I also adhere to my former observation. As to (9)—pauper inquiries—I said the Solicitor "does absolutely nothing," not, as in the Government order, that he has nothing to do; and what I said is quite true.

As to his *chambers*, I apprehend that the Rs. 50 charged to him or his firm as rent represents the accommodation to the firm, but I was not aware that even they paid anything. Since writing my former minute, too, I have had more practical insight into the work out of Court done by our Solicitor, and I am bound to confess

that it seems to be more, and more valuable, than my experience as a Judge led me to believe.

In any case we must add the 300 rupees to the proposed salary, making it Rs. 1,050. And bearing in mind the two points last mentioned, I do not think it should be reduced below Rs. 1,100. The Finance Committee say that the present pay, Rs. 1,225, is moderate as compared with other Presidencies, but they add that the work is large, going of course on Mr. Morgan's figures. It is a question whether any reduction should be ordered, but I think Rs. 1,100 or Rs. 1,200 would be sufficient.

As to the other points raised by the Finance Committee.—There seems to be no ground to raise the rate of commission drawn by the Official Trustee. The question of amalgamating his office with that of Administrator-General, or Official Assignee, has not been answered by the High Court, but may be considered when any vacancy occurs. There is no Official Receiver. The Official Assignee's position may be greatly altered when the Small Cause Court gets bankruptcy jurisdiction.

There is no sufficient reason for limiting the appointments of law officers to five years.

The existing arrangements as to Crown prosecutions are perfectly satisfactory.

9th August 1887.

(Signed) P. P. HUTCHINS.

ORDER—dated 6th September 1887, No. 2032, Judicial.

In their Proceedings, No. 1291, dated the 16th June 1887, the Government passed in review such measures as appeared practicable for effecting economy in the charges under the head of Law Officers in this Presidency, but before passing final orders they requested the Honorable the Chief Justice and Judges of the High Court to favor the Government with their opinion and advice, and they also directed the several officers concerned to show cause why the arrangements contemplated should not be introduced. The proposals made arose out of a general suggestion made by the Finance Committee last year, and since the proceedings in question were passed, the Government have received the foregoing letter from the Government of India drawing attention to certain detailed suggestions of the Finance Committee as to the salaries of the law officers and as to some other points connected with the same subject. The replies to G.O., dated 16th June 1887, No. 1291, have also been received and have been carefully considered by the Government, who now proceed to pass final orders on the several points at issue.

2. The chief law officer of Government is the Advocate-General, whose present salary is Rs. 2,187½ per mensem. The Finance Committee have suggested that Rs. 1,500 will be sufficient remuneration and the Government of India have requested that this suggestion may be considered in connection with the existing vacancy in the office. The Honorable the Judges of the High Court have pointed out that any measures calculated to render this and other appointments unattractive to the best men available in the legal profession cannot fail to prejudice the efficient performance of the legal business of the Government. His Excellency the Governor in Council entirely concurs in these remarks, and does not consider that a salary of Rs. 1,500 would be sufficient to ensure the services of a lawyer of such experience and ability and occupying such a position at the Bar as it is desirable that the chief law officer of Government should possess. But in his opinion the reduction of the salary to Rs. 1,800, proposed in the Proceedings of the 16th June last, will not be open to the objection suggested by the Honorable the Judges, while it will effect a substantial economy. The Advocate-General's salary will, accordingly, be fixed at Rs. 1,800, subject to the approval of the Government of India, and with effect from the date on which such approval may be communicated. He will be relieved of the duty of conducting the prosecution before the Sessions of the High Court in any criminal cases, except such as may be specially deputed to him by Government, and it is not the intention of Government to add to his duties by transferring to him the cases of advice and pleadings referred to in paragraphs 4 and 5 of G.O., dated 16th June 1887, No. 1291, which will remain with the Government Pleader. It will be his duty to give

his advice and assistance in all difficult cases to the Government Pleader, who will be looked upon as his assistant, and it appears desirable that they should have a joint establishment, consisting of one confidential clerk and such additional hands as may be really necessary for the Government work. The Advocate-General, after consultation with the Government Pleader, will submit proposals for such an establishment. As regards chambers, the Government will not insist on any immediate change, but the point will be borne in mind in providing accommodation in the new High Court.

3. The Government Pleader will be regarded, as already intimated, as the assistant of the Advocate-General for *mofussil* business, and will share an establishment with that officer, from whom he will receive advice in difficult cases. The Government are aware, as pointed out by Mr. Powell, that there has been a great increase of work of late years and that some of this work is of a very pressing nature. But the increase has been in criminal work only, for which a fee in each case is paid in addition to the fixed salary, and, after considering the matter carefully, the Government have decided that, on the occurrence of a vacancy, the salary of the Government Pleader shall be fixed at Rs. 350 per mensem. The remarks in paragraph 4 of the Government order of the 16th June regarding the supply of copies to the Government Pleader have given rise to some misapprehension. It was never the intention of Government to withhold a copy of any papers which were really required, much less of such as are actually in type. It is undoubtedly necessary that he should have a tolerably full copy of the record, and as he considers the proposal that he should take notes from the original record and have the assistance of a copyist to be impracticable, it will not be pressed. The Government, however, desire that the Government Pleader will be careful only to ask for such copies as seem really necessary, and the Honorable the Judges will be requested to allow their Registrar to issue the copies on plain paper, debiting their actual cost to the Court's Printing Fund and contingent bills, according as they are printed or not. It is noted that one of the chief reasons why he requires complete copies is that the Court expects him to check inaccurate quotations made by the other side.

4. In their Proceedings, No. 1291, of the 16th June 1887, the Government intimated the opinion that the office of Clerk of the Crown might be abolished. In making that intimation, the Government intended it to be contingent on the contemplated transfer from the High Court of a considerable portion of its original jurisdiction, and the Government retain their original opinion. At present, however, there is no further action to be taken, and the Court will be separately addressed on this point. As for the objections taken by the Crown Prosecutor to the scheme for transferring to him a part of the Clerk of the Crown's duties, whenever he has time to prepare a case carefully he will have time to revise the Magistrate's indictment, and all such communications with the presiding Judge as cannot be made in open Court will be made through the Registrar. The Crown Prosecutor accepts the correctness, in principle, of the proposal that he should prosecute in all ordinary criminal cases before the High Court, thus relieving the Advocate-General from appearing in murder and certain other cases, and this proposal will be carried out. In other respects it is not intended to alter his position.

5. In regard to the observations on the work done by the Government Solicitor, Mr. Morgan has submitted a lengthy reply, urging that the Government have underrated the amount of work done and the cost to his firm at which it is done. Upon considering this reply, and particularly in view of the fact brought to notice that the Government Solicitor pays his firm Rs. 300 a month for the use of the establishment, the Government have decided that the salary of the Government Solicitor shall be fixed at Rs. 1,100 per mensem instead of Rs. 750 as before proposed. This reduction will take effect from the date on which it may be approved by the Government of India. The proposed instructions to heads of departments to abstain from all but unavoidable references to him will not be issued.

6. Certain further questions, which were not dealt with in G.O., dated 16th June 1887, No. 1291, were raised in the foregoing letter from the Government of India and have been referred to by the Honorable the Judges of the High Court. The Government agree with the High Court that the existing arrangements for the conduct of criminal prosecutions in the High Court are entirely satisfactory and also that no ground exists

for altering the present rate of remuneration to the Official Trustee, which has not been suggested to be insufficient. The question of amalgamating the office of Official Trustee with that of Administrator-General or Official Assignee will be considered on the occurrence of a vacancy. In the meantime the work and position of the Official Assignee may be substantially altered if bankruptcy jurisdiction is conferred on the Presidency Small Cause Court. Finally, His Excellency in Council agrees with the High Court in deprecating the suggestion that future appointments to the posts of law officers should be made for a limited period, such as five years; he considers that no ground for making the change has been shown and that there is no reason to believe it would produce any valuable result.

7. A copy of these proceedings will be communicated to the Madras Bar, with reference to their petition, dated 3rd August 1887, and the attention of the Government of India will be drawn to the remarks contained in paragraphs 9 to 12 thereof. A report on the measures resolved on will be made to the Government of India.

(True Extract.)

H. E. STOKES,
Ag. Chief Secretary.

To the Honorable the Judges of the High Court with C.I.
" the Advocate-General.
" Government Solicitor.
" Government Pleader.
" Public Prosecutor.
" Madras Bar.
" Accountant-General.

Govt. of (1887) H. E. S.
JUDICIAL.

Issued

Recd.

Encl.

G.O.; 6th September 1887, No. 2032.

SEPTEMBER.

Law Officers.

Passing orders for reducing the charges under the head of — and addressing the Government of India.



6TH SEPTEMBER 1887, No. 2032, JUDICIAL.

JUDICIAL DEPARTMENT.

LETTER—from
THE CHIEF SECRETARY TO THE GOVERNMENT OF
FORT ST. GEORGE,

To
THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT.

SIR,

I am directed to acknowledge the receipt of your letter No. 886, dated 30th May 1887, referring, for the consideration and opinion of this Government, certain suggestions and recommendations of the Finance Committee on the subject of the law officers of this Government. In reply, I am to say that His Excellency in Council has had under his consideration for some time the propriety of effecting an economy in the salaries of law officers in accordance with a suggestion made to this Government by the Finance Committee, and I am to transmit copies of the orders which have been passed on this subject as noted in the margin.

G.O., dated 16th June 1887, No. 1291.
" " 6th Sept. " " 2032.

It will be observed that His Excellency in Council, after consulting the Honorable the Judges of the High Court, is of opinion that a salary of Rs. 1,500 would not be sufficient to secure the service of a lawyer of such standing and attainments as the office of Advocate-General demands, and has not considered that any occasion at present exists for change in the office or rate of commission of the Official Trustee. But this Government has resolved that the salary of the Advocate-General shall be reduced from Rs. 2,187½ to Rs. 1,800, while that of the Government Pleader has been reduced by Rs. 150, and that of the Government Solicitor by Rs. 125, making a total immediate saving of Rs. 7,950 a year. Some further saving may result from the amalgamation of the establishments of Advocate-General and Government Pleader, and eventually from the contemplated abolition of the post of Clerk of the Crown and his establishment. This Government is not in favor of the proposal that the law officers shall be appointed for a limited period only, and considers that no change in the existing arrangements for the conduct of prosecutions in the High Court is called for. In conclusion, I am to invite the attention of the Government of India to the views expressed in paragraphs 9 to 12 of the memorial from members of the Madras Bar, recorded in the enclosed proceedings, in which reference is made to the increasing arrears in the High Court and to the need for speedy relief being afforded.

I have the honor to be,

Sir,

Your most obedient servant,

OOTACAMUND,
6th September 1887.

H. E. STOKES,
Ag. Chief Secretary.

Exd. J. Moses.

June 21/22/87
6/2/1887

Original

1576/10
73/8/02
Regr. No.

HOME 1887 DEPT.

[]

From the Government of
Fort St. George.

Letter, 6th Sept. 1887, No. 2033.

SEPTEMBER.

Law Officers.

Acknowledging receipt of letter and forwarding
copy of proceedings in regard to the reduction of
charges under the head of — and addressing the
Government of India.



25
20TH MAY 1887, No. 12, JUDICIAL.

JUDICIAL DEPARTMENT.

LETTER—to

THE RIGHT HONORABLE THE SECRETARY OF STATE FOR INDIA.

MY LORD,

In continuation of our Despatch, No. 7, Judicial, dated the 8th March last, we have the honor to inform your Lordship, as the result of the inquiry which we have been making into the possibility of effecting some retrenchment in the expenditure on the law officers of this Government, that we have under preparation a scheme by which the pay of the Advocate-General will probably be reduced to Rs. 1,800 per mensem, and by which some slight changes in his duties will be effected. Should your Lordship, therefore, see reason to fill up the appointment without waiting until the scheme has been matured and submitted through the Government of India for sanction, it would be desirable that the officer, who may be selected for the appointment, should be prepared to accept the reduction in salary and the alteration in work above referred to, if these are eventually decided upon.

We have, &c.,

(Signed)	CONNEMARA.
(")	C. G. ARBUTHNOT.
(")	C. G. MASTER.
(")	PHIL. P. HUTCHINS.

OOTACAMUND,
20th May 1887.

FORT SAINT GEORGE.

JUDICIAL (1887) DEPARTMENT.

LETTER to the Right Honorable
the Secretary of State for
India.

Dated 20th May

No. 12 of 1887.

Intimating that a scheme is under preparation, by which the pay of the Advocate-General will be reduced and some slight changes in his duties effected; and stating that the officer selected for the appointment should be prepared to accept the reduction in salary and alteration in work.

16TH JUNE 1887, No. 1291, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—Minute by the Hon. Mr. Hutchins, dated 4th May 1887.

ORDER—dated 16th June 1887, No. 1291, Judicial.

In paragraph 4 of their letter, dated the 2nd June 1886, No. 161, the Finance Committee invited the attention of Government to the charges under the heading Law officers in Madras, and suggested that inquiries should be instituted into the duties performed by each, with a view to possible retrenchment. Information was accordingly called for from the officers concerned with the following results. The charges for Law officers are as follows:—

	Per annum. RS.	Quensem. RS.
(1) Advocate-General	26,250	187
(2) Advocate-General's establishment	1,380	15
(3) Government Solicitor	14,700	1,225
(4) Government Pleader	6,000	500
(5) Government Pleader's establishment	600	50
(6) Crown Prosecutor	6,000	500
(7) Crown Prosecutor's establishment. No separate establishment from that of the Clerk of the Crown.		
(8) Clerk of the Crown	3,600	300
(9) Clerk of the Crown establishment	1,020	85

In addition to these fixed salaries, each of the foregoing officers has chambers provided for him in the High Court, and fees are paid to the Government Pleader for certain work actually done by him. A statement of the work done by the Advocate-General, the Government Pleader, and the Government Solicitor during the year 1885 is given in the following table:—

Nature of work.	Advocate-General.	Government Solicitor.	Government Pleader.
1. Advising Government and Heads of Departments	79	161	30
2. Acting as the channel of communication between Advocate-General and Government	6	42	220
3. Appearances in criminal cases	6	15	2
4. Attending Legislative Council and advising as to Bills	6	2	16
5. Appearing or advising as to civil proceedings	7	7	7
6. Appearing in Small Cause Court	69	29	24
7. Preparing or revising pleadings	29	24	..
8. Preparing or revising tenders, security bonds, &c.	..	..	..
9. Recovering sums due to Government	..	..	..
10. Inquiries as to pauperism	..	..	..

2. The following are the measures which appear to His Excellency the Governor in Council practicable in view to effect economy without prejudice to the efficient performance of the legal business of the Government. In the first place His Excellency in Council considers that the office of Clerk of the Crown may be abolished, the work being divided between the Crown Prosecutor and the Deputy or Assistant Registrar of the High Court. To the former officer might be assigned the duty of revising indictments, and of conducting the other necessary preliminaries to the prosecution of cases committed for trial, and to the latter the duty of preparing jury lists, summoning juries, and attending court to read the charges, to record pleas and verdicts, to swear juries and witnesses, &c. It will probably be necessary to retain one clerk on Rs. 30 to be added to the establishment of the Deputy or Assistant Registrar, and the saving effected will thus amount to Rs. 3,600 + 600 = Rs. 4,260.

3. *Crown Prosecutor*.—The work done by this officer includes the following:—
- (a) Prosecuting at four Sessions annually—say 50 to 80 cases—each Sessions lasting on an average about five days.
 - (b) Prosecuting in a very few Government cases before the Presidency Magistrate.
 - (c) Opposing in a very few appeals and revision petitions presented to the Appellate Side against sentences, &c., of the Presidency Magistrate.

The retention of the office appears to be necessary; but, as above pointed out, in addition to the work now performed by him, he should be required to undertake a portion of the duties of the office of Clerk of the Crown, viz., the duty of revising indictments and of looking after the other preliminaries connected with the prosecution of the cases committed to the High Court for trial. He should also, in future, conduct the prosecution in all cases without exception committed to the Sessions, the rule under which the Advocate-General appeared in cases of murder and certain other grave crimes being rescinded, though in cases of exceptional difficulty the latter officer may still be required to appear in conjunction with the Crown Prosecutor.

4. *Government Pleader*.—After careful consideration, His Excellency in Council is of opinion that the retention of this office also is necessary. It is essential that the Government should be represented in criminal appeals and revision cases by an officer familiar with the various Acts relating to Salt, Abkari, Forests and other branches of Revenue, and also possessing a knowledge of the mofussil practice. Cases not unfrequently occur, moreover, in which it is necessary that a lawyer from Madras should be deputed to conduct important cases in up-country courts, and the Advocate-General could not be deputed to this work without great additional outlay. The office of Government Pleader will be retained therefore, but its character will be materially modified. In future the Government Pleader will be regarded as the Assistant of the Advocate-General for mofussil purposes, and they will share one set of chambers and one establishment between them. The cases of advice to Government and heads of departments, and the preparation or revision of pleadings, which are shown in the above table as performed by the Government Pleader, will be transferred to the Advocate-General. The Government Pleader's work will then be restricted to the following particulars:—

- (1) Appearing in criminal appeals and revision in the High Court cases, for which he will continue to receive a fee of Rs. 30 per case;
- (2) Conducting such criminal cases in mofussil courts as he may be deputed to appear in, for which he will continue to be paid at the rate of Rs. 175 per diem; and
- (3) Appearing in civil proceedings, for which he will continue to get "regulation fees."

The present practice of furnishing him with copies of criminal records, the cost of which is charged in the High Court's contingent bill and which amounts to Rs. 1,300 per annum, is expensive and will be discontinued, and he will be required to make his own notes from the original records. For those cases in which this may not be possible, he will be allowed the services of a copyist on Rs. 15 per mensem, who will make any copies which he may require. Finally, his salary will be fixed at Rs. 250 per mensem, giving a saving of Rs. 4,120 per annum, and his establishment, as already stated, merged in that of the Advocate-General.

Saving—		Rs.
• Salary Rs. 250 × 12	.. =	3000
1,300 — 180	.. =	1120
Total ..		4120

5. *Advocate-General*.—For this post it is necessary that Government should be able to command the services of a lawyer of experience and ability, and one of the leaders of the local Bar. He will continue, as at present, to be supplied with chambers in the High Court (which he will, however, share with the Government Pleader). He will be allowed, in conjunction with the Government Pleader, an establishment of two clerks on salaries amounting to Rs. 100 per mensem, not including the copyist to be employed, if necessary, by the Government Pleader. The

existing rule under which the Advocate-General is required to conduct the prosecution before the High Court in all cases of murder and in certain other cases of a grave character committed to the Sessions will be rescinded, and the Advocate-General will be relieved from all charge of Sessions work, except in cases of exceptional importance which may be specially deputed to him by Government. On the other hand, the thirty cases of advice called for by heads of departments and Government, which are shown in the above table as devolving on the Government Pleader, will be transferred to the Advocate-General, who will also be required to give the Government Pleader his advice in all difficult cases whenever applied to. The Government Pleader will, as already ordered, become the Assistant of the Advocate-General for mofussil purposes. The pay of the Advocate-General will be fixed in future at Rs. 1,800 per mensem, which will give an annual saving of Rs. 4,650, in addition to a saving of Rs. 780 * on the joint

* Advocate-General's establishment ..	Rs. 1,380
Government Pleader's ..	600
Total ..	1,980
Deduct ..	1,200
	780

establishments of the Advocate-General and the Government Pleader.

6. *Government Solicitor*.—The work of this officer, though making a considerable numerical display in the table given in paragraph 2 of these proceedings, is by no means so heavy as it appears. The cases under item 1 may probably be greatly reduced in number; those under item 2 are purely formal; under 5 and 6 the Solicitor gets fees in case of success; those under item 7 cannot give much trouble; and in those under 9 the Solicitor has nothing to do; while those under 8 rarely involve more than writing a letter of demand. On the other hand, it is absolutely necessary that the Government should have some professional representative and adviser in actual or prospective litigation. The office of Government Solicitor will therefore be retained, but the salary attached to it will be reduced to Rs. 750 per mensem. He will continue, as at present, to have chambers provided for him, and the attention of heads of departments will be called to the necessity of discontinuing unnecessary references to him, which the Government have reason to believe are made in many cases. The saving effected by this reduction will amount to Rs. 5,700 per annum.

7. Before passing final orders for introducing the changes above detailed, His Excellency the Governor in Council resolves to request the Honorable the Chief Justice and Judges of the High Court to favor him with their opinion and advice as to the proposals made. The several officers concerned will also be directed to show cause why the arrangements contemplated should not be introduced.

(True Extract.)

H. E. STOKES,
Ag. Chief Secretary.

To the Honorable the Judges of the High Court, with O.L.
" the Advocate-General.
" Government Solicitor.
" Pleader.
" Crown Prosecutor.

Exd. T. O'Connor.

31x

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Govt. of (1887) Madras.

JUDICIAL

Issued

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G.O., 16th June 1887, No. 1291.

JUNE.

(a) p. 6 of Mr's minute. The 220 cases are all criminal
(b) p. 5 of the minute

Law Officers.

Reviewing the arrangements contemplated for reducing the charges connected with the Law officers in Madras; inviting the opinion and advice of the High Court; and calling upon the officers concerned to show cause why they should not be introduced.

There is a mistake in § 4(2). It includes civil as well as criminal cases.
(3) Relating to appearances in Court. 26/6/87
I did not remember having called attention to this. However, it is now corrected.

Extract paragraphs 30 to 35, 27 to 29, and 16 and 17 of Note No. F. C.—23, dated 22nd February 1887, by the Finance Commissioner with the Government of India.

30. The Advocate General performs all the duties of an advocate in cases in the High Court in which the Government is concerned, or in which it directs him to appear on behalf of its officers. He advises the Government and heads of Departments, and is consulted by the Government Solicitor and the Government Pleader when desired. He gives opinions on all questions submitted for his opinion by the Government Solicitor. He appears in all civil suits and appeals in which the Government or its officers are concerned, and prosecutes in all criminal cases in the High Court which involve a capital charge or which affect the revenue. He has, *ex-officio*, superintendence of all litigation connected with public charities. He advises on all pending legislation, and, as a Member of the Legislative Council, assists as a Member of the Select Committee when required.

The following is the work done by the Advocate General in 1885:—

References for opinion	...	...	...	79
Bills in which services were rendered in the Legislative Council	...	...	...	5
Committee to consider Malabar Land Tenures	...	...	...	1
Prosecutions at Criminal Sessions	...	...	...	5
Appearances at Police Court in respect of assessment of Government property by Municipality	...	...	...	1

No fee is in any case payable to the Advocate General except where Government recovers costs from the opposite party.

31. The Advocate General does not appear to have been engaged in any civil litigation during the year; the opinions given are fewer than in the case of Bombay and Calcutta. On the other hand, the services rendered in the Legislative Council are specified as a material portion of the Advocate General's work, and we have no means of comparing the amount of time and labour thus given with that given by the other Advocates General. If Bills are long and troublesome, and the Advocate General is expected to assist in framing them, to serve on Select Committees, and to take charge of the measure in its legal aspects, the amount of labour may be very considerable. We recommend, however, that, on the occurrence of the next vacancy, the question of a reduction of the Advocate General's salary be considered. If it is considered that Rs. 2,000 per mensem is sufficient for Bengal, then Rs. 1,500 would appear to be an ample salary in the case of Madras. It must, however, be kept in view that the Bar is so small and the professional position of Barristers so seriously injured by the right conceded to pleaders and vakils of practising on the Original Side, that it may not improbably happen that the incumbent of the post may have to look mainly to his official income, and the Government might have difficulty in finding a competent and experienced Barrister ready to occupy the post on a lower salary than the present. This, we think, can be decided only when the time arrives, and by those who are better acquainted with the local circumstances of Madras than we can pretend to be.

32. The duties of the Government Solicitor are to advise Government in cases in which the opinion of the Advocate General is not required; to obtain the Advocate General's opinion when required; to prepare conveyances, contracts, &c., for Government; to furnish the Crown Prosecutor with a brief in cases in which he has to appear in Police cases, *viz.*, cases in which the prosecution is instituted or carried on by orders of Government; to appear at the Police Court and instruct the Crown Prosecutor in such cases; to supply the Advocate General with briefs in the cases in which he prosecutes, and to attend in Court at the trial of such cases; to institute, defend, and conduct all civil suits by and

against Government, or, when Government sanction has been obtained, its servants. He also advises, when required, on pending legislation, and conducts enquiries into applications by parties to sue *in forma pauperis*, and appears in wreck enquiries to watch the case on behalf of Government.

Work done by Government Solicitor.

33. The work done for Government by the Government Solicitor in 1885 was as follows:—

Advising Government in cases in which the Advocate General's opinion is not required	161
Preparation of cases for opinion of Advocate General	42
Preparation of conveyances, contracts, &c.	66
Prosecution of police cases, personally (1) or through Crown Prosecutor (6)	7
Preparation of briefs, &c., for Advocate General	8
Appearances in Small Cause Court on behalf of Government	7
Conduct of Civil suits on behalf of Government or Government servants	14
Advising on pending legislation	2
Examination into title of claimants of lost promissory notes	3
Recovery of money for Government otherwise than by suit	29
Conduct of enquiries into applications to sue <i>in forma pauperis</i>	24

34. The salary of the Government Solicitor is Rs. 14,700, and he receives Rs. 600 for his establishment. The amount is moderate as compared with the salaries in the other presidencies, and the work done is large; we do not therefore feel called upon to make any suggestions as to reductions.

35. The salary of the Government Pleader is Rs. 500 per mensem. His duties are (1) to appear in any Civil or Criminal Court in the Presidency when specially directed by the Local Government; (2) to appear on the Appellate Side of the High Court, when instructed by Government to do so, in all Civil appeals in which Government or Government officials are interested; (3) to appear in all Criminal appeals before the High Court in support of convictions or in miscellaneous criminal matters when directed by Magistrates or heads of Departments, or in appeals from acquittals when directed by the Government; (4) to advise Government and the Board of Revenue and heads of Departments on legal questions arising in the mofussil. The Government Pleader gets a fee of Rs. 175 per diem in the first case, the regulation fee in the second case, a fee of Rs. 30 in the third case; in the fourth case he gets no special remuneration. The amount of work done in 1885 was as follows: He appeared in 16 Civil appeals (head 2), in 202 Criminal appeals and 18 appeals against acquittals (head 3), and he gave 30 opinions, and prepared 7 plaints and written statements under head (4). For his appearance in Criminal appeals, he received Rs. 6,600. The amount received in Civil appeals has not been reported. It seems to us that for his attendance in Court he is sufficiently remunerated. Looking at his salary of Rs. 500 as a general retainer, and as remuneration for the work done under head (4), the salary does not seem excessive as compared with the salary of Rs. 300 paid to the Government Pleaders at Calcutta and Bombay, where there are Legal Remembrancers, and the class of work shown under head (4) does not exist.

27. The Official Trustee is appointed under Act XVII of 1861. He may accept all trusts other than those of a religious nature, at the request of parties in the case of new trusts, and by summary order of the Court or by decree in the case of existing trusts. Mr. J. F. Fergusson, in a letter dated 1st December 1886, informed the Finance Committee that he has now 315 trusts in his charge, and that this may be taken as the average number, which he is

Duties of the Official Trustee.

Amount of work.

called upon to manage. The average number of new trusts annually received for the last ten years has been 14, and the number of trusts annually made over or distributed during the same period has also been 14. The average annual expenditure incurred has been Rs. 6,525, and the average net commission received by the Official Trustee has been Rs. 11,543, in addition to which he is allowed by the Chief Justice to make a charge of Rs. 1,000 per annum against a fund styled the Audit Fund for what are termed schedule and audit charges. This grant is allowed on the recommendation of the Auditors (the Comptroller General and Assistant Comptroller General), and is, the Official Trustee informs us (a), absorbed by special expenses incurred in connection with the audit. The rate of commission fixed by section 11 of Act XVII of 1861 for the three Official Trustees at the three presidencies is as follows:—

(a) See letter of 30th December 1886.

A commission of one-half per cent. on all capital moneys received, and on all such moneys invested.

A commission of two and a half per cent. on all rents collected or dividends and interest received.

28. In a memorandum supplied to us on 30th December 1886, Mr. Fergusson makes the following observations:—

Suggestion by Official Trustee.

The difficulty of working the Official Trustee's Act (Act XVII of 1861) to the advantage to which it might be worked appears to the writer to arise in this way.

Under Section XI of the Act, the Official Trustee is entitled to certain remuneration on Trusts made over to him by "the Court." This remuneration is of itself very low, but in cases where only Government securities or landed property situate in Calcutta are concerned, it is fairly remunerative for the work to be done in such cases. Section XII, however, of the Act defines the expenses and charges to be covered by the remuneration provided by the Section XI, and not only that, but it goes on to say (see last sentence of Section XII): "The commission of the Official Trustee is intended to cover all the expenses and risk and responsibility of management, collection, and distribution." Now it is confidently, but respectfully, submitted that to manage mofussil estates, and to undertake the "expenses and risk and responsibility of management, collection, and distribution of such estates on a commission of 2½ per cent. on all rents collected" (see last paragraph of Section XI of the Act) would be simply an act of folly, as the business could not be managed on the terms stated.

Hence it is that certain estates (notably the estate of the late Honourable P. C. Tagore) are held by the incumbent of the office of Official Trustee for the time being as Receiver, but not in his office of Official Trustee; and on the death or removal of the Official Trustee, the property of such trusts would not vest in the successor of the Official Trustee under Section XVII of the Act.

It may be said that under Section IX of the Act, the Official Trustee is entitled to such remuneration as he shall be declared entitled to receive under the deed appointing him trustee, and may therefore make his own bargain; but the trusts lastly referred to (*i.e.*, trusts in regard to mofussil estates held by him as Receiver) are not new but existing trusts, and therefore come under Section X, and not under Section VIII of the Act. Moreover, even in the case of new trusts of the description now under consideration, it is difficult, in the face of the rate of remuneration provided and laid down under Section XI of the Act, to get settlers to agree under Section IX to a higher rate of remuneration than provided by Section XI. The writer is at present engaged in a discussion on this very subject with regard to a proposed trust of a large mofussil estate, of which it is desired that he should undertake the trusteeship as Official Trustee.

We think that the question thus raised should be considered, and the Act, if necessity be shown, amended.

29. On the one hand, if the commission allowed be too low to cover the necessary expenditure and give a fair remuneration, it should be raised. On

Recommendation as to work and remuneration.

the other hand, it seems anomalous that the Official Trustee should decline to take charge of an estate as Official Trustee, and be at liberty to take charge of it as Receiver, and thus to claim a higher commission than would be permissible to him as Official Trustee. We have recommended elsewhere that, in the case of a new incumbent, the Official Trustee should not be allowed to

take Receiverships, and also that the post should be amalgamated with the other posts, the work of which is closely akin to that of this office. These are the post of Administrator General, Official Receiver, and Official Assignee. If, however, no such change is made, we recommend that, whenever the income of the office becomes sufficient to make it worth while, the Official Trustee should be paid partly by commission and partly by salary. If the Act were altered so as to provide an adequate remuneration, and the zeal of the Official Trustee stimulated by a reasonable share of the commission, it is not, we think, impossible that the sphere of his operations might be greatly enlarged, and that a considerable income might in course of time be earned by the State. The same proposals apply to the Official Trustees in Madras and Bombay, and need not be separately repeated. The work there is much lighter. The Official Trustee, Bombay, receives only from one to two estates a year, and his average commission since 1880 has been Rs. 1,615. The Official Trustee in Madras has received three trusts a year on an average since 1878, and his average commission has been Rs. 2,830.

Work of Standing Counsel.

16. The work done by the Standing Counsel in 1885 was as follows:—

Cases at the Sessions	...	...	...	...	40
Insolvency opposed	...	...	...	...	1
Appearances in applications to sue <i>in forma pauperis</i>	...	...	...	...	20
Appearances in connection with suits	...	...	...	...	3
Papers drawn or settled in Civil cases	...	...	...	...	12
Opinions in connection with civil suits	...	...	...	...	13
Opinions in connection with criminal suits	...	...	...	...	7
Deeds settled	...	...	...	...	4

Apart from the Sessions cases, the largest number of cases in which the Standing Counsel appeared was, it will be seen, in enquiries as to the right to sue *in forma pauperis*. The question has been raised in the Finance Committee's Note on the Calcutta High Court whether these enquiries, which are of an extremely simple character, involving hardly any other point than whether the petitioner is possessed of Rs. 100, might not advantageously be disposed of by the Registrar or other person appointed by the Court. We think that the conduct of such an enquiry before such a tribunal as a High Court Judge, conducted by an officer of the status of the Standing Counsel, is an unnecessarily expensive proceeding. All that can be necessary in such a case could apparently be done before the Registrar by the Government Solicitor, if the Code so permitted.

The Standing Counsel's work may, therefore, be divided into—

- (1) his work in the High Court as Crown Prosecutor or in connection with civil suits, or insolvency and pauper cases;
- (2) his work in chambers, in giving opinions on cases and settling deeds.

17. There is no Standing Counsel in Bombay or Madras, and we believe that the work of the first class is there done by the Clerk of the Crown or Crown Prosecutor and the Advocate General, and that of the second class by the Government Solicitor and the Advocate General. The question, therefore, naturally arises why the same arrangement should not be sufficient in Calcutta.

NOTE FOR THE CHIEF SECRETARY.

Please say whether any of the currents need be printed. The S.O. seems complete by itself, but as it is going to the S.I. perhaps the High Court would wish that these letters accompanied.

With regard to the letter from the Madras Bar - copy of it has to be to S.O., & we might adopt any of the following courses

- (1) send our present copy.
- (2) Ask Mr. Browne 1/100/100 copies.
- (3) Print it.

Recd again 6.8.8 16 June 17 No 1291 Jnd

RECEIVED

39x

Recd also the following papers:

No.

586.

39x

FROM

A. P. MACDONNELL, Esq., C.S.,
Secretary to the Government of India,

To

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS.

Home Department.
Judicial.

Simla, the 30 May 1887.

SIR,

WITH reference to paragraph 2 of the Despatch from the Government of Madras to Her Majesty's Secretary of State, No. 7 (Judicial), dated the 8th March last, I am directed to request that the suggestion made in paragraph 31 of the enclosed extract* from a Note by the Finance Commissioner with the Government of India for the reduction of the salary of the Advocate General, Madras, to Rs. 1,500 per mensem may be considered by the Madras Government in connection with the existing vacancy in that office, and that the Government of India may in due course be informed of the conclusion which may be arrived at on the point.

2. I am also to transmit a further extract† from the same Note containing a proposal to the effect that the rate of commission now admissible to the Official

Trustee, under section 11 of Act XVII of 1864, in the case of estates situated in the mofussil should be raised by an amendment of the law, and that the post of Official Trustee should be amalgamated with other cognate offices, namely, those of Administrator General, Official Receiver, and Official Assignee. The Governor General in Council will be glad if, after consulting the Honourable the Chief Justice and Judges of the High Court at Madras, the Governor in Council will favour the Government of India with his opinion on the subject.

3. I am further to intimate that it has been recommended by the Finance Commissioner with the Government of India that in future appointments to the posts of Law Officers of Government, as well as to those of Official Trustee, Official Assignee, &c., should be made for a limited period only, say 5 years, and not as now in permanence, it being urged that this will protect Government interests from loss in case it is found that the selection made does not turn out

Just No 2032-35679

a satisfactory one, or in case the official selected deteriorates in capacity to carry on the duties of the post. Before coming to a decision on this point, the Governor General in Council considers it desirable to invite an expression of the views of the Government of Madras thereon.

4. Lastly, I am to enquire, with reference to paragraphs* 16 and 17 of the Finance Commissioner's Note, whether, in the opinion of the Honourable Judges, the existing arrangements for the conduct of criminal prosecutions in the High Court at Madras on behalf of the Crown are satisfactory.

* Extract enclosed.

I have the honour to be,

Sir,

Your most obedient Servant,

A. P. MacDonnell

Secretary to the Government of India.

70C. 4/2/24

1026-27-14-5-07
 43-11-1-07
 61-4-1-07
 100-14-1-07
 734-20-7-06
 735-20-7-06
 776-7-0-06
 864-27-0-06

10/17/80
 11/1/87

The foregoing letter will be communicated
 to the Honble the Judges of the High
 Court, in continuation of G.O. 16 June
 1887 - no. 1291 Jud^g, with the request that
 the Govt. may be favoured with an
 expression of the opinion of the Honble the
 Judges on the several points referred
 to by the Govt. of India.

29/6.

The Honble the Judges
 with C.L. 5/7/87

257
 2276
 CURRENT NO. 2962

From
 G.O., Home Dept

22.5.87
 1/9
 Encls. me

4 spare Copies
 Each of letters
 Encls.

post of calling for opinion
 re Official Notice &
 reduction in Advo. at
 General's salary

over

4P
 CURRENT NO. 2962
 8th July 1887

No 313
 From C. B. Russell Esquire
 Of Government Pleader
 To The Chief Secretary to Government
 Madras.

16 June/87
 no. 1291

Sir In reference to the Proceedings
 of Government noted in the margin,
 I have the honor to submit the fol-
 -lowing reasons why the proposed
 changes in the character of the office
 of Government Pleader appear to me
 to be inexpedient.

There is an objection to the
 Advocate General and the Government
 Pleader sharing one set of chambers,
 and it rests principally on the incon-
 -venience these two offices will suffer
 in as much as neither of them will be
 able to conduct his private work or

See

See his clients and attorneys with any degree of privacy. The objection will be apparent to any one who has himself been a practising barrister.

The proposal to discontinue furnishing the Government Pleader with copies of criminal records, and to require him to make his own notes from the original records is open to much more serious objection. In the large majority of criminal cases in which the Government Pleader appears, it is essential that he should have before him when arguing the case, the complete record. It not infrequently

happens that a Pleader who appears for an accused person reads from some papers supplied to him by his client which purports to be a copy of the proceedings, but is altogether incorrect. It is the duty of the Government Pleader to check any such

inaccuracies

458 32
inaccuracies and bring them to the notice of the Court, but how is it possible for him to do so unless he is provided with a copy of the record. In many cases the accused (Appellant) is unrepresented. In such cases the Court expects the Government Pleader to be prepared to read the evidence or give any information regarding the case that may be required by the Court. Moreover when there is a press of work it would be impossible for the Government Pleader to act upon notes or have the records copied by one or even two copyists.

During the last vacation I had to come down from Coonoor to appear in support of the convictions in 19 criminal cases which were fixed for the 1st June. The Court was occupied during the 1st & 2nd June in disposing of the cases. Many of them were appeals against

against convictions for murder in
which the records were very voluminous.
It would, I think, have been impossible
for any man to have taken notes
of those cases sufficient to have enabled
him to do his work efficiently. But
a still stronger and more striking
instance of the impossibility of acting
upon notes has occurred more recently.
I was engaged the whole of yesterday
in arguing an Appeal against an acquittal.
The accused & in number were charged
with murder before the Sessions Court
of Salem, and acquitted principally
on the ground of the variations made
by the witnesses in their statements
before three courts. The witnesses were
24 in number, and there were 22 exhibits
put in by the prosecution & 28 for the
defense which latter consisted of
depositions given before two other
courts. It was absolutely essential,
therefore, that I should have before
me

478 6 P 5
be not only for my own information
but to refer to in court every one of
those depositions. Judgment has not
been delivered, but I apprehend the
court will permit me out of the
I accused of murder, and I attribute
the conviction principally to the fact
that the whole record had been printed
and I was enabled to show the court
without much difficulty that the
alleged variations were not variations
at all or that they were immaterial.
The printed record consisted of 152
pages. If instead of having been
supplied with a printed copy, I had
had to depend on a copyist, the
manuscript copy would have con-
-tained about 600 pages representing
about 2 1/2 months' work for one
copyist at the rate allowed by the High
Court viz. 4 pages a day or 2/10 a month.
One copyist would under such circum-
-stances

circumstances be utterly unable to supply me with the copies I could require.

As regards the proposal of the Government to cut down the salary of the Government Pleader by one half, it is not altogether becoming in one

holding the office to give an opinion

as to the value of his services, but I desire to bring to the notice of Govern-

ment that the Government Pleader is bound to be in close attendance on the Court if a single criminal case is in the list. His absence owing

to an engagement on the original side would never be accepted as an

excuse by the Court. The Chief Justice is very strict in insisting on criminal cases coming on in their order in the

cause list, & in proceeding with a case even though the counsel for the

accused is absent in another Court,

a fortiori the absence of the Government Pleader in another Court would never be

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7P
be accepted as an excuse. Consequently the Government Pleader has to give up more or less private work, but it should interfere with his public duties, and I presume the salary he receives ought to compensate him for such losses. To assure the Govern-
ment that this is a real & not an imaginary objection on my part, I may mention that only yesterday I received a brief with the Advocate General in the case of Champion vs Pakes which was heard today and returned it, because it might interfere with my presence in the other Court where there were some criminal cases packed.

When the office of the Government Pleader was first established, the criminal work did not interfere at all with that officer's undertaking any amount of other work. The Appellate Court seldom heard criminal cases more than once a week, and the same strictness was not observed

observed, as how, regarding the despatch
of criminal work.

No one except a person in the habit
of attending the High Court can have
any idea to what an extent the work
of the Government Pleader has increased.
Practically he is prevented from under-
taking any other work.

Taking into consideration all
these circumstances I respectfully
submit for the consideration of Govern-
ment that the salary is at present
inadequate if that salary was a fair
remuneration at the time the office
was instituted.

I have the honor to be
Sir
Your most obedient servant

W. P. W.

Of Government Pleader

CURRENT NO. 2962

Incl. 188 of Sept.

From

The Government Pleader,
Madras.

To

The Chief Secretary
to Government

Dated

8th July 1887

Despatched

12th Do

Received 15th Do

No. 3/3

Subject.

Submitting explanation
regarding the proposals
of Government to reduce
the pay &c. of the Law
Officers.

RECEIVED
14 JUL 87

See over pending other replies

W. H. 16/7

CURRENT

3/2

No. 1872. 53rd 14 P
High Court of Judicature,
Madras, 20th July 1887.

From,

H. J. Ross Esquire,
Registrar of the
High Court of Judicature,
Madras.

To,

The Honorable H. E. Stokes,
Acting Chief Secretary
to Government,
Fort St. George.

Sir,

I am directed to reply to Government
Order, dated 16th June 1887, No. 129, Judicial,
reviewing the arrangements contemplated
for reducing the charges connected with
the Law Officers in Madras, and to Reference,
dated 5th instant on Judicial No. 2476
of 1887 communicating certain points
referred by the Government of India
in connection with the same subject.

2.

As regards the proposal to
abolish

abolish the office of Clerk of the Crown, and to divide his work between the Crown Prosecutor and a Deputy or Assistant Registrar of the High Court, I am to remind His Excellency in Council that the very strong objections entertained by the Honorable the Judges to abolishing the office of Clerk of the Crown have already been fully stated in para. 7 of my letter No. 512 dated the 3rd March last. The Chief Justice and Judges, with the greatest respect for His Excellency the Governor in Council, beg to protest against the abolition of the office. The Deputy and Assistant Registrars have, in the opinion of the Court, sufficient duties to perform; and I am to intimate that, under these circumstances, the Honorable the Chief Justice cannot assent to any portion of the Clerk of the Crown's duties being undertaken by either of the officers specified. The experiment of having a portion only of the duties in question performed by the Deputy Registrar, Appellate Side, was, some years ago, tried and abandoned, as it was found to result in serious inconvenience.

convenience to the Court. I am to add that the proposal to abolish the office of Clerk of the Crown raises the question of law whether the Government can, in the manner proposed, abolish an office for the performance of the duties of which the Chief Justice has appointed an officer under Section 8 of the Letters Patent of 1865, and whose appointment has received the approval of Government.

3. As regards the division of work which it is proposed to make between the Advocate-General and the Government Pleader, the Honorable the Judges have nothing to say; but the suggestion that these officers should share the same chambers is one which is not suitable to the positions of the officers as such, or as Counsel employed by the ^{public} parties.

4. The proposal to discontinue furnishing the Government Pleader with copies of Criminal records, save such as are printed and such as he can obtain with the assistance of a clerk on Rs. 15 per mensem, and to require

a require him to make his own notes
 a from the original records, is, in the
 opinion of the Honorable the Judges,
 calculated to prejudice most seriously
 the efficient discharge of that officer's
 duties. It is imperatively necessary,
 in the interests of justice, that in
 Criminal appeals the Government
 Pleader should be in a position to
 afford the High Court the valuable
 assistance which his possession of
 copies of the record at present enables
 him to give: and if, in any case,
 for want of such copies, the Govern-
 ment Pleader is not properly in-
 structed, it will be the duty of the
 Court to postpone such case until
 he is able to obtain copies. It is hardly
 necessary to point out the delay and
 interruption of business which the
 present proposal is thus calculated
 to cause, at a saving to the State
 of the small sum of Rs. 1,300 per
 annum.

5. In the case of the Official Scribe,
 I am to remark that the need for
 altering the present rate of remuneration
 is not apparent in Madras where it
 has

has not been suggested that the
 fees are insufficient.

6. In reply to the enquiry in
 para. 4 of letter No. 886, dated 30th May
 1887, from the Government of India,
 I am to state that, in the opinion of
 the Honorable the Judges, the existing
 arrangements for the conduct of
 criminal prosecutions in the
 High Court on behalf of the Crown
 are satisfactory.

7. It is not within the province
 of the High Court to discuss the
 terms of remuneration to be settled
 between Government and their Law
 Officers; but the argument that if
 Rs. 2,000 per annum is considered a
 sufficient salary for the Advocate-
 General in Bengal, Rs. 1,500 should
 suffice in Madras, is one to which,
 in the peculiar circumstances of
 Madras, the Honorable the Judges
 find themselves unable to sub-
 scribe. It has to be remembered
 that the Bar at Madras is small,
 and that the Vakils get a large
 percentage of the practice. It is
 important

important that Government should have a first-rate adviser as — Advocate-General, and it may be that, in a place where the prospects of receiving other fees are less, a higher rate of remuneration is necessary to secure the services to Government of a first-rate barrister. From this point of view, it might be advisable to give the Advocate-General quite as high a salary in Madras as in Calcutta.

8. In Connection with the salary of the Government Solicitor, it is observed that, in para. 34 of the note of the Finance Commissioner, Communicated with the Chief-Secretary's letter of the 5th instant, the amount of that salary is described as moderate as compared with the salaries in other Presidencies, and the work done as large; and seeing that no necessity for reduction in this direction is apparent to the Finance Commissioner, it may be doubted whether His Excellency the Governor in

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in Council will press for such reduction. The suggestion that the Government Solicitor's work might be reduced by issuing, to heads of departments, instructions calculated to result in fewer references than at present being made to that officer, does not commend itself to the Honorable the Judges. From their experience, it appears doubtful whether such references are, as a rule, not made too infrequently, and that it is very desirable that they should not be deferred until too late to avoid complications which might otherwise have been prevented.

9. Generally, as regards the proposed reductions of salaries now paid to the Law Officers, it appears to the Honorable the Judges that any measures calculated to render such appointments unattractive to the best men available in the profession, cannot fail to prejudice the efficient performance

performance of the legal busi-
 -ness of the Government. And
 As to the suggestion that the
 Law Officers should be appointed
 for limited periods of say, five
 years, the High Court is not aware
 that the Government has hitherto
 had any reason to regret the ap-
 -pointment of their law officers
 without any such qualification
 as is now suggested as to length of
 tenure of office, and the Honorable
 the Chief Justice and Judges have
 doubts as to the advisability of making
 any change in this respect.

I have the honor to be,

Sir,

Your most obedient Servant,

Imlos:

Registrar,

Appellate Side.

To

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2014

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CHIEF SECRETARY
22 JUL 87
GOVERNMENT OF MADRAS

From.

William Morgan,

Acting Government Solicitor.

Madras.

To.

The Honorable H. E. Stokes,

Secretary to Government.

with the Governor, Stonehouse.

Sir,

I am in receipt of G. O. dated 16th June 1887 No 1291 Judicial and am obliged for the opportunity which has been given to me before final Orders are passed on the subject, to shew cause why the arrangements contemplated there in should not be introduced.

2. I first have to call attention to an error in the statement in paragraph 1 of the Order, to the effect that "in addition to their fixed salaries each of the foregoing officers has Chambers provided for him in the High Court" and beg to call your attention to the fact that though - this is correct so far as the other Law Officers are concerned, it is not so in the case of the Government Solicitor as he pays Rupees 50 a month rent, for which no allowance has apparently been made.

3. Government also appear to be under some misapprehension as to the nature and extent of the work performed by this office; and I propose therefore to follow the recommendation made in paragraph 6 of the G. O. in reference to the different items shown in paragraph 1 of the Order.

4. With reference to the cases under item No 1 "advising Government and Heads of Departments" it is stated in paragraph 6 of the G. O. that these "may probably be greatly reduced in number" The figures given are in respect of the year 1885, and I have now gone through the books for 1886 and for the first half year of 1887, and find that the average is quite equal to the number given in the Table viz 161 Opinions per annum. It must also be remembered that there are numerous occasions upon which Officers of Government come into the office and obtain an Opinion without there being anything in my books to shew that this has been done, so that it may fairly be taken that the number of cases upon which the Government Solicitor advises is somewhat larger than that mentioned.

5. With reference to cases under item No 2 "acting as the channel of communication between the Advocate General and Government" it is stated that these are "purely formal" This is not quite correct: It has always been considered a part of the duty of the Government Solicitor to go through the papers submitted to the Advocate General, and also to peruse and to a certain extent check his opinion in order to see that the reference has been fully answered, and that nothing has inadvertently been omitted. The Opinion has then to be copied by this office, signed by the Government Solicitor, and sent in to Government.

6. With reference to cases under items 5 and 6 "appearing and advising as to Civil Proceedings" and "appearing in the Small Cause Court" it is stated that the Government Solicitor "gets fees in case of success". This is true, but owing either to the fact that the Courts are not generally

65-198
disposed to give costs in favor of Government knowing their Solicitor has a monthly salary, or that the parties litigating with Government are parties of no substance, or that Government have issued orders that costs shall not be asked for, as in the case of the suit by the Zemindar of Palkondah. I find by reference to my books that during the year 1885 Rupees 253-8-0 only was recovered by the Government Solicitor under this head, and during the year 1886 and the 1st half of the year 1887, nothing at all.

7. I also wish to call attention to the fact that with reference to cases under item No 5, which are referred to in the Table as "appearing or advising as to Civil Proceedings" ten out of the fourteen cases represent High Court Suits - which were contested to final hearing.

8. With reference to cases under item No 7 "Preparing or revising pleadings" it is stated that these "cannot give much trouble" - A reference to the Table will shew that I had no pleadings to prepare or revise other than those in High Court suits, so that the reference to this item is evidently a mistake, and the remark can hardly be intended to apply to either items 8 or 9 which are specifically referred to.

9. With reference to cases under item 8 which are referred to in the Table as "preparing or revising tenders, security bonds &c" I would submit that the description is hardly an adequate one of the work involved. The item includes the preparation of eighteen conveyances or leases - which in addition to the actual preparation of the document, necessitated enquiries into title more or less complicated, and in reference to many of the other documents such as Indemnity Bonds they involved an enquiry into position of

the parties giving them, and occasionally the preparation of affidavits and declarations in support of the claims.

10. With reference to the cases under item No 9 viz - "recovering sums due to Government" it is stated (if I am right in concluding that the remarks upon item No 8 are intended to apply to item No 9) that these "rarely involve more than writing a letter of demand" This is hardly so, as in most cases several letters of demand have to be written, and in very many cases the matter is one of disputed account which requires considerable correspondence before it is brought to a conclusion.

11. With reference to cases under item No 10 (I presume the remarks upon item No 9 are intended to apply to this item) it is said the Government Solicitor has "nothing to do" This also is hardly correct- In the first instance I receive notice that the application to appear in "forma pauperis" is to be made, I then make enquiries through some of my clerks as to the position of the applicant, and when it appears to me necessary I attend the hearing and cross-examine the witnesses- After the suit has been disposed of I have to search the Record and take a note of the Decree-passed, and subsequently I have to ascertain whether as a fact anything is recovered under the Decree, so that if anything is so recovered the Government Fees may be paid thereout. During the course of the year ending the 1st instant I find that I recovered Rupees 404-4 on behalf of Government from Paupers who had been allowed to file suits without paying Institution or other Court fees.

12. I have recently gone through the Government work performed by this office during the last 6 months i. e.

between the 1st January and the 30th ultimo, and find that (notwithstanding two months out of the six were occupied by the vacation) there were 79 cases for opinion; in one of them, for example that of the claim of the late Contractor W. South against the Bellary Kistna State Railway Company for Rupees 20,000, I had a file of 270 papers given to me to go through, and had several lengthy attendances upon the Officials of the Company and to make numerous complicated and intricate calculations; again in a case relating to a claim against Government in respect of funds belonging to the Estate of the late Major Dickson which funds have been in the hands of the Accountant General for many years I had to investigate the alleged descent of the present claimants from the year 1809, and to go through and advise upon numerous declarations, precognitions, birth, and Baptismal certificates, and other documents.

13. During the same six months I have also had to prepare 67 Conveyances, Leases, Bonds, Contracts or agreements (the two former class of cases involving enquiries into title) amongst these were the lease of the Tekady Forest which had to be revised some three or four times, and in respect of which I had several attendances at the Board of Revenue office, and the Agreement between the Cuddapah Nellore State Railway and the South Indian Railway for the working of the former line by the latter, and which also involved several long attendances on the officials of the Railway.

14. With reference to the last item, Government will observe that the number of documents prepared by this office in the first six months of 1887 amounts to within two of the total of documents prepared for the whole year.

1885.

15. I also desire to call the attention of Government to the fact that the Table contained in the first paragraph of the G. O. does not embrace any thing like all the work which has to be done by this office. In addition to recovering sums of money due to Government, I have to call upon parties to comply with their contracts, to execute documents to repair Houses Leased by Government, and to do certain acts required by statute, such for instance as under the Company's Act, where I have had as many as forty and fifty Notices at a time to send out calling upon parties to file balance sheets and other documents required by the Act.

16. There are also other matters necessitating my attendance in Court, such as cases where deposits made by Government servants have been attached in a suit, in many of these cases I have to realise the Government securities which have been lodged, and pay the sale proceeds into Court or to the parties.

17. Again there are cases between the Municipality and Government relating to the assessment of Government buildings which recently have been somewhat numerous, and which in almost every case are made the subject of Appeal to the High Court.

18. In addition to the above there are other Miscellaneous matters, such as the enquiry into the People's Park Fire in which I was absent from office for six entire days and a portion of nine further days, without receiving any extra remuneration therefor, notwithstanding that the Coroner the Crown Prosecutor and each of the Jury were paid for their services: Freck enquiries; and enquiries such as I was recently requested to

make by the Collector of Chingleput in-

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to the alleged malpractices of certain parties in connection with several High Court Suits since the year 1862, involving attendances upon the Registrar of the Court, searching Records &c; and prosecutions under the Company's Act, of these latter I have at the present moment 20 on hand, in each of which an application has been made for a Summons necessitating a separate trial of each case.

19. I would also call attention to the fact that during the last year eight Bills have been submitted to me for my Opinion, some of which such as the "Civil Wrongs Bill" and the "Bankruptcy Bill" were of great importance and also very voluminous, and required considerable time to be expended upon them before it was possible to express any opinion upon their provisions, or even to see how far such provisions differed if at all from the existing law.

20. A good deal of the above Miscellaneous work I am afraid I omitted to mention in my letter to Government No 364 of the 26th August 1886 when asked to send in an account of the work performed by this office, but this was owing to the fact that mine is only an acting appointment, and also to the fact that the Managing clerk who attended almost exclusively to this Department was at the time ill and absent from office.

21. The principal matter however to which I wish to call the attention of Government is the question of Establishment. Out of the five Law officers of the Crown the Government Solicitor is the only one that has no establishment whatever allowed, and I feel quite confident that this fact must have been lost sight of by Government when considering the proposed reduction in his pay.

71x 227

22. The establishment of the Government Solicitor is really that of the firm of Barclay and Morgan, which consists of three European Assistants whose salaries collectively amount to Rupees 1200 per month, and an establishment of clerks amounting to Rs 900 per month; I have recently made calculations to ascertain as far as possible what proportion of the above is fairly chargeable to Government work, and I have no hesitation in stating that during the 20 months that I have held the acting appointment at least Rs 600 per month has been represented by Government work. This of course is in addition to my own time. In support of this statement I may mention that the Government Solicitor has for many years been in the habit of paying out of his salary to the firm of which he is a member, the sum of Rs 300 per month in respect of the services of the Clerks belonging to the Firm, which sum was admittedly far below the amount which such services actually cost the firm, but was accepted for certain reasons which it is unnecessary to enter upon here.

23. In further proof of the correctness of this statement I have made enquiries of the two leading firms in Madras viz. Messrs Wilson & King and Messrs Branson & Branson, and have ascertained that the establishment of the former firm (whose business is almost as much as that of the firm of Barclay and Morgan) amounts to Rs 410 per month, and that of the latter firm (whose business is if anything of a more extensive character than that of the firm of Barclay and Morgan) to Rs 600 per month. In the case of both the above firms the partners are the same in number as in that of Barclay & Morgan.

24. From the above it will be seen that the difference between the cost of the establishment of the firm of Barclay and Morgan and of the other two firms is approximately -

between 1700 Rupees and 1500 Rupees per month, so that in estimating Rupees 600 per month only as the value of the work performed for Government by the establishment of Barclay & Morgan, I am well within the mark.

25. As an example of the establishment which is required in order to do the Government work and of the way in which it is done I trust I may be pardoned for mentioning an Opinion which was sent in by Mr Barclay to the late Secretary to Government Public Works Department, in respect of a claim by a contractor for over Rs 30000 which was reduced by Mr Barclay to Rs 2528-6-2 and which latter sum was I believe subsequently accepted by the Contractor; this Opinion took a clerk 23 days to copy, and a further 23 days to enter in the Government letter Book, and I leave it to Government to form their own idea as to the time it must have taken their Solicitor to peruse the papers and to draft the above opinion, if it took a clerk over 3 weeks to copy it. I take the liberty of enclosing the Draft of this opinion for reference and return. I see that in the G. O. on the case No 2851 of 30th November 1885 Mr Barclay's opinion is referred to as follows: "the Government Solicitor has reviewed in a most thorough and complete manner all the transactions between the Executive Engineer and the Contractor and in an exhaustive Report in which every detail has been carefully sifted has given his opinion &c. I may also mention that on several occasions when Deeds have been required at a few hours notice, such as in the case of the Transfer of the Civil service Fund to Government, my clerks have been employed all night long copying the Deeds, without any extra expense to Government, though they had of course to be paid for such extra work by my firm.

26. In order also to shew how Government benefit by having the services of a large and efficient establishment attached to the office of their Solicitor, I may mention that about 12 months ago owing in great measure to the enormous extent to which the Government work had increased I found it necessary to engage the services of a short hand writer at a cost of Rs 150 per month. During the hearing of the application in re Mr Eardly Norton and Mr H. E. Sullivan I was directed to obtain for Government a short hand writer's report of the proceedings. This I had done by the firm's short hand writer but at no expense to Government.

27. I feel confident that after the above explanation Government will see that if any reduction at all is made in the salary of the Government Solicitor he will not be fairly & adequately remunerated for the work and services performed.

28. I am also confident that it would be impossible for Government to obtain the services of a Solicitor of any standing, at a lower salary than the present one, or to have their work done more economically under any other system. The cost of the 67 documents prepared during the last 6 months if charged for at Solicitors ordinary rates, would average between Rs 150 and Rs 200 each, and if calculated at the lower of the above rates, these 67 docs alone would cost Government Rs 10050, which is almost three fourths of the Government Solicitor's pay for the entire year.

29. I observe that in paragraph 6 of the above G. O. Government state that "the attention of Heads of Departments will be called to the necessity of discontinuing unnecessary reference to the Government Solicitor which the Government have reason to believe are made in many cases" My experience has been that the number of cases in which unnecessary refer-

ence is made to me are but very few indeed, but that the number of cases in which no reference at all is made until a certain amount of mischief has been done are very many, and in the interests of Government I would suggest that the Departments should not be checked in submitting all matters for the opinion of the Government Solicitor as soon as ever they are in any way contentious, or in any case relating to the construction of legal documents.

30. I am of course aware that a certain amount of outside business follows the appointment of Government Solicitor though I presume Government would hardly take this into consideration in fixing his remuneration; at the same time however it must not be forgotten that the fact of his acting for Government debars him from acting against Government and in cases where the interests of Government may possibly conflict; for instance I have been credibly informed that had it not been for the fact of a member of my firm being the Government Solicitor and that it was anticipated that the interests of the Government and of the Madras Harbour Board might at times conflict, my firm would have been appointed Solicitors to the Board which I need hardly say is now, and will be in the future a still more, remunerative appointment.

31. I think it is very possible that Mr Barclay may be able to add to this letter and show further cause against the proposed reduction, and may be in possession of information to shew what proportion of Rupees 1225 the permanent pay of the office, was originally supposed to represent the cost of establishment as to which I am of course ignorant; I would therefore suggest that as he is returning to Madras in the

first week of September next, the matter may be allowed
remain open until his return.

I have the honor to be,

Sir,

Your Obedient Servant

Wm. Morgan

Acting Government Solicitor.

WSH
Judl. DEPARTMENT.

From

As. Govt. Solicitor

No. 375

Dated 21st }
Received 23rd } July 87

Enclosures one

SUBJECT.

Remarks on proposal
to reduce the charges con-
nected with Law offices.

Enclosure, returned
to be returned

8 P
Madras 18th July 1887 79K
CURRENT NO. 5087

From

J. H. Spring Branson Esq.

Public Prosecutor & Crown Prosecutor

To

The Honorable N. E. Stokes

Acting Chief Secretary to Government
with the Governor
Stonehouse Hill

Sir,

In compliance with the Order of Govern-
ment, dated the 16th June 1887 No. 1291, Judicial
Department, calling upon me to show cause
why the arrangements contemplated for reduc-
ing the charges connected with the Law Offices
of Madras should not be introduced, and con-
fining myself to the office of Crown Prosecu-
tor, I have the honor to submit the following
observations.

1. I agree in thinking that the Crown
Prosecutor should conduct the prosecution
in all cases, without exception, committed
to the High Court for trial at the Sessions,
but I respectfully submit that the work
now done by the Clerk of the Crown should
not be thrown upon the Crown Prosecutor.

2. The work now done by the Crown Prosecutor cannot be fairly gauged by the average number of days each Session may last, or by the average number of cases in which he may have to appear. Such a criterion omits the important element of time spent out of Court in the preparation of the work for the trials. That time must be added to the time occupied in Court, and must be deducted from the time which would otherwise be available for private practice.

3. Cases are committed to the Sessions even after Sessions have commenced, and in such cases the Crown Prosecutor has considerable difficulty in making himself acquainted with the facts of such cases in time for the hearing, because he is occupied all day in Court in the discharge of his duties there. He would have no time for settling indictments in cases committed after the commencement of the Sessions. As an instance, I may mention a case which was committed to the last Sessions

8197
so late that there was no time, even with the present establishment, to get ready for trial. That case had to be postponed till the next Session.

4. Not unfrequently the Clerk of the Crown has to attend on the Judges who preside at Sessions in order to obtain instructions, or to make communications. It seems to me most undesirable that that duty should be thrown on to the Crown Prosecutor. He should not even appear to have an advantage over the Counsel for the defence. It is most undesirable that the native public should suppose that the Crown Prosecutor had the "ear of the Court" when the accused or their counsel had not.

I have the honor to be
Sir

Your Most Obedient Servant

J. A. Spring Manson.

Public Prosecutor and Crown
Prosecutor.

3087

July 1887 Sept

From

The Crown Prosecutor
Madras

To

The Chief Secretary to Govt.
Co. lacamund

Dated 18th July
Despatched 19th "
Received 21st "



Subject.

Showing cause why the
arrangements contemplated
for reducing the charges
connected with the Law
Officers should not be
introduced. -

To be over the [unclear]
10/12/87

Madras 18th July 1887

From

The Honorable J. H. Spring Branson
Acting Advocate General

To

The Honorable H. E. Stokes
Acting Chief Secretary to Government
With the Governor
Stonehouse Hill

Sir

In compliance with the Order of Government
dated the 16th June 1887, No 1291, Judicial Depart-
ment, calling upon me to show cause why the ar-
rangements contemplated for reducing the charges
connected with the Law Officers of Madras should
not be introduced, and confining myself to the
office of Advocate General, I have the honor to
submit the following observations.

1. Duties. Under the proposed changes, the Advo-
cate General will be relieved from all charge of
Sessions work, except in cases of exceptional im-
portance which may be specially deputed to him
by Government. On the other hand, the thirty
cases of advice called for by the Heads of
Departments and Government... devolving
on the Government Pleader, will be transferred

to the Advocate General, who will also be required to give the Government Pleader his advice in all difficult cases whenever applied to.

The suggested relief is right in principle, but slight in amount. The additional duties cast upon the Advocate General, on the other hand, will be very considerable. The "Statement of work done" given in the table printed in the Order, dated 16th June 1887, No. 1291, Judicial, concludes the important elements of the time and labour spent by the Officers mentioned upon the "work done". Every professional man knows that the time and labour spent in Court during the conduct of a suit are trifling in comparison with the time and labour spent out of Court in the preparations for the hearing. The time and labour spent upon a Judgment or an opinion cannot be gauged by the number of "folios" contained in that Judgment or opinion. The mere number of cases disposed of during a given period by a given Court, is not a reasonable criterion of the actual work done by that Court in that time.

In addition to the opinions the

Advocate General has to write when called upon to do so by the Government of Madras and Heads of Departments he has also to advise as to Bills of the Government of India sent to him for his opinion by the Government of Madras. As an instance, I may refer to the draft Bill on the subject of actionable wrongs. That subject is a very extensive one, and the expenditure of time in perusal and consideration of the draft Bill was very great. To illustrate further the pressure upon the time of the Advocate General, I may mention that I have been obliged to ask Government to relieve me of the duties of Public Prosecutor for the Town of Madras and of Crown Prosecutor which I consented to perform as a temporary measure to help Mr. W. Grant. I have been compelled by want of time to get members of the profession to appear for the Public Prosecutor in appeals from the convictions and sentences of the Presidency Magistrates.

If the suggested changes take place, the duties of the Advocate General will be considerably increased. If the duties of the Advocate General be increased the time at his disposal

to for his private practice will be proportionately decreased, and this is a most important consideration when we turn to the subject of the salary attached to the office.

2. Salary. No pension is attached to the appointment. The holder of the office has to trust to his profession for a living. Time is money to him. I trust any member of the Bar, who has the honor conferred upon him of being appointed the Advocate General, would most earnestly desire to perform the responsible and anxious duties of that office to the best of his ability. If, however, his salary as Advocate General be cut down, in justice to himself, he must take up so much professional work as will, with his salary, prevent his being a loser in a pecuniary point of view by holding the appointment. That professional work will occupy a considerable amount of his time. The more of that time he is compelled to devote to his private practice, the less can he devote to his official duties. It seems to me to be most undesirable to place any man in such a dilemma.

Another matter in this connection requires attention. There are certain cases which the Advocate General cannot take up in consequence of his official position. The same cause practically debars him from appearing in some court open to other members of his profession. It is undesirable that any departure be made from the hitherto accepted practice that the Advocate General should not appear in relatively insignificant cases, or at all in original suits without a junior to assist him. That practice has the effect of considerably reducing the number of cases in which the Advocate General is retained. Moreover the position the Advocate General ought to occupy as the chief legal adviser to Government and the head of the Bar to which he belongs, can hardly be treated as a "negligible factor."

3. As to Chambers provided for the Advocate General, I beg leave to point out that those chambers are by no means large, and that it is impossible for him to share

to them with any other members of the profession. My own books form a large and rapidly increasing library. Official records and books take up much space in addition, and these records and books yearly increase in numbers. There is no room for the office establishments, private and official, of the Government Pleader and the Advocate General in the rooms now occupied by me.

By the letter from the Board of Directors dated the 7th November 1827, an allowance of Rs 200 per mensem was sanctioned to defray the expenses of the Advocate General's establishment. It appears from the letter dated 23rd May 1859 from the then Advocate General to the Civil Auditor that chambers were provided for the Advocate General in November 1836, and that Rs 85 per mensem were deducted from the allowance of Rs 200, thus reducing that allowance to the sum of Rs 115 at present received. That allowance goes to pay a clerk, peons, furniture, fuel, sweeper and scavenger, and also to meet contingent expenses, as no "contingent allowance" is

911 13 P
given to the Advocate General. As Advocate General, I have only one clerk who draws Rs 80 per mensem. Mr. D'Sena has been in the office for many years and thoroughly understands the work. "Confidential" communications are sometimes made to the Advocate General, and it is important that his clerk should be one who can be thoroughly trusted not to divulge such communications. I think therefore that it would be a mistake to lose Mr. D'Sena's services, and to substitute for him some untried and unknown though cheaper man.

I have the honor to be
Sir

Your Most Obedient Servant

J. A. Spring Branson.

Acting Advocate General

3088

Judl. 1887 Dejt.

From
The Acting Advocate General
Madras

To
The Chief Secretary to Govt.
Cotacamund

Dated 18th July
Despatched 19th "
Received 21st "

CHIEF SECRETARY
5 JUL 87
GOVERNMENT OF MADRAS

Subject

Showing cause why the
arrangements contemplated
for reducing the charges
connected with the Law Of-
ficers should not be in-
troduced.

CURRENT NO. 3343

High Court. 24P
Madras. 95*

3rd Aug 1887.

CHIEF SECRETARY
5 JUL 87
GOVERNMENT OF MADRAS

Honorable Sir,

I have the honor to forward to
you for the consideration of
His Excellency the Governor in Council,
a copy of a Memorial unanimously
approved & adopted for the purpose
by a recent meeting of the Madras Bar.

I have the honor,

to be,

Your obedient servant,

Remondy Brown
Secretary to the Madras Bar

To,
The Hon^{ble}
H. E. Stokes.

cc cc

258/ 97x
FROM

THE MEMBERS OF THE MADRAS BAR.

HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

1. Your memorialists have learnt from widespread public rumour that your Lordship's Government contemplate certain changes in the salaries and establishments of some of the law officers of the Crown; the vital importance of which to the future status and position of the legal profession in this Presidency, seems to your memorialists to make it advisable that they should come forward and lay the following considerations before your Lordship in Council. Your memorialists also respectfully invite your Lordship's attention to certain further considerations as to the present state of business in the Madras High Court.

2. The conclusions to which your memorialists have been led with regard to the abovementioned subjects are as follows:—

- (a.) That the salaries attached to the offices of Advocate General, Government Pleader and Public Prosecutor, and Government Solicitor are not excessive, and that their reduction is to be deprecated in the interests of the public; and that the office establishment supplied to them cannot be reduced without imperilling the efficiency of the work done.
- (b.) That the salary of the Clerk of the Crown is not excessive, and that it is conducive to the interests of justice and to the dignity of the High Court that the office of Clerk of the Crown should be kept distinct from any other office.
- (c.) That the present state of business in the High Court imperatively demands the permanent appointment of at least one additional High Court Judge, who should be a professional lawyer of experience in the practice of the profession.

3. With regard to the Advocate-General,—it cannot but be admitted that this officer should be not only the titular but also the actual leader of the bar, in other words that he should have acquired and should keep in the highest degree the confidence both of the profession and of the public at large. The multifarious

nature of the functions that attach to his office further demand that he should not only be possessed of the greatest experience in the practice of the local law, but also that he should be an accomplished and versatile lawyer. Hitherto the salary and consideration attached to the appointment in question have enabled the Secretary of State to secure for the Government of Madras the services of such a man. But if the emoluments of the Advocate-General are reduced, and his time, which is to him money, is further occupied by some of the minor duties at present satisfactorily discharged by the Government Pleader, it may be gravely questioned whether the Secretary of State will be able to secure a succession of such eminent Advocates General as Madras has hitherto had, and the degradation of the legal profession as a whole would be likely to follow. The necessity of having an eminent man ready at hand always to advise the Government on all matters of importance, to lead the bar of this Presidency, and by his position and learning to regulate and elevate the whole profession, was justly recognised when the salary of the Advocate-General was fixed; at a time it may be observed when salaries paid in India possessed greater value to Englishmen than similar salaries bear at the present day. The varied character of the functions of the Advocate-General has already been alluded to. It is a mistake to regard a list of the opinions furnished by him to Government, as any reasonable criterion of the value of his work or the amount of time and thought expended on it. The Government of Madras is as compared with those of Bengal and Bombay supplied with relatively few legal officers: the Advocate-General is accordingly from time to time called upon for advice as to matters arising in all departments of Government. He is the only legal officer regularly employed in the work of local legislation; which is a matter calling for more consideration from the fact that the bills laid before Council in Madras are not now, as until recently, drafted by a professional man. He is further required to advise on the bills of the Government of India. To call at short notice for an Expert's opinions upon all sorts of important and difficult questions both of law and custom, and then to draw an inference as to his fitting remuneration from the fact that the total number of his opinions amounts to so many units, is a course which would, it is submitted, commend itself as reasonable to no one fully instructed in the circumstances.

4. With regard to the establishment charges of the Advocate-General's Office, it may be observed that the only considerable item is one of Rs. 80 per mensem being the pay of a confidential East-Indian Clerk. The frequency with which apparently confidential papers of Government have recently found their way into the public prints, points to the risk that would be involved in the attempt to save a few hundred rupees a year by substituting for this functionary a clerk on low wages.

5. With regard to the salary of the Government Pleader and Public Prosecutor—it operates like that of the Advocate-General as a general retainer from Government, securing to Government the first claim on all his time, and excluding him from part of the work of the profession. It has long been fixed at the present sum. The Government Pleader advises the Board of Revenue on cases of often great importance, and appears in the High Court in cases in which the Board of Revenue is concerned for an *ad valorem* fee, however small it may be. As Public Prosecutor, the same officer represents the Crown for a small fixed fee on all Criminal Appeals and Criminal Revision Petitions of any considerable importance. The last mentioned department of his work is daily becoming more and more onerous. Not only has the Criminal work of the High Court on its Appellate Side increased enormously in the last few years, but the Government Pleader and Public Prosecutor has been instructed

to appear for the Crown in an increasing proportion of the total number of cases. His retainer by Government accordingly secures year by year for Government more and more of his time, while the retainer has not been proportionately increased. Thus even if it be in contemplation to relieve him of some of his work by transferring to the Advocate-General the duty of advising the Board of Revenue, the reduction of this officer's salary would appear to be at least an untimely economy of questionable justice.

6. The clerical establishment of the Government Pleader and Public Prosecutor has remained the same as it was before the late increase in the number of Criminal Appeals; and it would not be greatly affected by such a transfer of work as that referred to above. The clerical establishment of this office consists of one Native Clerk:—Court copies of Criminal Records are therefore necessarily supplied from the Court in which the Appeal or Petition in question is to be supported or opposed, an arrangement in which no alteration would appear to be feasible.

7. That the salary of the Clerk of the Crown is not excessive must be admitted if it is considered that that functionary should as heretofore be a Barrister, that his office should remain on its present footing, and that his salary should constitute the whole of his remuneration. The utility and importance of this office seem more than once to have been called in question by Government, but invariably upheld by the Chief Justice of Madras. Sir Colley Scotland and Sir Walter Morgan, both maintained strongly the opinion that on the Criminal Side of the High Court a Ministerial officer corresponding to the Registrar on the Civil Side was necessary for the due administration of justice. That the duties of such an officer of the Highest Criminal tribunal,—to which mofussil cases can on cause shown be transferred and from the decisions of which there is no appeal,—are at least as important and difficult as those of the Registrar of the Civil Side of the Court, appears to be a proposition requiring no support; and it would be an anomaly to entrust these duties to any one but a trained lawyer. Leaving out of account the attendance and work of the Clerk of the Crown at Sessions, his functions include the onerous and responsible duty of the preparation of indictments; he is in charge of the records, for the completeness of which he is responsible; he has to satisfy himself as to the solvency, &c., of sureties offered by accused persons admitted to bail, and to perform other such ministerial duties, involving often considerable enquiry and correspondence, which do not admit of being set out in a tabular form and apprised accordingly. And he is in charge of the Jury lists. These duties have sometimes been discharged by lawyers holding also the office of Crown Prosecutor, but an amalgamation of the two offices involved the appointment of a Deputy Clerk of the Crown; and after a long and careful enquiry it was decided in 1873 to put the office of the Clerk of the Crown on its present footing. The establishment charges were then re-arranged on as economical a basis as was considered to be consistent with efficiency; and since that date no circumstances appear to have arisen which would justify any further reduction. On general grounds it appears to be in a high degree desirable that the functions of the Clerk of the Crown should be discharged by a separate officer of Court. Criminal trials must from time to time take place with regard to which Government or important officials will be credited with a keen desire that they should result in a conviction of the accused. The Crown Prosecutor may perhaps also be credited with similar feelings. In such cases, if the result is in fact in accordance with the wish supposed to be entertained in these influential quarters, the risk of disturbing public confidence in the purity of justice will be minimised by leaving such work as the impanelling of the jury in the hands of an officer of Court at once independent of the ordinary administrative service, and unconnected with the cause of the prosecution.

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1017

8. The salary of the Government Solicitor is not supplemented by any further allowance in respect of the cost of "office establishment," which, as is well known, absorbs necessarily a considerable proportion of the gross income of any solicitor with a general conveyancing practice. That the Government Solicitor as such must have at his disposal such an office establishment as is required for a practice of this description, is obvious from the fact that Government (apart from the work of what may be called ordinary administration) is not only itself a great land-owner but also undertakes the direct management of a great and increasing railway system. And if it is suggested that the office establishment required to be maintained for his official work is at times available for the private practice of the Government Solicitor, it must also be remembered that at other times the sudden exigencies of Government work in turn require the whole strength of the office to be devoted to it, including that usually employed on private work. Thus it cannot be supposed that the profits derived from the appointment of the Government Solicitor may be fairly estimated at any sum approaching the full amount of his salary. The actual value to Government of the work done, leaving the expenses incidental to its performance out of sight, can best be estimated by considering its results; and as an element to be included in such a consideration the fact should be remembered that the Government Solicitor is seldom consulted, by Mofussil officials at any rate, at the early stage of a dispute when private individuals would as a rule avail themselves of legal advice. But in spite of this, Government is a proverbially successful litigant. It is obvious from what has been stated above, that the Government Solicitor must be supposed to receive no small measure of the remuneration for his official work in the form of prestige and enhanced reputation. But if (as appears beyond all doubt desirable) Government appoints on a vacancy the local solicitor most eminent for ability and trustworthiness, his prestige and reputation are probably already great, and he gains in this respect only the *cachet* of official approval. Thus if the salary attached to the appointment is reduced, a grave doubt arises as to whether the leading solicitors of Madras will be found willing to accept it. For, the gain in respect of prestige if coupled with a reduced salary, might well appear to him insufficient to induce him to make the considerable sacrifice of paying business which the appointment involves, accept the task of doing an indefinite quantity of Government work, and undergo the trouble of reorganising his office.

9. The High Court of Madras has consisted of a Chief Justice and four Puisne Judges since a short time after its creation. A calculation made by Mr. Justice Innes, on the basis of the statistics of the years 1877 to 1880, displayed the fact that the work of the High Court Judges of Madras exceeded that of the High Court Judges of Calcutta, Bombay, and Allahabad, by 50 per cent., 100 per cent. and 30 per cent. respectively. Since the last mentioned date the total number of suits, petitions, appeals, &c., instituted in the Madras High Court has increased by about 30 per cent.: and the arrears of work (taking cases of all sorts into consideration), which amounted on the 1st January 1881 to 1545 reached on 1st January 1887 the enormous sum of 2314. Starting from the assumption, (which however the above figures show to be untenable,) that the Madras High Court was strong enough to perform its work with due deliberation and efficiency seven years ago, it is abundantly plain that for the public now to require the appointment of one additional Judge is to demand a measure of very scant justice both to itself and to the Judges of its Court of highest jurisdiction. The five Judges of the High Court last year disposed, on an average, of nearly 837 cases each, and in spite of this high rate of work the arrear of that year alone (apart from the accumulation of cases remaining from former years)

amounted to 654, to dispose of which, at the existing rate of work would alone occupy the whole time of an additional Judge for more than $\frac{2}{3}$ of a year. But as has been seen there in fact remained at the end of the year an arrear of 2314 cases, to dispose of which, supposing that figure to be stationary, would occupy the whole time of one Judge for $2\frac{2}{3}$ years. Thus regard being had to the increasing number of suits annually instituted, it is clear that the addition of one Judge, working at the present annual rate would not meet the requirements of the Court. In order to supply a standard of comparison with the present average rate of judicial work, it may be pointed out that in the years included in Mr. Justice Innes' calculation above referred to, the average rate per Judge was less, by more than 137 cases *per annum*. The present average rate is, it is true, exceeded considerably by the average rates attained in 1883 and 1884, which amounted to slightly more than 1,000 cases *per* Judge, but that rate of work is beyond all doubt inconsistent with efficiency of the highest degree, and involves an excessive strain on the Judges. The High Court Bench, with its present numerical strength, cannot justly be called upon for more work than was accomplished last year.

10. The serious effect of the block in the business of the High Court is well illustrated by detailed statistics of its work on the Original Side. In 1881, 411 benches were engaged on 163 days on this side of the Court: the corresponding figures for 1885 were 267 and 177, and for last year 157 and 128. The duration of suits from institution to decree in 1881 amounted to 163 days and 120 days for contested and uncontested suits respectively; and the corresponding figures for 1886 were 299 days and 165 days. The arrears on this side of the Court amounted to 221 for 1881, 226 for 1885 and 301 for last year; and on the 1st of April 1887 the arrears amounted to no less a total than 321. The total number of suits instituted, which the year before had reached the number of 518, only amounted in 1881 to 494, in 1885 to 348 and last year they had further fallen to the total of 292. These figures show clearly that the Presidency Town has in some measure lost confidence in the High Court and has learnt to recognise the fact that litigation in that Court has become and is increasingly becoming a matter of infinite delay and vexation. No doubt Act XV of 1882 served to diminish the number of litigants having a right to look to the High Court for a fair and speedy trial of their causes; but the effect of that Act on the number of suits instituted is scarcely appreciable. The downward tendency of the number of suits instituted had already thoroughly set in,—nor indeed can this be a matter of surprise, seeing that less and less judicial time was being devoted to the litigation of the Presidency Town and that arrears of work were, as it would seem recklessly, allowed to accumulate. Further it will be remembered that litigation begun on the Original Side of the Court is occasionally renewed on the Appellate Side where the average pendency of regular appeals was in 1885 no less than 272 days, and is now, necessarily from the increase in the arrears above noted, very much longer.

11. It becomes obvious from the above facts that if the functions of the High Court are to be discharged in a manner satisfactory both to the public and the Judges themselves, a sixth Judge must be added to the Bench; and it has already been demonstrated that such an addition would not suffice unless the average rate of judicial work were at the same time raised. The expectation that these objects would be attained and the efficiency of the administration of justice kept up the while to its present standard, by an appointment made from among the District Judges appears from the records of judicial work in the Mofussil not likely to be realised. No doubt the District Courts may continue to produce from time to time as heretofore

two Judges worthy from their learning and experience to occupy seats on the High Court Bench. But that a heavier demand cannot wisely be made on them, becomes evident from the consideration, *inter alia*, of the manner in which their work stands the revision of the Appellate Court. In the various regular Civil Appeals from the decrees of the District Court disposed of by the High Court in 1885, only 48 per cent. of the original decrees were allowed to stand. Further, the facts that District Judges have generally only a short and often intermittent experience of judicial work, that apart from such experience they have enjoyed but little legal training, and in particular that few of them have any considerable experience of Mercantile and Maritime cases (such as constituted a large proportion of the work of the High Court on its Original Side when litigation in that Court was a matter of less delay) all point to the same conclusion.

12. The facts stated in the last three paragraphs require no comment. They clearly point to the imperative necessity of some step being taken by Government in the interests of the public to remedy the state of affairs which they disclose as existing in the High Court. They have led your memorialists irresistibly to the conclusion that the High Court Bench must be strengthened by the permanent appointment of at least one additional Judge, especially in order that litigation arising in the Presidency Town should receive the attention, which from its importance it deserves. And your memorialists are strongly of opinion that the interests of the Local Mercantile Community would best be consulted, and the efficiency and expeditiousness of the work of the Court would best be promoted by the appointment of a Judge who should be a professional lawyer of experience in the practice of the profession.

*Signed on behalf of the
Members of the Madras Bar.
Kensworthy Brown.
Secretary.*

3rd August 1887

11/17/87

Judell 3343/87

Wm

[0] CURRENT NO. 3343

Judl. DEPARTMENT.

Current 3343 with S.O. 3348.

Submitted for orders in continuation of the papers, regarding the reduction in the salaries of law officers, which are already in circulation.

22/8

From

Secy. Madras Bar.

No.

Dated 2nd }
Received 6th } Augt. 8/81.
Enclosures 1.

SUBJECT.

Submitting Memorial from the Madras Bar regarding the proposed reductions in the salaries of law officers.

over

Judl. DEPARTMENT.

1078

C.No. 3087. From Crown Prosecutor. 18th July 87.
✓ 2962. " Govt. Pleader. 8th July 87. no. 313.
✓ 3088. " Adv. General. 18th July 87.
✓ 3141. " Govt. Solicitor. 21st July 87. no. 375.
✓ 3121. " High Court. 20th July 87. no. 1872.

From

Dated 188

FOR ORDERS.

I have noted on the Hon. Mr. Duttham's minutes
11/8

The foregoing file of replies to G.O. 16th June 87, No. 1291, is submitted for orders. A précis is put up of the contents of the papers, contrasting the proposals, as to each officer, on which remarks were called for, with the reply of the officer concerned.

~~Since~~ The G.O. was not communicated to the Clerk of the Crown, as that officer is appointed by the Chief Justice, & there is, therefore, no reply from the Clerk of the Crown. As regards this office, however, it will be observed (para. 2 of C. 3121) that the High Court object to the abolition of the app't & suggest that it is doubtful in law whether the Govt. can abolish this office, to which the C.J. has made an appointment under sec. 8 of the Letters Patent of 1865. From the terms of sec. 8, this seems very doubtful indeed, but it would appear that the Govt. can determine the salary payable to the Clerk of the Crown.

As regards the objections of the Crown Prosecutor to undertaking a part of the duties of the Clerk of the Crown, it would be easy to obviate the difficulty mentioned in para. 3 of his letter. That in para. 4 is a mistake, for the part of the Clerk's duties referred to would go to the Dy. Registrar.

As regards Govt. Pleader & Advocate General, it is submitted: - (1) that the grant of separate chambers may be continued. (2) that the practice of furnishing the former officer with private copies of depositions may not be altered.

It never was proposed to alter

Crown Prosecutor.

Reply.

Proposals.

That he should, in addition to the work now performed by him, be required to undertake

(1) a portion of the duties of the office of Clerk of the Crown, viz. the duty of revising indictments &c and

(2) to conduct the prosecution in all cases without exception committed to the Sessions, the rule under which the Cor. Genl. appeared in cases of murder & certain other grave crimes being rescinded.

very respectfully
Crown Prosecutor

This was constantly done by Mr Durrant - as Prisoner.

or make common

Accepts (2) but objects to (1) on the following grounds.

That the work of the Crown Pro. cannot be fairly gauged by the average no. of days each Session may last or by the average no. of cases in which he may have to appear; that time spent out of Court in preparation shd. be added to time occupied in Court & deducted from time available for private practice; that he wd. have no time for settling indictments in cases committed after the commencement of the Ses. as he wd. be occupied all day in Court in the discharge of his duties there; that it is undesirable that the duty of the Clerk of the Crown shd. attend on Judges who preside at Ses. in order to obtain "instructions" shd. be thrown on the Crown Pro. who shd. not even appear to have an undue advantage over the Counsel for the defence.

Govt.

FOR ORDERS.

Proposed reduction in the salaries of Law Officers

In the Advocate Genl's case, it will be remembered that in despatch No. 12 of 1887, the Secretary of State has been informed that this Govt. contemplates reducing his pay to Rs. 1800 p.m.

reprints. noted as errata. by the Hon. Member will be found on a copy of G.O. 16th June 87, No 1291, put up. 9.5

Alp.
2/8.

W.S.

Government Pleader.

Reply.

Proposals.

- (1) That he shd be regarded as the asst. of the Adv. Genl for business purposes & share with him one set of Chambers and one estate.
- (2) That the present practice of furnishing him with copies of criminal records shd be discontinued, that he shd be required to make his own notes from the original records, he being allowed the services of a copyist on Rs 15 p.m.
- (3) That his salary shd be reduced from Rs 500 to Rs 250 p.m.

- (1) States that the objection to the Adv. Genl & the Govt Pleader sharing one set of Chambers rests principally on the inconvenience they will suffer as neither of them will be able to see his clients & attorneys with any degree of privacy.
- (2) Records. - That it is evident in the large majority of cases in which the Govt Pleader appears that he shd have before him when arguing the case the complete records to enable him to check inaccuracies in the records produced by accused parties, & to read the evidence & give any information regarding the case that may be required by the Court. That when there is a mass of work it will be impossible to act upon notes or have the records copied; that in certain murder cases in which he recently appeared in support of the conviction, the records were very voluminous and notes had been of no use; that in one case the printed record consisted of 152 pages representing

I did not propose to give him advice
in a civil case

How are surplus copying fees
credited? 7 10 1

Whole Record printed

I. C. only for prison not left paid
but not in case as comp. with the 200
in case in Rs where legal Pen.

456 = 7
65

C. J. very strict

Only the minor work interferes
I am not in habit of sitting in
can have any idea how things
work here increased. I shall now
make it fair before

- representing about 2 1/2 months
work for one copyist.
- (3) Salary. States that he is bound to be in attendance on the Court if a single criminal case is on the list, and is in consequence obliged frequently to give up private work; that the salary he receives ought to compensate him for such losses; & that owing to the extent to which his work has increased he is practically prevented from taking private work.

Advocate General.

Reply.

Proposals.

- (1) That he should share his Chambers with the Govt Pleader.
- (2) That he be allowed in conjunction with the Govt Pleader an estate of two clerks on salaries amounting to Rs 100 p.m. not including the copyist on Rs 15 to be employed by the Govt Pleader.
- (3) That the rule requiring him to conduct prosecutions before

- (1) Chambers. That the Chambers are not large & that it is impossible to share them with any other member of the Profession; that his private library & office records & books take up much space & are increasing. & that there is no room for the office estate private & office of the Govt Pleader & the Adv. Genl.

22 years been going
for years

before the High Court in
all cases of murder. In
certain other cases of a
grave character be rescinded
and that he appear only
when specially requested
by Govt.

(44) That cases of advice called
for by H^d. of Dept. be transfd.
from the Genl. to the Adv.
Genl. who sh^d. also give
the Genl. his advice in
all difficult cases whenever
applied to.

157 That the Genl Pleads
 sh^d be the Capt of the Adv.
 Genl for moral purpose
 with the

(6) That the pay of the ~~1st~~^{2nd} ~~apt~~^{apt} be reduced to ~~1800~~¹⁸⁰⁰.

(2) Resol. That the allowance of Rs. 115 now received goes to pay a clerk, peon, himrah pullis sweepers & scavengers) plus to meet contingent expenses; that the allowance was originally Rs. 200 p.m. & was sanctioned by the Ct. of Directors in 1827. to defray expenses of the Ad. Genl; Resol.; that on the 1st of being provided with chambers Rs. 85 were deducted, thus reducing the allowance to the present amount; that he has only one clerk on Rs. 80 who thoroughly understands his work & that it wd be a mistake to lose him for an untried & cheaper man; That as confidential communications are sometimes made to the Ad. it is necessary that the clerk shd be one who can be thoroughly trusted.

As regards (3), (4), (5) states that the relief proposed is right in principle but on all in detail, that the addl. duties im-
posed are very considerable that the State of work done given in R.O. 16/6/07 excludes the important elements of time & labor spent before the work; that in addition to

Of course this was not lost sight of, but it was then entered in the 1st.

Dr. Combe rec^d 1500 !!
in Bengal 2000, but admitting
knows with him to his day we work in
local cities
1500 reported to S. of S.

no doubt

a purely temporary duty under-
taken on the part of Wason for the
present.

his being required to write
opinions when called upon
by Govt & Heads of Depts,
he has to advise as to Bills
of the Govt of India sent him
for opinion - Instances the
Bill on the subject of actionable
wrong & states that the
expenditure of time in its personal
and consideration was very
great - States that on owing
to the pressure on his time, he
was obliged to ask the relief
of the duties of Public Prosecutor
and Crown Prosecutor which
he temporarily took up; that
if the proposed changes take
place the duties of the A.G.
will be considerably increased
and if the duties be increased
the time at his disposal for
private practice will be
proportionately decreased.

Salary. States that no pension is attached to the app't; that the holder of it has to trust to his profession for a living; that if the salary is cut down he must take up so much prof^l work as will with his salary prevent his being a loser pecuniarily; that the

This is always the case. If
the refraction is as proposed 3870.
2 or 3 short cases are made
it up. It is only a question of degree

of his time he is compelled to devote to his private practice the less can he devote to his official duties, & that it is undesirable to place any man in such a dilemma. That there are certain cases which the Govt. in consequence of his offl position cannot take up, ^{that he} is practically detained from appearing in some Courts which are open to other members of the Profession, ^{and} that it is undesirable that he should hear in relatively insignificant cases, or at all in right suits without a junior to assist him, & that he is deflected from the effect of the practice is to reduce the no of cases in which he is retained.

Govt.

much work on opposite side

Government Solicitor.

Proposals.
Tally with. ^{probably the whole of his former income} Reply.

1. Advising Govt & H^{rs} of Depts. — 165.
2. As a channel of Com. between H^{rs} & Govt. — 42.
3. Appearance in civil cases. — 15
4. Attending Leg. Councils and advising as to bills — 2
5. Appearing or advising as to civil proceedings. — 14
6. Appearing in Small C. Ct. — 7.
7. Preparing or reviewing pleadings —
8. Preparing or reviewing tender security bonds &c — 89.
9. Recovering sums due to Govt. — 29.
10. Inquiries as to pauperism. — 26.

Remarks of Govt thereon.

- Item (1). May probably be greatly reduced.
- (2) Purely formal.
- (5) & (6). Govt gets fees in case of success.
- 7. Cannot give much trouble.
- 9. Govt has nothing to do.

Proposals.

- (1) That salary be reduced to \$750.
- (2) That chambers be continued to him.
- (3) That H^{rs} of Depts be requested to discontinue unnecessary references to him.

States that Chambers are not provided for him & that he pays a rent of \$50 a month. That Govt are under a misapprehension as regards the extent and nature of his duties.

Item (1) That the figures given for 1885 & that the average for 1886 & first 6 months of 1887 are equal but. That the no of opinions given to officers of Govt who personally see him are not taken into account.

Item (2) - That the remark that this is purely formal is not quite correct, as the papers are gone thro' & the opinions checked & see that the reply has been fully answered.

^{There is nothing to be done} that the opinions are then copied by the office, signed & sent to Govt.

Items 5 & 6. Admits that he gets fees in case of success but states that Courts are not disposed to give costs in favor of Govt; that during 1885 only \$253.80 were

recovered - not even
 more received, and during
 1888 and 1st half of 1887
 nothing at all. That 10 out
 of the 11 cases under item (5)
 referred to Hf: suits which
 were contested to the final
 hearing. i.e. his bill with some been
 several hundreds.

Item (7) That the remark
 "that they 'caut' me. much
 trouble" is evidently a mistake
 as the table shows that there
 were no hearings.

Table
 7 in 11 G.O.
 8 in 11 G.O.

Item (8) That the description
 "Preparing &" is inadequate.
 that it included the pre-
 -paration of 60 conveyances
 or leases which necessitate
 inquiries into title more
 or less complicated. That
 in reference to many other
 documents as indemnity
 bonds, it involved an
 inquiry into the position of
 the parties & the preparation
 of affidavits &c.

out 7.69

'caut' - gives much trouble'
 not really misline > letter (Dand)

yes

Item (9). That if the remark on
 (8) is intended to apply to (9)
 that these "rarely involve
 more than writing a letter
 of demand" it is hardly
 correct as in most cases
 several letters of demand
 have to be written & in very
 many cases the matter is
 one of disputed account
 which requires considerable
 correspondence.

Item (10). That if the remark
 the "Solicitor has nothing
 to do" is intended to apply
 to this item, it is hardly
 correct & details the
 procedure in such suits.

Board 'overlooked' nothing
 is perfectly correct

the same as in 85

States that during the last
 6 months, notwithstanding
 the vacation, there were 79
 cases for opinion, that
 in one case he had a file
 of 270 papers to go through,
 attend on off^{rs} of the Rail
 to finish numerous.

intricate calculations,
that in another case relating
to claims against an estate
he had to investigate the
alleged descent of the claim
from the year 1809; That
during the same period
he had to prepare by con-
veyances, leases, bonds &
involving inquiries into
title, ^{referred to him} attendances at the
office of the H^{on} of the
Officials of the Railway.

States that the Title
in the G.O. does not embrace
anything like all the work
that he has to do; that he
has to call on parties to
comply with their contracts,
to execute documents,
to repair houses leased to
H^{on}, & to do certain acts
required by Statute (see Copy
Act.) - that he has to attend

apt 69 in all 55

recently somewhat
numerous
not included before

not included

part in cases where deposits
made by H^{on} servants
have been attached;
realize H^{on} securities &
pay proceeds into fund or
to parties. Refers to cases
relating to a payment on
H^{on} buildings which in
almost every case are
made the subject of appeal
to the High Court, his cell.
laurels work, such as ^{attending}
the enquiry into the People's
Park Tric in which he has
absent from office for 6
entire days & a broken of
some days without receiving
any extra remuneration
therefor. making enquiry,
at the request of the Job of
Chingfuch, into the alleged
malpractices of certain
parties in connexion with
several H^{on} sent. since
the year 1862 & presenting
under the Company's Act
giving his opinion on

Leg. Bills & Expenses
show it happened that
these matters were not
mentioned in his previous
letter.

Estab. states that
out of the five Law Officers
of the Crown he is the only
one who has not been
advised an Estab. &
that this fact must have
been lost sight of when
considering the proposed
reduction in his pay.
That his Estab. is really
that of the firm of Barclay
& Morgan, that, according
to his calculation, at
least Rs 600 a month of
the cost of that Estab. re-
presents the value of
the work done for Govt.
& that for many years
the Govt. Secy. has been

was not to be compared
referred to him in the
line to the Govt.

The present matter to which I
wish to call attention

F.C. says he gets 600 (50 p.m.)
for Govt. & that his salary
of 1225 is moderate as compared
with other Secys of the Govt. & is large.

Perhaps

121A
paying to the Firm the sum
of Rs 300 a month in
respect of the services of the
clerks belonging to the firm.
As an example of the detail
required for Govt. work,
refers to an opinion of Mr
Barclay which took a
clerk 23 days to copy
& 23 days to enter in the
Govt. Letter Book. He asks
if Govt. to consider how long
it must have taken them
to peruse the papers
& to draft the opinion.
States that his clerks
have been on several
occasions employed
all night long in copying
deeds (as in the case of the
transfer of the Civil S. & L.
to Govt.) without any
expense to Govt. Also the
Firm has to pay for the
extra work. To show
how

have not benefited by the
large extent of the term,
states that during the
hearing of the application
in re Mr. E. Boston and
Mr. E. Sullivan, he was
directed to obtain the short-
hand writer report of the
proceedings. This was done
by employing the 'Tennis' short-
hand reporter at an expense
of \$400. He is confident that
it will be impossible for Gov.
to obtain the services of a
collector of any standing
at a lower salary than
the present one, or to have them
work done more economically
under any other system.
As regards the remarks that
the attention of H. J. of Dept.
will be called to the necessity
of discontinuing unnecessary
references to the Gov. Sec.,
states that his experience

has been that the number of
unnecessary references to him
is ~~exceed~~ very ^{small} indeed,
but that the number of cases
in which no reference at all
was made until a certain
amount of mischief had been
done, ~~is~~ very ^{large} ~~exceed~~ ^{suggest}

has been that the number of
unnecessary references to him
^{is} ~~exceed~~ very ^{small} indeed,
but that the number of cases
in which no reference at all
was made until a certain
amount of mischief had been
done, ~~is~~ very ^{large} ~~exceed~~ ^{suggest}
therefore that Dept. should
be checked in submitting all
matters for the opinion of the G.S.
as soon as ever they are in
any way contentious or in
any case relating to the con-
struction of legal documents.
Admits that a certain
amount of legal business
follows the appointment of Gov. Sec.,
but says that the fact of
his acting for Gov. delays
him from ^{appearing} against Gov.
in cases where the interests
of Gov. may possibly conflict.
For these reasons he states

of the law for
the Gov. Sec.
to be employed
127

his firm were not app.
Solicitors to the Madras
Trust Board. Suggesting
that as Mr. Barclay
who is expected to return
to Madras in the 7th week
of Sept. may be able to know
further cause against the
reduction of pay, the matter
may be allowed to remain
open till then.

The proposal for
reducing the charges
connected with the
Law Officers in Madras
were referred to the Hon.
the Judges of the High Court
with the request that
they send down the facts
with their opinion &
advice on them. A letter
from the Govt of India sub-
sequently received in con-
-sultation with the same

- 125*
- subject was also referred to
them. That letter forwarded
for the views of the Govt.
contains the extracts from
a note by the Finance Com.
with the Govt of India sug-
gesting the reduction of the
salary of the Ad. Genl.
Madras to Rs 1500 p.m.,
(2) and proposing that the
rate of commission now
admissible to the Official
Trustee in the case of Settlements
in the Muzofils shd be
raised by an amendment
of the law, & that the post
(3) of Offl Trustee shd be amal-
-gamated with other cognate
offices as those of Ad. Genl. &
the Receiver of Muzofils.
(4) The Govt of India further
intimated that it has
been

been recommended by the
 Law Council. That in
 future, appointments to
 the post of Law Officers
 to Govt as well as to those
 of Off. Trustee, Off. L.
 Assignee & sh. be made
 for a limited period
 only, say 5 years. Further
 the views of Govt on the
 proposal. They also en- (5)
 -quired whether in the
 opinion of the Hon. the
 Judge of the H.C. ~~at present~~
 the existing arrange-
 ments for the conduct of criminal
 prosecutions in that Court
 on behalf of the Crown
 are satisfactory.

The High Court in their
 reply protest against the
 abolition of the office of Clerk
 of

not at all

of the Court and reminds the
 Govt of their strong objection to
 the measure stated in their
 letter of 3rd March last, No. 572,
 para 7. They state that as
 the Dy. & Asst. Registrars have
 sufficient duties to perform
 they cannot assist to any
 portion of the duties of the Clerk
 of the Court being undertaken
 by either of those officers;
 that the experiment of having
 a portion only of the duties
 of the office in question per-
 formed by the Dy. Reg. Asst.
 was some years ago tried &
 abandoned as it was found
 to result in serious incon-
 -venience to the Court & they
 add that the proposal to
 abolish the office raises the
 question of law whether the
 Govt

York can abolish the Office
to which an officer has been appointed by the C. T. under the Letters Patent.
As regards the division of
work which it is proposed
to make between the Gov. Judge
and the Gov. Pleader, the
Judges have nothing to say,
but the suggestion that those
officers should share the
same chambers is not con-
sidered suitable to the
position of the officers as
such or as counsel employed
by the public. They consider
the proposal to discontinue
the supply of criminal
records to the Gov. Pleader
to be one calculated to
prejudice most seriously
the efficient discharge of
that officer's duties, and
State

127
state that it is essentially
inconvenient in the interests
of justice that in criminal
appeals the Gov. Pleader
should be in a position to consult
the High Court the valuable
assistance which his possession
of records at present enables
him to give; and that if
in any case for want of
such copies the Gov. Pleader
is not properly instructed
it will be the duty of the Court
to postpone such case
until he is able to obtain
copies.

As regards the Office
Trustee, the High Court re-
marks that the need for
altering the present rate
of

of remuneration is not
apparent in Madras.

With Rs. 2000 annually

The existing arrangements
for the conduct of criminal
prosecutions are said to
be satisfactory. The Hon.
the Judges are unable to
subscribe to the argument.

repeatedly

that if Rs 2000 p. m. is
considered a sufficient
salary for the Cor. Judge
in Bengal, Rs 1500 shd
suffice in Madras, remarking
that it has to be remembered
that the Bar at Madras is
small, that the Vakils get
a large percentage of practice
that it is important that
Judges shd have a fixed rate
as in Cor. General.

In reference to the Cor.
Magistrate salary, the High
Court

point out that in para 34 of
the note of the Fin. Com. the
amount of that salary is
described as moderate
as compared with the
salaries in other Presidencies,
and state that, seeing that
no necessity for reduction is
apparent to the Fin. Com.,
it may be doubted whether the
Govt would prep for such
reduction. The suggestion to
give instructions to H.P. of Seps
in view to their reference to the
Govt. Sal. being reduced is
not approved. - In general
the High Court are not in
favor of any reduction in the
salaries of the Law Officers
of the Govt or of limiting
their appointments to ^{any} ~~15~~ years.

Certain part

Law Officer

For order.

133x

GOVERNMENT HOUSE.

I have given these papers all the attention I can: but as the decision in each case depends upon knowledge I do not possess, I can only decide upon the facts stated -

Letter to the Crown -

I think the High Court do not appreciate the proposal as it was made -
The change was not proposed until a portion of the work on the original site was transferred to the Small Law Court. I agree with the

23/8 Rec. 12/8.
R11/2 R16/8

Hutchins minute - but
a further explanation can
be made to the High Court

Crown Prosecutor

I also agree to Mr. Hutchins
minute -

Government Pleader

Knowing how apparently
petty charges respecting
chambers are, to a professional
man, I would leave this
question alone - and
as to pay: I concur with ^{Hutchins} ~~the~~
~~minutes~~ - Explanation
also had better be given

to the High Court as to "Copies" -
135x

Advocate General
Mr. Hutchins' original
proposal I understand to be
accepted -

Government Solicitor

I think I would ^{make} ~~not~~
the pay eleven hundred ^{hundred} pounds of
~~"quite not enough"~~

[Signature]

The Suggestion that appointments
are to be made for five
years, has been negatived

by evening in I am glad to say.

This whole question has been a most troublesome

one, and I feel very much obliged to my worthy colleague for dealing with it -

We cannot expect in a matter of this kind to please the persons interested in the proposed changes -

P

The High Court threw out a doubt whether Govt. have power to abolish an Office in the C.J. have appointed.

When the High Court was first constituted this very point arose in connection with the post of Chief Clerk of the Insolvent Court. The conclusion arrived at by Govt. is stated in G.O. 30 May 63, 20842 - see para 4 of Mr. Pym's Minute & para 3 of the G.O. These proceedings were reported to the Secy of State & approved by his despatch, 31 July 63.

It is true that by a subsequent order the Govt. found that this particular post of Chief Clerk was protected by 11 & 12 Vic. c. 21, § IV, but that does not touch the general question, nor was it communicated to the Secy of State.

And it also seems to me that the powers of Govt. under the Letters Patent are not exhausted when a scale of Offices & ^{salaries} has been once sanctioned, but like the powers of the C.J. himself may be exercised from time to time as occasion may require - § 8 of the L.P.

I may also point out that it was expressly stated in § 17 of Mr. Pym's Minute & § 3 of the latter, 30 April 63, 20668, that the whole arrangement regarding the Clerk of the Crown & Crown Prosecutors

The following papers are submitted, as desired by the Honble Member in his Minute on the proposed changes in the Salaries & duties of the Law Officers of Govt. the papers connected with which are in circulation:

(1) Letters Patent of the High Court in Wier's Digest - (1883) pp 27.

(2) File of papers regarding the orig. establishment fixed for the High Ct. in 1862-63. the then Chief Justice's claim to determine the salary of the establishment, & the decision of the Secy of State thereon. Desp. no 19 of the 31st July 1863.

Dep.
11/8.

The other parts of the papers circulated relating to this post are

G.O. 30 April 63, C.J.'s letter § 7, Pym's Minute § 18, 20 & 21, G.O. § 3.

G.O. 23 May 63, C.J. § 4, Pym's § 5, 6

Note for the Honble Mr. Hutchins

was to be open to revision at any future time in connexion with any rearrangement of the duties & salaries of the post law officers. This is the first time any such revision has been undertaken. Probably this saving clause will cut away the ground for any claim to compensation. I think it will be better to point out these & the other considerations relating to the Clerk of the Crown in his letter to the C.J. & not in the G.O. - & to invite his cooperation for the economical working of the C.J. as far as possible. It must be pointed out that Sir Colley Scotland (27 Nov 62, G.O. 2 Dec 62, 1955) decided to refer to the Clerk of the Crown. In the Office the ministerial duties connected with the Criminal Justice of the C.J. are performed. It may be said to be the Registrar's Office in Criminal matters & our proposal is merely to make it so, excluding ^{all work} which is ^{merely} ministerial. In regard to the orders passed last Council I believe my suggestions as to Chambers were overruled but into the Est. of the Adv. Gen. & Gen. Phadisi accepted. Unfortunately they are interdependent. I think the G.O. reference to Brown who Chambers is. I proposed had better be made, or what I said worked up into the order.

Police but the Est. also remains as they are. I am pretty sure they will ask for an increase instead of proposing a saving!

The Law Officers' papers have been sent to the Hon. Mr. Hutchins with this. They have just come from Mr. W. Martin.

C12/8
22/8

NOTE FOR THE CHIEF SECRETARY.

A draft of the papers relating to the changes in the salaries of the law officers, is submitted for approval.

In one or two points I have had to go beyond the orders, as the final decision was not beyond a doubt - esp. as to

- (1) the Chambers of the Advocate Genl
- (2) the eventual abolition of the post of ~~Q.C.~~ Clerk of the Crown.
- (3) disposal of the Memorial of the Bar.

As the draft will go to the Honble Mr. Hutchins, he will be able to decide whether the orders have been rightly understood.

The savings now to be affected are: —

Adv. Genl. Rs. 4050.

Gov. Pleader Rs. 1800.

Gov. Solicitor. Rs. 1500.

Establishment
of Adv. Genl &
Gov. Pleader } Rs. ?

Records &
copies of } Rs. ?

Total Rs. 7950

Self
22/8.

Are the reductions to take effect immediately?

Mr. Powell as Asst. Gov. Pleader draws Rs. 250 only.

The other money being drawn by Mr. Stephenson.

Note.

Showing the Savings on Salaries & Establishmt. of Law officers proposed to be effected by G.O. 16th June 1887 - No 1291 Jwd^t, as compared with those w^h will be realized under the present Orders of Govt.

Ind^t

Sal^y 350

Sal^y 1100.

Council

Settled in Council - 19th Aug.

Gov^t Pleader Rs. 350.
Adv. Gen. Rs. 1800.
Gov. Sol^r. Rs. 11.00.

Sgd.
22/8.

Name of office	Savings under G.O. 16 th June 87. No 1291. Rs. per annum	Savings under present orders Rs. per annum
Crown Prosecutor	nil	nil
Gov ^t Pleader	4120	nil
Advocate General	4650	4650
Establishmt of Gov ^t Pleader & Adv. Gen.	780	?
Government Sol ^r	5700	nil
Clerk of the Crown	3600	nil* at present later 3600.
Establishmt of Clerk of the Crown	660	nil* at present later 660.
Copies of Records for Gov ^t Pleader.	1120	?
Total immediate saving	20630	?

* Abolition of Clerk of the Crown to be insisted on, as soon as the scheme regarding the orig^l civil jurisdⁿ can be brought into effect.

In a former minute I made certain proposals for the reduction of the cost of our Law Officers. These were accepted provisionally & we have now before us some alternative suggestions by the Finance Committee & the views of the High Court, as well as the arguments contra of the Law Officers themselves. I will take up the several Officers in the same order as before.

Clerk of the Crown: - Para 7 of their former letter which is referred to by the High Court does not at all answer, or even apply to, my proposal to divide his duties. That proposal was contingent on the original work being greatly reduced, when, as I showed in my minute on the High Court, the Deputy & Assistant Registrars will not have arduous work. I was a member of the Court in 1885, when on Mr Jerrard's death the two posts of Crown Prosecutor & Clerk of the Crown were severed & the latter conferred on Mr Justice Kermarck's son: the so called "serious inconvenience" would not apply to the present proposal. It is but natural that the abolition

Agreed - had
with the Advocate
General better
be consulted
on this?

Note.

of the Office & be resisted, but, unless there is something in the legal objection, I have no doubt that it is. He insisted on as soon as the scheme regarding the original civil jurisdiction can be brought into effect. As regards that objection I must see the papers of 1862, when a similar argument was maintained by Sir Colly Scotland but overruled, and also the Letters Patent. These can be sent to me while the Minute is in circulation.

Some trifling objections have been raised by the Crown Prosecutor. (1) Settling indictments is no great matter & very few cases are committed after a summons has commenced. Mr. Brown, large stress on the necessity of the Prosecutor keeping his cases carefully - it can then add but little to his work to receive the Magistrate's indictment. When he has no time for this he cannot have time to prep. in the case, & then, as he himself shows, he can get an adjournment. (2) Mr. Darsant as Crown Prosecutor, at

is Clerk of the Crown, used often to attend on the Judge to obtain instructions or make communications. I agree ~~that this is not desirable~~, but the difficulty is at once removed by making the Registrar, as Clerk of the Crown, the medium of all communications. It cannot be done in Open Court.

Crown Prosecutor:- Both in this capacity as Advocate

General Mr. Brown suggests that his work out of Court has been overlooked. This is not at all the case. We were & are perfectly aware that every practitioner must prepare his cases before he can be in a position to put them before a Court. But if this consideration, & the fact that I was proposing some slight additions to his work, I should probably have thought him over. He accepts, as correct in principle, the proposal that he should prosecute in murder & other cases hitherto reserved for the Advt. Genl. This will add but little to his work, & is of the same character, but increases the Advt. Genl. of a very unengaged duty.

Joint Pleader:- The principle that he should be regarded as an Assistant to the Advt. Genl. for ^{his} professional business has been accepted & many of my remarks here must apply to the Advt. Genl. also.

N.B. The Crown Prosecutor has no establishment of his own. Would he not require a (Chief) of the Establishment of the Clerk of the Crown (in future the Registrar) to be reduced to one clerk? I think not.

Is he inclined not to press any change of Chambers - I suppose the A.G. & the C.P. are not far off each other.

Note it seems that the Advocate General has, in effect, been carrying No 85 in. all along in rent of his Chambers. He was given Chambers - all his days in that Chamber was done & so on. I think of his rent - all on my own. I have not seen the original paper or verified his statement. Yes, let them propose that they will be sufficient.

These mistakes will doubtless be rectified in the G.O. to issue.

My suggestion as to their Chambers has been misunderstood. I meant it was meant supposed that both could occupy one room. The Advocate Genl. has two rooms, and the late A.G. sent one of them to a friend. I cannot understand therefore how it can be "impossible to share them with any other member of the profession". Perhaps Mr. Brown had better be asked by a D.O. note to explain. The second room is allotted to the Joint Pleader & when a new Court is built a similar arrangement should be made.

I also adhere to my opinion that their establishment should be joint. I recognize the expediency of keeping at least one good confidential clerk, but the Joint business before the Advt. Genl. requiring that the Joint confidential cannot possibly occupy all such a clerk's time & it is the economical that he should have charge of the Joint Pleader's confidential work also. If this principle is accepted it might be left to the two Officers in consultation to propose such a joint set as maybe really necessary for the Joint work.

The G.O. was not submitted to me in draft & one or two inaccuracies have crept into it. The only one of importance is that it proposes to transfer 37 cases of 'advise' & 'Pleading' from the Pleader to the Advt. Genl., whereas I had merely remarked that this might be done if on the whole, the former Officer was abolished. My final proposal amounted to no more than this, that in difficult cases it should be recognized as the duty of the Pleader to seek, & the Advt. Genl. to afford advice & assistance. This is even now done to some extent & the principle is accepted. - Another error in

the G.O. relate to the Pleader's remuneration for work up country. He sets 175 Rs a day for civil work, & not only for criminal prosecution.

Now as to his pay. I thought his fixed salary or retaining fee, might be reduced from 500 to 250 Rs. Mr Powell now states that no one, not in the habit of attending the High Court, can have any idea how his work has increased of late years. If he had been in that habit & was well aware of the increase, but it has been in criminal work only & as he receives a special payment for criminal

case, his argument does not hold good that the salary, if fair before, must now be inadequate.

It is at least doubled by the extra fees. But on the other hand the work is much more than doubled

& the criminal business is, as he points out, of a very pressing nature. Bearing this in mind, &

the Finance Committee's remark that even 500 Rs.

does not seem excessive as compared with

Calcutta & Bombay. I do not now reduce

his salary below 350.

Now then are the charges for copies as to Mr. my

proposal appears to have been misapprehended

both by Mr Powell & by the High Court. I do not

last person to ask any advice to undertake to plead

a case without the necessary papers, and I certainly

never thought of guarding myself against the

imputation of wishing to withhold a copy of the

which had been printed! But his time for copies

were increasing at such a rapid rate that some

check seemed necessary & my proposal was simply

to revive the old practice, under which he was allowed

to take notes from the original record before going into

149x30P
Court, and to give him over & above that a special copyright for cases where this could not be managed. Mr Powell says this will not do, and this instance he gives as no application - because the whole record was printed & he wd of course have a copy of all printed matter - it certainly does seem necessary that he should have a tolerably full copy of the record if the judges rely on him to "check inaccuracies" of statement on the other side. But as his copies are made for the benefit of the Court & of the public I think they should be furnished on plain paper & charged in the Court's contingent bill only at the actual cost. At present a vast quantity of stamped papers are used on his behalf & of course a quarter share of the cost goes to "Imperial". I shall be satisfied if the Pleader only asks for copies which seem really necessary & if the Registrar is instructed to furnish them as cheaply as possible, debiting the cost of printed copies to the Court's Printing Fund & that of other copies in his Contingent Bill.

Yell

Advocate General: - Some of my remarks under the

last Pleader refer to the A.G. also. It

only remains to consider if his salary must

still be Rs 2187½. The F. Committee suggest

1500 but they seem to have had no data

beyond the fact that 2000 is considered

sufficient in Bengal. I proposed 1800 & it

has since been reported to the Secy of State as

the probable pay. I have not, as supposed,

adhere to
1880. *qur*

added anything material to his work, but on the contrary I have relieved him of some troublesome serious cases. Nothing in Mr. Brauer's remarks has led me to modify my proposal.

Government Solicitor: - Mr. Morgan, as I expected, has made out a long & plausible case, but the only important fact brought to notice is that the fort solon actually pays his firm P^d 300 out of his own salary for the use of the Estab^t. The Finance Committee say he gets 600 a year for establishment but they appear to have confused him with the fort Pleader.

As Mr. Morgan points out the G.O. misstates the figures, putting my remarks as to (7) (8) & (9) without noticing the alteration of those figures in the previous table to (8) (9) & (10). As to (7) & (8) there are of course exceptional cases which entail trouble, but my remarks are true ~~and~~ generally. As to (2) I also adhere to my former observation. As to (3) - pauper enquiries - I said the solon "does absolutely nothing", not, as in the G.O., that he has nothing to do: and what I said is quite true.

As to his chambers I apprehend that the S^r, charged to him or his firm as rent, represents the accommodation to the firm, but I was not aware that even they paid anything. Since writing my former minutes, too, I have had more practical insight into the work out of Court.

On the whole I think the Solicitor may be left as he was, that there is no reason to discontinue references to him or to be withdrawn *qur*

151x31P
done by our solon & I am bound to confess that it seems to be more, and more valuable, than my experience as a Judge led me to believe. In any case we must add the 300 P^d to the proposed salary, making it 1050. And bearing in mind the two points last mentioned I do not think it should be reduced below 1100. The Finance Committee say that the present pay, 1225, is moderate as compared with other Presidencies, but they add that the work is large, going of course on Mr. Morgan's figures. It is a question whether any reduction should be ordered, but I think 1100 or 1200 w^d be sufficient.

As to the other point, raised by the Finance Committee

qur | There seems to be no ground to raise the rate of commission drawn by the Official Trustee. The question of amalgamating his office with that of Auditor General, or Official Assignee, has not been answered by the H.C. but maybe considered when any vacancy occurs. There is no Official Receiver. The Official Assignee's position maybe greatly altered when the S.C. gets Bankruptcy Jurisdiction.

qur | There is no sufficient reason for limiting the appointments of Law Officers to 5 years.

qur | The existing arrangements as to Crown Prosecutions are perfectly satisfactory.

qur 11/8
J. M. M. L. L.
9 Aug 87

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read again 16th June 1887. N^o. 1291

also
Read the following

From the Govt Pleader. 8th July 1887. N^o. 313.

The Crown Prosecutor. 13th July 1887. N^o.

The Adv. Genl. 18th July 1887. N^o.

The Registrar - H. Ct. 20th July 1887. N^o. 1372.

The Govt Solicitor. 21st July 87. N^o. 375.

K. Brownlow, Secy to the Madras Bar,
3rd August 1887.

The Govt. of India. Home Dept. N^o. 886,
dated 30th May 1887.

Also. Minute by the Honble Mr. Hutchins. 1st August 1887.

Order. 6 Sep/87 N^o. 2032

In their Pros. no. 1291 dated the 16th

June 1887 the Government passed in review

such ^{as} these measures which appeared practicable

for ~~reducing~~ effecting economy in the

charges under the head of law officers in this

Presidency, but before passing final orders

they requested the Honble the Chief Justice and

Judges of the High Court to favour the Govt

with their opinion & advice and also directed

the several officers concerned to show cause

why the arrangements contemplated should

not be introduced. The proposals thus

made arose out of ^{a general} the suggestions of the

Finance Committee last year, & since the

mm
27 and

Pros. in question were passed, the Govt. have
 received the foregoing letter from the Govt. of
 India drawing attention to ~~the same matter~~ ^{the same} ~~matter~~
 detailed
 suggestions of the Finance Committee as
 to the salaries of the Law Officers and as to some
 other points connected with
 the same subject. The replies to G.O. 16:

June 1887 No 1291 have also been received
have been carefully considered by the
Government, who now proceed to pass
final orders on the several points at
issue ~~variation~~.

subject to the approval of the Govt of India & with effect from the date on which such approval may be communicated.

efficient performance of the legal business of the Govt. and with this opinion H.E. the Govt. in Council ^{entirely} concurs ^{in these remarks &} H.E. in Council does not consider ^{a salary of} that Rs. 1500 would be sufficient to ^{ensure} ~~cover~~ the services of a lawyer of such experience & ability, & occupying such a position at the Bar, as it is desirable that the chief law officers of Govt. should possess. But ^{in his opinion} they consider that ~~a~~ ^{the} reduction of the salary to Rs. 1800, as proposed in the Pros. of the 16th June last, will not be open to the objection suggested by the Honble the Judge, ~~as it~~ ^{it} will ~~at the same time~~ ^{a substantial} effect an economy. The Advocate Genl's salary will, accordingly, be fixed in future at Rs. 1800. ~~Also~~ He will be relieved of the duty of conducting the prosecution before the Sessions of the High Court in any criminal cases, except such as may be specially deputed to him by Govt., and ~~and~~ it is not the intention of Govt. to add to his duties by transferring to him the

Cases of advice & pleadings referred to in
para. 4 and 5 of G.O. 16: June 1887 No 1291,

which will remain with the Government

1. Pleader. It will be his duty to give his
advice & assistance in all difficult cases

to the Govt. Pleader, who will be looked

upon as his ^{for personal business} assistant, and they will be it appears desirable that they should have

allowed a joint establishment, ^{consisting} of one
confidential clerk, and such ~~and~~ addi-

tional hands as may be really necessary

for the Government work. The Advocate

Genl. after consultation with the Govt. Pleader
will submit proposals for ^{such an establishment} fixing the

amount. As regards Chambers, the

Government have decided ^{will not insist on any immediate} not to retro-

duce any change, but, ^{the point will be come in mind} in providing

accommodation in the new High Court.

^{if such a building} to be ~~presently~~ built, the question will be
brought ~~in mind~~.

3. The Government Pleader
will be ^{regarded} as already intimated, as the
Assistant of the Advocate General, for
most ^{will} of his business, & share an establish-
ment with that officer, from whom he
will receive advice in difficult cases. The
Government are aware, as pointed out

These cases
added in
connection
with the
Govt. Pleader
in the
High Court
8/10/87

(but it seems very
likely that an increase
in the number of
hands will be required
in the future.)

It was never intended that the two
offices should share a single room
but it seems desirable that their
chambers should be in immediate proximity.

(Mr. Shephard is to be made
Adv. Genl. & not we can
reconsider the date for election)

by Mr. Powell that there has been a great
increase of work of late years and that
some of this work is of a very pressing
nature. But the increase has been in
criminal work only, for which a fee in each
case is paid in addition to the fixed salary,
and after considering the matter carefully,
the Govt. ^{on the occurrence of a vacancy} have decided that the salary of
the office of Govt. Pleader ~~in future~~ shall be
fixed at Rs. 350 per mensem. The
remarks in para. 4 of the G.O. of the 16:
June, regarding the supply of copies to the
Govt. Pleader have given rise to some ^{mis} apprehen-
sion. It ^{was} never been the intention
of Govt. to withhold a copy of papers ^{any} which were
~~really required~~ necessary, much less of such as are
already actually in type. It is undoubtedly
necessary that he should have a tolerably
full copy of the record, & he considers the
proposal that he should take notes of the
original record, assisted ^{by a} copyist, to be
impracticable, it will not be pressed. The
Govt. ^{however} desire that the Govt. Pleader
will be careful only to ask for such copies
as ^{are} really ~~only ask~~ for copies which seem really

necessary, and the Honble the Judges will

be requested to allow their Registrar to

issue the copies on plain paper, debiting

their ^{actual} cost to the Court's Printing Fund &

Contingent Bills, according as they are

printed or not. It is noted that one of the chief reasons why he requires complete

copies is that the Court expects him to check inaccurate quotations made by the other side.

4. In their Pros. No. 1291 of the 16th June

1887, the Govt. intimated the opinion that

the office of Clerk of the Crown might be

abolished. In making that intimation

the Govt. intimated it to be contingent on

the contemplated transfer from the High

Court of a considerable portion of its

original jurisdiction, and the Govt.

will retain their original opinion. At

present, however, there is no further

action to be taken, ~~but~~ ^{relief} ~~and the~~ ^{Court will be separately}

~~addressed on this point.~~ ^{to be afforded}

~~to the original side of the Court must~~

~~first be carried out. It is not necessary,~~

~~therefore, to refer to the objections taken~~

~~by the Crown Prosecutor to the scheme for~~

~~transferring to him a part of the Clerk of~~

~~the Crown's duties, ^{whenever he has time to prepare a case carefully, he will have}~~

~~that he should prosecute in all ^{ordinary} criminal~~

~~cases before the High Court, thus relieving~~

~~the Advocate for appearing in murder & certain~~

~~other cases, and this proposal will be~~

ment, and all such communications with the presiding judge as cannot be made in open Court will be made thro' the Registrar.

The Crown Prosecutor

from the date on which it may be approved by the Govt. of India. The proposed instructions

carried out. In other respects it is not intended to alter his position.

5. In ^{regard} ~~reply~~ to the observations on

the work done by the Govt. Solicitor, Mr.

Morgan has submitted a lengthy reply,

writing that the Govt. have underrated

the amount of work done & the cost to

his Firm at which it is done. Upon

considering this reply, ^{particularly in view of} ~~the Govt. agree that~~

~~in certain respects the work done is more~~

~~more valuable than they previously~~

~~lowered, and the fact brought to notice~~

that the Govt. Solicitor pays his Firm,

Rs. 200 a month for the use of the Establishment

is certainly ~~of weight~~ The Government

have ~~recently~~ decided that the salary

of the Govt. Solr. shall be fixed at Rs. 1100

per mensem, instead of Rs. 750 as before

^{This reduction will take effect} ~~proposed. & after perusing the~~

^{of the Honble the Judges the Govt.} ~~remarks, the instructions to Heads of Dept~~

to abstain from all but unavoidable

references to him will ^{not be issued} ~~be withdrawn.~~

6. Certain further questions, which were

not dealt with in G.O. 16th June 1887 N^o 1291,

were raised ~~and referred~~ in the foregoing letter from the

Govt of India and ^{has been} referred to by the Honble

the Judges of the High Court. The

Government agree with the High Court

that the existing arrangements for the

conduct of criminal prosecutions in the High

Court are ^{entirely} satisfactory and ^{also} that no ground

exists for altering the present rate of remuneration

to the official Trustee, which has

not been suggested to be inefficient. ~~Very~~

~~will be accepted~~ The question

of amalgamating the office of official

Trustee with that of Admⁿ ^{in official arrangements} will be

considered on the occurrence of a vacancy

but in the meantime the ^{work} position of the

~~official assignee~~ may be substantially altered, if

bankruptcy jurisdiction is conferred on the

Presidency S.C. Court. Finally, H.R. in

Council ^{agrees with the High Court in deprecating} is ~~opposed~~ to the suggestion

that future appointments to the posts of law

officers should be made for a limited

period, such as 5 years; ^{he} considers

that no ground for making the change

has been ~~shown~~ ^{shown} that there is no reason

to believe it will produce any valuable

result.

2. A copy of the ~~Proceedings~~ Proceedings will be communicated to the Madras

After the papers of the Govt. are sent to the Secy. to Govt. of India, the Secy. to Govt. of India will be informed of the same.

The Honble the Judges of the High Court of Madras
- the Secy. to Govt. of India 3
- Govt. Solicitor 3
- Mr. Meader 3
- Mr. Public Prosecutor 3
- Mr. Madras Bar 3
- Mr. Acett 6

Depts. to the Secy. to Govt. of India
+ 1291 of 1887. H.R.
Copy of letter to the Secy. to Govt. of India
justified no 2034 -

Bar, with reference to their Petition dated 3rd August 87, and the attention of the Govt. of India will be drawn to the remarks contained in paras. 9 to 12 thereof. ~~Acceptance~~ A report on the measures resolved on will be made to the Govt. of India.

22/8.
Letter N^o 2033 D 6/7/87

To the Secy. to the Govt. of India, Home Dept.

Sir,
29/9/87. I am directed to acknowledge the receipt of your letter no. 886 dated 30th May 87, referring for the consideration of opinion of this Government certain suggestions & recommendations of the Finance Committee on the subject of the law-officers of this Govt. In reply, I am to say that H.R. in Council has had under his consideration for some time the proposed

of effecting an economy in the salaries of law officers, in accordance with a suggestion made to this Govt by the Finance Committee, and I am to transmit copies of the orders which have been passed on this subject as noted in the margin. It will be observed that H.C. in Council, after consulting the Honble the Judges of the High Court, is of opinion that a salary of Rs. 1500 would not be sufficient to secure the service of a lawyer of such standing & attainments as the office of Advocate Genl demands, and has not considered that any occasion at present exists for change in the office or rate of commission of the Official Trustee. But this Govt has resolved that the salary of the Adv. Genl shall be reduced from Rs. 2187 1/2 to Rs. 1800, thus effecting a saving of Rs. 387 1/2 a year, while that of ^{the} Govt Pleader has been reduced by Rs. 150 & that of Govt Solicitor by Rs. 125, making a total immediate saving of Rs. 662 1/2 a year. ⁷⁹⁵⁰ Some further saving will result from amalgamation of the establishments

G.O. 16 June 87 No 1291
 G.O. 6 August 87 No 2032
 14 copies of the letter to the Chief Justice, also 10.7
 10.7/87

163370

of Adv. Genl & Govt Pleader, & eventually for the contemplated abolition of the post of clerk of the Crown & his Establishment. This Govt is not in favour of the proposal that the law officers shall be appd for a limited period only, & considers that no change in the existing arrangements for the conduct of prosecutions in the High Court is called for. In conclusion, I am to invite the attention of the Govt of Madras to the views expressed in paras 9-12 of the Memorial for Members of the Madras Bar recorded in the enclosed Pros, in w^{ch} reference is made to the increasing arrears in the High Court, & to the need for speedy relief being afforded.

Alp
 22/8.

11/1

Tudl

Chicago - the Salaries
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20/9/10 ✓

3/5/11 ✓

27.11.11 ✓

20-9-17 ✓

13-12-17 ✓

25.1.27 ✓

25.4.28 ✓

27.4.28 ✓

3.12.31 ✓

21.2.39 ✓

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[Despatch Abstract]

Law Officers.

Passing orders for reduction

charges under the head of

addressing the Govt. of India