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.

18-1-94

Govt. of 1877 Madras.

JUDICIAL.

To

THE DISTRICT MAGISTRATE,

Trichinopoly,

&c., &c., &c.

Dated April, 10th.

Issued

Recd.

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.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper:—

From W. LOGAN, Esq., District Magistrate of Malabar, to the Chief Secretary to Government, dated Calicut, 9th March 1885, No. 898.

The Session Judge of South Malabar informs me that the want of a Public Prosecutor is felt in his court, and suggests that he may be appointed as such. I have, therefore, the honor to request that, under section 492 of the Code of Criminal Procedure, Government may be pleased to appoint V. Ramen Menon as the Public Prosecutor of the Sessions Court, South Malabar. He already attends to all Government cases, criminal civil, coming before the Calicut Courts, and is in every way a most suitable person for the post.

2. A copy of the Session Judge's letter is forwarded herewith.

ENCLOSURE.

From H. J. STOKES, Esq., Acting Sessions Judge, South Malabar, to the District Magistrate of Malabar, dated Calicut, 27th February 1885, No. 176.

I have the honor to request that, under section 492 of the Code of Criminal Procedure, you will be good enough to recommend to the Government the appointment of V. Ramen Menon, first-grade pleader, as Public Prosecutor of this court.

2. At present there is no officer in the court who can exercise the power of withdrawal under section 494 of the Code of Criminal Procedure. At the last sessions in two cases this power might have been usefully applied, as it was plain from the first that no conviction could be arrived at on the evidence. But for want of a Public Prosecutor, the cases had to be heard throughout, which involved considerable waste of time.

ORDER—dated 20th April 1885, No. 1022, Judicial.

The Government observe that Pleaders who were also Public Prosecutors, were formerly appointed under section 37 of Madras Regulation XIV of 1816, which was repealed by Act II of 1867, and since that time no appointments of Government Pleaders or Public Prosecutors have been made.

2. In 1875, Government declined to appoint a Public Prosecutor for the Cuddapah district, preferring the disbursement of the usual fee "to be raised on good cause being shown in each case."—G.O., dated 21st May 1875, No. 1198. In 1877, a request was made for a Government Pleader for the same district, but this also Government declined to accede to, and resolved to adhere to the existing practice of allowing the Collector to appoint a Pleader *pro re natâ*.—G.O., dated 11th July 1877, No. 1634. An apparent objection to the present system, brought to notice by the District Magistrate of Chingleput, was disposed of by Government in G.O., dated 30th October 1883, No. 2899, Judicial.

3. It is observed that the practice in Ben gal is to appoint a Government Pleader under the Procedure Code for each Distri Court, and every Government Pleader is *ex-officio* Public Prosecutor.

4. With these remarks the Right H ora ble the Governor in Council resolves to fo rward the papers to the Honorable the J udges of the High Court and the officers noted in the margin, with a request that hey will favor Government with their pinion as to the desirability of appointing Public Prosecutors and the probable elative cost of the proposed and existing practices.

1. J. F. Price, Esq., District Magistrate o Chingleput.
2. C. S. Crole, Esq., District Magistrate Madura.
3. G. McWatters, Esq., District Magistrate of Salem.

(True Ex ract.)

E. F. WEBSTER,
Chief Secretary.

To J. F. Price, Esq., District Magistrate of Chin leput.
" C. S. Crole, Esq., District Magistrate of Mad ra.
" G. McWatters, Esq., District Magistrate of S lem.
Copy to the District Magistrate, Malabar.

LETTER—to the Registrar of the High Co t, Appellate Side, dated Ootacamund, 20th April 1885, N 1023, Judicial.

I am directed to forward the enclose copy of the Proceedings of Government, and to request that you will lay the paper before the Honorable the Judges for favor of compliance with the request contained erein.

E. F. WEBSTER,
Chief Secretary.

Exd. J. Wright.

Govt. of {1885} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

G.O., &c., 20th April 1885, Nos. 1022, 1023.

APRIL.

Public Prosecutors.

Communicating to the Honorable the Judges of the High Court and to Messrs. Price, Crole and McWatters certain papers for report as to the desirability of appointing — in District Courts, and as to the probable relative cost of the proposed and existing arrangements.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers:—

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

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

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

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

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

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

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

5. The Collector should have the nomination.

(Signed) G. McWATTERS,
District Magistrate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The history of the creation and abolition of the office of Government Pleaders, who were also public prosecutors, is briefly told in paragraph 1 of the above Government order. It will be seen that there is a consensus of opinion on the part of Judicial officers consulted in G.O., dated 1st September 1866, No. 1369, which preceded the repeal of Regulation XIV of 1816, and in the papers referred to in paragraph 2 of the Government order under reference, as to the permanent value of the services of the public prosecutor, whatever differences of opinion might exist as regards the other functionary—the Government Pleader. It will be seen that this consideration has materially influenced Government in raising the maximum fee (payable without previous sanction of Government) which was originally Rs. 10 to Rs. 25 * and then to Rs. 50.†

* G.O., dated 1st September 1866, No. 1369.
† „ dated 10th April 1877, No. 914.

3. The public prosecutor has been looked upon as an indispensable factor in the results of criminal trials before the Sessions Court, both before and after Act II of 1867, which repealed section 37 of the Madras Regulation XIV of 1816. One of the main causes that led to the repeal of section 37 of Regulation XIV of 1816, and to the consequent abolition of the appointment of Government Pleader, was that the District Judge had a potential voice in making the appointment; and it was considered anomalous that the District Judge, whose duty it was merely to decide matters brought before him, should have anything to do with the Government representative. With the abolition of the office of Government Pleader under Act II of 1867, the public prosecutor ceased to have any statutory existence, as in the nature of things, the functions of the latter were combined with those of the former, but this state of things could not continue long. With the increase and complexity of work, the status and powers of the public prosecutor became more clearly defined. The power of selection was given to the Collector and Magistrate of the district, subject of course to the sanction of Government. The public prosecutor was allowed‡ to plead in all courts in cases under his charge without any written authority; the power§ of withdrawing from the prosecution of any person in sessions cases was given to him; the conduct‖ of trials before the Courts of Sessions was entrusted to him; and he is now under Act X¶ of 1882 the only person whom the Sessions Court is bound to hear in support of convictions in appeals to the Court of Sessions.

‡ Section 60 of Act X of 1872.
§ Section 61 of do. of do.
‖ Section 235 of do. of do.
„ 270 of do. of 1882.
¶ „ 423 of do. of do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ENCLOSURE.

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

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

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

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

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

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

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

I think the Government ought to appoint Public Prosecutor.

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

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

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

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

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

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

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

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

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

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

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

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

(True Copies.)

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

MADRAS,
18*th July* 1885.

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

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

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

(True Extract.)

E. F. WEBSTER,
Chief Secretary.

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

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

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

Dated 20th April 1885, No. 1022, Judicial.
„ 28th Aug. „ „ 2279 „

E. F. WEBSTER,
Chief Secretary.

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

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

Dated 20th April 1885, No. 1022, Judicial.
„ 28th Aug. „ „ 2279 „

E. F. WEBSTER,
Chief Secretary

Exd. T. O'Connor.

Govt. of {1885} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

G.O., &c., 28th August 1885,
Nos. 2279—2280-A.

AUGUST.

Public Prosecutor.

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

No. 2489 Ct., Judicial.

Transferred to the Public Works Department accordingly.

(By Order.)

OOTACAMUND,
28th June 1888.

(Signed) A. G. CARDEW,
Ag. Under-Secretary.

ORDER—dated 7th July 1888, No. 2050 W., Public Works.

The rule in para. 405 of the Public Works Code refers to civil proceedings only, and not to criminal cases.

2. When a public officer is prosecuted criminally, he must defend himself, and the only question will be whether he should bear the cost personally, or whether Government should bear it. This is a question which can only be decided after the investigation. The officer must, therefore, in all cases apply to the District Magistrate to appoint a vakil, and unless it is obviously a personal matter, or so simple that legal assistance is not necessary, the District Magistrate should comply with the request, subject to future orders as to payment of the fee.

3. As to prosecutions by officers of the department, Executive Engineers will be authorised, at their discretion, to order such to be instituted in very petty cases, or cases of emergency, but no important prosecution should be instituted without the sanction of Government, except in cases of emergency. In cases of doubt the Executive Engineer will do well to consult the District Magistrate, and no vakil can be retained, except through that officer.

4. These orders will be embodied in the Public Works Code.

(True Extract.)

(Signed) J. O. HASTED, Colonel, R.E.,
Secretary to Govt., P.W.D.

To Superintending Engineers.
To the Consulting Architect to Government.
,, Superintending Engineer, Periyár Project.
,, Examiner, Public Works Accounts.
,, Chief Engineer for Irrigation.
,, Consulting Engineer for Railways.
,, Judicial Department.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.

Establishment.

Read—again the following :—

G.O., dated 30th May 1888, No. 1580 W., Public Works.

Read—the following letter from Major A. W. SMART, R.E., Executive Engineer, South Arcot Division, to the Superintending, Engineer, V Circle, dated Cuddalore, 7th March 1888, No. 114 :—

I have the honor to inform you that the Sub-divisional officer, Chidambaram, forwarded, with his letter No. 114, dated 24th ultimo, a report received from Rungasawmi, head lascar, Coleroon Rajahvoikal, complaining of assault by Nadamuni Sreenivasa Iyengar and others of Kangankollai village, Chidambaram taluk. The case is this, that while the head lascar and other lascars tried to take to the pound in the Kondayaruppu village about 150 cattle, which were grazing nanal in the Coleroon padugai in the limit of Kangankollai on the evening of 19th February 1888, the above-mentioned individuals (Nadamuni Sreenivasa Iyengar and others) illegally obstructed the lascars from driving the cattle to the pound, and also assaulted them. Notwithstanding this interference, the head lascar succeeded in pounding 9 cattle as per receipt enclosed. I intended to have prosecuted the offenders before the Magistrate, as there appears to be sufficient ground to do so and also sufficient proof to establish the case; but, in the meantime, the Sub-divisional officer, Chidambaram, intimated in his letter No. 129, dated 28th February 1888, that the head lascar had been summoned to appear before the Sub-Magistrate of Mannárgudi on the 3rd March 1888, on a charge brought against him by Nadamuni Sreenivasa Iyengar for wrongfully impounding cattle, whereupon the Sub-divisional officer was asked to request the Sub-Magistrate to postpone the case till the counter-case can be brought. I therefore request that you will obtain the sanction of Government to the case brought against the head lascar being defended at the public expense, as also to the institution of the counter-case against Nadamuni Sreenivasa Iyengar and others.

No. 717.

Forwarded to the Chief Engineer, Public Works Department, with recommendation that sanction be given under Code para. 405, to the defence of the charges brought by the villagers against the lascar, and to the prosecution of the counter-charge by the lascar against the villagers being conducted at the public expense.

Bangalore,
19th May 1888.

(Signed) H. M. VIBART, Colonel, R.E.,
Superintending Engineer, V Circle.

Order—dated 30th May 1888, No. 1580 W., Public Works.

The defence of the suit brought against head lascar Rungasawmi, and the prosecution of the counter-charge, at the expense of the State, is sanctioned. It does not appear why the papers were delayed by the Superintending Engineer from the 7th March to the 19th May. The result of the cases should be reported.

(Signed) W. L. C. BADDELEY, Captain R.E.,
Under-Secy. to Govt., P.W.D.

Read—also the following paper :—

From H. SEWELL, Esq., District Magistrate, South Arcot, to the Chief Secretary to Government, dated Cuddalore, 4th June 1888, No. 111/88.

I have the honor to report the following case for the orders of Government.

2. On the 22nd February 1888 a complaint was lodged by one Nadamuni Sreenivasa Iyengar before the 2nd-class Magistrate of Mannárgudi, charging one Rangasami Pillai, head lascar of the Lower Coleroon anicut works under the Public Works Department, and another, with illegal seizure of cattle under Section 22, Act I of 1871.

3. The Sub-Magistrate fixed the hearing of the case for the 3rd March and sent out summonses. On that date the Public Works Department Superintendent of the Rajahvoikal and the head lascar (one of the accused) requested the Sub-Magistrate to adjourn the case, as it was intended to bring a counter-complaint against complainant of having resisted the seizure of impounded cattle, and having rescued them while being taken to the pound. It was stated that this matter had been referred to their official superior the Assistant Engineer for orders.

4. The Sub-Magistrate first adjourned the case to the 17th and then to the 24th March 1888, but no complaint was formally laid by the head lascar, and on the matter being brought by the Sub-Magistrate to the notice of the Executive Engineer, through the Assistant Engineer, the former officer requested me in letter No. 246, dated 23rd March 1888, to say whether the case could not be adjourned till the sanction of Government to the institution of the counter-case which had been applied for was received.

5. As the counter-complaint was a simple matter, being an offence under Section 24, Act I of 1871, I asked the Executive Engineer (letter No. 55/88, reference on Engineer received, dated 5th April 1888) why the sanction of Government was required; but as no reply was received till the 26th idem, I reminded him on that date.

6. In his letter No. 383, dated 30th April 1888, the Executive Engineer said that under para. 405 of the Public Works Code, the members of the Public Works Department were prevented from instituting or defending any suits in their official capacity without the formal sanction of Government, and that sanction had, therefore, been applied for.

7. I pointed out to the Executive Engineer, on the 2nd May, that the paragraph of the Public Works Department Code referred to by him related to civil suits and not to criminal proceedings, and asked him whether he had any other objection to the case against the lascar being proceeded with. I again reminded him of the above on the 14th May.

8. The Executive Engineer and Superintending Engineer, whom I also addressed on the subject, are both of opinion that para. 405 of the Public Works Code refers to *criminal* as well as civil proceedings, and inform me that the sanction of Government has been applied for through the Chief Engineer for the institution of a complaint against Sreenivasa Iyengar referred to above, and for the defence of the complaint brought by him, and therefore ask the case to be allowed to stand over till the sanction is received.

9. I am of opinion that para. 405 of the Public Works Code refers only to civil suits. If sanction has to be applied for in every petty criminal case of the kind, great delay in their disposal will necessarily result. I have, therefore, the honor to request the favor of instructions as to whether it is necessary to obtain the previous sanction of Government in such cases.

Referred to the Public Works Department for the favor of remarks.

(By Order,)

(Signed) A. G. CARDEW,
Ag. Under-Secretary.

15th June 1888.

GENERAL.
ESTABLISHMENT.

Government of Madras.

PUBLIC WORKS DEPARTMENT

Recd. } 1888. *Enclosures*
Regd. } *Spare copies*

G.O., 7th July 1888, No. 2050 W.

JULY.

Criminal Suits

Instructions regarding the prosecution and defence of — by officers of the Public Works Department and the modification of Public Works Code para. 405.

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—the following paper:—

From E. B. POWELL, Esq., Acting Government Pleader, to the Chief Secretary to Government, dated Madras, 25th March 1886, No. 99.

I have the honor to bring to the notice of Government that objection has just been raised for the first time that the *Government Pleader* is not the *Public Prosecutor* mentioned in section 526 of the Criminal Procedure Code. The question has arisen with reference to the notice which, the section says, must be served on the *Public Prosecutor*. It has always hitherto been assumed that the *Government Pleader* is the officer referred to, and my learned friend the Advocate-General informs me that he was frequently served with such notices when Government Pleader. A bench of three Judges has, however, now decided that the *Government Pleader* is not the person designated there as the *Public Prosecutor*. This ruling will have very serious results if the same objection is taken when I file an appeal against an acquittal under section 417, because the same words are there used, viz., the *Public Prosecutor*.

2. I would therefore venture to suggest that the *Government Pleader* be appointed at once ex-officio *Public Prosecutor* for the whole Presidency outside the limits of the town of Madras.

3. In Bengal all Government Pleaders were appointed by a notification in the Bengal Gazette (November 21) 1881, page 1046, to be *ex-officio* Public Prosecutors in the districts in which they might for the time being hold the office of Government Pleader.

4. In the mofussil of Madras, I believe, Pleaders are specially appointed *pro hac vice* Public Prosecutors to conduct prosecutions at sessions, and a similar notification was therefore unnecessary in their case.

ORDER—dated 27th March 1886, No. 820, Judicial.

In exercise of the power conferred by section 492 of Act X of 1882 (the Code of Criminal Procedure), His Excellency the Governor in Council hereby appoints the Government Pleader to be *ex-officio* Public Prosecutor throughout the Presidency of Madras, without the limits of the town of Madras.

(True Extract.)

E. F. WEBSTER,
Chief Secretary.

To the Government Pleader.
„ the Registrar, High Court.
„ all District Magistrates.
„ all Session Judges.
„ the Inspector-General of Police.

Exd. A. Raitt.

Govt. of {1886} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

G.O., 27th March 1886, No. 820.

MARCH.

Public Prosecutor.

Appointing the Government Pleader to be *ex-officio* — throughout the Presidency of Madras, without the limits of the town of Madras.

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. 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.*

Establishment.

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.

* 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 or for a specified class of cases in a district or division of a district; and it also includes the Government Pleader in the High Court for the purposes mentioned in rule 47 of these rules, and any person appointed by a District or Sub-divisional Magistrate for the purposes mentioned in rule 50 of these rules.

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	Each Rs. 125 per month.
Kaira, Broach, Ratnágiri, Kánara	Each Rs. 35 per month.
Ahmednagar, 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 $1\frac{1}{2}$ 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. 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.

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

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.)

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	Class 1, Rs. 50 per mensem.
Madura	
Malabar	
Tanjore	
Bellary	
Godávari	
Salem	
North Arcot	Class 2, Rs. 30 per mensem.
South Canara	
Ganjam	
Cuddapah	
South Arcot	
Vizagapatam	
Trichinopoly	
Nellore	
Coimbatore	
Kurnool	Class 3, Rs. 20 per mensem.
Chingleput	
Nílgiris	
Kistna	
Anantapur	

Exd. P. L. Pereira.

15-11-12

Madras 4412

Govt. of {1886} Madras.

JUDICIAL.

No. 1507 W. d/15 June 1886
B

Recorded
Recorded

9/6/86

Issued

Recd. 9/6/86 Encl.

11-6-86

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

B. No. 1507 W. d/15 June 1886

MAY.

Public Prosecutor and Government Pleader.

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

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.

20. The salary of the Remembrancer of Legal Affairs is Rs. 2,000 per month, rising by annual increments of Rs. 100 to Rs. 2,500. He is entitled besides to travelling allowance at the usual rates when required to travel, and may, with the sanction of Government, employ such establishment as he thinks necessary, at a cost not exceeding Rs. 200 per month.*

Salary.

Establishment.

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.

Duties in respect of litigation in the mofussil.

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

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 $1\frac{1}{2}$ annas per mile by railway.

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

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, Kurnool	Class 2, Rs. 30 per mensem.
Chingleput, Nilgiris, Kistna, Anantapur	Class 3, Rs. 20 per mensem.

Exd. P. L. Pereira.

B No 1507 & 915-686

Recorded

D/J.S.2
16.6.86

Govt. of {1886} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

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

MAY.

Public Prosecutor and Government Pleader.

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

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.

20. The salary of the Remembrancer of Legal Affairs is Rs. 2,000 per month, rising by annual increments of Rs. 100 to Rs. 2,500. He is entitled besides to travelling allowance at the usual rates when required to travel, and may, with the sanction of Government, employ such establishment as he thinks necessary, at a cost not exceeding Rs. 200 per month.*

Salary.

Establishment.

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.

Duties in respect of litigation in the mofussil.

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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 or for a specified class of cases in a district or division of a district; and it also includes the Government Pleader in the High Court for the purposes mentioned in rule 47 of these rules, and any person appointed by a District or Sub-divisional Magistrate for the purposes mentioned in rule 50 of these rules.

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	Each Rs. 125 per month.
Kaira, Broach, Ratnágiri, Kánara	Each Rs. 35 per month.
Ahmednagar, 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.

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

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. 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.

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

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.

No. 1507 W 7/15-6-86

Recorded

1887 J.S.S.
11-6-86.

Govt. of {1886} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

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

MAY.

S. E.
Lr. Wacks.

Public Prosecutor and Government Pleader.

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