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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. <u>669</u>	Press Mis. <u>Original</u>
Dated <u>10-4</u>	18 <u>91</u> .

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FROM

C. J. LYALL, Esq., C.I.E.,
Secretary to the Government of India.

To

The Chief Secy. to the Govt of Madras

Home Department.
Judicial.

RECEIVED
12 APR 91
GOVERNMENT OF INDIA

SIR,

Calcutta, the 26th March 1891.

WITH reference to the correspondence ending with the telegram from *this Department* No. 1652, dated the 24th November last, regarding the office of Sheriff of Madras and his office establishment, I am directed to say that the difficulties which have been experienced in carrying out the orders contained in Home Department letter No. 1465 dated the 12th September 1888, have induced the Government of India to consider what modification of those orders is possible and whether measures should not be devised for securing the performance of the duties of serving writs and executing decrees of the High Court, which are now carried out on the responsibility of the Sheriff, more in accordance with modern practice, as observed in the mufassal courts, and more economically than at present because more under the control of the Court, while retaining the purely formal duties which appertained to the Sheriff's office.

2. The office of Sheriff is an English institution imported into the Presidency Towns of India, and his functions are of a two-fold character. He has to perform certain merely formal or ornamental duties, such as calling public meetings and attending sessions and other public ceremonies, and he is at the same time the head of the process-serving and execution staff of the High Court. The Government of India have come to the conclusion that the combination of these two classes of duties in the same officer is an unsatisfactory arrangement. As head of the process-serving staff the Sheriff does no work himself, though he undertakes considerable responsibility, at all events in theory. The working head of the process-serving establishment is the Deputy Sheriff, who is not always a man of substance; and from this point of view the Sheriff is a sort of surety for the Deputy's good behaviour, but frequently he requires security or an indemnity bond from the Deputy for his own protection. The system is a survival of times when there was no Procedure Code, and when owing to the complicated and uncertain practice of the Courts it was convenient to suitors to have an officer who would undertake to execute processes and decrees at his own peril. In the opinion of the Government of India it is unsuitable to the altered conditions of the present time, and should now be replaced by a system more in harmony with them.

The theoretical responsibility of the Sheriff is believed to be part of the common law borrowed from England. The Government of India have not learnt that this liability has ever been enforced in practice. From the reports received from Bombay and Madras it is understood that no action to enforce it has been brought within living memory. The Barrister Judges of the High Court of Calcutta reported in 1864 that they were not aware that the Sheriff had ever sustained serious loss; and no information has reached the Government of India of any case of loss since that year. The Judges of the Bombay High Court are

confident that the theoretical liability, which now attaches to the Sheriff would, if the Government were to undertake it, be of no practical importance; and the Government of India are disposed to concur in this opinion. There appears, however, to be no reason why the Government should undertake the liability, except perhaps to the moderate extent mentioned in paragraph 6 of this letter. If the connection of the Sheriff with the service of processes and execution of decrees were abolished, the common law liability would, the Government of India understand, also disappear, and the Government would be no more liable for the nonfeasance or misfeasance of the process-staff, than they are for the conduct of the numerous similar establishments in the mufassal courts.

3. The proposal to sever the connection between the process-staff of the Presidency Towns and the Sheriff, or any other officer who holds office only for a year, is not a new one. As long ago as 1815 the Indian Law Commissioners, with the concurrence of all the Supreme Courts, advised that a permanent officer should be appointed to do the work of supervising the service and execution of processes. In 1852 a draft Bill was prepared, providing among other matters that there should be a permanent Sheriff, and that he should not appoint a Deputy. This Bill was not proceeded with—partly, no doubt, if not entirely, because the Procedure Code (Act VIII of 1859) was then being elaborated, and it was felt that the new practice might necessitate or render desirable a still more radical change. In 1863 the Judges of the Bombay High Court represented that the office of Sheriff was a useless and expensive sinecure, which ought to be abolished, and in 1865 the Government of India suggested to the Secretary of State the appointment of a permanent officer in the place of the Sheriff and the expediency of legislating so as to relieve the Government from liability; the Secretary of State approved the proposal. In 1867 the Government of Bombay addressed the Government of India supporting the views expressed by the High Court in 1863, and advocating legislation, and the Government of India consented to the required legislation being taken in hand. The Local Government then made further proposals regarding the charge of the House of Correction, till then attached to the Shrievalty, and in 1868 the Secretary of State sanctioned these proposals on the understanding that the Shrievalty itself would be abolished without delay. The proposed legislation was, however, abandoned in the next year on the following grounds:—(1) that the Shrievalty was the only office open to non-officials, who might therefore be seriously prejudiced by its abolition; (2) that the emoluments of the office were not much greater than the risks; and (3) that the Government of Bombay had apparently overlooked (they had not really done so) the liability which would be cast on Government if they took upon themselves the Sheriff's responsibility. In 1880 the abolition of the office was again recommended by Sir Richard Garth, then Chief Justice of the Calcutta High Court, among other reasons on account of the inconvenience caused by the Deputy Sheriff being repeatedly changed, and it was suggested that a permanent officer should be appointed under any title that might be considered suitable to carry out all the writs of the High Court and also the processes and execution work of the Presidency Small Cause Court. No action, however, was taken on this suggestion, apparently from an apprehension that the abolition of the office might be unpopular.

4. The Finance Committee's scheme, which next came under consideration, did not meet with objection from any of the Local Governments or High Courts so far as its essential part was concerned, *viz.*, the proposal to make the office of Sheriff an honorary one and that a process-serving establishment should be maintained by Government. The Government of Madras fully accepted the principle that there should be a permanent process-serving staff. The Government of Bombay, though they demurred in 1857 to the Committee's views as to the appropriation of fees, were then and still are in favour of having a permanent staff to serve processes. The objection of the Calcutta High Court to the Finance Committee's proposal that the same officer should do the work of Clerk of the Crown and have charge of the process and execution business was based upon the undesirability of imposing on an officer, who could only spare for it a fraction of his time, the responsibility for

the due service of the processes of the High Court, while the reply of the Government of Bengal was limited to the submission of some remarks by an ex-Sheriff, and the observation that no great financial advantage would result from the scheme proposed by the Committee. In the Committee's proposals contained in the Departmental letter of 12th September 1888 reference was made (1) to the existing law and (2) to certain changes in the law which were expected to reduce the Sheriff's work. The Governor General in Council expressed the opinion that the system under which the Sheriff is indemnified by the Deputy Sheriff and the Deputy Sheriff by the suitor, possessed certain advantages and should be preserved; and the decision of His Excellency in Council was that, while the payment to the Sheriff of a salary should be discontinued, he should be allowed to receive the fees on condition that he provided his own office establishment, and that he should be guaranteed against positive loss by the Government undertaking to recoup to him any amount by which the fees might fall short of the cost of maintaining the necessary establishment. When these orders were issued the Government of India were under the impression that the fees would more than cover the cost of the Sheriff's establishments. It now appears that in Bombay the fees raised to the utmost limit which the High Court is willing to propose will not amount to much more than half what is required; that in Madras the deficit is double the amount of fees, the fees being less than a third of the total sum required; and that in Calcutta also there is a substantial deficiency. The Government of Madras have declared the system adopted in 1883 to be impracticable, the Government of Bombay are pressing for the appointment of a permanent Sheriff, while in Calcutta there have been difficulties owing to the endeavours of the Government of India to reduce certain items of expenditure which a late Sheriff thought should be maintained.

5. The present arrangements are not satisfactory and seem to be to some extent inconsistent. On the one hand it is difficult to see how an unpaid Sheriff can be held responsible unless he is allowed to choose his own Deputy and subordinate staff, and this principle was to some extent recognized in the system sought to be introduced by the orders of September 1883. On the other hand the judicial authorities have consistently urged since 1845 that a permanent process-serving establishment is essential to efficiency, and in the Madras Presidency both the clerks and bailiffs of the Sheriff's establishment have long been treated as Government servants, and are earning pensions, while in the Bombay Presidency the same principle has been extended to the Deputy Sheriff as well as the subordinate staff. The Government of India are in favour of extending the principle followed by the Madras and Bombay Governments to Calcutta.

6. The course which the Government of India are now disposed to adopt is to cancel the arrangement made in September 1883 and to amend the law so as to make the office of Sheriff a purely honorary and ceremonial one and to relieve him of all duties connected with the service of writs and execution of decrees of the High Court.

In regard to the duties connected with the service of writs and execution of decrees of the High Court, the Government of India would be prepared to sanction the appointment of a permanent officer at the head of the process-serving establishment under the designation of High Bailiff, who might be charged with the service and execution of all process issued by all Civil Courts attached. Not only the Head Bailiff, but also every other member of the process-staff should, in the opinion of the Government of India, be required to give reasonable security, and the Government might perhaps accept liability to the extent to which it can protect itself by taking security. It seems possible that the reason why successful actions have not been brought against Sheriffs is that they insist on being indemnified by suitors who are accordingly careful not to run risks, and that the latter will not be so careful unless High Bailiffs

are empowered to require similar indemnity. I am to bring this point to notice in order that it may receive consideration. As regards the process-serving establishment that would actually be required, it is proposed that the High Court should determine its strength from time to time subject to the sanction of the Government. The Government of India would only insist that in the Presidency Towns, as elsewhere, remuneration should be given for all the work connected with the service and execution of processes, and that the system should be made self-supporting.

7. I am now to request that the Government of India may be favoured with an expression of the views of *the Honble the Chief Justice and Judges of the Madras High Court and of H. E. the Privy Council* on the suggestions contained in this letter.

I have the honour to be,

SIR,

Your most obedient Servant,



Secretary to the Government of India.

CURRENT No.

[9] Judicial (1870) DEPARTMENT.

From Govt of India

Home Dept

No. 428

Dated 26th March }
Received 2nd April } 1871

Enclosures 7. 5. c.

SUBJECT.

Requesting to be furnished with an
expression of the views of the Hon:
the Chief Justice and Judges of the
Madras High Court and of H.E. the
Govt in Council on certain suggest-
ions regarding the Office of Sheriff
of Madras and his Office establish-
ment.

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12-12-90: 1995
2-6-90: 929
7-3-90: 425
8-2-90: 212

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Co. 669
order 10th April 91 No. 670
the letter of the Govt of India
will be communicated to the
Honble the Judges of the High
Court with the request that they
will favor Govt with their
views on the subject.

S. L.
8 April 71/100.

To for Govt with C. L. 157/100
into case

15/4

FURTHER PAPER, No. 157/91 Reminder OF 18
465/72

ORDINARY, MS.

Judicial DEPARTMENT.
G.O., DATED 10-4-91
No. 669

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[Despatch Abstract.]

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Judges of the High Court
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