P.W.C. No 7153

Jos 1008 W. 2. 4. 83
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P.W.C. No 7051

(2)

No. 2358 W of 17-9-86

B

Recorded in
Continuation of G.O.
No. 1507 W. dated
15th June 1886.
15. 6. 86.

Jud. No 1507 W. 15. 6. 86

10/9/86

13/9/86

Govt. of {1886} Madras.

JUDICIAL.

13.S.C

11

Issued

Recd. 10-9-86 Encl.

G.O., 26th August 1886, No. 2273.

No 2358 W of 17-9-86

AUGUST.

Pleaders' Fees.

Concurring in the suggestions made by the High Court in their letter regarding the scale of Government — in civil cases; and directing that it be communicated to all District Judges and Collectors for information and guidance.

S. Es ✓
Exr. P.W. Acts ✓
Extr Despd 17.9.86.

2 copies to Body

Orf. 59/9. 23/1 Exc 10/9
C. 11.9.86 R. 15.9.86

17/9 with order

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

10th April 1877, No. 914.

Pleaders' Fees.

Read the following paper:—

No. 66. *From S. H. WYNNE, Esq., Acting Magistrate of Trichinopoly, to the Officiating Chief Secretary to Government, dated 20th March* 1877, *No.* 22.

I have the honor to report, for the information of Government, that, at the sessions held at this station in the month of January last, a case of culpable homicide not amounting to murder and dacoity was tried in which four prisoners were sentenced each to two years' rigorous imprisonment, and eight years' transportation for the first and second offences respectively, and another to two years' imprisonment for having attempted by payment of money to screen the said offenders. The trial occupied two full days. The Public Prosecutor has applied for an enhanced fee in consequence, and the Session Judge has recommended the grant of double fee of Rupees 50 as a special case (*vide* copy of his letter, No. 47, dated 19th February last, which is herewith forwarded).

2. I submit also the Session Judge's calendar which contains the full account of the case, and request that the Government will be pleased to sanction payment of Rupees 50, which appears to me to be a suitable fee.

No. 67. ORDER THEREON, 10th April 1877, No. 914.

The Government authorize the District Magistrate of Trichinopoly to disburse to the Public Prosecutor a special fee of 50 Rupees, in consideration of the heavy work entailed on him in conducting to a successful termination, in the Session Court of the district, an important case of culpable homicide not amounting to murder and dacoity, the trial lasting two days.

2. The rule at present is that the Magistrate may pay the Public Prosecutor a fee of 25 Rupees for each case, but is to apply for special sanction when any higher fee is considered necessary. In modification of this rule, the Government are pleased to invest District Magistrates with general authority, when from the peculiar circumstances or nature of any case, and the trial having necessarily occupied more than one day, a higher fee than 25 Rupees is considered proper, to award such additional amount not exceeding 25 Rupees as the importance of the case seems to call for; the grounds for each such special grant being entered in a statement in the following form, to be submitted quarterly to Government:

G.O., 1st September 1866, No. 1369, para. 14.
„ 8th October 1873, No. 1606.

RETURN of Fees paid to the Public Prosecutor for conducting Criminal Cases, for the Quarter ending _____

Number of Calendar, or Case.	Offence charged, and number of Prisoners.	Amount of Fee paid.	Grounds for enhancing the Fee above the authorized amount of Rs. 25.

(True Extract.)

W. M. SCHARLIEB,
Asst. Secy. to Govt.

To the District Magistrate of Trichinopoly.
,, all District Magistrates.

Exd. A. Grubert.

20/11/86.

Govt. of [1877] Madras.

JUDICIAL.

To The DISTRICT MAGISTRATE, *Trichinopoly*.

&c., &c., &c.

Dated April, 10th.

Issued

Recd.

Exd.

G.O., 10th April 1877, No. 914.

APRIL.
Nos. 66 67.

Pleaders' Fees.—Fixing the maximum fees payable by District Magistrates to the Public Prosecutor for conducting criminal cases.

1

19TH JANUARY 1886, No. 155, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again G.O., dated 17th December 1885, No. 3273, Judicial.

ORDER—dated 19th January 1886, No. 155, Judicial.

In modification of paragraph 3 of G.O., dated 17th December 1884, No. 3273, Judicial, the Governor in Council authorizes all Sessions Judges to sanction a fee not exceeding Rs. 25 in each case. If in any case the Judge considers the payment of a higher fee necessary, he may award such additional amount, not exceeding Rs. 25, as the importance of the case seems to call for. The grounds for each such special grant should be entered in a statement in the following form, which is to be adopted in substitution for the return prescribed in the Government Order above mentioned, and to be submitted quarterly to Government :—

Return of Fees paid to Vakils engaged to defend prisoners in Murder cases for the quarter ending———

Number of Sessions case.	Offence charged.	Number of Prisoners.	Amount of fee.	Grounds for enhancing the fee above Rs. 25.
			RS. A. P.	

(True Extract.)

W. WILSON,
Acting Chief Secretary.

To the Honorable the Judges of the High Court, with C.L.
,, all Sessions Judges.
,, all District Magistrates.
,, the Accountant-General.

Exd. A. Raitt.

Govt of {1886} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

G.O., 19th January 1886, No. 155.

JANUARY.

Fees in Murder Cases.

Authorizing all Sessions Judges to sanction a fee not exceeding Rs. 25 to a vakil in each case of murder, and to award a higher fee not exceeding Rs. 25 in any important case.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following papers :—

G.O., dated 20th April 1885, No. 1022, Judicial.
G.O., dated 28th August 1885, No. 2279, Judicial.

READ—also the following papers :—

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

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

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

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

ENCLOSURES.

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

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

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

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

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

15*th September* 1885.

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

16*th September* 1885.

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

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

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

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

I would recommend that the two appointments be combined.

18*th September* 1885.

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

21*st September* 1885.

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

There was always a difficulty in getting rid of such people and the same difficulty may occur again, if care is not taken to guard against it by some such arrangement as I have suggested.

23*rd September* 1885.

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

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

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

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

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

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

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

ENCLOSURE.

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

* * * * *

III.—Remembrancer of Legal Affairs.

Salary.

20. The salary of the Remembrancer of Legal Affairs is Rs. 2,000 per month, rising by annual increments of Rs. 100 to Rs. 2,500.

Establishment.

He is entitled besides to travelling allowance at the usual rates when required to travel, and may, with the sanction of Government, employ such establishment as he thinks necessary, at a cost not exceeding Rs. 200 per month.*

Duties in respect of litigation in the mofussil.

21. It is the duty of the Remembrancer of Legal Affairs to superintend and advise on the conduct of all litigation arising originally in the mofussil in which the Government or Government officers are concerned or interested, in accordance with the rules prescribed in this behalf.

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

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

Control of Government Pleaders vested in him.

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

Is *ex-officio* Public Prosecutor under the Criminal Procedure Code.

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

May be called on to prosecute by the High Court.

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

To engage special counsel, when necessary, and settle their fees.

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

Procedure when special counsel has to be employed.

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

Duties as Government Adviser.

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

Procedure in respect of reference to him for opinion or advice.

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

Direct references by Government officers to him for opinion or advice not ordinarily permitted.

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

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

Municipalities not ordinarily entitled to his advice.

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

Duties in respect of appeals against acquittals in criminal cases.

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

And in drafting Bill.

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

First drafts how to be treated.

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

Final revision of Bills.

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

Drafting of rules, notifications, &c.

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

Annual report.

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* The following are the rules referred to:—

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

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

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

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

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

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

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

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

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

Government Pleaders and Public Prosecutors.

"Government Pleader" defined.

37. The term "Government Pleader" includes—

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

"Public Prosecutor" defined.

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

Salaries.

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

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

Fees in civil cases.

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

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

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

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

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

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

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

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

Fees in criminal cases to Government Pleader in the High Court.

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

Fees for prosecutions in criminal cases in the mofussil.

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

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

Fees to Government Pleaders in the High Court when employed in the mofussil.

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

Fees to District Government Pleaders when employed away from their head-quarters.

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

Travelling allowance of District Government Pleaders, &c., in certain cases.

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

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

Ordinary duties of Government Pleaders.

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

Retaining and instructing of special counsel for mofussil cases.

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

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

Duties of the Government Pleader in the High Court in criminal cases.

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

Government Pleader in the High Court when bound to appear.

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

He will ordinarily so appear:—

(*a*) in every case submitted to the High Court under section 374 of the Criminal Procedure Code for confirmation; and

(*b*) in every appeal against an acquittal; and

(*c*) in every case submitted to the High Court under section 307 of the Criminal Procedure Code, and in every appeal against a conviction heard by it under section 423 of the said code, if in such case or appeal the accused person (or when there are several accused persons, any one of them) is represented by counsel, whether a barrister or a pleader;

(*d*) in any criminal case in which he may be specially instructed to appear by the Magistrate of a district or by the Remembrancer of Legal Affairs; and

(*e*) in any criminal case in which the High Court or a Division Court desires him to appear or intimates its opinion that he ought to appear.

Duties of District Public Prosecutors in criminal cases.

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

Appointment and remuneration of Special Prosecutors under section 492 of the Criminal Procedure Code.

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

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

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

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

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

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

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

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

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

Duties of Subordinate Government Pleaders.

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

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

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

District Government Pleaders' duties as advisers of Government officers.

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

From the Accountant-General, dated 18th November 1885, No. I.B.E.—200.
From the Accountant-General, dated 26th January 1886.
From the Accountant-General, dated 5th February 1886, No. I.A.C.Z.—18.

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

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

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

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

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

Pleaders in civil cases can be laid down.

G.O., dated 10th April 1877, No. 914.
" " 19th January 1886, No. 155.

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

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

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

(True Extract.)

E. F. WEBSTER,
Chief Secretary.

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

Copy to the Government Pleader and Public Prosecutor, Madras.

APPENDIX.

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

Exd. P. L. Pereira.

Nos 10080, 2. 4. 83

Order thereon No: 1507 Mad 15.6.86.

Recorded

Govt. of {1886} Madras.

JUDICIAL.

Pol 886 / 4612/86

Issued

Recd. Encl.

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

Bro: 1507 Mad 15th June 86.

MAY.

Public Prosecutor and Government Pleader.

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

The Supt Gov
Ex P. W. Mds.

26TH AUGUST 1886, No. 2273, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper:—

From H. T. ROSS, Esq., Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated Madras, 12th August 1886, No. 2320.

Referring to paragraph 4 of G.O., dated 18th May 1886, No. 1309, Judicial, I am directed to state that the Honorable the Judges are unable to suggest any detailed scale of fees for Government Pleaders in civil cases. There appears no reason why pleaders appearing on behalf of Government should get other than the regulation fees prescribed in the case of pleaders for private parties. In cases decided in favor of Government, the full regulation fee might be paid. It will be recoverable in execution, as part of the costs incurred by Government; in cases in which the decision is against Government, a proportion—say, a half or a quarter—might suffice in view of the retaining fee paid. In exceptional cases, higher rates might be allowed on recommendation made by the Collector.

ORDER—dated 26th August 1886, No. 2273, Judicial.

The Government concur in the suggestions made in the foregoing letter, and direct that it be communicated to all District Judges and Collectors for information and guidance. In cases in which the decision is against Government, half-fees will be allowed.

(True Extract.)

Chief Secretary.

To the Registrar of the High Court.
„ the Departments of the Secretariat.
„ all District Judges.
„ all Collectors.
Copy to the Accountant-General.

Exd. A. Raitt.

B. No 1507/W. 15-6-86

No. 2358 W of 17-9-86

B

Recorded in
Continuation of G.O.
No. 1507/W. dated
15th June 1886.
15.6.86.

CP
10/9/86

Govt. of {1886} Madras.

JUDICIAL.

(2) P.W.C. No. 7051

13.9.86

11

Issued

Recd. 10.9.86 Encl.

G.O., 26th August 1886, No. 2273.

No. 2358 W of 17-9-86

AUGUST.

Pleaders' Fees.

Concurring in the suggestions made by the High Court in their letter regarding the scale of Government — in civil cases; and directing that it be communicated to all District Judges and Collectors for information and guidance.

S. Es √
Exr. P.W. Accts √
Extr Despd 17.9.86.

Copy 10/9 Exr 10/9

2 copies to Govt