

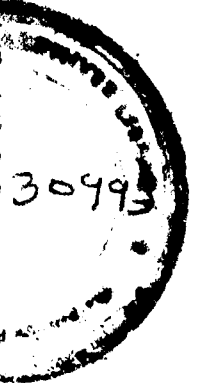
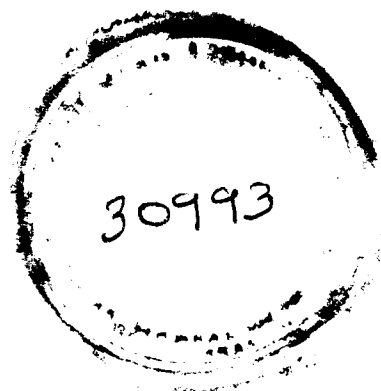
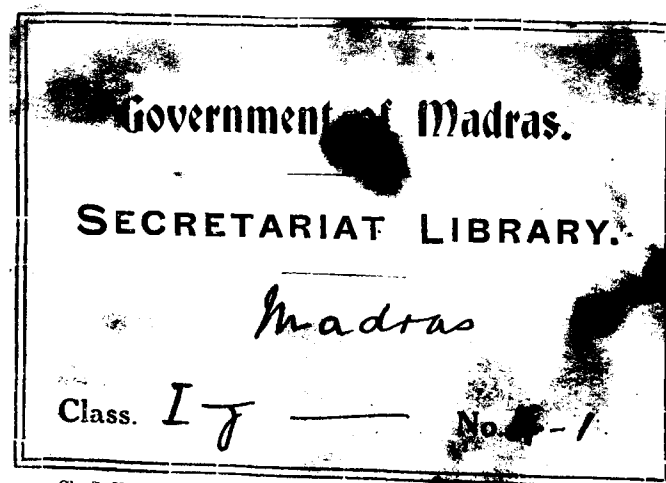
STATEMENT OF THE GOVERNMENT OF MADRAS ON THE REPORT
OF THE COMMITTEE ON THE SEPARATION OF JUDICIAL AND
EXECUTIVE FUNCTIONS.

In G.O. No. 86, Judicial, dated 18th February 1923, the Government appointed **The Resolution.**
a committee presided over by Mr. F. A. Coleridge, I.C.S., to examine and report
on the question of the separation of judicial and executive functions. This action
was taken as the result of a resolution moved by M.R.Ry. C. V. Venkataramana
Ayyangar in the Legislative Council in September 1922, which was accepted by the
Government and which ran as follows:—

“That this Council recommends to the Government that a committee be
appointed to investigate and report on the steps to be taken to separate the judicial
and executive functions now exercised by some of the officers, the cost involved in
taking such steps, the different stages in which the separation may be given effect
to, if it can be completely carried out at once, the administrative changes necessary
for the purpose and any legislation that may have to be undertaken.”

2. The report of the Committee was received at the beginning of May 1923 and **The Committee's Report.**
it has since been under the consideration of the Government. The matter is one of
such importance and the proposals of the Committee involve such radical alterations
in the system of the administration of the Presidency, that, before passing orders on
their report, the Government consider it essential that the whole position should be
laid before the Legislative Council with an expression of their own views in the
matter, so that that body may be in a position to realize exactly what the proposals
amount to and what financial liability they involve before committing themselves to a
final expression of opinion. The report of the Committee therefore with its dissenting
minutes and this statement will be laid on the table of the House and a suitable
opportunity will be taken for a full discussion of the whole subject.

3. Before proceeding further it may be as well to summarize the conclusions **Summary of conclusions.**
of the Committee as contained in the majority report. They have come to the
conclusion that no change in the present system is called for except with regard to
the magistracy from the District Magistrate downwards. As regards these officers
they consider that they should retain the functions which they at present exercise
under Chapters VIII to XII of the Criminal Procedure Code in their capacity as
executive officers responsible for the maintenance of the public peace and safety,
but that they should be deprived of the power of trying cases. They thus propose
the setting up of two parallel sets of magistrates, one performing purely executive
and the other purely judicial functions; and they recommend that, while the control
of the former may remain, as it does at present, with the Collector-District Magis-
trate, the control of the latter shall be vested in the High Court exercising its
functions through the Sessions Judge, who will, until section 17 of the Criminal
Procedure Code can be amended, have to work through an Additional District
Magistrate. They do not however hold out any hope that it will ever be possible to
dispense with this additional officer even if section 17 (5) of the Criminal Procedure
Code, which at present expressly prohibits the Sessions Judge from exercising any
powers of supervision over the magistrates, is eventually repealed. As a practical
method of carrying out this scheme the majority report suggests that there will be
no need greatly to increase the number of officers in any particular district in order
to provide for the two sets of magistrates, but that it should be possible to increase
the size of the jurisdiction of the several officers who at present exercise both
executive and judicial functions and thereby find a certain number of surplus officers
who will perform the duties of stipendiary magistrates employed solely on judicial
work. In this way they consider that, besides the Additional District Magistrate in
each district, at the outside not more than 24 extra officers who will exercise first-
class magisterial powers will be required for the whole Presidency and that possibly
the number may be reduced to 10. As regards the lower grades of magistrates the
majority report recommends that the system of employing honorary agencies, both



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purity of the judicial administration in this Presidency the Government are of the opinion that any further advance in the direction of separating judicial and executive functions is unnecessary and uncalled for.

Previous experiments towards further separation.

10. It may also be mentioned here that the Government have on two occasions in the recent past, partly in deference to public opinion on the subject, as expressed in the Legislative Council, and partly as a means of improving the administration, attempted to make a start in the direction of appointing additional first-class magistrates without revenue functions. In 1919 the Government accepted a resolution recommending that "the system of stationary sub-magistrates might be extended and that special magistrates of the first class might be appointed in as many districts as possible to try and hear criminal cases exclusively." In pursuance of that resolution proposals were placed before the Finance Committee in August 1921 for the appointment of first-class magistrates in Madura and Trichinopoly, but the Committee considered that the matter might be deferred as there was no special urgency for it. In October 1921 the Government sanctioned with effect from 1st April 1922 the appointment of one stipendiary first-class magistrate in each of the districts of Coimbatore and Ramnad, as an experimental measure, to try criminal cases exclusively. The necessary funds were included in the budget for 1922-23, but the Legislative Council resolved to delete the provision. In addition to these schemes the Government themselves outlined proposals for the improvement of the criminal administration combined with a practical separation of executive and judicial functions, which they referred to the District Magistrates of Madura and Tanjore in September 1922, before the resolution was passed which led to the constitution of the Committee whose conclusions are now under consideration. These proposals will be discussed at length later on, but the Government trust they have said enough to show that their administration has always been conducted in deference to all reasonable sentiment in the matter, and they believe that the continuance of the demand for the separation of functions must, in the case of Madras, be largely due to sentiment derived from instances which have occurred in other parts of India for which no parallel can be found in this Presidency.

Other reasons for reform.

11. There are, it is true, other grounds on which the change has been advocated, among the chief of which is the argument that the present system, by which a magistrate with revenue functions to perform is constantly on the move and not always accessible, tends to cause considerable inconvenience both to parties and to the bar. The Government do not deny that there is some weight in this argument; but for the present it is perhaps sufficient to point out that the proposals of the Committee, by which magisterial courts would be placed far further apart than they are at present, would certainly not solve the difficulty, but would on the other hand add appreciably to the hardships and inconveniences of parties and witnesses, though they might possibly tend to the convenience of members of the bar.

Financial aspect.

12. It is perhaps on the financial side that the proposals of the Committee are most open to attack. The minority report signed by Messrs. Moore, Thomas and Blackstone shows clearly that, by the simple expedient of omitting any provision whatever for establishments, travelling allowances, contingencies and batta to witnesses, or for any additional magistrates to perform the judicial work which they propose to take away from deputy tahsildars, and by debiting only half of the cost of the Additional District Magistrates to the scheme for the separation of functions, on the ground that the other half should be debited to the civil courts budget, the Committee have arrived at an estimate of from 2½ to 3¼ lakhs as the total cost of the scheme which is entirely unacceptable. The minority report gives sound reasons for believing that the minimum cost of the scheme as proposed by the majority will be over 11 lakhs. The only conclusion that the Government can draw from these facts is that the Committee have not really applied themselves to an accurate calculation of the cost.

Reasons for doubting minority estimate.

13. As a matter of fact there are ample grounds for believing that even the estimate of the minority report is too low. The minority report adopted the figures of the majority as to the average pay of various posts, but these figures were in many cases incorrect. For instance the Committee put the cost of an establishment

of two clerks, one typist, one attender and two peons at Rs. 175 a month. According to the correct figures of the average pay of these posts on the time-scale the cost works out at Rs. 216½ a month, so that, allowing only one extra magistrate for each district, the cost of their establishment will come to Rs. 62,208 against Rs. 50,400 as estimated in the minority report. Again the minority report follows the majority in assuming that the pay of the new stipendiary first-class magistrates will be Rs. 665 a month. This figure is below the average pay of a deputy collector in the present time-scale, and considerably below that of a sub-judge. Again according to the majority scheme the pay of the Additional District Magistrate will be Rs. 1,250 on an average, on the assumption that half the appointments are to be held by senior civilians verging on District Judges' posts. The average pay of a District Judge is Rs. 2,221, so the pay of these officers would be nearer Rs. 2,000 than Rs. 1,000. Another aspect of the case which the Committee appear to have overlooked entirely is connected with their proposals for the promotion of sub-magistrates to district munsifships after two or three years' service. They consider apparently that a man should start on the present pay of a sub-magistrate, which is Rs. 150-5-200, and that in two or three years he should find a place in the district munsif's grade, which is Rs. 300-600. There are at present 158 sub-magistrates and 164 district munsifs, and how it can be expected that promotion should be so rapid is not explained, nor is any attempt made to count the extra cost of a proposal which would result in the majority of sub-magistrates being on the district munsifs' scale of pay.

14. So far the criticism of the proposals of the majority report has proceeded entirely on the premises adopted by the Committee itself as to the numbers of extra officers required. Their proposals have been referred to the Board of Revenue, which has stated most emphatically its disapproval of the scheme. Its opinion is based partly on the revenue aspect of the question and the effect that the proposals would have on the administration and prospects of the Revenue department—an aspect of the question that does not seem to have occurred to the Committee—and partly on the financial aspect, with regard to which it considers that the estimates in the minority report are very modest and that in actual fact the additional cost will be not less than Rs. 15 lakhs per annum, besides a sum of nearly Rs. 25 lakhs for capital expenditure. The Board points out that the Committee has based all its calculations on an imaginary district containing four divisions, whereas there are two districts in the Presidency with six divisions, five with five, ten with four, six with three and one with only one. It stipulates, not without reason that where there are three divisions in a district at least two divisional officers should be retained, that where there are four or five, three divisional officers should be retained and that four divisional officers will be required where there are six divisions. That is to say the number of additional officers that would be required besides those borrowed from the Revenue department would be 30 as against the 24 of the minority report, and the minimum of 10 and maximum of 24 of the majority report. In other words the imaginary four-division district of the Committee is the smallest possible district for the purposes of the scheme, because the three officers of a three-division district are incapable of being equally divided between judicial and executive work, and no district (except the Nilgiris) could possibly do with less than two first-class magistrates and two divisional officers, which is also the absolute minimum required for the four-division district.

Government's Estimate. Criticisms of Board of Revenue—Magistrates.

15. The Board goes on to point out, again with good reason, that the Revenue Divisional office cannot possibly be expected to surrender any establishment when it is at the same time going to take over the revenue work of an extra number of taluks; that as a matter of fact for administrative reasons few, if any, deputy tahsildars can be abolished; and that the number of magistrates that would be required to take on their judicial work would be at least 90, as against the 60 of the minority report, and the entire absence of any provision under this heading in the majority report. It is also confident that no establishment from existing deputy tahsildars' offices could be spared for these new officers and that extra establishment and contingencies under this head would come to considerably over one lakh and the pay of the new officers themselves to over two lakhs. It also considers that the

Revenue Officers.

provision for travelling allowance allowed by the minority report should be doubled; and such a conclusion appears to be irresistible when the number of new officers and the greatly increased areas over which they will preside is taken into account.

Cost of buildings.

16. Finally the Board has dealt at some length with the question of new buildings. The majority report considers that little, if any, provision will be required under this head on the ground that the existing buildings will be available, when the number of officers in each branch of the service is halved. The only extra buildings required in their opinion will be for the accommodation of the Additional District Magistrates in the District Court buildings, and the extra outlay on these additions they estimate at about one lakh for the whole Presidency. The Board points out that the proposals of the Committee under this head proceed on the assumption (which, as shown above, is incorrect) that the mathematical halving of the number of judicial and executive officers in each district is possible. It considers that at least one new first-class magistrate's court in each district would be required, the cost of which is estimated at half a lakh; and it thinks it probable that this provision would have to be increased owing to the absolute necessity, when the size of divisions is increased, of having the court situated in the most central position. It also points out that the additional sub-magistrates, who would take over the judicial work of deputy tahsildars, would require new buildings; and its considered opinion is that at least Rs. 25,00,000 capital expenditure would eventually be required if the proposals of the majority were carried out.

Conclusion.

17. The Government consider that enough has now been said to prove that the Committee's estimate of the cost of their scheme cannot possibly be accepted and that any attempt to put their proposals into practice would involve a very serious increase in both recurring and capital expenditure. It is hardly necessary for them to point out that their finances at the moment are not in a position to meet the bill without a very considerable increase in taxation; and they would earnestly invite the members of the Council, as the elected representatives of the people, to bestow their most careful consideration on this aspect of the question before giving their vote in favour of imposing additional burdens on the taxpayer. The Government would only add that they can assure the Council that they have investigated the financial aspect of the case with considerable care. They are by no means anxious to over-estimate the difficulties and they believe that the considerations that they have put forward above are based on facts that cannot be denied. They have only one further comment to make on this aspect of the problem; and that is that in their opinion the Committee erred in working out what can at best be regarded as only a paper scheme. It is only when the actual conditions of a particular district come to be considered that anything approaching an accurate estimate of the cost of such proposals can be arrived at; and in making their own proposals this is the procedure that they themselves propose to adopt.

Administrative aspect.

18. The attitude of the Government towards the proposals of the Committee on the administrative side has already been indicated in what has gone before, but may be recapitulated as follows. They consider that the majority scheme has been framed without any consideration of the needs of the revenue administration in the first place, and, in the second place, without paying sufficient attention to the all important duty of making adequate provision for the peace and safety of the country.

Need for strong Executive.

19. In the words of Lord Chancellor Bacon, 300 years ago, "Judges ought above all to remember the conclusion of the Roman twelve tables. 'The safety of the people is the highest law.'" The Government hold, and they are confident that the large majority of the public will agree with them, that the first necessity is to give the head of the district ample powers to provide for the peace and safety of his charge, and quite apart from the question whether the District Magistrate now derives his influence and authority from the magisterial powers he possesses, it cannot be gainsaid that the majority proposals would reduce that influence and authority, and would moreover, leave the District Magistrate with actually a smaller number of executive officers to assist him in dealing with a serious outbreak of disorder than he has at his disposal at present. From this point of view therefore the Government would be most reluctant to accept the proposals of the majority report, and their

Effect on Revenue administration.

reluctance is increased when they come to visualize the position of their officers on the Revenue side and of the people themselves under the Committee's scheme. Not only would it abolish with a stroke of the pen some 50 per cent of the higher posts in the Revenue department, for which large numbers of young and able graduates are at present recruited, and thus materially affect their prospects and the prospects of securing suitable men in future, and probably necessitate the raising of the pay of the younger men in order to fill the ranks at all, but, in the words of the Board of Revenue, "the increase in the size of divisions will mean less local inspection, greater delay in carrying out such local inspection as is done and a consequent deterioration in the work of the Revenue department in the districts." The Board goes on to point out that now that the Revenue Divisional Officer has to control on an average 12 revenue inspectors, it is all he can do to see something of the work of each in the course of a year, and if the size of his charge were to be doubled the amount of supervision would be halved. It is fallacious to suppose that the removal of magisterial work would proportionately increase the amount of out-door supervision; the Revenue Divisional Officer necessarily does his out-door work in the mornings and evenings and devotes the heat of the day to files and cases; and the removal of the cases would not mean more time for field work. The Government agree that from the practical point of view the truth of these arguments cannot be denied; and under a system which depends so largely on the adequate supervision of a large number of subordinates, they cannot but view the prospects of removing or lessening the amount of that supervision with the gravest apprehension both as to the efficiency of the administration and the condition of the people themselves, who would undoubtedly be exposed to a far greater extent than they are at present to the exactions of petty officials.

20. Then again it is impossible to see how the annual jamabandi could be performed by the Revenue Divisional Officer in double the number of taluks in which he has to do it at present, unless the present system were radically altered.

21. Finally there can be no doubt whatever that the increase in the size of charges and the extra distance which petitioners and ryots would have to travel to the headquarters of the division would produce a storm of protest from the people themselves which would not be entirely without justification. Recent experiments in this direction which the Government have themselves initiated in the interests of economy have demonstrated the truth of this assertion beyond the possibility of doubt. The great mass of the people would be slow to realize that the change was intended for their benefit and it would be an almost hopeless task to try to convince them that it was better to separate judicial and executive functions, even at the cost of reducing the number of magistrates and revenue officers and placing them farther apart, than to continue the present system with its alleged liability to abuses.

22. The Government must therefore make it clear that both on administrative grounds as well as in the interests of the people themselves they cannot accept a proposal which would result in any wholesale increase in the size of the charges of their magistrates and revenue officers. A possible alternative would be to adopt the Committee's proposal without increasing the size of divisions or magistrates' charges, but this would entail doubling the number of officers in every district and the expense would be so enormous as to put the possibility beyond the range of practical politics at once. Another alternative which might be suggested would be to abolish divisional officers altogether and administer a district entirely by means of the Collector and his tahsildars; but, apart from the practical difficulties of training men under such a system to be fit for the post of Collector, the Government are definitely of the opinion that the results of abolishing divisional officers would be disastrous and would destroy those intimate personal relations between the district officer and the people which are, perhaps, the most important feature of the present administration.

23. It now remains to describe briefly the steps which the Government themselves are prepared to take in the direction of reform. It has already been mentioned in paragraph 10 above that they made certain tentative proposals in the matter in a memorandum, which was sent to the District Magistrates of Madura and Tanjore in September 1922, and which is printed as the sub-enclosure to Appendix I of the

Government's proposals.

Committee's report. The main objects of these proposals were in the first place to improve the standard of efficiency of their paid magistrates by abolishing as far as possible the sub-magistrate and putting in his place a more highly-paid officer with first-class powers, and in the second place to make an extended use of honorary agencies wherever possible and to redistribute the work of the revenue officers who would be relieved of the duty of trying cases.

Madura-
Tanjore
Scheme.

24. The scheme was described in the opening words of the memorandum as a potential measure of economy as well as a means of improving and accelerating the administration of justice. The detailed proposals on these lines which have been received from the District Magistrates of Madura and Tanjore show that the Government were over-optimistic as to the possibilities of reducing the cost of the administration in this way and also as to the amount of reduction that could be effected in the number of revenue officers in a district. It has indeed become obvious from the practical application of their ideas to the actual conditions of these two districts that any real improvement in the administration of justice cannot be combined with economy and any scheme for reform must cost a certain amount of money. What that amount will be must again depend on the individual characteristics of different districts, on the success of the village panchayat court scheme, which is at present in an experimental stage, and on the number of persons in a district who are really suitable for appointment as honorary or bench magistrates. The districts of Madura and Tanjore were selected for the experiment on the ground that they probably contained more retired officials and non-officials of the type required than any other. The report of the District Magistrate of Madura shows, however, that the actual number of suitable persons in his district is comparatively small and the majority of those that are suitable live in Madura itself. It is quite certain that in many other districts the numbers available would be very much smaller and the Government are confident that nobody will dispute the axiom that it is no use constituting courts and benches that will not command the confidence of the public. For these reasons alone the Government doubt whether their scheme is capable of universal application throughout the Presidency. At the same time they are convinced that if reforms are to be carried out, they must follow the general lines mentioned above.

Weak point of
present system.
The Sub-magis-
trate.

25. There is no doubt to their mind that the weakest point in the present system is the sub-magistrate, who is ordinarily recruited from the clerical establishment, though of recent years a certain number have been recruited direct. There has been considerably less criticism of these officers lately than there was some years ago, and it will probably be agreed that there has been a considerable improvement both in their ability and honesty. On the other hand unnecessary delays in the disposal of cases are still only too common; the increase both in the numbers and ability of the members of the bar makes it more than ever necessary to have sensible and experienced officers on the bench; and many of the existing sub-magistrates do not carry sufficient authority to control their courts and the disposal of business in the way that it should be done.

Replacement by
First-Class
Magistrates.
Conditions
under which
possible.

26. It would therefore be an undoubted improvement to have more of the work done by experienced first-class magistrates, if such a step were financially possible. It would, however, for the reasons given above in discussing the proposals of the Committee, be a very retrograde step to reduce the number of centres at which complaints could be presented; and the net result of these considerations is that reform will only be possible where a sufficient number of sub-magistrates can be abolished to provide funds for the pay of a somewhat smaller number of first-class magistrates, and where the less important work now done by sub-magistrates can be entrusted to unpaid agencies. Where a combination of these conditions can be secured the Government are prepared to introduce their scheme experimentally; and they believe that there are solid grounds for holding that it will result in a distinct improvement in the administration of justice without adding materially to the burden of the taxpayer. Where a sufficient number of unpaid agencies were not available it would no doubt be possible to provide a certain number of stipendiary first-class magistrates without at the same time abolishing a corresponding number of sub-magistrates, much on the same lines as the Coimbatore-Ramnad proposals referred to in paragraph 10 above. Such a procedure would be expensive; and the

Government would not themselves recommend it. They would, however, welcome an expression of the opinion of the Council on the subject; and in any case the cost would probably not be so great as that involved in the Committee's scheme.

27. If the two schemes are compared it will be found that the main difference between them is that the Government scheme omits the provision for the extra Additional District Magistrate in each district which is an essential feature of the Committee's proposals. That is to say that the Government scheme retains in the hands of the head of the district control over the subordinate magistracy as well as over the subordinate revenue officials, whereas the Committee's scheme attempts to transfer the control of the magistracy to another officer. For the reasons given above the Government consider that the retention of this control is essential, but in all other respects their scheme does give practical effect to the separation of executive and judicial functions which is the object aimed at by the Committee. The result of it will be that practically every criminal case will be tried by an officer who has no executive functions to perform. The District Magistrate will, as he does now in practice, try practically no cases himself; and his duties will eventually be confined to checking delays and keeping magistrates up to the mark. That such a measure of control is effective and salutary is obvious when one compares the administration of civil justice with that of criminal justice, and the Government are convinced that the transference of control to judicial officers would not in any way improve matters, but would on the other hand tend to make them worse. They would also point out that even as a matter of theory it is very doubtful whether the transfer of such administrative functions to judicial officers is not positively opposed to the principle of the separation of judicial and executive functions, according to which the sole duty of the judicial officer should be to hear evidence and decide cases.

Difference
between
Committee's
and
Government's
proposals.
Control.

28. Turning now to the details of the proposals submitted by the District Magistrates of Madura and Tanjore, the Government consider that they cannot do better than attach to this statement the report of the former, Mr. Hall, I.C.S. Mr. Gharpurey in Tanjore has not treated the subject in the same detail as Mr. Hall, though his conclusions are of interest, but Mr. Hall has dealt with the problem in such a sympathetic and practical spirit that the Government consider that it would be an advantage if all members of the Legislative Council made a careful study of his report. It will be seen that Mr. Hall himself had considerable hesitation in recommending that effect should be given to his proposals, and that his report is based on an optimism which is not apparently shared by non-official opinion generally in the Madura district. The net result of his proposals is to abolish 8 sub-magistrates and 1 deputy tahsildar, to appoint in their place 5 stipendiary first-class magistrates who would deal with all the more important criminal cases in the district and to leave the disposal of the remainder to benches and village panchayat courts. Madura is a district which contains four divisions and may therefore be taken to represent the typical district of the Committee's report; but whereas according to the Committee's proposals such a district should be capable of being administered by two Revenue Divisional Officers and two or three first-class magistrates, Mr. Hall shows clearly that he cannot do with less than three Revenue Divisional Officers and five magistrates with first-class powers. On the financial side Mr. Hall's calculations need some revision because he has not taken the correct figures of the average cost of certain posts. Thus for instance he has taken the average pay of a deputy collector to be Rs. 450 whereas it should be Rs. 675; he has also slightly underestimated the average pay of sub-magistrates and clerks, with the net result that the slight margin of saving arrived at in paragraph 13 of his report should be converted into an extra expenditure of about Rs. 984. His calculations too proceed upon the assumption that all the new stipendiary magistrates will be on deputy collectors' pay—a point which the Government regard as doubtful.

Madura
proposals
analysed.

29. Mr. Gharpurey's proposals involve the abolition of 2 Revenue Divisional Officers, 10 sub-magistrates and 6 deputy tahsildars (though some of the latter officers would probably have to be retained as assistant tahsildars), and the creation of 11 stipendiary first-class magistrates. Tanjore is a district with six divisions and according to the proposals of the Committee it should be capable of being administered by three Revenue Divisional Officers and three or four first-class magistrates.

Tanjore
proposals.
pre-

The difference in the theoretical and practical requirements of these districts provides a good illustration of the danger of applying a paper scheme, such as that of the Committee, to the Presidency as a whole and of basing on it any estimate of the total cost of the proposals.

Criticisms anticipated.

30. There is one aspect of the Government case which must be dealt with before concluding. It may be said that their scheme is open to the same criticism as that which they have themselves levelled against the Committee's scheme, namely, that it entails a reduction in the numbers of revenue officers and an increase in the size of their charges, and, perhaps to a less extent, a similar reduction in the number of magistrates and an increase in the size of their jurisdiction, which will reduce the prospects of recruits in the Revenue department and impose hardships on parties and witnesses and on petitioners who have to attend criminal or revenue courts. The Government must admit that there is some truth in the criticism and that at the time when they issued the memorandum to the District Magistrates of Madura and Tanjore they had not fully considered the results of increasing the size of charges. At the same time they would point out that their proposals are nothing like so sweeping as those of the Committee; and though it might be quite out of the question to halve the existing number of officers, a certain measure of reduction based on the practical needs of each district might be feasible and must be faced if the reform is to be financially possible at all. Their proposals also do not at a stroke of the pen abolish some 50 per cent of the superior posts in the Revenue department; and if it is found in practice that the small measure of reduction that their scheme entails does affect recruitment to that department they can only say that they will be prepared to consider such remedies as may be necessary when the time comes. They would also add in this connexion that they would amplify Mr. Hall's proposals by allowing Revenue Divisional Officers to retain their magisterial powers to the extent of entertaining complaints as well as disposing of cases under the security sections of the Criminal Procedure Code. The latter powers are retained by them under the Committee's scheme and the recent amendment of the Criminal Procedure Code, which provides that appeals from orders in security cases should lie to the Sessions Judge, should remove all grounds for complaint under this head. The retention of the power to record complaints would enable complainants to approach these officers in the course of their tours, and the normal procedure would be for them to pass on the complaint either to a first-class magistrate or to a bench for actual trial, if they considered that further action was necessary. The stipendiary magistrates and bench courts would be stationary and it is inevitable that the extra distances to be travelled to the courts would mean increased charges under travelling allowance for the police and batta to parties and witnesses, and also a certain amount of inconvenience to litigants themselves. It is also possible that some extra buildings would be required, for which Mr. Hall has not made provision, in order to situate the courts as centrally as possible. The Government, however, consider that such extra expenditure must be faced and that all possible steps should be taken to reduce the inconvenience to the public to the minimum.

Alternative Government proposal.

31. As a result of all these considerations the Government are inclined to put forward an alternative to the scheme as propounded by Mr. Hall, which, while retaining the essential features of their original proposals, will to their mind be more workable in practice. Mr. Hall's scheme is applied to the district as a whole, including outlying and thinly populated parts of it, where it will obviously be a matter of considerable difficulty to depend on honorary agencies. Mr. Hall has recognized this difficulty himself and it has also been noticed by the Committee in paragraph 16 of their report. Mr. Venkataramana Ayyangar, in his minute attached to the report, has even gone so far as to refer, with apparent approval, to the circumstances of an out-of-the-way taluk like Kollegal, where the functions of civil judge, criminal magistrate and revenue officer are combined with success in the person of the Deputy Collector. The alternative would be to replace sub-magistrates by benches and first-class magistrates only in large towns and thickly-populated areas where there is a large amount of petty crime and where there are also, generally speaking, a considerable number of persons available for appointment as honorary magistrates. In such areas it might be possible to reproduce arrangements,

such as are understood to be in force in certain other provinces in India and which follow the procedure in the Presidency town, under which one central agency would receive police cases and complaints, deal with them in their initial stages and then distribute them over a variety of paid and unpaid magistrates for trial, in such a way as to secure the most speedy disposal with a minimum of inconvenience to the parties. If this alternative were approved, each District Magistrate would be required to keep lists of persons suitable for appointment as honorary magistrates in the first, second or third class. These lists might, in the opinion of the Government, include not only retired officials, but also a number of leading zamindars, retired vakils, merchants and others, to whom it should be possible to assign this class of work. The District Magistrate would then from time to time submit proposals for the introduction of the new methods of magisterial control in suitable areas in his district, together with suggestions for the consequent revision of the existing revenue administration.

32. There are at present 14 towns in the Presidency which have a population of over 50,000. Only five districts as a whole have a population of over 500 per square mile, while six more have a population of over 400 per square mile; but there are thirty-three taluks which by themselves have populations of over 600 per square mile—including eight in Tanjore, five in Malabar, four in Gōdāvari, three in Vizagapatam and South Arcot, two in Kistna and Tinnevely, and one each in the districts of Guntūr, Chingleput, North Arcot, Trichinopoly, Madura and South Kanara. Of these thirty-three taluks the following have a population of over 800 per square mile:—Ramachandrapuram (Gōdāvari), Saidapet (Chingleput), Kumbakōnam, Mayavaram and Negapatam (Tanjore), Trichinopoly, Madura, and Cochin and Ponnani (Malabar). Any or all of these towns or taluks might be suitable for the introduction of the new arrangements.

Statistics of density of population.

33. The Government have now covered the whole ground and they trust that their conclusions will receive the same careful consideration at the hands of the members of the Legislative Council as they have devoted to them themselves. These conclusions may be recapitulated as follows. They have given their reasons for holding that the scheme propounded in the Committee's majority report is impossible on financial grounds, impracticable on administrative grounds and unnecessary on general grounds. On the other hand they have propounded a scheme of their own in which they have frankly discussed what they themselves regard as the weak points in their magisterial system and which they claim provides the most hopeful practical remedy at the smallest possible cost. They are prepared to introduce this scheme immediately into the district of Madura, where Mr. Hall can be directed to initiate it, and if the experiment proves successful, they are ready to extend it to other districts which may be found suitable. As an alternative they are prepared to call upon all District Magistrates to submit proposals on the lines mentioned in paragraph 31 for the gradual introduction of the revised arrangements in suitable areas throughout the Presidency.

Conclusion.

ANNEXURE.

Letter from J. F. HALL, Esq., O.B.E., I.C.S., District Magistrate of Madura, to the Secretary to Government, Judicial Department, Madras, through the Secretary to the Commissioners of Land Revenue and Settlement, Madras, R. Dis. No. 11343-22-C/1, dated 15th February 1923.

[Reference.—Magisterial work—Madura district—Second- and third-class Magistrates—Replacement of—by Benches of Magistrates and Stipendiary First-class Magistrates—Government Memorandum No. 4369-1, dated 6th September 1922.]

I have been some considerable time in replying to the Government Memorandum in question. The change proposed is radical and I have been reluctant to submit any proposals without giving the proposed changes my most careful consideration in consultation with various officials and non-officials.

2. I would preface my remarks with the suggestion that Government ask me to achieve a very difficult thing. I am to replace the existing set of sub-magistrates by a set of Benches and stipendiary first-class magistrates. I am thereby to improve and accelerate the administration of justice and I am at the same time to achieve a measure of economy. I can—at least I trust that I can—achieve the first two results at any rate in so far as the more serious classes of offences are concerned. But I doubt very much whether I can combine them with the third result without running the risk of almost denying justice to the poorer classes of people in so far as the less serious offences are concerned. Possibly, Government are unaware that in Malabar Mr. Evans and I worked out a similar scheme—of which we both thoroughly approved in principle—for a very large portion of the Malabar district and had to abandon it as impracticable. Government insist upon the submission of definite and detailed proposals. I therefore submit definite and detailed proposals. In doing so I have accepted the risk to which I have just referred in limiting the number of stipendiary first-class magistrates to five in order that the improvement and acceleration in the administration of justice may not prove more costly than the present system.

3. I wish it to be understood that I view my own proposals with a considerable amount of suspicion. They are the most hopeful thing which I have been able to work out. They will or ought to accelerate the administration of justice in so far as the more important classes of cases are concerned. They will improve the administration of justice in so far as these classes of cases are concerned. In so far as other classes of cases are concerned, I doubt whether there will be either an improvement or an acceleration. The changes will be unpopular. Almost without exception those with whom I have discussed them—whether they be members of the Legislative Council or officials or ordinary non-officials—have condemned them. Even the mildest of the Madura local newspapers has launched forth an editorial against them. To my mind this adverse criticism is but a reflection of the truth that we cannot achieve a real improvement and acceleration in the administration of justice without paying for it. The idea that second-class magistrates should be replaced by first-class magistrates is popular with everybody provided that the first-class magistrates can be given files which are not too heavy to prevent them from doing their work properly and provided that they are sufficiently accessible to people living in the more out-of-the-way portions of the district. I myself perhaps have a higher opinion of bench work than has anybody whom I consulted. The work of the village panchayat courts is as yet an unknown quantity. I have in order to obtain a scheme of any description had to allow for the utilization of these courts to the very fullest extent.

4. I am presuming that Government intend the stipendiary first-class magistrates to be stationary. To make all magistrates touring officers would be a retrograde step involving as it does an extraordinarily large amount of additional trouble for complainants and police officers and possibly an additional amount of inconvenience to both classes of persons. From paragraph 5 of the Government Memorandum under reply I was at first inclined to deduce that Government intend to deprive Revenue Divisional Officers of all their magisterial work. On further consideration I do not think that this can be the real intention of Government. To do so would weaken hopelessly the position and power of the Revenue Divisional Officers. These officers perform three sets of duties relating respectively to the administration of justice, the general administration of their divisions and the revenue administration of their divisions. The second set of duties covers a very wide field including the maintenance of law and order and a host of minor administrative duties which do not properly belong to the sphere of revenue administration. I would emphasise the fact—which is I believe widely recognised—that a Revenue Divisional Officer is able to perform his general administrative duties, because he is a magistrate and not because he is entrusted with the administration and collection of the revenue. If Government accept this view, I would suggest that Revenue Divisional Officers remain Sub-Divisional Magistrates—i.e., the direct agents of the District Magistrate for the maintenance of law and order—involving direct relations with the administrative work of the police—and that the various classes of miscellaneous cases now tried by them continue to be tried by them. What would be taken away from them would then be the trial of all ordinary criminal cases: and they would be left with what, for want of a better term, I may call the “police” portion of their present magisterial work. I understand from a speech made by the Honourable Member in charge of the Judicial Department in the Legislative

Council that the scheme upon which I am now reporting is intended to effect a partial separation of the executive from the judicial. The separation of the executive from the judicial I take to mean an arrangement by which the officer who performs the general administrative duties should not be the officer who tries criminal cases. If my assumption is correct my proposal to leave what I have called the “police” portion of the magistrate's duties with the Revenue Divisional Officer is a correct interpretation of the intention of Government. It is essential that the officers responsible for the general administrative work of the district should be officers who are constantly on tour and in close touch with conditions throughout the district—which qualifications a set of stipendiary magistrates do not possess. The separation of the executive from the judicial will of course be only partial if, as I presume is to be the case, the new stipendiary first-class magistrates are to be under the general control of the District Magistrate.

5. I am assuming therefore that under the new scheme the Madura district will be officered by—

- (1) A District and Sessions Judge whose functions are judicial with a set of subordinate civil courts under his judicial and administrative control and set of criminal courts under his judicial control.
- (2) A District Magistrate who is also a Collector with two entirely distinct sets of officials under his control—
 - (a) Revenue Divisional Officers who will also be Subdivisional Magistrates.
 - (b) Stipendiary First-class Magistrates.

Both classes of officers will be under the administrative control of the District Magistrate. The first set will be responsible to him for the general administration of the district including the maintenance of law and order. The second set will be responsible only for the trial of criminal cases and for the supervision of all courts subordinate to themselves, which courts will be either bench courts or village panchayat courts.

6. I come now to the details of the scheme which I submit as the most hopeful which I have been able to work out. There are in the Madura district eight stationary sub-magistrates and four deputy tahsildars. One of these deputy tahsildars is the deputy tahsildar of Kodaikanal. He must continue to exercise magisterial powers as he even now exercises the powers of a district munsif. The geographical conditions of the Palni Hills are such that there must be a resident magistrate upon them. His file is light and his position is altogether peculiar. Of the other three deputy tahsildars, I am prepared to sacrifice the deputy tahsildar of Vedesandur. The deputy tahsildars of Usilampatti and Uthamapalayam are necessary and will continue under the new scheme to be necessary for revenue reasons. The file of the former is light. The file of the latter is not light. But he is at present an overworked officer and his revenue work, if it is to be done properly, will keep him fully occupied—particularly as there is the possibility of “Revenue” developments in his division. I therefore propose the abolition of eight stationary sub-magistrates and one deputy tahsildar together with their establishments. These officers are upon a time scale. Allowance must be made for this fact. I take the average pay of a sub-magistrate and deputy tahsildar to be Rs. 175. Each officer has two clerks, an attender and two peons whose average pay I take to be respectively Rs. 42, 16 and 16. The average pay of each officer's establishment is therefore Rs. $2 \times 42 + 16 + 2 \times 16 = \text{Rs. } 132$. By abolishing the nine officers in question we therefore effect a saving of Rs. $9 \times 175 + 9 \times 132 = \text{Rs. } 2,763$. On the assumption that the new stipendiary first-class magistrates will be paid on the same scale as that upon which Deputy Collectors are now paid I take the average pay of such an officer to be Rs. 450. Each of these officers will require at least the same establishment as that of the present sub-magistrates—the cost of which is Rs. 132. The total cost of each of the new courts will therefore be Rs. 582. I propose to replace the abolished sub-magistrates and deputy tahsildar by five stipendiary first-class magistrates costing with their establishments Rs. 2,910. These five stipendiary magistrates will be stationed as shown below with the jurisdiction shown against each:—

- | | | |
|---------------------------|-------|---|
| (1) Dindigul | | having jurisdiction over Palni taluk and Dindigul taluk. |
| (2) Periyakulam | | having jurisdiction over Periyakulam taluk including Uthamapalayam and Usilampatti division of Tirumangalam taluk. |
| (3) 4 and 5. Madura | | with jurisdiction over Madura town, Madura taluk, Nilakottai taluk, Melur taluk and Tirumangalam taluk less the Usilampatti division, two magistrates being subordinate to the third who would take cognizance of all cases and divide the file between himself and his junior magistrates. |

The probable files of these magistrates are as shown in the statement appended. The figures given in this statement are a reasonable estimate based upon an interpretation of the statistics of the various courts throughout the district over an average of three years made in the light of my knowledge of the fluctuating items of work dealt with by some of the courts.

7. Government will observe that the average file of each of these stipendiary magistrates will be about 370 cases. The file of the Dindigul magistrate is somewhat heavier. But this cannot be helped. It is important to remember that all these cases will belong to the more serious classes of cases under the Indian Penal Code. Against each of these magistrates has also been shown a number of cases triable summarily by a first-class magistrate. My idea is that eventually none of these cases will be tried by the stipendiary magistrates, but that all these cases should eventually be tried by benches of magistrates. At present it is impossible to form first-class benches in a sufficient number of places to take the disposal of all these cases away from the stipendiary magistrates. However, most of them I propose to take away from them for disposal by second-class benches of magistrates. The comparatively small number which remains will at present be tried summarily by the stipendiary magistrates and will form a comparatively insignificant item of the stipendiary magistrate's work. It is unnecessary to work out the probable number of such cases which will remain to be tried by the stipendiary magistrates. My fear is that the files (i.e., the files of the more serious classes of Indian Penal Code cases) will be too heavy for the magistrates—particularly as they will have in addition to these cases all the preliminary register cases of the district. Whether this fear is reasonable only experience can show. It may be thought that the effective weight of the files will be considerably reduced owing to the fact that the new stipendiary first-class magistrates will dismiss many more cases under Criminal Procedure Code, section 203, than do the present class of sub-magistrates. I doubt the truth of this though if the new stipendiary magistrates are to be recruited either from the bar or from the ranks of Deputy Collectors, there should undoubtedly be a greater number of dismissals under Criminal Procedure Code, section 203. But I doubt whether it will be large. My doubts are based upon my own experience.

8. Government will observe that the number of cases shown as triable summarily by first-class magistrates against the three Madura stipendiary magistrates is comparatively small. This is owing to the fact that I have in these proposals ignored all cases now tried by the present benches of Magistrates in Madura, one of which exercises first-class powers. These benches will continue to work as they work at present with the modification that the second-class bench will in future be presided over by a non-official instead of by the town sub-magistrate. To these benches can also go cases shown as triable summarily by a first class magistrate against the Madura courts. It remains then to arrange for the disposal of the bulk of some 565 cases by benches of magistrates for the present exercising only second-class powers. At present there are such benches in Palni, Dindigul, Periyakulam and Uttamapalayam. These benches will suffice. They are all at present presided over by the sub-magistrate. He will have to be replaced by a suitable non-official or failing that by the local sub-registrar.

9. In making these proposals I have assumed that the net-work of village panchayat courts, which already extends over a considerable portion of the district, will be extended throughout the whole district and that all cases triable by them will be tried by them.

10. Government will observe that I make no provision for honorary first-class magistrates sitting alone and that I make little provision for non-official presidents of bench courts. This is not due to the fact that I disapprove of such magistrates and presidents, but to the fact that very few persons are available in this district for appointment as such. Government have restricted the appointments to retired officials of certain classes. There are in this district only 20 such officials, of whom 14 live in or around Madura. Of the remaining six, two are already doing honorary judicial work and will continue to do so as president of a bench and honorary magistrate.

11. An analysis of the work of the various courts of the district is attached to this report. Government will find that my estimates do not tally exactly with these figures. This, as I have already indicated, is due to the fact that I have made use of local knowledge in eliminating fluctuating items of work.

12. It is now necessary to consider the redistribution of the revenue divisions. The Revenue Divisional Officer, Madura (i.e., Madura Town and suburbs) is also the Personal Assistant to the Collector. As I have more than once said, even though the income-tax work is taken away and is done by the special department, the Collector of Madura will require a Personal Assistant. This point has been discussed with the present first Member of the Board of Revenue when he was in Madura and I understood him to agree. At present both Collector and Personal Assistant are decidedly overworked and the general administration of the district cannot receive the detailed attention from the Collector which it ought to receive. This district has undoubtedly suffered much in the past from this fact. I am therefore strongly of opinion that the Revenue Divisional Officer, Madura, should remain as he is at present. I would also retain him as a magistrate—particularly with a view to using him as a relieving magistrate in case any of the other files become congested. It is very important to make a provision for this in the experimental stage of the scheme. It is also essential that there should be an administrative officer of the status of a Subdivisional Magistrate always available in Madura town. The Collector and District Magistrate spends a considerable portion of the year on tour. Madura town should never be without a Subdivisional Magistrate actually in it. The Revenue Divisional Officer, Madura, could also be utilized for the purpose of giving relief to the remaining divisional officers in connexion with Estates Land Act suits work—over which the proposed

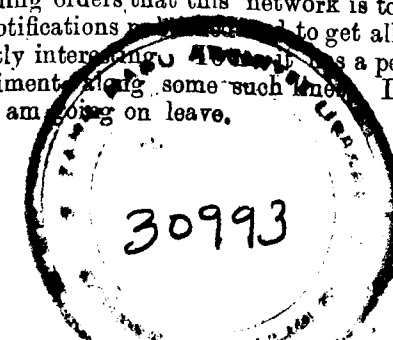
redistribution is more likely than over anything else to break down. The Usilampatti Revenue Divisional Officer I would abolish along with his establishment. The rest of the district I would divide into two Revenue divisions with headquarters at Dindigul and Madura. The Dindigul division would comprise Dindigul, Palni, Nilakottai and Periyakulam taluks and the taluk of Kodaikanal which is in charge of a deputy tahsildar. The Madura (or Melur division as it is now called) would comprise Melur and Tirumangalam taluks and Madura taluk excluding Madura town. The latter division I would place in charge of a Deputy Collector. The Dindigul division, as reconstituted, should always have a Civilian officer. It will be very extensive and it will be awkward in shape, the furthest point of the division being over 80 miles from headquarters and the longest possible journey within the division being about 120 miles. In both cases the travelling is entirely by road. It is essential that the officer in charge of this division should be young and active and should possess a motor-car. If a Deputy Collector possesses these three qualifications, there would of course be no objection to placing him in charge of the division. But the average age of Deputy Collectors is very much higher than the average age of Sub-Collectors and the pay of young Deputy Collectors is such that they are not likely to keep a motor-car. Moreover Dindigul has always been recognized as a Civilian division.

13. By abolishing the Usilampatti division the saving would be Rs. 450 (average pay of a Deputy Collector) plus average pay of the Deputy Collector's establishment = Rs. 784. The total apparent saving to Government by the introduction of the new scheme would therefore be Rs. 2,763 (saving by abolishing eight sub-magistrates and one deputy tahsildar with their establishments) plus Rs. 784 (saving by abolishing the Usilampatti division) minus Rs. 2,910 cost of five stipendiary first-class magistrates with their establishments) = Rs. 637 per mensem.

14. We have now to consider the less apparent profit and loss arising from the introduction of this new scheme. There is first the question of travelling allowance for the police and for witnesses. To take the police first—the District Superintendent of Police has very kindly had some rough calculations made of the probable difference in expenditure in connexion with court attendance of police officers at the existing and proposed courts. In so far as the ordinary district staff is concerned the expenditure on travelling allowance will probably be practically the same as it is at present—apparently largely owing to the fact that all the new courts will be stationary. But if the present strength of the prosecuting staff is maintained there will be a probable saving of some Rs. 200 per mensem. This figure is of course merely an estimate and only experience can show whether it is reasonable. It may, however, be accepted for working purposes. The total monthly saving to Government so far arrived at is therefore Rs. 637 plus 200 = Rs. 837, i.e., only some Rs. 250 per mensem more than the cost of one additional stipendiary first-class magistrate's court. To judge from our experience in connexion with the travelling allowance of police officers it is very unlikely that there would be a saving in connexion with the travelling allowance of witnesses. On the contrary there will probably be a loss—possibly a considerable loss. It would require a laborious and detailed investigation to arrive even at an estimate of this loss, and I have not considered it necessary to undertake such an investigation as my present scheme provides a sufficient margin to cover such loss. I would, however, emphasize the fact that if the number of stipendiary magistrates were increased even by one the new scheme would run a very serious risk of being more costly than the existing system.

15. Two points remain to be considered. Firstly, either the present sub-jails must remain as they are and the taluk head accountant of each taluk office must be made the sub-jail officer—in which case he ought, I think, to get a small allowance—or larger sub-jails will have to be constructed at Dindigul and Periyakulam. In Madura, of course, there will be ample accommodation for under-trial prisoners in the District Jail. Secondly—and this is the point in connexion with which the whole scheme is most open to criticism—the distance which every police station is from a stipendiary magistrate's court will be very largely increased and the distances which witnesses will have to travel to give evidence and which complainants have to travel in order to file a complaint will in many cases be so great that except in serious cases they will be deterred from going to court at all, and will rather suffer loss than spend large sums of money in an attempt to secure justice. I attach two statements showing the distances of the various police stations from the courts to which they are now attached and the distances of the same police stations from the new stipendiary magistrate's courts.

16. If Government accept my proposals which, as I have already said, I myself view with sympathy but with a considerable amount of suspicion, a large amount of preliminary ground work will be necessary before the scheme can be actually introduced. The most important part of this ground work is the completion of the network of the village panchayat courts so as to cover the whole district. I am in any case issuing orders that this network is to be completed. But it will take some little time to get all the notifications and to get all the panchayat courts elected. The experiment will be distinctly interesting and I have a personal interest as for many years past I have desired to experiment along some such line. I am sorry that this report should be submitted by me just as I am going on leave.



ENCLOSURE

Statement showing the distance in miles between the sub-magistrates' courts and the police stations attached thereto.

Names of courts.	Police stations.	Distance in miles.	
		M.	F.
1. Sub-Magistrate, town.	Madura B. Central station	0	2
	North station	1	0
	South station	1	0
2. Madura taluk	C. Madura taluk	0	0
	Alanganallur	3	0
	Sholavandan	11	0
	H. Chekkanurani	13	0
3. Nilakottai	C. Alanganallur	13	0
	Sholavandan	27	0
	D. Ambathurai	18	0
	G. Batlagundu	12	0
	Nilakottai	6	0
4. Melur	C. Alanganallur	0	0
	Melur	12	0
	Kottampatti	0	0
	Nattam	14	0
5. Tirumangalam	H. Tirumangalam	24	0
	Kallupatti	0	2
	Saptur	12	0
	Sindupatti	23	0
	Chekkanurani	10	0
6. Palni	E. Palni	9	0
	Virupakshi	0	4
	Kallimandayam	14	0
	Keeranur	27	0
7. Dindigul	D. Dindigul town	12	0
	Do. taluk station	0	2
	E. Vadasandur	1	0
	D. Vadamadura	12	0
	Kannivadi	12	0
	Ambathurai	16	0
	Shanarpatti	7	0
	E. Virupakshi	9	0
8. Vadasandur	E. Vadasandur	22	0
	Kallimandayam	0	0
	D. Kovilur	23	0
9. Periyakulam	G. Periyakulam	10	0
	F. Bodinayakkanur	0	0
10. Uthamapalayam	F. Uthamapalayam	26	0
	Cumbum	0	0
	Chinnamanur	5	0
	Virapandi	5	0
	Andipatti	14	0
11. Usilampatti	H. Usilampatti	28	0
	Saptur	0	0
		16	0

Statement showing the distance in miles between the headquarters of the proposed stipendiary magistrates and the police stations attached to it.

Headquarters of the proposed stipendiary magistrates.	Police stations.	Distance in miles.	
		M.	F.
1. Dindigul	E. Palni	36	0
	Virupakshi	22	0
	Kallimandayam	27	0
	Keeranur	48	0
	Vedasandur	12	0
	D. Dindigul town	0	2
	Do. taluk	1	0
	Vadamadura	12	0
	Kannivadi	16	0
	Ambaturai	7	0
	Shanarpatti	9	0
	Kovilur	22	0
2. Periyakulam	G. Periyakulam	42	0
	F. Bodinayakkanur	68	0
	Uthamapalayam	71	0
	Cumbum	76	0
	Chinnamanur	66	0
	Virapandi	15	0
	Andipatti	61	0
	H. Usilampatti	63	0
	Saptur	44	0
3, 4 & 5. Madura	B. Central station	0	2
	North station	1	0
	South station	1	0
	C. Madura taluk	0	0
	Alanganallur	11	0
	Sholavandan	12	0
	Melur	18	0
	Kottampatti	32	0
	Nattam	23	0
	D. Ambaturai	32	0
	G. Batlagundu	37	0
	Nilakottai	31	0
	H. Chekkanurani	13	0
	Tirumangalam	12	0
	Kallupatti	24	0
	Saptur	35	0
	Sindupatti	24	0

* Also in Dindigul division.

+ Also in Periyakulam division

Average of three years ending 1921.

Division.		Summarily triable by first-class Magistrates.	All other cases.
1. Dindigul		350	400
2. Periyakulam		265	375
3. Madura		460	1,110
4 & 5. Madura.		138	giving an average file of 370

REPORT OF THE COMMITTEE ON THE SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS.

We, the members of the Committee, appointed to consider the question of the separation of the judicial and executive functions, have the honour to submit this, our report.

The points referred to us for consideration are indicated in the resolution of the Legislative Council of 22nd September 1922, in pursuance of which the Government have appointed this Committee. And those points are to investigate and report on—

(1) the steps to be taken to separate the judicial and executive functions now exercised by some of the officers ;

(2) the cost involved in the taking of such steps ;

(3) the different stages in which the separation can be given effect to, if it cannot be completely carried out at once ;

(4) the administrative changes necessary for the purpose ;

(5) any legislation that may have to be undertaken.

2. At the first meeting of the Committee held on 9th March 1923, two schemes were propounded, one by Mr. C. V. Venkataramana Ayyangar and the other by Mr. Rutherford, which are reproduced in Appendix I and the Committee decided to invite public criticism thereon and referred them to a number of gentlemen of all classes competent to express an opinion thereon—vakils, merchants, landholders, publicists, judicial and executive officers—in service and retired—from all parts of the Presidency. A general invitation to the public was also issued in all the local papers. On the whole 82 persons were by name consulted and of them 40 have responded and their replies are tabulated in a statement appended to this report.

3. By the terms of the reference, read along with the speeches in Council, the Committee were clearly precluded from considering the question of the desirability of separation of the functions, although, in the view of three of the members, there is not much need in the circumstances of this Presidency to have an entire separation right through the whole of the criminal judiciary. In every country, in England, France and the United States of America, the functions overlap at some point or other of the machinery. However, as we are not to consider that aspect of the matter, we confined our attention to the question of scheme or schemes, which would bring about a complete separation. The Committee unanimously agreed at the outset that in order to secure the safety of person and property the preventive powers in Chapters VIII—XII of the Criminal Procedure Code assigned to magistrates, should continue to remain with the Collector-Magistrate, and his executive subordinates represented by the Divisional Officer, tahsildars and deputy tahsildars who would be also magistrates for these chapters. The appeals provided in these chapters would lie to the Sessions Judge as provided in the newly amended Criminal Procedure Code.

4. Another point on which there was agreement was that the village headmen, who are exercising judiciary functions—civil and criminal—should not be disturbed, and that revenue divisional officers who are invested with powers to try rent suits under the Madras Estates Land Act may continue to have those powers, until the Act is amended, which it is understood is under the contemplation of Government. There is considerable public opinion, supported by replies to our letters of reference, that the revenue divisional officers should have no judicial powers—civil or criminal.

The issue was therefore restricted to a consideration of the question as affecting the criminal judiciary above the village magistrate and up to and including the District Magistrate.

5. Before proceeding further, it is desirable to give here a brief description of the existing criminal judiciary.

The High Court, the highest tribunal in the Presidency and, the Sessions Court, next below it, are purely judicial tribunals and do not therefore come within the scope of the Committee's enquiry.

Number and name of court.	Miscellaneous cases.			Appeal cases.			Calendar cases.			Special and local laws except Forest and Abkari cases.			Forest and Abkari cases.			Indian Penal Code cases.						Indian Penal Code cases triable by Village Courts.						All other cases.		
	1919.	1920.	1921.	1919.	1920.	1921.	1919.	1920.	1921.	1919.	1920.	1921.	Filed on Police charge sheets.			Filed otherwise.			1919.	1920.	1921.	1919.	1920.	1921.	1919.	1920.	1921.	1919.	1920.	1921.
													1919.	1920.	1921.	1919.	1920.	1921.												
1. Sub-Magistrate, Pehni ..	..	..	..	..	..	..	..	..	..	318	338	402	234	204	155	149	128	71	451	538	309	289	224	149	190	178	29	121	264	202
2. Do. Veda-andur ..	..	..	..	..	..	..	..	..	..	106	109	289	27	16	50	92	72	336	293	509	274	301	545	566	21	34	28	63	2	77
3. Do. Dindigul ..	..	..	..	..	..	..	..	..	..	412	255	397	188	142	96	128	128	159	357	447	377	222	274	278	186	93	109	77	104	69
4. Subdivisional Magistrate, Dindigul ..	70	63	35	..	..	..	..	..	..	..	692	382	234	283	236	172	156	162	325	403	220	363	434	234	44	32	63	90	93	115
5. Sub-Magistrate, Nilakottai ..	..	..	..	..	..	..	..	..	..	186	72	22	81	124	43	43	24	8	42	31	21	59	20	6	12	13	6	14	22	18
6. Do. Kodakkal ..	..	..	..	..	..	..	..	..	..	210	374	772	167	187	277	69	45	101	192	186	193	..	..	..	160	96	81	91	145	213
7. Do. Periyakulam ..	..	..	..	..	..	..	..	..	..	133	300	915	407	228	301	97	117	118	205	153	131	122	96	98	85	18	45	95	166	106
8. Do. Uthamapalayam ..	..	..	..	..	..	..	..	..	..	451	618	382	19	41	63	68	128	54	180	332	167	88	309	105	118	109	80	42	42	33
9. Do. Usilampatti ..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
10. Subdivisional Magistrate, Usilampatti ..	37	39	22	..	..	..	..	..	..	340	333	216	66	116	97	91	142	52	655	290	581	512	189	107	102	151	476	132	93	50
11. Sub-Magistrate, Tirumangalam ..	..	..	..	..	..	..	..	..	..	113	103	80	46	9	2	228	189	162	210	243	331	..	..	..	..	..	..	438	432	493
12. Do. Madurai town ..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
13. Subdivisional Magistrate, Madurai ..	..	..	..	..	..	..	..	..	..	231	104	98	125	48	137	84	53	55	229	313	205	54	107	16	153	140	121	106	119	123
14. Sub-Magistrate, Madurai taluk ..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
15. Subdivisional Magistrate, Melur ..	21	39	25	..	..	..	..	..	..	140	172	161	65	297	212	61	41	46	355	392	303	309	266	222	39	45	50	5	122	77
16. Sub-Magistrate, Melur ..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..

J. F. HALL,
District Magistrate.

Madurai District Magistrate's office,
15th February 1923.

REPORT OF THE COMMITTEE ON THE SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS.

Next below in rank is the District Magistrate, who is a first-class magistrate, with powers to hear original cases and appeals from subordinate magistrates, and who has under the Criminal Procedure Code general powers of supervision over all the subordinate magistrates' courts. He can transfer cases from one file to another or to himself. In practice, the District Magistrate hears very few appeals and tries fewer cases. In 1921, the total number of cases tried and appeals heard by all the district magistrates in the presidency were 60 and 247 respectively, or on the average two original cases and nine appeals apiece. In districts where the criminal work is heavy, there are additional district magistrates. The District Magistrate's functions are more of supervision over the subordinate courts, by way of inspection, perusal of calendars, etc., than of actual trial of cases. As Collector, he has various executive duties, such as the collection of revenue. He has general control and supervision over the Police of the district.

6. As regards the other subordinate magistracy, we take the following description given in a Government record :—

Below the District Magistrate there are a certain number of sub-divisional magistrates in each district, who are either members of the Indian Civil Service or of the Provincial Civil Service. They exercise the powers of a first-class magistrate. They dispose of cases triable by a first class, but not by a second-class magistrate under the Criminal Procedure Code and of other cases which are of special importance for any reason or in which it is probable that a heavier sentence should be awarded than a subordinate magistrate is competent to pronounce in view of the previous history of the accused or of the value of the property stolen, etc. Most subdivisional magistrates, besides disposing of original criminal cases themselves, are also empowered to hear appeals from second and third-class magistrates. They supervise the work of the subordinate magistracy in their divisions. Subdivisional magistrates are also either sub or deputy collectors and, as such, exercise revenue functions.

Each division is composed of one or more taluks, each in charge of a tahsildar. All tahsildars are ex-officio second-class magistrates, but those tahsildars who have the assistance of stationary sub-magistrates are not competent to take cognizance of cases or to commit accused persons for trial and their work is practically confined to the collection of revenue. They can, however, act in an emergency under Chapters VIII-XII of the Criminal Procedure Code for the preservation of peace and cases can be transferred to them for trial if necessary. All the magisterial work proper of the taluk is done by stationary sub-magistrates, who generally sit at the taluk headquarters and dispose of all petty cases arising within the taluk and commit sessions cases to the Sessions Court. In theory stationary sub-magistrates are not absolutely confined to magisterial duties. Under Board's Standing Order No. 139 they are expected to do such revenue work as may be entrusted to them by tahsildars, but in practice they do little or no such work. There are also a certain number of deputy tahsildars in heavy taluks who have charge of a specified portion of the taluk. They tour about their charge and, besides doing revenue work, dispose of criminal cases arising therein.

In certain taluks where work is not very heavy, tahsildars have not been given the assistance of stationary sub-magistrates. Such tahsildars continue to exercise all the powers of a magistrate, and to help them in this function they are given the assistance of a sarishtadar-magistrate.

Sub-magistrates, deputy tahsildars and sarishtadar-magistrates are magistrates of the third class *ex-officio*. An officer is at first given only the powers of a third-class magistrate. If he satisfactorily discharges the function of that office for a period of six months, he is given the powers of a second-class magistrate. Further, it is only after a period of six months' exercise of second-class powers that an officer of the grade of deputy or assistant collector is given the powers of a first-class magistrate.

7. Appointments and postings to districts of district magistrates and sub-divisional magistrates are made by the Local Government, and within certain limitations district magistrates are allowed to post subdivisional magistrates within the district. Appointments and postings of tahsildars, deputy tahsildars, stationary sub-magistrates and sarishtadar-magistrates are made by the District Magistrate from among officers approved by the Board of Revenue as suitable for such appointments.

8. In the larger towns in the Presidency retired Government officers with judicial experience are appointed honorary magistrates and exercise the ordinary and certain special powers of stipendiary first-class magistrates. Benches of magistrates are sometimes appointed in important mufassal stations and in villages with ordinary powers to try cases under certain special laws and with summary powers to dispose of certain other classes of petty cases. Special third-class magistrates chiefly selected from among sub-registrars are appointed to try such petty cases in mufassal towns and villages not within easy reach of a regular magistrate.

9. All judgments pronounced by the subordinate magistrates are perused by the subdivisional and district magistrates, except in certain petty cases, the results of which only are reported. The judgments of subdivisional magistrates are perused by the district magistrates and sessions judges. District magistrates and sessions judges transmit to the High Court copies of their judgments in certain cases.

10. In the Presidency town, there is already a complete separation of the judicial and executive functions. The Collector of Madras is purely an executive officer and not a district magistrate. He has nothing to do with the Police, which is under the control of the Commissioner of Police and his assistants. The latter attend to the maintenance of law and order in the city. The presidency magistrates are purely judicial officers. The conditions prevailing in mufassal districts cannot conduce to the adoption of such a system there. In the first place, the people will not like the transfer of the duty as to maintenance of law and order from the district magistrate to the Police and secondly the area is so vast and the cost of a system such as that which obtains in the City, will be prohibitive.

11. In the Agency tracts, it is out of the question to contemplate any change. The nature of the country, the primitive habits and the peculiarities of the people and the level of their civilization, preclude the possibility of any change in the system of administration now prevailing there, until a vast improvement takes place among the inhabitants of those tracts.

Our discussion therefore excludes the Presidency town and the Agency tracts and is confined to the mufassal districts and is further limited to that portion of the criminal judiciary starting from the stationary sub-magistrates and ending with the district magistrates.

12. It does not seem necessary for our present purposes to trace the history of the development of the criminal judiciary from its original to its present condition, but it is sufficient to say that under the system, which immediately preceded its present form, the district magistrates had direct charge of particular parts of the district for both original and appeal trials and that taluk magistrates (tahsildars) tried second-class cases. In 1892 taluk magistrates were relieved of their magisterial work by stationary sub-magistrates, which class of officers were then newly created and district magistrates also gradually ceased to try original cases or hear appeals except important ones, the whole of the first-class cases and appeals being left to be disposed of by subdivisional magistrates. The creation of stationary sub-magistrates and the relief of tahsildar-magistrates of their magisterial work was an important landmark in the development of the machinery and since then and up to now about 158 stationary sub-magistrates have been appointed. This was in furtherance of the object which Government had in view of making magistrates purely judicial.

13. The President brings to notice that the agitation for the separation of the executive and judicial functions seems to have begun in Bengal and spread to other parts of the country, growing in volume, as time advanced. The conditions of Bengal find, however, no parallel in Madras. In the former, the tenure is mostly zamindari, while in the latter, it is mostly ryotwari. In Bengal, and perhaps also in most of the northern parts of India, the Government had to obtain whatever information it needed for its administrative purposes, through the Police, as it had not had its village organizations. The Police naturally attained in course of time more influence than necessary or desirable and perhaps also used that influence in not very proper ways. The absence of a Revenue system, such as that of a ryotwari, which obtains in Madras and which brings the people and the Executive Government into closer contact and the absence of an agency other than the Police for carrying on the ordinary administration of the country, gave considerable strength to the agitation in Bengal and other

parts of the country, where zamindari or similar kind of tenure prevails. Conditions are quite different in Madras. The Police is not utilised for the ordinary purposes of the administration. There is a systematised village organisation developed under the ryotwari system, and even in the zamindari tracts of the Presidency the village establishments have been put on a footing of direct responsibility to Government. In the state of things as prevailing here, there is closer contact between the people and the executive officers and less Police influence. Executive functions in Bengal and other provinces, with large tracts of zamindari tenure, meant more Police work, which the district collector and his subordinates had or were supposed to do, owing to their closer connexion and larger association with the Police, than Revenue work, of which it is not difficult to conceive that they have very much less than here, owing to their peculiar land tenure. Moreover, there was considerable difference in the way in which criminal work was received and distributed to the criminal judiciary. Complaints and appeals appear to be received there at some headquarter station by a magistrate and then distributed by him to all the subordinate magistrates for disposal. Here in Madras, magistrates have been given local jurisdiction and powers to take cognizance of complaints and appeals directly from parties, within the particular areas comprised in the local jurisdiction assigned to them. Litigants here thus know definitely to whom to go for complaints and where his complaints will be enquired into, unlike in Bengal where, after having preferred their complaints to a central authority, they have to wait till they receive notices or summonses from some other authority subsequently. The uncertainties and inconveniences associated with the latter system are absent in Madras. The non-official members present except M.R.Ry. Diwan Bahadur T. N. Sivagnanam Pillai Avargal are not prepared to endorse this statement of facts.

Another feature which differentiates Madras from other provinces is the existence in Madras of a class of stipendiary magistrates, 2nd and 3rd class, called stationary sub-magistrates employed exclusively in the trial of criminal cases.

It would seem desirable therefore to bear these considerations in mind, when discussing the question so far as it affects this Presidency and it should be obvious that schemes, which have been propounded in the past to meet the requirements of Bengal and Provinces similarly circumstanced would not be suitable to Madras, where the conditions prevailing are different. The scheme proposed by Mr. R. C. Dutt in 1896 and that by Sir Harvey Adamson in 1907 had reference more particularly to the conditions of Bengal and although some elements of usefulness found therein might be taken and embodied in the system to be ultimately evolved for Madras, those schemes cannot be adopted wholesale by us. That is the reason why the Committee at their first meeting did not feel disposed to consider those schemes and proposed a different set of schemes for Madras.

14. Besides the two schemes referred to above as having been propounded for Madras, there is another scheme reproduced in *extenso* in Appendix II which has been prepared by the President of this Committee from the various suggestions received, the main features of which are as follow :—

Bench, honorary and special magistrates' courts should be increased wherever possible, gradually replacing the present stationary sub-magistrates' courts.

Some of the existing subdivisional officers who are also first-class magistrates should be exclusively detailed for magisterial work, the others being retained for revenue work.

The whole criminal judiciary consisting thus of bench courts, honorary courts, stationary sub-magistrates, first-class magistrates, all doing exclusively magisterial work should be withdrawn from the district magistrates' control and placed under the sessions judge, who should be given an assistant, invested with the powers of additional district magistrate. The nomenclature of this officer is selected to enable the scheme to be brought into being without any alteration in the Code, but if section 17, Criminal Procedure Code, is altered to give the sessions judge the existing powers of the district magistrate, this is immaterial.

The present district magistrate and his executive subordinates, subdivisional magistrates and taluk magistrates should continue to be 1st and 2nd class magistrates, with no powers to try cases or hear appeals but with the preventive powers under chapters VIII—XII of the Criminal Procedure Code.

15. Before proceeding with the discussion of the merits or demerits of the several schemes, the committee feel that the following essential points should be present in a scheme to justify its acceptance by them :—

(1) That the judiciary set up should be exclusively engaged in the trial and disposal of judicial work ;

(2) that it should have an existence separate from the executive and be independent of the executive ;

(3) that the scheme should, as far as possible, make the least changes in the existing machinery and laws ;

(4) that the cost should, as far as possible, be low and aiming at decrease rather than increase when the scheme is in full force ;

(5) that it should be a progressive scheme taking in the public more and more and so dispensing with all unnecessary paid magistracy.

16. All the above three schemes agree in one particular, viz., the extension and improvement of the courts of bench and honorary magistrates. The number of such courts existing in the Presidency as worked out from the latest Quarterly Civil list is 185, with 1,324 members. Details for these bench and honorary magistrates' courts are given in appendix V to this report, from which it will be seen that they are doing a large volume of work and relieving the stipendiary magistracy considerably. In many parts of the Presidency, these courts would seem to be absent and their introduction will certainly depend upon the availability of men, competent and commanding the confidence of the public. In many important centres, such as municipalities and taluk headquarters, it might be possible to secure men of the sort required, but in the interior parts, it will not be easy. But since the advent of the reforms, men are seen to take a greater interest in public affairs and they evince a keen desire to serve on institutions of this and other kinds, calculated to promote the general welfare of the country. And, if as suggested by Mr. Rutherford, the present restriction against the nomination of men already on the municipal and local boards of the areas, be removed, the scope for selection will be enlarged. It may be provided in the case of such men, that they should not take part in the trial of persons whose offences are connected with the municipality or local board of which they are members. It is understood that in Scotland, Baillies, i.e., members of the Municipal Council in Scottish Burghs, are appointed as honorary magistrates. Should Government not be prepared to make such a general exemption, the committee would recommend that in the case at least of honorary first-class magistrates sitting singly for the disposal of cases, the restriction may be removed, as they will be men of superior status and attainments.

Municipal councillors and local board members being ineligible, the choice is very restricted in all but large towns. The few Government pensioners from whom the selection can be made, may, for the first few years after retirement, have the energy and the inclination to work and may be disposed to accept such service, but after some years, they will be unfit by their physical infirmity to take any active part on the bench. We could not therefore count entirely upon this source of recruitment and the choice will be limited to the men engaged in educational work, landholders, merchants and contractors. Most men of great experience, such as Sir T. Sadasiva Ayyar, are opposed to the extension of the bench court, chiefly because of the paucity of really capable men, commanding the confidence of the public, to serve on such benches. Complaints are heard of want of punctuality, irregular attendance, inattention to law and procedure and prejudices, due to various causes in the disposal of cases. To this we must add the possible communal rivalries that may arise. Some suggest that on each bench there should be a representative from each community, in order that one community may not get control over another. All these clearly indicate that in the development of the bench courts, we should proceed slowly and not as rapidly, as we would otherwise wish, and it is this that makes it desirable to have available for the benches every man who could efficiently help to make the courts popular. It seems almost a slur on a man to say that being a member of a Council or District Board makes him unfit to try his fellowmen. The aim must, of course, be the creation of a large number of such courts not only in important centres, but also in the rural parts, so that the administration of justice, except as regards grave crime, may ultimately be transferred to honorary agency from the hands of

stipendiary magistrates. But it is a distant goal, and in the opinion of those, who have considerable experience of the working of the bench courts now in existence, the prospects for immediate extension on any large scale are not encouraging. Until bench courts are formed in such large numbers as to displace the existing Stationary Sub-Magistrates, the latter class of courts must continue. As bench courts are formed and their stability and efficiency established, Stationary Sub-Magistrates can be dispensed with.

It has also been suggested that special Magistrates' courts may also be developed, wherever men are available. Special Magistrates are generally Sub-Registrars, and in 1921 there were 76 such courts in the Presidency. Such agencies can, it is hoped, be more liberally utilized in the future and may be reckoned as a valuable adjunct to the criminal judiciary of the Presidency. They do not do any executive functions. They should have a regular office, a regular staff and should sit at fixed hours. Honorary first-class Magistrates should similarly be used whenever possible and given an office, a clerk and fixed hours of work and should be allowed to entertain complaints and receive charge sheets.

The Committee are aware that the Government are already moving in these directions and are as keen as anybody else in promoting these agencies and utilizing them for the Criminal Judiciary and they merely wish to emphasize that it is here they think the real change in criminal justice is most needed.

17. Another point, on which it has been said above, that there is general agreement in the Committee is, as regards the preventive powers vesting in the District Magistrates and their subordinates under the Criminal Procedure Code. Some of the gentlemen consulted consider that the Executive officers may have the powers up to the stage of initiating proceedings and should thereafter cease to proceed with the actual trial of those cases, which trial should, according to them, be held by a Judicial officer. Many are emphatically of the opinion that as the District Magistrates and his Executive Subordinates are made responsible for the maintenance of law and order, these preventive powers should continue to vest in them in order that they might discharge in full their responsibility in this matter.

Some think that the District Magistrate and his Executive subordinates should not take even the initial proceedings in respect of the whole of chapter VIII of the Code and that their powers should be restricted to the other chapters IX to XII. They do not, however, suggest how riots could be prevented with the powers vesting in Stationary Magistrates, living many miles away.

In the first place, the question arises, whether these functions are Executive or whether they are Judicial, or whether they are partly Executive and partly Judicial.

These chapters are contained in Part IV of the Criminal Procedure Code, headed "Prevention of crimes."

Chapter VIII relates to security for keeping the peace and for good behaviour, chapter IX to unlawful assemblies, chapter X to public nuisance, chapter XI to temporary orders in urgent cases of nuisance or apprehended danger and chapter XII to disputes as to immovable property likely to lead to breaches of peace. It is, therefore, clear that these are connected with steps to be taken for prevention of crimes and not with steps for trials of offences after they have been committed. An actual trial of an individual for an offence alleged to have been committed by him, is a judicial proceeding, but all steps taken beforehand to prevent the actual commission of offences, prohibiting a person from doing a certain act likely to lead to an offence and calling upon him and requiring him to furnish a security or an undertaking that he will not do a certain act likely to lead to breaches of peace or commission of an offence either by himself or others, are of the nature of preventive measures, as they appertain legitimately to the executive and not to the judicial part of the Government. In the opinion of the majority of the Committee, they are executive functions, within the province of those entrusted with the Executive Government of the country and charged with the maintenance of law and order. The function cannot be divided into stages and one stage called executive and the other stage called judicial. If there be trial at all, the so-called trial is not for an alleged commission of any offence, but it is only an enquiry as to why a certain preventive measure should not be adopted in that particular case. This

kind of enquiry cannot be called a judicial function. At any rate, it is certainly more executive than judicial. So long as the District Magistrates and their subordinates are charged with the serious responsibility of maintaining law and order, these functions should continue to vest in them. If these functions, either partially or wholly be removed from them, it will result in danger to public tranquillity.

Such preventive measures will have to be taken in many cases very swiftly and often with a knowledge of local conditions and temperament in the locality itself, which a judicial officer, stationed as he would be at headquarters and lacking in personal knowledge of local conditions, would be unable adequately to do. Mere initiation of proceedings will be ineffectual in many cases. If a district officer is simply to initiate proceedings and leave the final conclusion to the judicial officers, it will lead to dangerous transfer of responsibility. The executive officers will in such circumstances decline to run any risk, or take any personal responsibility and will be inclined to rest content with initiating proceedings, perhaps without adequate enquiry or without personal efforts to deal with the offenders out of court. This will lead to enormous increase of work to the judicial officers with no advantage to the interests of public peace. If crime increases, responsibility could not be fixed, the executive officers would absolve themselves of the responsibility by saying that the judicial functionaries could not be persuaded to agree to effective preventive measures and the judicial officers would also free themselves from responsibility by saying that the executive were negligent and inefficient and would not put up materials sufficient for a judicial conclusion. In liberty-loving England the duty has always rested with the Justices of the Peace, who, it should be clearly realized, are quasi-executive, quasi-judicial officers and their first duty under their commission is the preventing of disturbances and the keeping of the peace and they can demand security. It would therefore seem absolutely necessary that there should be no divided responsibility in this matter and the Committee unanimously agree that the entire responsibility should continue to be as at present with the executive and that the whole of the preventive functions contemplated by chapters VIII to XII should continue to be exercised by them. It is considered that the new provision in the amended Criminal Procedure Code as regards appeal to the Sessions Judge will remove much of the existing distrust. So far as section 106 is concerned, the power therein referred to can be exercised only by a convicting court and that section cannot be utilized by the executive magistracy.

18. We now proceed to discuss the schemes brought before our consideration.

The first scheme, which proposes to amalgamate the criminal and the civil judiciary, though favoured by a large body of vakils, is against the custom of England and America. It is from these liberty-loving countries we draw our ideas of law and when we find that they out of their great experience find it undesirable that the same courts, except the very highest, should try both criminal and civil, we are loath to adopt the proposal.

Further it has to be recognized that criminal cases should be tried with more rapidity and disposed of more quickly than civil cases, because in the former the parties' personal liberty is concerned and cases depend on oral evidence which is likely to be less reliable months after an occurrence than immediately or shortly after. From the statistics of the administration of criminal and civil justice for the years of 1919-1920-1921, reviewed by the High Court, it is noticed that while smaller cases coming before the Bench Courts and the Stationary Sub-Magistrates are disposed of on an average in less than two weeks, the District Munsifs' Courts take 1½ months on the average in disposing even uncontested Small Cause suits. The average duration in respect of original suits is very much longer, ranging between 315 to 333 days or about 11 months. Such suits linger longer in the higher courts. The statistics collected are exhibited in appendix VI. Whatever justification there might be for such long durations in the civil courts, so far as criminal cases are concerned such delays would be an intolerable scandal. If both classes of cases—civil and criminal—are made to be tried by the same tribunal, there is great likelihood of both classes of work suffering, at any rate, the criminal cases suffering still more than at present. The remedy is suggested by some that the civil tribunal should be directed to set apart some days of the week for the trial of the criminal cases, thereby ensuring prompt disposal. Apart from the impossibility of making any such

arrangement, owing to emergent applications in respect of civil suits on matters of execution—attachment before judgment—coming up for immediate consideration, there will be new criminal work coming up almost every day, such as remand of prisoners, bail applications, transfer petitions, etc., requiring immediate disposal and complaints must always be taken as soon as presented. The interruptions to either civil or criminal work by an arrangement of this nature would be considerable, and if each work be allowed to be taken up as it comes and the other made to wait till its turn, the results will be more delays than at present.

In England, the civil and criminal powers are kept entirely separate until the High Court is reached. The bulk of the kind of magisterial work done in this country by the subordinate Magistracy is attended to in England by Justices of the Peace and Courts of petty Sessions and Civil Justice is dispensed there by County Courts, Borough Courts or Recorders and such like courts, having no criminal functions.

In none of the provinces, except Punjab in this country, where schemes for separation of the Executive and Judicial functions are under consideration, has the combination of civil and criminal powers in one court been proposed, so far as we have been able to ascertain.

Owing to these considerations the Committee does not favour amalgamation and is on the other hand strongly of the opinion that the criminal courts should be kept separate from the civil courts, more especially as no possible economy could result. The Committee however are of opinion that it will be greatly to the benefit of both civil and criminal administration if the same officer presides over each in turn, so that when the officer has risen to Assistant or Additional or Sessions Judge, he will have a full knowledge of criminal law and its administration.

19. As regards the other two schemes, those of Mr. Rutherford and of the President, the underlying principles are the same, viz., (1) that the criminal courts should be separate from the civil, (2) that a portion of the existing criminal judiciary in the upper grade should be utilized exclusively for magisterial work, divesting it of executive functions and (3) that the control of the criminal judiciary should vest in a judicial officer and not in the executive officer. While Mr. Rutherford proposes the abolition of all Revenue Divisional Officers, in order he says to provide funds for the extra first-class magistrates and additional district magistrates required, the other scheme proposes to take only some of the Revenue Divisional Officers for magisterial work, leaving the rest for revenue work. Whether all the Revenue Divisional Officers can be abolished or not is a matter for the Revenue Department to decide and the Board of Revenue is, we gather, strongly of opinion that this is not practical. Mr. Rutherford also considered extended investiture with and use of summary powers by the first-class magistrates as essential to his scheme and this the Committee do not favour as the right of appeal is very highly valued. Further his scheme proposes the total abolition of the stationary sub-magistrates and the appointment of a separate civil judge and a separate sessions judge with jurisdiction over two districts. The Committee are not prepared to go to that extent and are inclined to prefer the President's scheme, which they will now proceed to consider in detail.

Briefly the scheme is to put the magistracy under the Sessions Judge assisted by an Additional District Magistrate, who would also have Sub-Judge's powers. The trial work now done by divisional magistrates would be done by two or three stationary first-class magistrates, who could be recruited from the present deputy magistrates, and from district munsifs and sub-judges. They would exercise appeal powers over sub-magistrates. The latter would be the existing men gradually replaced by men of the district munsif class. The latter would be recruited for both civil and criminal work, but would start as third or second class magistrates for two or three years and on sub-magistrate's pay and could then rise to the present district munsif's pay and would be in the district munsif's cadre. Existing sub-magistrates should be eligible for district munsif's work, if qualified and appointed. Men on the munsif magistrate grade would change from civil to criminal courts and the same would apply to sub-judges and first-class magistrates. By degrees we should increase honorary and bench courts and so reduce sub-magistrates' courts to the minimum.

20. At present, the bench courts and the stationary sub-magistrates are purely judicial officers, employed exclusively in the trial of criminal cases. It is true that stationary sub-magistrates are theoretically subordinate to tahsildars and should do occasionally revenue work when called upon to do so by the latter, still they do in practice very little revenue work. Their subordination to either the tahsildars or the collectors should be withdrawn. Corresponding to stationary sub-magistrates, there are deputy tahsildar-magistrates in some places and tahsildar-magistrates doing magisterial work in addition to their executive functions in certain other places. These officers should be abolished as trying magistrates and, when necessary, replaced by stationary sub-magistrates to whom no function other than trial of criminal cases should be assigned.

21. The main attack is against the subdivisional magistrates, who, owing to their being executive officers, have to tour in their divisions in the discharge of those functions and are obliged to post cases in camps, causing some amount of inconvenience to parties and vakils. There is also the complaint that owing to what is called the executive bias, these magistrates are, as at present constituted, liable to judge in cases with some prepossession of mind, which they may happen to be seized with in the course of their executive duties. How little this is really so can be seen from the fact that when their judgments go on appeal to a purely judicial officer, i.e., the Sessions Judge, a vast majority of cases are upheld. However the belief is firmly established, and therefore if these magistrates are dissociated altogether from executive and are employed exclusively on the trial of cases, all the ground for the present allegations will be removed. We have considered the statistics of cases and appeals heard by this class of magistrates for the years 1919, 1920 and 1921 and have worked out the average for each year for each district (appendix VII).

Taking an average district of four divisions with four divisional officers, we consider that the magisterial work of these four officers can be done in some cases by two and in others by three officers when relieved of their revenue work. Generally magisterial work occupies a greater portion of a revenue divisional officer's office time than revenue, and on the calculation that a revenue divisional officer spends on the average three hours a day in court work excluding security cases, we get a total of twelve hours' court work to be provided for. Courts will sit only from 11 a.m. to 5 p.m. with an interval for lunch of three-quarters of an hour, which is the usual court routine of every judicial court and therefore the time available for work will be only five and a quarter hours. Nothing more can be obtained. Twelve hours' court work will therefore require slightly more than two officers. If the Revenue Department can spare only half the number of revenue divisional officers for magisterial work in the average district referred to, we shall get two officers who will be probably insufficient. Some additions will have to be provided for. The majority arrived at ten as the maximum extra magistrates for the Presidency but some of the Committee consider one for each district necessary, and we have therefore estimated on both scales in our proposals. We have proceeded on the assumption that the collectors will need half their revenue divisional officers for purely revenue work and that the other half and their offices will be available.

22. We have thus up to now the following courts in the scheme which will be exclusively devoted to judicial work with no executive functions:—

- (1) Bench courts, including honorary and special magistrates' courts.
- (2) Stationary sub-magistrates, until replaced by No. (1).
- (3) Stationary first-class magistrates, corresponding to subdivisional magistrates.

23. Then there remains the District Magistrate, whose control over the subordinate trying magistracy, we feel, must be ended, if there is to be a real separation of executive and judicial functions.

The Committee, as a whole, recommend the withdrawal and transfer of the District Magistrate's powers of control and supervision to the Sessions Judge.

The District Magistrate and his future executive subordinates, the revenue divisional officers and tahsildars will continue under our scheme to exercise the preventive powers under Chapters VIII to XII of the Criminal Procedure Code and the District Magistrate, in addition, will keep his special powers under the Arms Act,

Petroleum and Explosive Acts and all other special Acts, where administrative functions are allotted to the District Magistrate. They will retain their present magisterial designations and the new first-class divisional magistrates will be styled 'stationary first-class magistrates'. The advantage to the executive will be that instead of having to stand aloof from Police investigation and prosecution as at present they will be able to exercise direct control with probable improvement in investigation and prosecution.

24. The Sessions Judge, to whom the control of the subordinate magistracy is proposed to be transferred, will have more work than at present and will therefore need the assistance of some officer though not in every district. So far as criminal work is concerned, his duties are now confined only to the hearing of appeals from first-class magistrates, revision applications and the perusal of calendars of first-class magistrates in the district. He has nothing to do with the appointments or transfers of the magistracy, nor with the more important duty of inspecting the sub-magistrates' courts and records or with the calendar of other than first-class magistrates. The addition of these duties in future will enlarge his work and the question is what should be the status of the assistant, that is proposed to be given to him. Some are of the opinion that the officer might be of the grade of sub-judge on a pay of not less than Rs. 1,000 per mensem and some others think that he should be of the same status as the present District Magistrate, with a pay of about Rs. 1,500 per mensem. We are inclined to fix Rs. 1,250 as we consider that the assistant should be given the power of an Additional District Magistrate and be also sub-judge, so that he might help the District Judge in the disposal of such civil and criminal work, which the District Judge might transfer to him. Inspection and supervision of the subordinate magistrates' courts will form an important duty of the Additional District Magistrate hereafter and upon the frequency of this inspection, much of the efficient working of the subordinate magistrates' courts will depend. Each court—bench, stationary sub-magistrate and stationary first-class magistrate—should be inspected at least once a year in addition to inspections by the stationary first-class magistrates of the courts under them.

The assistant to the Judge, in addition to hearing revisions, reading calendars and dealing with the general administration of the magisterial courts, should also have civil work and therefore should be of the grade of a sub-judge.

In order that the provisions of section 17, Criminal Procedure Code, may be complied with, we agree with the suggestion, that this officer be called Additional District Magistrate and that all the powers of the District Magistrate be conferred on him by Government. This will obviate the necessity for altering the section, so as to give Sessions Judges the powers of District Magistrates under that section. This alteration will no doubt have to be made in the near future, if the control of the magistracy is to be with the Sessions Judge but until that is done and in order to avoid illegality the assistant to the Sessions Judge should be called Additional District Magistrate whom Government should invest with the powers of a District Magistrate. It would be within the power of Government also to give him additional sessions power.

Mr. Rutherford's proposal of a civil judge for two districts and a Sessions Judge similarly for two districts might not be practicable. This will be found to be either too heavy a charge in some parts of the Presidency for civil and too light a charge in certain other parts for criminal work. In the Ceded Districts, the Collector of Cuddapah thinks that the civil work of two districts will prove to be too light for one officer, while the criminal work will be found heavy—heavier than one officer could cope with. In the southern districts—to combine two districts for criminal or civil would be too heavy in one branch or the other and most inconvenient to parties and expensive in sessions charges. Apart from this, the main objection to that proposal is that the District and Sessions Judges, from whose ranks future High Court Judges are selected and who should then have to do both criminal and civil work should not, when in the district, be out of touch with either class of work, but should be made to do both.

25. *Recruitment.*—Dissatisfaction is expressed against the present class of stationary sub-magistrate who, it is said, is lacking in legal equipment and it is urged that unless the method of recruitment is changed and a better class of officers is

appointed, no improvement in the quality of the work turned out by them can be expected. The stationary sub-magistrates are at present recruited mostly from the clerical staff of the Revenue Department, from persons who, in addition to their general educational qualifications, have passed the Criminal Judicial tests. Their legal equipment is not much and their service in the ranks of clerks, while giving them an insight into the details of office work, will not conduce to the formation of that breadth of view, necessary for a judicial officer. The stationary sub-magistrates will in future be placed under the control of the Sessions Court and of the High Court, and if, as proposed by us, transfers from magistrates to munsifs and *vice versa* be permitted, the High Court will require from aspirants for sub-magistrates' posts a higher knowledge of law than at present, such as a degree in law as now insisted on in the cases of munsif applicants. Direct recruitment, partly from the Bar and partly from the service, should be made, and a better class of men will be brought into existence gradually, as vacancies occur or as the present magistrates are absorbed by the Revenue Department which should be permitted so as to fill up vacancies among tahsildars, for these men who are now sent as sub-magistrates hold it only as a stepping stone in the Revenue Department.

Details as to recruitment are given in the President's memorandum which we fully adopt. An important feature therein is the inter-changeability of officers from the criminal to the civil judiciary from time to time according to the exigencies of the service at the discretion of the High Court, and the committee agree with the President that this inter-changeability will have a very beneficial effect upon both classes of officers and will render them fit to take up both kinds of work, with facility, when called upon to do so, either as Sessions or High Court Judges in fullness of time, when promoted to such situations in their official career. With such prospects of advancement before it, the subordinate magistracy will attract a better class of men and we are confident that exactly the same men who now apply for district munsif's post will be available for sub-magistrate's post, and therefore we propose that the men chosen should be men who would rise from sub-magistrate to district munsif after two or three years and they need only be started on the present sub-magistrate's pay. The committee however realize that the Government should have the final word in the approving of magistrates and it is thought that this might be secured by the list approved by the High Court being sent to the Government for final acceptance of the names for magisterial duties, as powers of magistrates have to be conferred by Government. It would, therefore, be evident that a person selected as eligible by the High Court for the munsif's post might not be necessarily approved for magistrate's work, but such cases would be extremely rare, and such men would always be kept on civil work.

As regards Bench Courts, it is the opinion of some well-informed gentlemen, who have watched their working either from outside or inside as members thereof that the disrepute which some of these Benches have got into is due to bad nomination. The necessity for considerable care in the selection of members cannot be too much emphasized. On the efficient functioning of these courts, the abolition of the stationary sub-magistrates depends and further, it is through these courts, that the public or rather the intelligent portion of it should learn the art of administering justice in all small cases, which form the bulk of the criminal work of the country. These courts will hereafter come under the purview and administrative control of the Sessions Court, but the duty of nominating members therefor should, we consider, continue to vest as at present with the Collector who should submit lists of competent men to Government for making appointments therefrom. We see no objection to the Sessions Judge also making nominations, but his local knowledge will be very limited, confined to headquarters, hence our suggesting the Collectors, more especially as the Collector-Magistrate, is responsible for the law and order of the district and should therefore have the power to see that undesirables are not made into magistrates.

26. Our scheme is therefore as follows:—

That the bench, honorary and special magistrates' courts should be increased as far as possible and as they are increased, stationary sub-magistrates should be as far as possible abolished, but until then the latter should continue, and when new ones have to be appointed they should be taken from the district munsifs

cadre. That the subordinate criminal judiciary consisting of the above courts and of the stationary first-class (corresponding to subdivisional) magistrates be employed exclusively in the trial of criminal cases, and that their control be withdrawn from the district magistrate and transferred to the sessions court which will be assisted by an additional district magistrate.

That the bench magistrates be appointed by the Government.

That the appointment of stationary sub-magistrates and first-class magistrates up to Rs. 600 vest in the High Court and thereafter magistrates when promoted to the sub-judge grade should be appointed by Government.

That the Collector and his executive subordinates retain their present magisterial designations and be *ex officio* magistrates, with powers under the security section, chapters VIII to XII, and under all the Special Acts, but with no powers to try cases.

That an officer with the status and powers of an additional district magistrate be appointed as the head of the criminal judiciary in the district, who will perform all the functions which the district magistrate is now performing in regard to the control of the criminal courts until such time as section 17, Criminal Procedure Code, can be amended so as to empower Sessions Judges to have direct control.

There will thus be two parallel sets of magistrates, one performing purely executive and the other judicial functions, the former under the control of the district magistrate and the latter under the sessions court which will exercise its control through the additional district magistrate.

27. As regards cost, it has to be considered under the following heads:—

- (a) Pay of the new officers and their establishment.
- (b) Buildings.
- (c) Additions, if necessary, to the existing Police prosecuting agency.
- (d) Increase in the scale of fees for batta and travelling allowance to witnesses.

In respect of (a), the additional officers proposed are—

- (1) Additional district magistrate and (2) additional first-class magistrates, ten in number, for the Presidency.

The pay of the additional district magistrate is put down at Rs. 1,250 per mensem on the assumption that half the appointments are likely to be held by senior civilians verging on District Judge's post. But as this officer will also do civil work half of his pay will have to be debited to the latter and the other half alone is proposed to be taken into account for calculating the cost of the additional criminal judiciary. Rupees $625 \times 12 \times 24$ (for all the districts) give a total of Rs. 1,80,000. As regards first-class magistrates, their average pay is taken as Rs. 665. Their cost will be $665 \times 12 \times 10$ equal to Rs. 80,000. The total for both the officers will be Rs. 2,60,000. If, however, as some of the committee consider every district should be provided with an additional first-class magistrate, that is, in addition to the one-half of the revenue divisional officers whom the Revenue Department should spare for magisterial work, the cost would work out to $665 \times 12 \times 24 = 1,92,000$, making a total of (1,80,000 plus 1,92,000) 3,72,000.

Rupees 2,60,000 is the minimum and Rs. 3,72,000 is the maximum recurring charge under the two sets of proposals.

Each of these classes of officers will require an establishment consisting of two clerks and a typist, an attender and two peons.

At present the district magistrate has for magisterial work three clerks and an attender and the fair-copying and despatching is done for them by the general staff of the Collector. As he will have some work even after the separation, viz., issue of gun licences, and exercise of powers under the preventive sections, a clerk will still be needed by him. The remaining two clerks and possibly the attender and also one peon should be withdrawn from him and placed under the additional district magistrate, who will need further a typist and another peon. The latter will have to be provided.

(a) As regards the new first-class magistrates, the clerical and menial staff actually attending to the magisterial portion of the revenue divisional officer's work

will be available for them. So far as has been ascertained, in each divisional office, there is at present one clerk and one attender, doing magisterial work. There are 64 Provincial Civil Service and 40 Indian Civil Service divisions in the Presidency and the whole of the clerical staff including attenders now attending to magisterial work can furnish the establishment needed for the new first-class Magistrates at the scale referred to above. After magisterial work is taken away from them, the Revenue Divisional officer would not need so many as three peons or so many clerks as they now have. The Committee think that it should be possible to distribute the existing establishment between the Revenue Divisional Officers and first-class Magistrates and also to spare the necessary additional establishment needed for the additional District Magistrate except, as regards the 10 or 24 new magistrates who will need two clerks, a typist, and an attender and two peons, at Rs. 175 each court per mensem. By the transfer of the criminal work of the Deputy Tahsildar to the Stationary Sub-Magistrate one clerk and a peon might possibly be released from the former and made available for the new officers, but that would leave him with only one clerk and one peon and one attender. It is doubtful if this would suffice.

28. (b) As for buildings, there will be no need for extra permanent buildings, for the first-class Magistrates, as their own buildings are now available and the Stationary Sub-Magistrates' buildings will also become available, as their courts are abolished, but temporarily it may be necessary to rent for the extra magistrate who may be found necessary for a district. For the Additional District Magistrate, who will have to be accommodated in the district court building, some additions to the latter may be necessary in some districts. In other districts, where the District Court buildings have been constructed according to the improved design, accommodation will be available in the existing buildings themselves. The extra outlay on these additions where necessary, may be estimated at about a lakh for the Presidency which, of course, is a non-recurring expenditure. A fair sized court hall, a private room for the officer and one for the clerks, will be all that will be necessary for the new officers.

29. (c) *Police Prosecuting Agency*.—A question might be raised whether under the conditions which would be created by the new order of things, the existing Police Prosecuting Agency would be able to cope with the work or whether it would not require to be strengthened.

A statement showing the existing staff in each district is appended (vide appendix VIII) and Mr. Blackstone, a District Superintendent of Police and a member of our Committee, considers that the staff is sufficient and no addition is necessary. The Committee accept his view as the figures entirely support it.

A system obtains at present, under which each court sets apart some days of the week for police cases and this system is said to be found convenient by both the police and the courts, conducing to the early disposal of police cases with the least inconvenience to parties and witnesses. This system should, we recommended, be continued.

The Committee would further recommend that complainants in police cases may, whenever they so desire, be freely permitted to engage their own pleaders (and in important cases they generally desire to do so) which, while satisfying them, save to a great extent, the time and work of the Police Prosecuting Agency.

For these reasons no additional cost is provided for under this head. The civil court has a scale of fees different from that of the criminal court and the question is whether when the criminal courts are placed under the District and the High Courts, the scale of fees of the criminal court should not be made the same as that of the civil court. The two scales are printed in appendix IX. The rates as regards railway fares are the same, but those for mileage and daily allowance differ, the difference in the case of the latter being very marked. It should be remembered that in civil cases the fees are collected from parties, while in criminal cases prosecuted by the Crown, they are paid by Government. These differences have continued to exist for a long time and the District and the Sessions Judge, who tries both civil and criminal cases, has been collecting and paying at these scales. When in the same court, different scales prevail, no attempt need be made on the

occasion of the separation of the judicial and executive functions, to assimilate these rates, especially as the future criminal courts will continue as at present to be separate from civil courts. The reason for the lower rates for criminal cases lies probably in the fact that people are under a legal obligation as part of their duty to the public to help the Crown by placing before the courts all that they know about the case and should not claim compensation for their trouble in attending the Court to the same liberal extent as in civil cases which are disputes between private parties. But whatever might be the reason, the differences in rates have been recognized. The scales were moreover revised only so recently as two years ago. The Committee do not propose to recommend any alteration, and there will therefore be no extra expenditure under this head.

31. The next point in the reference is as to the different stages in which the separation can be given effect to, if it cannot be completely carried out at once. The Committee consider that, if the scheme cannot be introduced *en bloc*, it may be introduced gradually, taking 4 or 5 districts a year, beginning say with one district in the north, one in the south, one in the centre and another on the west coast, so that within six years the scheme will have been in operation in all the districts in the Presidency. The obvious advantage is that defects noticed in the earlier districts in the working of the scheme may be rectified, before it is introduced into other districts and the pressure on the provincial finances can be evenly distributed. The Committee are aware that certain anomalies will arise when fixing the position of the officers absorbed in the judicial line, seniors in some cases becoming juniors. But this cannot be helped when introducing a large scheme as this. The advantages are overwhelming and injustice can be remedied departmentally.

32. (4) *Administrative changes necessary for the purpose.*—The charges of the Revenue Divisional Officers and of the new first-class Magistrates should first be determined by the Collector and the District Judge in consultation with each other and after the Board has expressed its opinion on the number of Divisional Officers that will be required for Revenue work. The Additional District Magistrate should be located at the District Judge's station and as regards the divisions, the arrangement will be that the Revenue Divisional Officer and the first-class Magistrate will be located at different stations. Suppose a district consists of four divisions A, B, C, D with headquarters at each of those stations and with the district headquarters at A. We would recommend that the Additional District Magistrate be located at A, which will presumably be the District Judge's station. If a Revenue Divisional Officer is located at A, the first-class Magistrate will be at a different station, say B. C may be Revenue Divisional Officer's station and D, a first-class Magistrate's station. Our object in recommending the above is that the Revenue Divisional Officer and the first-class Magistrate can then use the existing buildings. By this arrangement, all the buildings will be occupied and there will be no over-crowding of officers at one and the same station. This will cause moreover the least dislocation in the existing state of things, and the details can be worked out by the local district officers—the Revenue and the Judicial Departments co-ordinating with each other and making the redistribution with the least disturbance.

33. (5) *Legislation that may have to be undertaken.*—The scheme proposed by us involves no alteration in the law and can be brought into effect, without even amending section 17 of the Criminal Procedure Code, which defines the controlling authorities over magisterial courts. The Additional District Magistrate, who will have the power of District Magistrate, will by Gazette notification control all the criminal trying courts, viz., the Stationary first, second and third class Magistrates and the Bench and Honorary and Special Magistrates' courts but will have none over the executive magistracy as opposed to the trying magistracy. The Collector-Magistrate will have to have his powers limited under section 17 to control over the present Subdivisional Magistrates and Taluk Magistrates and Deputy Tahsildar-Magistrates. This can be done by Gazette notification. The enactments—Imperial and Provincial—affecting the position and power of magistrates have been examined as far as possible and we find no need to alter any of the provisions. Even in enactments, such as the Reformatory Schools Act, section 9 (1) and (2) giving special judicial powers to the District Magistrate, alteration is unnecessary, because those judicial powers can be exercised by the head of the new judiciary, the Additional

District Magistrate. What we consider sufficient is that Government would issue executive instructions to the Collector-Magistrate and the Additional District Magistrate that they should restrict their control to their respective sets of courts. The nomenclature Additional District Magistrate should, as already observed, be only temporary until section 17 is amended so as to vest the subordination of all criminal judicial courts under the Sessions Court. Until then, the Sessions Court can exercise its control only through the Additional District Magistrate. This may seem anomalous, but in practice it would give no trouble, as in civil matters the Additional District Magistrate would as sub-judge be subordinate to the District Judge and friction is most unlikely. The scheme as regards this is of course tentative and to enable the proposals to take immediate effect without waiting for an amendment of the law.

In order to discriminate the new first-class magistrates from the existing sub-divisional magistrates, we propose to call the former stationary first-class magistrates of Division, while the latter will retain their present appellations Subdivisional Magistrate, thus avoiding confusion and indicating that the present scheme is only a logical extension of the principle of stationary sub-magistrates begun in 1892. This is also so as to comply with the provision in section 17 that every magistrate other than a sub-divisional magistrate shall be subordinate to the sub-divisional magistrate.

34. The new executive and judicial courts under this scheme will be arranged as follows:—

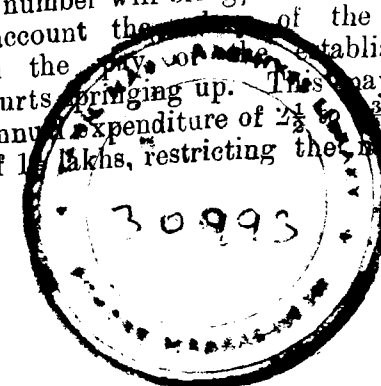
Executive.		Judicial.
(Collector) District Magistrate	...	Sessions Judge.
	...	Additional District Magistrate.
(Sub and Deputy Collector) Subdivisional Magistrate.	...	Stationary first-class Magistrate.
Tahsildar—Taluk Magistrate	...	Do. second-class and third-class Magistrates.
Deputy Tahsildar—Deputy Tahsildar-Magistrate.	...	Honorary first-class Magistrate.
		Bench Courts, first and second and third class.
		Special Magistrates.

The grading of the new establishment will be starting from the bottom of the paid magistracy—

- (1) Stationary sub-magistrate who can be posted to a civil court as district munsif after second or third year's criminal work.
- (2) First-class magistrate who can also be posted as a district munsif.
- (3) First-class magistrate who can also be posted as a sub-judge. When a magistrate reaches the Rs. 600 grade, he will be eligible to be appointed a sub-judge.
- (4) Additional District Magistrate, who can also be an additional sessions judge and sub-judge.
- (5) Sessions Judge who will also be District Judge,

the idea being to employ the same class of men in both civil and criminal courts by turns but not to combine the two classes of work in the same officer below the grade of additional sessions judge.

35. It will have been seen that the anticipated annual expenditure under the scheme—when it is fully in operation—will be from 2½ to 3¼ lakhs. As against this, there will be no immediate savings, but if bench courts develop, there will be a corresponding reduction in the number of stationary sub-magistrate courts. In course of time about one-half their present number may be expected to be abolished. The total number of stationary sub-magistrates' courts is 158, and the savings which the abolition of one-half their number will bring, will amount to Rs. 175 × 80 × 12 or 1,68,000, taking into account the pay of the magistrates alone, and leaving out of consideration the pay of the establishment, which may be required for the new bench courts springing up. This may be expected only after some considerable time—an annual expenditure of 2½ to 3 lakhs, with the prospect, though distant—of a saving of 1½ lakhs, restricting the net expenditure to 1 to 2 lakhs.



lakhs, which cannot be considered to be too high for a reform for which the country has been agitating for so long a time.

36. We wish to express our great appreciation of the help rendered by the Secretary M.R.Ry. S. Tirumalai Ayyangar and we wish him a happy life in his retirement.

F. A. COLERIDGE.
A. RANGANADHAN.
T. A. RAMALINGAM (subject to a note).
S. M. PADSHA.
B. MOHIDIN KHAN LODI.
K. SARABA REDDI.
M. R. SETURATNAM (subject to a note).
T. N. SIVAGNANAM.
C. V. VENKATARAMANA AYYANGAR (subject to a note).
T. W. BLACKSTONE (subject to a dissenting note).
T. G. RUTHERFORD (28-4-23).
S. TIRUMALAI AYYANGAR.

21st April 1923.

APPENDIX I.

Committee to consider the question of the separation of judicial and executive functions.

Mr. C. V. Venkataramana Ayyangar's scheme.—(1) Numbers and powers of Bench Courts to be increased. They should be invested with civil powers. The present Stationary Magistrates all have civil powers in suits of small causes nature up to Rs. 500 and also their present magisterial powers. The present District Munsifs to have their present civil powers and also criminal powers of first-class magistrates.

After some experience, they may be given appellate powers over Bench Courts and the Stationary Magistrates. The present sub-judges may be given powers of the present District Magistrates for revision purposes. District and Sessions Judges will hear appeals from first-class Magistrates and have revisional and transfer powers of the District Magistrates and have full control over the Stationary Magistrates including the powers of appointment if the High Court gives such powers to them. The present District Magistrates should retain all their powers under special Acts, except the power to try cases.

It is suggested that Sub-Magistrate-Munsifs (with civil powers as suggested above) be appointed by the District and Sessions Judge from an approved list by the High Court and be retained for such number of years as the High Court may consider desirable as second or third class Magistrates with reduced civil powers and thereafter become full District Munsifs with full civil powers and first-class criminal powers.

(2) It is suggested that the proposed Munsif-Magistrates should not attend inquests.

(3) Under this scheme, the recess will be abolished.

(4) The present Collectors, Revenue Divisional Officers and Tahsildars may retain their present powers under chapters 8-12 of the Criminal Procedure Code provided that every order or judgment passed by those Magistrates shall be subject to an appeal to the Sessions Judge in the first two cases or the District Munsif or the Sessions Judge in the third case.

Mr. Ranganatha Mudaliyar suggests that chapter 8 be excluded from the above.

A further suggestion is made by Mr. Saifid Padsha Sahib that up to the stage of trial they may have the above powers but the actual trial should be before a judicial officer.

Proposed by Mr. Rutherford.—(1) Scheme already proposed by Government for trial in two selected districts to be examined—see Sub-enclosure below. Civil and Criminal Judiciary should be kept apart as far as possible. Number of Benches, status and powers to be increased and Stationary Sub-Magistrates gradually abolished. Subdivisional Magistrates to be stations and try committal cases, all first-class cases and second-class cases which cannot be dealt with by a Bench summarily. His summary powers to be raised if possible. Security cases will normally go to him, appeals to Sessions Judges as at present. Bench and stipendiary courts will be under the control of Sessions Judges, including revision work. Question of having one Sessions Judge and one District (Civil) Judge for each two districts to be considered.

Collectors to retain powers of District Magistrates as regards preventive sections and special laws such as Arms Act, Explosives and Petroleum Act. Revenue work will be dealt with through Tahsildars. Revenue Divisional Officers to be abolished and Collector must have one senior Revenue officer (Provincial or Imperial Civil Service) to assist with income-tax, land acquisition, and revenue appeals.

Recruitment to criminal judicial to be partly from existing civil and partly from members of executive services, who elect for judicial service.

SUB-ENCLOSURE

Memorandum No. 4309-1, Judicial, dated 6th September 1922.

[Scheme for the appointment of Benches of Magistrates and Stipendiary First-class Magistrates solely for magisterial work.]

As a potential measure of economy and also as a means of improving and accelerating the administration of justice, the Government are anxious to explore the possibility of utilizing unpaid agencies to a greater extent for the trial of criminal cases and at the same time appointing whole-time magistrates of superior ability to deal with more important criminal work.

2. The main features of the scheme that they have under contemplation are as follows:—

(1) The entire abolition of sub-magistrates with second and third class powers.

(2) The appointment in all important centres of stipendiary first-class magistrates who will be employed solely on magisterial work and invested with summary powers.

(3) The appointment of honorary magistrates wherever suitable gentlemen can be found to sit either singly or as benches for the disposal of cases of lesser importance.

(4) A redistribution of the revenue work consequent upon the appointment of stipendiary first-class magistrates and the attendant reduction in the work of Divisional Officers who have already been relieved of Local Fund and in some cases of Income-tax work.

3. In working out details it is necessary to bear in mind the following points:—

(1) In order to maintain the standard of efficiency and to command the confidence of the public, a very careful selection will have to be made of persons to be invested with powers as honorary magistrates. In some places non-officials of acknowledged status, including Europeans, may be available, but in most the selection will have to be made mainly from retired officials and among these should for the present be confined to retired deputy collectors, district munsifs, and sub-judges, district registrars, educational officers, sub-magistrates and police officers not below the rank of Inspector.

(2) Of those selected some will probably be fit to be invested with first-class powers and to sit alone to try cases; the others would be formed into benches. A panel consisting of 10 or 15 honorary magistrates might be chosen for each place where such a court is established and of these three sitting together might constitute a bench. These benches would be invested with powers suitable to their capacity.

(3) The number of stipendiary first-class magistrates and their jurisdiction as well as the number of bench courts would have to be worked out on a calculation of the statistics of the work of existing courts and with due consideration for the convenience of the public.

(4) The first-class magistrates would take primary cognisance of all offences and would transfer to honorary magistrates and benches cases or classes of cases that can suitably be tried by them. They would themselves deal with all important criminal cases including preliminary enquiries into cases triable by the court of sessions.

4. It will be seen that the success of an experiment of this nature must depend largely on the capacity and energy of the first-class stipendiary magistrates whose duty it would be to guide and assist the honorary magistrates and benches and who would have to be selected with particular care. They would have to arrange their own work with method and exactitude, setting apart fixed hours every day for the admission of complaints and for the various other classes of their work. A great defect of the present system is the failure of magistrates to examine complainants carefully and promptly in the first instance; and as has frequently been pointed out in the Government reviews, far too little use is made of section 202, Criminal Procedure Code. If all obviously false or vexatious complaints were dismissed immediately the work of the courts would be lightened appreciably; and it may be hoped that this result with its attendant benefits to the public would follow on the raising of the standard of the courts receiving complaints; while they would be able to refer doubtful complaints for preliminary enquiry to honorary and bench magistrates and village headmen as well as to the Police. Such enquiries, if properly made, would often supply all the material for discharge after what practically amounted to a regular trial. They would also be expected to make habitual use of their summary powers. This is a matter of considerable importance both from the point of view of expedition and from that of reducing appellate work. Finally, they would be expected to exercise far greater discretion in committing cases for trial to sessions courts than is evidenced now by the statistics of the percentage of acquittals to commitments. Unnecessary committals spell a vast amount of unnecessary work.

5. Lastly it will be necessary, if the scheme is to be practicable at all from a financial point of view, to work out a general scheme for the distribution of revenue and magisterial charges. Now that revenue divisional officers have been relieved of local fund work, the Government consider that it should not be impossible to increase the size of divisions; and if, as would be the case under the above scheme, they were also relieved entirely of magisterial work the number of divisional officers doing revenue work should, in the opinion of the Government, be capable of very considerable reduction.

6. The Government are anxious to initiate a scheme of this nature experimentally. The districts in which it seems most probable that material will be available for the constitution of the honorary courts contemplated are Tanjore and Madura, and the district magistrates of these districts are accordingly requested to submit definite and detailed proposals for the introduction of the system in their districts as soon as possible. They will be at liberty to point out any particular difficulty or to make any additional suggestions that may occur to them, but their proposals should follow the broad lines indicated above.

R. A. GRAHAM,
Chief Secretary.

To the District Magistrates, Tanjore and Madura (memo. only).
,, Board of Revenue, Land Revenue and Settlement.

APPENDIX II.

The President of the committee submits the following proposals for consideration based on the conflicting opinions received:—

Taking it as established that public opinion wishes for separation of Executive and Judicial functions so far as is practicable, it is desirable to arrive at some scheme

(1) That will not weaken law and justice.

(2) That will as far as practicable, avoid changes in the criminal law as being fruitful of technical litigation and uncertainty as to the law existing.

(3) That will not confuse the public by its novelty, but will, as far as practicable retain existing courts, and existing names of courts.

(It is to avoid a complete revolution in the civil and criminal system that I have not pressed the many good points of the French system under which Judicial officers are recruited as soon as they pass their examinations and never join the Bar and, under which the number of courts is very large and of many degrees of jurisdiction. They combine also civil and criminal powers in the same officer in a way entirely alien to English custom except in the highest courts.)

(4) That will be easy to introduce at once by providing for existing establishments.

(5) That will provide a remedy for the admitted weak spots of the present system in the want of legal training of the sub-magistrates by replacing them by degrees with honorary courts and benches.

(6) That will provide a means for educating the public to administer justice and by degrees hand over to the public the administration of all justice but the gravest crime and the most complicated civil disputes as is now the custom in England and America.

(7) That will not necessitate a great initial increase in recurring expenditure nor a great outlay at any time in additional court buildings.

The following scheme appears to me to meet these requirements:—

(a) As the securing of peace and order is the essence of good government, there must be a responsible executive head in each district for control of the Police and to secure law and order. In England it is the Justice of the Peace and here it must be the Collector-Magistrate. Under him must be the control of the Police and the final say in matters governing law and order. He must therefore have the powers given in Chapters 8 to 12 of the Criminal Procedure Code. He must have under him officers with like powers and they must be the revenue officers both divisional and taluk, i.e., divisional officers and tahsildars and deputy tahsildars. They must also have the powers necessary under Chapters 8 to 12.

The enquiry into cases (it is not 'trial') must be with them, for these are executive acts and must be controlled by the executive head. There must not be two authorities interfering in these matters. The new Criminal Procedure Code provides an appeal from such order to the Sessions Judge.

In all the special acts where the District Magistrate has powers, other than to try cases, placed on himself or his subordinates, these powers shall vest in the Collector-Magistrate and his subordinates, but, where such Acts provide for a 'trial', that trial shall be before a Judicial officer.

This, I think, will secure that law and order do not suffer by the proposed change. Unless we can secure this, no Government with a sense of responsibility would sanction any change.

(b) Under the proposed scheme all civil and criminal courts will be under the control of the District and Sessions Judge, who may depute powers to those under him.

The Courts will be

(a) District Court, Sub-Courts, Munsifs' Courts, Bench Courts with civil powers but not honorary munsifs as civil work needs constant application.
(b) Sessions Court, Additional and Assistant Sessions Courts when needed, Divisional Courts, Taluk Courts (Sub-Magistrates) and bench courts. Also honorary first and second class Magistrates when needed and available.

All judgments of Magistrates will go to the Sessions Judge, who will have an assistant, or additional Judge who may be the local Sub-Judge, if practicable to help in these. The lower Court judgments will pass through the Divisional Magistrates who will have power of inspection of all lower and bench Courts.

I think these changes will be easy to the public to understand as so near to the present system and will need no changes in the law.

(c) So that the system can function at once, I would take over all criminal Magistrates and their officers and establishments, but the present Magistrates would be allowed to choose which branch they wish to belong to in the future and then just as in the Civil Service they would be allotted.

The Revenue Department would be allowed to choose all the men it would desire to take back as vacancies occur for Tahsildars and Revenue Divisional Officers and Collectors and they would be temporary hands in the Judicial to be surrendered whenever needed. The others would come on to the permanent Judicial staff and would be listed in it and get promotion in it.

It would have to be settled by the Revenue Department that they must take back a fixed number so as not to use the Judicial as a 'dumping ground, but, no doubt for their own work they would need many Sub-Magistrates.

Once the selection is made and the men are allotted, all future posts in the Judicial would be filled by the High Court from the classes now recruited for District Munsifs, but, as they would start as Sub-Magistrates, they would only get Sub-Magistrate's pay. (There would be no difficulty in getting men on this pay as very few aspiring vakils of under five years make as much as a Sub-Magistrate is paid and certainly never rise to what a Munsif or Sub-Judge automatically get.)

The newly-appointed men would start as third and then second class Magistrates and do two years as Magistrates and then would be drafted into a Civil Court for three years or two years and then given first-class Magistrates' powers and put again in a Magistrate's Court and so on through their service till when they become Sub-Judges they would be really efficient Magistrates and capable of doing assistant and then additional sessions' work and helping in the supervision of the criminal work.

At the start, men would continue in their criminal or civil Courts, but men in criminal Courts would be eligible to be made Munsifs or Sub-Judges, at the discretion of the High Court and Government, just as at present certain Tahsildars, Divisional Officers are Munsifs, i.e., one in Coimbatore, four in Ganjam, six in Vizagapatam, four in Gōdāvari and probably other districts I do not know about.

Divisional Magistrates would have the chance of being Sub-Judges and becoming Judges just as I.C.S. men become Judges. The training I open up to them by this scheme would be invaluable and the same remark applies to the criminal training I would open up to Munsifs.

As soon as the scheme is introduced I would allow Munsifs to apply for magisterial work and give them a year as third and second class Magistrates and then make them into first-class Magistrates and give them powers of appeal in due course.

This scheme takes over every one now employed, opens up chances to both sides and also in the future provides for a much better type of Sub-Magistrate.

(d) This scheme gets rid by slow degrees of the weak spot, i.e., the Sub-Magistrates as now recruited. To further get rid of them I would open as many *capable* benches as possible, but, I would rather go slow in this than bring the system into disrepute, as I fear many of the benches are doing.

I would give these benches a magisterial clerk from the regular establishment who would merely serve these for a time. It is essential they should have to keep their registers properly and have some one to help them in technical details.

I would, subject to this, give them second and third class powers and *powers to entertain complaints* but not first class powers till they have really established themselves as the recognised Courts to whom the public go for choice. I would have all the Honorary Magistrates I could get and give them a clerk from the regular establishment, and, if possible, have a fixed court for them. They might be first class if the right men are available and they might receive complaints. It is most important to give them a sense of responsibility by giving them this power, and it would soon show how they were viewed by the public. I would give an option to the public to

file before a regular Magistrate so as to create a sense of dignity and a realization that they were being judged by the public. The more the public chose the Benches and Honorary Magistrates, the more the Sub-Magistrates could be reduced.

(e) I do not think this scheme would be costly at any stage. Even if we put it at an Additional Judge on Rs. 1,800 (a high figure) and one more Divisional Magistrate on (Rs. 700) than we could count on securing from the reduction of Revenue Divisional Magistrates, this would only be Rs. 2,500 per mensem in a district or Rs. 30,000 a year, and this by the 24 districts, Rs. 7,20,000, i.e., 7 lakhs for a year for a reform the country is said to have been needing for 50 years, is not excessive. I have not added anything for establishments extra, as the pay I have mentioned will be more than cover anything extra that is needed, and I cannot see that anything will be needed, for the Divisional Magistrates' Magisterial staff would mostly be abolished and the same with District Collectors. The Sub-Magistrates and Deputy Magistrates would need no more and the Sessions Judge would only need what the District Magistrate no longer needs.

The clerk for the Benches and for the Honorary Magistrates would depend on the number of Courts. The cost would not be really much at the start and as Sub-Magistrates ended, they would cover the extra cost.

There would probably be no need for many buildings as Divisional Offices would be gradually vacated.

This scheme appears to meet the requirements I have outlined for any scheme that would be practicable.

I am of opinion that to combine Civil and Criminal work in the same Court would lead to much delay in Criminal work and to much dissatisfaction from both sides of the litigants—Civil and Criminal. The former would have always to give place to Criminal cases and the latter would get congested.

It is unlikely that a Criminal Court would dispose of the Civil work to be given it as quickly as a Civil Court would do it and vice versa and both would get into arrears! Better in my opinion to use the Courts we have and to improve the recruitment to them without mixing up the work. In England it has never been considered possible to entrust County Court Judges with Criminal powers and much less to give to Petty Sessions or Justice of the Peace the trial of Civil Suits. It is only the highest Bench that tries both. The same is the American custom. It is on these we mainly rely for our law and practice as being the growth of liberty loving people.

F. A. COLERIDGE.

APPENDIX III.

List of persons whose opinions were invited.

Serial number, name and address.

1. M.R.Ry. T. Sivasankaram Pillai Avargal, M.L.C., Penukonda.
2. " P. Siva Rao Garu, B.A., B.L., M.L.C., Bellary.
3. " B. V. Narasimha Ayyar Avargal, High Court Vakil, Salem.
4. " O. Krishnamurti Rao Garu, Municipal Chairman, Adoni.
5. " Diwan Bahadur P. Kesava Pillai Avargal, M.L.C., Gooty.
6. " Rao Bahadur T. M. Narasimhaachari Avargal, M.L.C., Cuddapah.
7. " D. Ella Reddi Garu, President, Taluk Board, Dhone.
8. Sowcar P. Saiyid Hussain Sahib Bahadur, Nandyal.
9. M.R.Ry. S. Alagiriswami Reddiyar Garu, Dharapuram, Coimbatore.
10. " C. Sundaram Mudaliyar Avargal, President, First-class Bench, Coimbatore.
11. " C. Sundaram Mudaliyar Avargal, M.L.C., Ellore.
12. " Diwan Bahadur M. Ramachandra Rao Pantulu Garu, M.L.C., Trichinopoly.
13. " Diwan Bahadur Sir. T. Desikachari Avargal, M.L.C., Palghat.
14. " Diwan Bahadur M. Krishna Nayar Avargal, M.L.C., Kurnool.

List of persons whose opinions were invited—*cont.*

Serial number, name and address.

15. M.R.Ry. Diwan Bahadur L. A. Govindaraghava Ayyar Avargal, M.L.C., Madras.
16. " Diwan Bahadur V. K. Ramannujachariyar Avargal, Tanjore.
17. " Rao Bahadur K. S. Venkatarama Ayyar Avargal, Negapatam.
18. " K. S. Ramaswami Sastrigal, B.A., B.L., Sub-Judge, Chittoor.
19. " K. Sundaram Chetti Avargal, B.A., B.L., Sub-Judge, Guntur.
20. " A. S. Krishna-swami Ayyar Avargal, B.A., B.L., Sub-Judge, Nellore.
21. " S. Ranganadha Mudaliyar Avargal, B.A., B.L., District Judge, Anantapur.
22. " A. Uppendra Pai Avargal, Collector, Cuddapah.
23. " Rai Bahadur U. Rama Rao Avargal, Collector, Salem.
24. " Rao Bahadur V. T. Krishnamachariyar Avargal, Mylapore.
25. Mr. W. H. H. Chatterton, Deputy Collector, Saidapet.
26. M.R.Ry. K. Balappa Garu, Rayadrug, Bellary.
27. Muhammad Khasim Ali Sahib Bahadur, Deputy Collector, Guntur.
28. M.R.Ry. R. S. Sankara Ayyar Avargal, B.A., B.L., Sub-Judge, Chingleput.
29. " S. V. Nargunam Avargal, Assistant Secretary, Board of Revenue.
30. " C. Rajagopala Achariyar Avargal, Salem.
31. " Konda Venkatappayya Garu, Guntur.
32. Dr. P. Varadarajulu Nayudu Garu, Salem.
33. M.R.Ry. K. V. R. Swami Avargal, Bar-at-Law, Rajahmundry.
34. Muhammad Abdul Latif, Editor, *Azathin*, Madras.
35. M.R.Ry. P. Krishnan Avargal, Editor, Calicut.
36. " S. Srinivasa Ayyangar Avargal, B.A., B.L., High Court Vakil, Mylapore.
37. " Rao Bahadur M. C. Raja Avargal, M.L.C., St. Thomas' Mount.
- 38—47. All Editors of daily papers—*Madras Mail*, *Hindu*, *Justice*, *Swadesamitran*, *Andra Patrika*, *Daily Express*, *New India*, *Sudaraja*, *Dravida*, *Jammachumi*.
48. Raja Sri Krishna Chandra Gajapati Narayana Deo Garu, Raja of Parlakimedi.
49. M.R.Ry. S. R. Y. Ankinedu Prasad Bahadur, M.L.C., Chellapalli.
50. " K. Sitarama Reddi Garu, B.A., B.L., M.L.C., Cuddalore.
51. " R. Srinivasa Ayyangar Avargal, M.L.C., Cuddalore.
52. " Rao Bahadur S. Kumaraswami Reddiyar Avargal, Palamecottah.
53. " Rao Bahadur C. V. S. Narasimha Raju Garu, M.L.C., Vizagapatam.
54. " V. S. Ramaswami Ayyar Avargal, Udamalpet.
55. " Rao Bahadur S. Hanumanta Rao Garu, Masulipatam.
56. " J. D. Samuel Avargal, Masulipatam.
57. " Diwan Bahadur B. Narayanamurti Pantulu Garu, Vizagapatam.
58. " W. L. Venkataramayya Garu, retired District Judge.
59. " B. Muniswami Nayudu Garu, M.L.C., Chittoor.
60. " Diwan Bahadur D. Seshagiri Rao Pantulu Garu, M.L.C., Cocanada.
61. " M. C. Narasimha Rao Garu, M.L.C., Berhampur.
62. " Venkatarama Rao Garu, Chintalapudi.
63. " P. Chinna-swami Ayyangar Avargal, B.A., B.L., Chingleput.
64. " D. M. Dorairajah Avargal, B.A., B.L., Madura.
65. " K. S. Ponnuswami Pillai Avargal, B.A., B.L., Municipal Chairman, Palamecottah.
66. " Kota Lakshmayya Nayudu Garu, Guntur.
67. " Venkatarama Rao Garu, Vakil, Madanapalle.
68. Muhammad Abbas Ali Sahib Bahadur, Bar-at-law, M.L.C., Madura.
69. Muhammad Hyath Hussain Sahib Bahadur, Guntur.
70. Sowcar Mir Hussain Sahib Bahadur, Chittoor.
71. F. A. Hamilton, Esq., Deputy Inspector-General of Police, Vellore.
72. M.R.Ry. Rao Sahib A. K. Rajah Ayyar Avargal, Special Superintendent of Police, Madura.
73. C. H. Gadsdon, Esq., District Superintendent of Police, Kistna.
74. Maulani Ghulam Jilani Quirushi Sahib Bahadur, B.A., B.L., District Munsif Conjeeveram.
75. Khan Bahadur Muhammad Bahl-ul-la Sahib Bahadur, Commissioner, Madras Corporation.
76. M.R.Ry. C. Govinda Nayar Avargal, District Munsif.
77. M. H. Ispahani, B.A., B.L., District Munsif, Guntur.
78. M. Zahir-ud-din, B.A., B.L., District Munsif, Nuzvid.
79. M.R.Ry. D. V. Hanumanta Rao Garu, Bezvada.
80. " Justice K. S. Chandrasekara Ayyar, Chief Court, Mysore.
81. " Diwan Bahadur Sir T. Sadasiva Ayyar Avargal.
82. " Rao Bahadur R. Satagopa Ayyangar Avargal, President, First-class Bench, Srirangam.

APPENDIX IV

Abstract of opinions.

Abstract.

Name of the officer with designation.

1. M.R.Ry. Rai Bahadur T. M. Narasimha-charlu, B.A., B.L., M.L.C., High Court Vakil, President, District Board, Cuddapah.
2. T. W. Blackstone, Esq., District Superintendent of Police, Cuddalore.

Accepts Mr. Venkataramana Ayyangar's scheme and is like him opposed to separate courts for Criminal and Civil cases.

Considers that the only change necessary in the existing machinery is the provision for hearing of appeals by Judicial Officers instead of as at present by officers having both Executive and Judicial functions and that as the maintenance of law and order is the most important thing, all the Magistrates should retain their existing powers—ordinary and preventive.

Would transfer all functions to the Civil courts, including preventive powers, except Arms, Explosive and Petroleum Act powers.

Same as Mr. Ramaswami Sastri.

Against Bench Courts.

Honorary Magistrates' Courts to be increased, but no Civil powers; Munsif-Magistrates to be appointed by High Court and to be invested with first, second and third-class powers according to capacity.

Sub-judges to be first-class Magistrates with appeal powers over second and third-class Magistrates.

Security and possession cases to be dealt with by first-class Magistrates.

Expresses inability to furnish useful suggestions on the matter.

Against abolition of Stationary Sub-Magistrates. They can be given Small Cause powers up to Rs. 200.

District Munsifs.—First-class powers plus usual Civil, except Small Cause up to Rs. 200.

Sub-Judge.—No Small Cause, otherwise purely Civil.

Collector to retain the preventive powers.

Recruitment by Government partly from executive and partly from the bar.

Against separate Civil and Criminal judiciary.

Approve Mr. Venkataramana Ayyangar's scheme in the main.

Would keep the Civil and Criminal judiciary separate, but would have no objection to transfers from one to the other.

Portion of Subdivisional Magistrates should be made stationary and employed on criminal work exclusively.

Bench Courts should not be given first-class or summary powers.

Collectors to have their present preventive powers.

Agrees with Mr. Rutherford's scheme and adds that all complaints should, as in North India, be received by a single Magistrate and distributed.

3. M.R.Ry. K. S. Ramaswami Sastri, Sub-Judge, Chittoor.

4. M.R.Ry. C. V. Narasimha Raju, M.L.C.

5. Diwan Bahadur Sir T. Sadasiva Ayyar.

6. M.R.Ry. Diwan Bahadur V. K. Ramanuja Achariar, Tanjore.

7. M.R.Ry. Sitarama Reddi Garu, B.A., B.L., M.L.C., Cuddalore.

8. Rao Bahadur M.R.Ry. C. V. Ranga Reddi, M.L.C.

9. T. Sivasankaram, M.L.C.

10. P. Chinna-swami Ayyangar, B.A., B.L., High Court Vakil, Chingleput.

11. Mr. W. H. Chatterton, Deputy Collector, Saidapet.

Name of the officer with designation.
12. M.R.Ry. A. Upendra Pai, Collector, Cuddapah.

Abstract.
Agrees with the principle of Mr. Venkataramana Ayyangar's scheme, but disagrees in some details. At the beginning there should be no fusion of the two judiciaries, which should be effected gradually by proper recruitment.

Is very strongly of the opinion that Collectors and their subordinates should retain all their preventive powers in order that they might discharge their responsibility for the maintenance of law and order.

13. M.R.Ry. Diwan Bahadur B. Narayana-murthi Pautulu, Vizagapatam.

Criminal and Civil judiciary should be kept apart as far as possible.

Bench Courts.—Number, status and powers to be increased, but should have no civil powers.

Stationary Sub-Magistrates to be retained until sufficient number of Bench Courts are formed.

Revenue Divisional Officers—Some to be made Stationary stipendiary first-class Magistrates.

District Magistrates to retain all their present powers, including the powers to nominate *Sub-Magistrates*.

14. M.R.Ry. Rao Bahadur M. C. Raja Avargal, M.L.C.

Civil and Criminal judiciary should be kept apart as far as possible.

Bench Courts to have Civil powers, etc., in suits of Small Cause nature up to Rs. 500 in the mufassal and Rs. 1,000 in the Presidency town. (Depressed classes to be represented on the Bench).

Revenue Divisional Officers to be retained.

Collectors to have preventive powers, while the trial should be before the judiciary.

15. M.R.Ry. A. K. Raja Ayyar Avargal, Special Superintendent of Police for Kallars, Madura.

Benches.—Number, status and powers to be increased and vested with Small Cause powers up to Rs. 500.

Stationary Sub-Magistrates to be abolished.

Subdivisional Magistrates.—Portion to be exclusively employed on magisterial work.

District Munsifs.—Selected men to be invested with first-class powers.

District Magistrates.—To continue to have preventive powers.

16. C. H. Gadsden, Esq., District Superintendent of Police, Kistna.

Mr. Rutherford's scheme may be tried in one selected Telugu district, in addition to two Tamil districts.

The extended use of Honorary Magistrates, either singly or as Benches, should be very carefully and gradually introduced in the majority of Telugu districts.

17. S. R. Y. Ankineedu Prasad Bahadur, B.A., M.L.C., Raja of Challapalli.

Agrees generally with Mr. Rutherford's proposals, except as regards one District Judge and one Sessions Judge each for two districts.

18. M.R.Ry. A. S. Krishnaswami Ayyar Avargal, B.A., B.L., Sub-Judge, Nellore.

Agrees in the main with Mr. Venkataramana Ayyangar's proposals and makes suggestions as to the magisterial powers to be given to District Munsifs, Sub-Judges, District Judges. Honorary Courts should have *only third-class* powers and village headmen should have no kind of Judicial function.

19. Maulavi G. J. Quaraishi Sahib Bahadur, B.A., B.L., District Munsif, Conjeeveram.

Agrees with Mr. Rutherford's proposals and adds that the Criminal and Civil judiciary should be interchangeable and there should be no class of Sessions Judges without Civil powers.

Name of the officer with designation.
20. Muhammad Kazim Ali Sahib Bahadur, B.A., Personal Assistant Deputy Collector.

Abstract.
Criminal and Civil Judiciary should be separate from the District Court downwards. Estate Land Act suits should be tried by Civil and not by Revenue Courts.

Honorary Magistrates to be increased.

Second and third-class Magistrates to be gradually dispensed with.

Collectors to have preventive powers subject to appeal to the High Court.

Existing Revenue Divisional Officers to be reduced by half.

Scheme should be introduced gradually beginning with two or four districts at first.

21. Muhammad Zahir-ud-din Sahib Bahadur, B.A., B.L., District Munsif, Nuzvid.

Favours Mr. Venkataramana Ayyangar's scheme with some modifications in details.

Collectors to have preventive powers. Chapters 8 to 11 and 13 but not Chapter 12.

22. M.R.Ry. B. Muniswami Nayudu Garu, B.A., B.L., M.L.C.

Not in favour of entrusting both civil and criminal powers to the same officer.

Bench Courts may be formed for groups of villages with elected and nominated members and with stipendiary Magistrates as Presidents.

Criminal Judiciary should be under the Sessions Judge.

Powers under Chapters 8 to 12 to hold inquiry and pass final orders should vest in Judicial officers.

Recruitment should be made by Government.

23. M.R.Ry. N. Venkataramana Rao, B.A., Pleader and Landholder, Madanapalle.

Civil and Criminal Judiciary should not be combined.

First-class Magistrates should be appointed, each for a number of taluks.

Criminal Judiciary should be under the control of the Sessions Court and High Court.

Collectors and their subordinates should have powers under Chapters 8 to 12, subject to appeal and revision to the Sessions Court and High Court.

24. M.R.Ry. R. S. Sankara Ayyar, B.A., B.L., Sub-Judge, Chingleput.

Civil and Criminal judiciary should be kept separate up to the District Court.

Bench Courts to be increased and given powers to receive complaints and to try cases under the special Acts.

For each district there should be two 1st class Stipendiary Magistrates with summary and appeal powers.

District Magistrate should have his present powers.

Revenue Divisional Officers to be ex officio 1st class Magistrates, with preventive powers under Chapters 8, 9, 10 and 11 but not 12. The latter should be transferred to the District Munsif.

25. M.R. Ry. V. Subramanya Nadar Avargal, High Court Vakil, Tinnevely Bridge.

Complains against the present method of recruitment and says that men with knowledge of law and procedure such as that possessed by a District Munsif should be appointed. Taking an average district containing eight Stationary Sub-Magistrates and four Subdivisional Magistrates he says that they could be replaced by eight men of the description referred to by him for magisterial work, leaving two men for revenue work.

Name of the officer with designation.
26. F. H. Hamilton, Esq., Deputy Inspector-General, Southern Range.

27. Raja of Parlakimedi

28. M.R.Ry. S. Ranganadha Mudaliyar, District Judge, Anantapur.

29. M.R.Ry. C. S. Sundara Mudaliyar Avargal, retired Deputy Superintendent of Police and Vice-President of the first-class Bench, Coimbatore.

30. R. Satagopa Ayyangar, retired Deputy Collector and President, First-class Bench.

31. Rao Bahadur S. Hanumanta Rao, Government Pleader and Public Prosecutor, Kistna.

Abstract.

Civil and criminal jurisdiction should not be combined in the same officer.

Bench Courts are not working satisfactorily and should not be increased as suitable men will not be forthcoming in the existing state of things.

The Second and Third class Magistrates should not be entirely abolished.

Bench and Honorary Magistrates' Courts should be invested with first, second and third class powers and also with varying small cause powers.

Decidedly against the normal combination of civil and criminal functions in the same officer.

Bench and Honorary Courts—The cases transferred to them for disposal should be of some specified classes.

Does not favour further extended use of section 202, Criminal Procedure Code.

Mr. Venkataramana Ayyangar's scheme complicated and impracticable.

Separate District Judge and separate Sessions Judge unnecessary.

Bench Courts—To increase the courts competent and willing men are not available in sufficient number, but suitable men can be found to sit singly and dispose of cases.

Second and Third class Stipendiary Magistrates—Entire abolition not advisable.

Criminal work should not be added to District Munsifs and Sub-Judges.

Bench and Honorary Magistrates' Courts may be increased and their powers augmented, but great care and caution should be exercised in the nomination of persons for such courts.

Sub-Magistrates.—Until further experience is gained of Bench Courts, Stationary Sub-Magistrates must continue.

Subdivisional Magistrates.—Portion of Revenue Divisional Officers, say, two or three in a district, may be employed purely on magisterial work and the remainder reserved for revenue work.

District Magistrate.—His powers—ordinary and preventive—should be continued.

Civil and criminal judiciary need not be separated.

Bench Courts.—Are not giving satisfaction. Proper selection should be made.

Stationary Sub-Magistrates.—In addition to their present magisterial powers, may have also small causes jurisdiction up to Rs. 100, but the recruitment should be from those who have passed either B.L., or B.A., with tests.

District Munsifs.—First-class powers and appeal powers over Stationary Sub-Magistrates and Bench Courts.

District Judges.—Appeals from First-class Magistrates (District Munsifs), transfer and revisional powers with full control over Stationary Sub-Magistrates, including power of appointments.

Collector and Revenue Divisional Officers.—May exercise powers under chapters 8 to 12 except section 108, Criminal Procedure Code, subject to appeal to the Sessions Judge. Also powers under the Special Acts except power to try.

Abstract.

Name of the officer with designation.

32. D. V. Hanumanta Rao Garu, Bezwada.

Bench Courts.—Third-class Bench Courts may be increased but proper persons should be selected.

First-class Bench Courts should be presided by retired officials.

2. For each district there should be two or three first-class stipendiary magistrates.

3. *District Munsifs.*—May be given first or second-class powers according to their standing and can try such cases as may be transferred to them.

4. *Sub-Judges.*—May be called Assistant Sessions Judges and may dispose of appeals and cases transferred to them.

5. Collectors may have the preventive powers and also powers under the Special Acts. They may also have their ordinary powers, but should not exercise them.

Supports Mr. Venkataramana Ayyangar's scheme with some modifications—

(i) Sub-Magistrate Munsifs should have small cause jurisdiction up to Rs. 100.

(ii) There should be one taluk Munsif-Magistrate for each taluk.

(iii) Men qualified for District Munsifs should be selected.

(iv) Appointments should be made by the High Court.

(v) Collectors, Revenue Divisional Officers and Tahsildars should have their present preventive powers and also powers under the Special Acts but the actual trial should be before the Judicial officers.

34. Muhammad Abbas Ali Sahib Bahadur, Bar-at-Law, Madura.

Agrees with Mr. Rutherford's proposals with some reservations. *Benches*—Number, status and powers should be increased. Liberal use should be made of Section 562, Criminal Procedure Code. Stationary Sub-Magistrates should be abolished.

Subdivisional Magistrate's to be itinerary and to try committal cases in the villages themselves—should not try security cases.

Collectors to have preventive powers but the actual trial should be before a Judicial officer.

Criminal Judiciary to be recruited by Government from the Bar.

35. O. Krishnamurthi Rao Garu, Chairman Municipal Council, Adoni.

Honorary Magistrates.—Not sanguine of their success.

Sub-Magistrates may have small causes powers up to Rs. 500.

The appointment should rest with the District and Sessions Judges, subject to High Court's general approval.

District Munsifs may be given first class and appeal powers. Collectors, Revenue Divisional Officers and Tahsildars may have preventive powers under Chapter 9 to 12, subject to appeal to the District Court or District Munsifs as the case may be.

Revenue Divisional Officers.—A portion may be reserved for revenue work.

Name of the officer with designation.
36. Bar Association, Chingleput.

Abstract.

Every district should be divided into two or three local areas and first-class Magistrates appointed for each area with original and appeal powers.

Stationary Sub-Magistrates should be recruited as far as possible from the Bar both *Stationary Sub-Magistrates* and *Sub-Divisional Magistrates* should be appointed by the High Court.

Criminal and Civil Judiciary should not be combined. Bench Courts should not be invested with first-class powers. Bench Courts may be increased.

37. R. Suryanarayan Rao Garu, Servants of India Society, Royapetta.

Stationary Sub-Magistrates may be given also small cause powers up to Rs. 500.

Taluk Magistrates may have preventive powers, but should not try cases.

Subdivisional Magistrates to be abolished, but District Munsifs should be made first-class Magistrates, with powers to hear and dispose of appeals.

District Magistrates to be the Executive officers, with the powers of a Commissioner of Police; but with no power to try cases.

Indian Civil Service officers to be recruited for executive service alone and Judicial officers to be recruited from the Bar.

The whole control of the Subordinate Judiciary should vest in the Sessions Judge.

38. M.R.Ry. Rao Bahadur K. S. Venkatarama Ayyar Avargal, Negapatam.

Bench Courts.—Not successful owing to bad selection.

Honorary Agency should be employed more for Civil than for Criminal cases.

District Munsifs may be appointed as second class Magistrates, and after eight years' standing may be made first-class Magistrates.

Only first-class Magistrates may enquire into committal cases.

Sub-Judges may have appellate powers.

District Magistrates should be the head of the executive and should have powers under the special Acts.

Tahsildars should not be deprived entirely of their Magisterial powers.

Trial by Jury is a failure.

39. President of the Village Panchayat Court, North Arcot.

There should be the following Courts:—

Village Panchayat Courts.—Appropriate Criminal powers and Civil powers in suits up to Rs. 100.

Bench Courts.—In addition to Criminal powers, should have Civil powers in suits up to Rs. 250.

District Munsifs.—First-class Criminal powers in addition to their usual Civil powers.

Sub-Judges and Sessions Judges

Name of the officer with designation.
40. Sir T. Desikachari, Trichinopoly.

Abstract.

Supports Mr. Venkataramana Ayyangar's scheme with some modifications.

Does not favour giving small cause powers to Stationary Sub-Magistrates.

Revenue Divisional Officers may be abolished and their revenue work transferred to Tahsildars.

Collectors and Tahsildars should retain their powers under chapters 8 to 12, Criminal Procedure Code, subject to appeal to the Sessions Court.

Criminal and Civil judiciary need not be kept separate.

Recruitment should be partly from the Bar and partly from the Executive, who elect for the judicial service.

Suitable persons should be selected for the Bench and Honorary Magistrates' courts.

One District and one Sessions Judge for two districts will be enough.

APPENDIX V.

Statement showing by districts the number of Bench and Honorary Magistrates' courts and the cases disposed of by them during 1921.

District.	Number of Courts.	Number of members.	Number of cases disposed of.
1. Anantapur	7	53	1,221
2. Arcot, North	15	81	4,664
3. " South	9	61	3,869
4. Bellary	8	38	2,199
5. Chingleput	12	76	3,475
6. Chittoor	5	31	2,103
7. Coimbatore	10	68	3,421
8. Cuddapah	2	12	671
9. Ganjam	3	16	1,261
10. Gōdāvari	4	40	5,525
11. Guntūr	8	67	2,444
12. Kanara, South	5	40	761
13. Kistna	5	45	5,678
14. Kurnool	2	9	657
15. Madura	6	45	7,569
16. Malabar	9	78	3,411
17. Nellore	3	21	1,972
18. Nellore	2	23	573
19. Nilgiris, The	18	111	3,318
20. Ramnad	12	101	3,517
21. Salem	12	80	5,835
22. Tanjore	7	60	2,860
23. Tinnevely	5	42	11,718
24. Trichinopoly	4	28	2,041
24. Vizagapatam	4	28	2,041
Total	173	1,226	80,770

APPENDIX VI.

Statement showing the average duration in days of cases—criminal and civil—in the various classes of courts.

Year.	Criminal Courts.										Appeals.				Civil Courts													
	Sub-Magistrate's Court.										Revenue Court.		District Munsif's Court.		Special Small Cause Court.		Sub-Court.		District Court.		City Civil Court.		Presidency Small Cause Court.		High Court.			
	Stationary Bench Court.	Bench Court.	Special Magistrate's Court.	Assistant Magistrate's Court.	Joint Magistrate's Court.	District Magistrate's Court.	Sessions Court.	Magistrates.	Sessions.	Contested.	Non-contested.	Contested.	Non-contested.	Contested.	Non-contested.	Contested.	Non-contested.	Contested.	Non-contested.	Contested.	Non-contested.	Contested.	Non-contested.	Contested.	Non-contested.	Contested.	Non-contested.	
1919	12	2	3	4	25	28	51	17	31	264	88	31 84*	63 42*	.. 100*	30*	490 143*	96 56*	425	137	311	57	70	37	350	140			
1920	11	2	3	13	22	32	56	22	35	309	92	328 86*	61 43*	.. 92*	30*	503 132*	89 51*	361	141	392	62	62	41	415	159			
1921	13	3	6	15	30	36	64	25	29	279	118	338 88*	62 45*	.. 94	26* 148*	520 67*	84 57*	479	150	262	52	77	41	420	162			

* Small causes.

APPENDIX VII.

Statement showing the average number of original and maintenance cases and appeals.

District.	Number of divisions.	Total number of cases for three years ^a 1919, 1920 and 1921			Average per annum.			Average per annum for each Magistrate.			Average per annum for each Magistrate at half the strength.			Remarks.
		Original.	Appeals.	Maintenance.	Original.	Appeals.	Maintenance.	Original.	Appeals.	Maintenance.	Original.	Appeals.	Maintenance.	
Anantapur ..	4	752	498	27	251	166	7	63	42	2	126	84	4	
Arcoot, North ..	5	1,396	923	272	465	308	91	93	62	16	155	103	30	At 3 Magistrates.
" South ..	4	826	973	281	309	324	94	77	81	23	154	162	47	
Bellary ..	4	1,114	396	36	371	132	12	93	33	3	186	66	6	
Chingleput ..	3	784	377	214	261	126	71	87	42	24	130	63	36	At 2.
Chittoor ..	3	1,138	450	80	379	150	27	126	50	9	189	75	14	Do.
Coimbatore ..	5	1,137	956	386	379	319	129	76	64	26	126	106	43	At 3
Cuddapah ..	4	808	419	35	269	150	12	67	38	3	134	75	6	Do.
Ganjau ..	6	579	1,467	223	193	489	74	32	81	12	96	245	37	
Godavari ..	5	897	833	212	299	278	71	60	56	14	100	93	24	At 3
Guntur ..	4	1,875	990	102	625	300	34	155	75	8	312	150	17	Do.
Kanara, South.	4	568	560	23	189	186	8	47	47	2	94	93	4	
Kistna ..	6	2,078	1,654	178	693	551	59	115	92	10	231	184	20	
Kurnool ..	5	1,065	623	59	355	208	20	71	42	4	118	69	7	At 3
Madura ..	4	1,173	982	71	391	327	24	98	82	6	196	164	12	Do.
Malabar ..	6	1,459	1,088	890	486	363	297	81	60	50	162	121	100	
Nellore ..	5	1,259	539	94	420	180	31	84	36	6	140	60	10	At 3
Nilgiris ..	1	174	69	29	58	23	10	58	23	10	58	23	10	Do.
Ramanad ..	3	1,444	580	34	481	193	11	160	64	4	240	96	6	At 2
Salem ..	4	1,509	1,047	291	503	350	57	126	88	25	250	175	50	Do.
Tanjore ..	6	1,529	1,220	122	510	407	41	85	68	7	170	136	14	
Tinnevely ..	4	993	882	90	331	294	30	83	73	7	166	147	15	
Trichinopoly ..	4	1,415	746	160	472	249	53	118	62	13	236	124	26	
Vizagapatam ..	5	814	567	412	271	189	90	64	38	16	90	63	30	At 3

As regards maintenance cases, the High Court Statistics do not give the number of cases, but only number of persons and each person is taken approximately to represent one case.

APPENDIX VIII.

Statement showing the sanctioned strength of prosecuting staff for the various districts of the Presidency.

Statement showing, the number of cases reported during the year ending 31st March 1926.			of the Presidency.		
Districts.	Prosecuting staff— sanctioned number.		Districts.	Prosecuting staff— sanctioned number.	
	Inspectors.	Sub- Inspectors.		Inspectors.	Sub- Inspectors.
	1	3		1	3
Ganjam	1	2	Madura	1	3
Vizagapatam	1	2	Ramnad	1	4
Gōdāvari	1	3	Tinnevely	1	2
Kistna	1	4	Salem	1	3
Guntūr	1	3	Coimbatore	..	1
Nellore	1	2	The Nilgiris	1	2
Kurnool	1	2	South Malabar	1	..
Bellary	1	2	Malappuram	1	2
Anantapur	1	2	North Malabar	1	3
Cuddapah	1	3	South Kanara	1	..
North Arcot	1	2	Railway Police, Madras	1	1
Chittoor	1	3	Railway Police, Trichinopoly.	1	..
Chingleput	1	3		Total ..	27
South Arcot	1	5			68
Tanjore	1	3			
Trichinopoly					

MINUTE OF DISSENT BY MR. C. V. VENKATARAMANA AYYANGAR.

I have signed the report subject to this note.

2. I am in general agreement with the contents of the report, excepting paragraph 18, where it is stated that civil and criminal powers should not be exercised by the same officer, my opinion being that they may very well be done so, having regard to the financial aspect and the convenience of parties concerned. My scheme to have combined civil and criminal powers in the same court is supported not only by a large number of vakils but also by several independent persons, both official and non-official, including some retired deputy collectors. I suspect that a large portion of the opposition is due more to the novelty of the scheme than to its inherent weakness. But if one realizes the fact that such a combination has been working smoothly in several countries on the continent of Europe and, to come nearer home, in our adjacent Indian States of Mysore and Hyderabad, there will be no doubt that the force, if any, in the opposition will considerably diminish, if not vanish altogether. There is no reason why we should follow the model of England and America alone, where distances are not great and easy means of communication are largely available and where also people are more rich than those in our Presidency. I may also add that, in my opinion, the practice in those places is not entirely opposed to my scheme.

3. To begin with Bench Courts, I think arrangements can be easily made to have one first class Bench Court in every small taluk and two in big taluks, with one or two second class Bench Courts in every taluk. If proper care is taken in making selection, I do not think there will be any difficulty in getting proper men, especially if the Committee's recommendation is accepted of the Government being given the powers of permitting members of Local Boards and Municipalities to be members of Bench Courts also in special cases. I am strongly of opinion that the first class Bench Courts should be given small cause powers up to Rs. 100. The number of suit will not be very large and there will not be much inconvenience by the combination, especially as we may expect a large number of panchayat courts in every taluk disposing of such suits within their jurisdiction. When a Bench is given the power of sending people to gaol, it is certainly not too much to give them the power of disposing of simple suits of the value up to Rs. 100. They may have, if necessary, even separate days for disposing of civil and criminal work. The ordinary establishment necessary for a first class Bench Court will be sufficient to cope with additional civil work also. By this institution of criminal Benches with civil powers, or if this is not done, the institution of separate civil Benches, parties will be saved considerable cost and inconvenience of travelling long distances, and, if suits are tried nearer home, there will be greater chance of truth being found out and of cases being probably compromised.

4. As for sub-magistrates, I am strongly of opinion that they may be given powers of trying suits valued up to Rs. 500. I know that this cannot be done without a change in the Madras Civil Courts Act, for my suggestion will be to create a new class of Civil Courts having jurisdiction to try suits valued up to Rs. 500. As Bench Courts increase, the number of Sub-Magistrates' Courts will have to be reduced; and my suggestion is that these sub-magistrates may gradually be given power to try suits valued up to Rs. 500, first of a small cause nature and then of a general nature without any restriction. When the recruitment of these Magistrates from members of the bar and other qualified persons takes place, it will not at all be difficult for them to dispose of criminal and, civil cases; and, in my opinion, such combination is necessary in the sub-magistrates themselves, so that they may be in constant and continued touch in civil and criminal law and may not run the risk of forgetting their civil law before they are made district munsifs either before or after being stationary first class magistrates under the scheme recommended by the report. As I have stated above, this will necessitate a change in the law which means some delay; and I do not therefore press for this change in the immediate

future and gladly accept the recommendation of the scheme of the report regarding the stationary magistrates, as I agree with the general view of the committee that we should not recommend any change in the existing enactments, especially as that will mean long delay and we all want the separation of judicial and executive functions to be carried out at once. But I would at the same time urge upon the Government the desirability of having the necessary change in the Madras Civil Courts Act as early as possible, so that sub-magistrates as a class or such of them as may in the opinion of the Government deserve, may also be given civil powers up to Rs. 500 either gradually or at once, for the reasons I have disclosed above.

5. Coming to the stationary first-class magistrates and the district munsifs, I am also of opinion that both civil and criminal powers should be combined and exercised together. The case law both civil and criminal is changing or being augmented almost every year, and a knowledge of it is to be constant and continuous; and there is a risk of the officers not being in close touch with it if they are given purely civil or criminal powers for two or three years. The fear on the part of some people that the combination of civil and criminal jurisdiction in the same person at the same time is likely to cause delay and other inconveniences is, in my humble opinion, more due to the novelty of the scheme than to the possible actualities. If an officer keeps some days of the week for criminal work with a few minutes for urgent civil work and *vice versa*, or reserves a few hours every day for criminal work and a few for civil, generally speaking, he will certainly be able to do both works satisfactorily, and the number of days and number of minutes or the number of hours can be easily adjusted after some experience. This is exactly what is done now by the District and Sessions Judge and by the sub-judge having powers of an assistant Sessions Judge. I know of the working of the court of the deputy magistrate of Kollegal, who is also a district munsif and a deputy collector having to tour round the taluk. He is able to adjust his work of trying civil suits at Kollegal as well as of disposing of criminal and revenue cases in addition to his touring work. This has not created any inconvenience; and I believe that if a small territorial jurisdiction is given to an officer having civil and criminal work without any touring whatever, things will adjust themselves very easily in a short time and there will be no difficulty at all. I am strongly for this change because, I see now that some district munsifs have got too much work and some too little. If the district munsifs are given criminal work, their territorial jurisdictions may be much reduced and parties both criminal and civil will have much less distance to travel than under the scheme of the report, according to which there will be only two or three first-class magistrates in every district and parties will have to travel long distances, I have signed the report and will have no objection to the scheme for having separate stationary first-class magistrates and district munsifs, if the Government were to think that my scheme of having combined powers cannot be given effect to at once. But even in that case I would strongly recommend that a few criminal cases be occasionally transferred to district munsifs and a few civil cases to stationary first-class magistrates. The number may depend on the heavy or the light nature of the files; and I know that at least these district munsifs in the Coimbatore district have very light files and can very well do criminal work also, if their courts are to be continued in the present localities. This will have very good financial result and there might be considerable saving effected thereby.

6. Then as to sub-judges, there will be no inconvenience at all felt either by way of delay or otherwise if they are given powers of hearing appeals from sub-magistrates and first-class magistrates of the district munsif's grade. They are now often asked to dispose of civil appeals and are able to adjust appellate and original work without any inconvenience. This will relieve the District and Sessions Judge of considerable criminal appellate work and may be easily effected by appointing all sub-judges or at least the senior among them as Additional Sessions Judges under the Criminal Procedure Code; so that the Sessions Judge may send any criminal appeals to them for disposal.

7. I have given above what I consider to be a practical scheme which will be beneficial to the officers concerned, which will conduce to the constant and continued knowledge of both criminal and civil law on the part of all judicial officers, will contribute towards a large reduction in expenditure due to the maintenance of

courts, and will result in greater convenience to the parties concerned by giving smaller local jurisdiction to the various courts; and I leave it to the Government to give effect to my suggestion either fully or partially, either immediately or gradually.

8. Before concluding this note, I would like to say a few words as to the financial aspect of the question. The general Report of the Committee states that in separating judicial and executive functions now exercised by officers who are combined revenue divisional officers and divisional magistrates and appointing officers separately as revenue divisional officers and stationary first class magistrates, the minimum number of total officers required will be the present number of divisional officers, the maximum being that number *plus* 10 for the whole Presidency. My opinion is that though the time spent by every divisional magistrate may be taken as three hours per each working day, as referred to in the Committee's report (though I think that in many cases it is much lower) we have to take into account the days on which these officers travel and do not do any criminal work. In any case there can be no doubt whatever that the present divisional officers who do both revenue and criminal work and have also much touring can among themselves do the whole criminal work and whatever the functions are divided, especially as the new revenue and criminal work when those functions are divided, the tabular statement first class magistrates will have no touring work whatever. The tabular statement prepared by the Secretary of the Committee showing the criminal work as it is and as it will be when the functions are divided would also show that there will be no necessity for any additional number of officers. And if by chance the number of magistrates is to be a little higher than half the total number of present divisional officers, that would be compensated by the fact that the number of revenue divisional officers might be a little smaller than half the present total number. In short my opinion is that there will be no necessity for any additional expenditure whatever in separating revenue and criminal functions in the grade of divisional officers and creating a combined grade of stationary first class magistrates and district munsifs or sub-judges. There will no doubt be an additional expenditure for having an additional first-grade sub-judge with criminal and civil powers for each district; but there will be the advantage of having such an officer for inspection of criminal and civil courts on a much larger and more satisfactory scale than at present in addition to his ordinary civil and criminal work.

9. As opposed to the small increase in expenditure that might be necessitated by the separation of functions, we have got to take into account the important reductions that will be made when the scheme is given effect to. The Report of the Committee says that it will take some time to have any reduction in the number of sub-magistrates. I think that the reduction can be done at once, as additional Bench Courts can be started at once without any trouble if only the Government issues an order to that effect. I may also mention that there might be some reduction in the number of District Collectors also. Even as it is, after depriving them of the work of local boards, I am of opinion that their number is a little too large and there will be no excuse whatever for retaining the present number when they are deprived practically of the whole criminal work. Thus on the whole, I am of opinion that by giving effect to the scheme of separation of functions the Government might be very well in a position to have some saving so far as expenditure is concerned.

10. I may in this connexion make a suggestion which may look novel and impracticable on first appearance but which will prove very useful if given effect to after careful examination. I am one of those who think that the powers should be more decentralised than at present. This can be done by having officers with small territorial jurisdictions but possessing varied and extensive powers. This will also create a large number of small towns instead of a small number of big towns. My suggestion then is to make the future revenue divisional officers also the Circle Inspectors of the Salt and Abkari Department and to make the District Collector an Assistant Commissioner, Salt and Abkari. This will lead to the abolition of the Deputy Commissioners, Salt and Abkari, and will result in considerable saving. I may make even one more suggestion, though it may not be probably as acceptable as the previous one. It is to the effect that the Revenue Divisional Officers be also District Registrars under the Indian Registration Act: but they need not be asked

to do any work of ordinarily registering documents. The District Collector may in this case be given some of the powers of the Inspector-General of Registration for making appointment, etc., within his district, the other powers of that officer being given to the Board of Revenue. If this is done, the post of the Inspector-General of Registration may be abolished. If the Government be prepared to give effect to both these suggestions of mine or at least to the former one, a very large number of appointments may be abolished and considerable saving made in salaries and travelling allowances. The public also will have the advantage of having high officers near at hand with limited territorial jurisdiction. This may not, however, appear to be quite relevant to the subject referred to the Committee for report, but it certainly has some connexion so far as the financial aspect and the question of convenience are concerned. I have added it to this note so that the Government may have an opportunity of considering the matter and giving effect to my suggestion if possible.

24th April 1923.

C. V. VENKATARAMANA AYYANGAR.

MINUTE OF DISSENT BY RAO BAHADUR T. A. RAMALINGA CHETTIYAR AND MR. M. R. SETURATNAM AYYAR.

We are in agreement with the general scheme of separation recommended in the report.

The matters mentioned in paragraph 13 of the report were not discussed in the committee. We have no personal knowledge of the conditions existing in Bengal. So we are not prepared to make ourselves responsible for the facts stated and the opinions expressed therein. Paragraph 13 is not quite material for the conclusions reached by the committee.

The scheme recommended in the report provides for the following grades of officers :—

Honorary magistrates (sitting singly or in groups).
Stationary second-class magistrates,
Stationary first-class magistrates,
Additional district magistrates, and
District judges.

It is proposed that the stationary second-class magistrates will be recruited partly from the Bar and partly from the service, that they will get sub-magistrates' pay to start with, that they will be magistrates for two years, they would then be drafted into a civil court and they would from that time be in the district munsif's cadre, but will be doing sometimes magisterial work as second-class magistrates and sometimes civil work as district munsifs. This means that the persons recruited will be on probation for two years and during the probation period, they will receive the pay paid at present to the sub-magistrates. But they are really recruited to the district munsif's cadre and they will receive the district munsif's pay. So when the system has worked for a few years, most of the second-class magistrates will be district munsifs. This is in our opinion an unnecessary and extravagant arrangement. We are in favour of keeping a separate cadre for second-class magistrates with the same pay as at present. Recruitment to this cadre will be mainly from the Bar. We have no doubt that the members of the Bar with the same qualifications possessed by those recruited as district munsifs will be available for recruitment as second-class magistrates on the present pay. All that would be necessary will be a relaxation in the rule relating to the period of experience required in the candidates as practising pleaders. In many cases, the mere period does not mean much and it is not an uncommon complaint that some of the present district munsifs have not had much experience even though they have put in the required period of service in the Bar. Promotion to the district munsif's cadre, when vacancies arise in it, will be a sufficient attraction for recruitment. If the two cadres (of second-class magistrates and district munsifs) are not kept separate with their present pay and if the proposal contained in the report is accepted, there will be a very large increase in expenditure and this aspect of the matter was not considered by the committee; nor has the committee calculated this increase in cost in its statement regarding finance. In our opinion the placing of second-class magistrates in the district munsif's cadre is not called for.

A point of similar nature arises with regard to first-class magistrates. It is proposed that district munsifs or sub-judges may be posted as first-class magistrates. We are of opinion that the first-class magistrates should be posted from the district munsif's cadre alone. The district munsifs will hereafter be men with some experience of criminal work. They are trained men of judicial experience. In capacity and in status, they are not considered as inferior to the present deputy collectors. Their present pay begins with Rs. 300 and goes up to Rs. 600. Before the recent revision of pay, most of the deputy collectors were getting Rs. 600 and less, as the places on the higher grades of Rs. 700 and Rs. 800 were very few, and the officers on the higher grades were mostly doing special duty. So we consider that it is quite unnecessary to appoint some sub-judges, as first-class magistrates.

The necessary experience will be gained by Judicial officers as munsif first-class magistrates or sub-judge additional district magistrates. The number of sub-judges will have to be increased as a result of investing some of them with the powers of an additional district magistrate. If first-class magistrates are also to be appointed from among the sub-judges, the number to be added to, will have to be much larger and to that extent the cost of the administration will be increased. The only argument advanced for this proposal in the report is that the deputy collector's pay now ranges from Rs. 300 to Rs. 1,200; the upper limit of the sub-judge's pay and so the future first-class magistrates should also get the same pay. We are now proposing a new scheme, and all that we need consider is whether men in the district Munsif's cadre are not competent to discharge the functions of the first-class magistrate and whether it is necessary to appoint sub-judges for the place. The few sub-judges that are now invested with criminal powers are appointed as assistant sessions judges. The new first-class magistrates are not proposed to be converted into a separate cadre. They will be borne on the cadre of the district munsifs and they will get promotion as sub-judges. The number of sub-judges will be increased for the reason that some of them will be invested with the powers of additional district magistrate. To that extent, the prospects of the district munsifs will be bettered. In our opinion, there is no reason or necessity for appointing some of the sub-judges as first-class magistrates. If this proposal is accepted, there will be a saving of the difference between the average pay of the deputy collector and the average pay of the district munsif on the total number of First-class Magistrates to be appointed.

As regards additional district magistrates, we consider that senior sub-judges may ordinarily be invested with the powers. It may be, for the purpose of gaining judicial training, a few Indian Civil Service officers may have to be appointed for the post. The number of such officers should be confined to the minimum necessary. We are not in favour of earmarking a percentage of the appointments to the Civil Service. Provincial Service men have been found quite equal to all sorts of judicial work. They are very much cheaper than the civilians. These additional district magistrates should be men ordinarily borne on the Provincial Service cadre.

As regards the additional number of officers necessary, mentioned in paragraph 21 of the report, we are not able to agree with the majority. We are not sure that the divisional officers do magisterial work, excluding security cases, on an average for three hours a day, nor are we convinced that the magisterial work of these officers occupies a greater portion of a revenue divisional officer's time than revenue. We consider that a redistribution of the revenue and magisterial work of the divisions can be so made as not to necessitate any increase in the number of officers. Even if a few additional officers—ten is the absolute maximum—are found necessary, the cost of these officers will be met from the savings effected by placing all the first-class magistrates in the district munsifs' cadre. There are divisions in the presidency where neither the first-class magistrate nor the district munsif may have work for more than half a day. In such cases the same officers may do the work of both. To such officers the objections mentioned in the report would not apply. In the Ceded Districts we are told that there are some divisions in which there will be no necessity to appoint separate officers for civil and criminal work.

The proposals made in the report make as little change as necessary in the existing order of things and so it will not be difficult to bring about the separation of the functions as proposed within a year or two. Since some proposals are under contemplation for making changes in the Land Revenue administration, we consider that this question of separation of judicial and executive functions should be first considered and given effect to both because this matter has been under consideration far too long already and because the giving effect to the separation will facilitate the consideration of other proposals.

We are not in favour of giving effect to the proposals in some districts first and then extending it to other districts after experience gained. We are painfully aware of the result of adopting such a policy. While a person in favour of the scheme may help it forward, one against it can always find flaws enough to condemn it. An half-hearted attempt to give a trial has in many cases resulted only in throwing back the little progress made. The institution of forest panchayats thought of long ago and

started on trial many years ago has not yet passed the gauntlet of adverse criticism and tardy progress. The question of the separation of executive and judicial functions, has been asked for by the people for a long time, the first resolution on the point was passed to our knowledge in the eighties of the last century. Now that it has been shown it can be effected without much appreciable additional cost, we hope that the Government will not lose much time in considering the question and giving effect to the separation.

If, in spite of the clear urgent demand on the part of the people, the Government consider that they cannot give effect to the whole scheme at once on account of additional cost involved or for any other reason, we would recommend the separation as far as the second-class and first-class magistrates are concerned at once in all districts. The final stage of placing all the magistrates under the district judges and investing a sub-judge with the powers of additional District Magistrate may alone be postponed. In the interval, recruitment may be made to the cadre of second-class magistrates by the District Judge and the District Magistrate in consultation from the Bar. This will be necessary as otherwise the change in the personnel of the magistracy contemplated, which is one of the main planks of the scheme, will be long delayed.

T. A. RAMAINGAM.

M. R. SETURATNAM.

MINORITY REPORT BY MESSRS. P. L. MOORE, C.I.E., I.C.S.,
E. F. THOMAS, C.I.E., I.C.S. and T. W. BLACKSTONE.

We, the undersigned members of the Committee appointed to consider the separation of judicial and executive functions, have the honour to submit our minority report. We would have gone a long way to meet the views of the majority of the Committee if there had been any possibility of coming to any sort of agreement on any of the main issues involved, but differing as we have been obliged to do fundamentally, not merely from the conclusions embodied in the majority report but also from the procedure adopted by the Committee, we have thought it better on all grounds to put our views before Government in a separate report.

2. In the first place, we did not at the time accept the view that the Committee was precluded from considering the question of the desirability of separation of judicial from executive functions. We observe that Mr. Arpudaswami Udayar, the hon. member who seconded the resolution in the Council which on adoption by Government gave rise to this Committee, did so on the ground that "the amendment provides for the question of the separation of judicial and executive functions being considered very carefully; first of all, the question whether such separation is absolutely necessary. . .". The hon. the Law Member, Sir K. Srinivasa Ayyangar, in accepting the amendment, pointed out how far the process of separating these functions had progressed in Madras, and evidently the intention of Government was that the Committee should examine the question how much further the process of separation on the lines already introduced might be carried. The Committee, however, to our regret, decided to "confine its attention to the question of scheme or schemes which would bring about a complete separation." The result was that the attention of the Committee and the public was focussed on two alternative schemes propounded by Messrs. C. V. Venkataramana Ayyangar and T. G. Rutherford respectively, and the work of the Committee resolved itself into a consideration of them and of a third scheme propounded by the President based on these schemes and on the conflicting opinions received regarding them from about 40 of the 82 gentlemen whose opinions were invited.

3. At our second meeting, after some discussion, the two rival schemes mentioned above were dropped and discussion focussed on the President's scheme. This scheme has never been put before the public at all or before responsible authorities in judicial matters for criticism or consideration, while the Board of Revenue, which is much concerned in the proposal, has had the minimum of time in which to consider the probable results to the administrative and revenue sides, and the Committee in three meetings disposed *ex cathedra* of a proposal which goes right to the heart of the existing revenue and judicial machinery by which this great province is carried on. We desire to emphasise with all the force we can command that, in our opinion, a proposal so far reaching in its consequences should not have been adopted even by a consultative committee before the widest publicity had been given to its proposal and the evidence taken of all those officers of Government and non-officials who were in a position to form a reasoned judgment. As long ago as 1918 the Government of H.H. the Maharajah of Mysore formulated a scheme for separation. This scheme was not brought to our notice until the draft report was under consideration. We consider that it would have been relevant to our inquiry to have gathered some information regarding the way in which the Mysore Separation Scheme has worked, the cost of working, and the degree of success that has been obtained.

4. So far we have considered the methods adopted in conducting this inquiry. Before proceeding to criticise the majority scheme in detail, we think it reasonable to enter a caveat in regard to the support which has been drawn from the replies to letters of reference issued on behalf of the Committee. We have perused those replies. There is no unanimity for any scheme of separation and we do not draw from

them the comforting assurance that there is considerable public opinion in support of the view that district officers should have no judicial powers, civil or criminal. Consider the facts: 82 gentlemen, including the editors of ten newspapers, were invited by name to favour us with their views. Forty replied, a fair number of whom criticised both schemes impartially. Apart from that, the newspapers published an invitation to the public generally to favour the Committee with their views. One reply (included in the forty) was received. It is scarcely too much to say that the public generally is indifferent or lukewarm about this topic and is it too much to infer that the public view is that the burning question of thirty years ago has practically been extinguished by the reforms and the resultant Indianisation of the higher services which is only a question of time?

5. We desire now to tabulate our objections in detail to the proposals of the majority report. We have no remarks to offer on the historical section of the report which ends with paragraph 13. We agree that the unpaid agency of Bench, Honorary and Special Magistrates' Courts should be increased wherever possible, and whenever the circumstances of each local area make it likely that a satisfactory personnel for such courts will be available, and we think that Government would do well to remove the existing ban on members of municipal councils and local boards. Under the old Municipal and Local Boards Acts and Rules the disqualification could be removed in the one case by Government and in the other case by the Collector, and it is our experience that members of municipal councils and local boards were as valuable members of benches as their colleagues. But this recommendation to increase the number of Bench, Special and Honorary Magistrates is not the private property of the majority report. It forms an important part of the proposals already under trial by Government for the improvement of the administration of criminal justice and we associate ourselves with the view of the majority report that "it is here the *real* change in criminal justice is needed." We dissent in toto from the rest of the majority proposals. The keystone of these proposals is that the control of the criminal justice of the district should be withdrawn from the District Magistrate and transferred to the Sessions Judge who should be given an assistant invested with the powers of additional District Magistrate and the majority are of opinion that this can be done without alteration of the Criminal Procedure Code. The latter point is so elementary that it can be disposed of offhand. The Criminal Procedure Code, Section 17 (5), definitely prescribes that neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12-15 shall be subordinate to the Sessions Judge except to the extent and in the manner provided in the Code. The additional District Magistrate, Assistant to the Sessions Judge, will be legally and practically independent entirely of the Sessions Judge and will continue to be independent in fact even if the law is amended to make the arrangement possible. In most, if not in all, districts, the Sessions Judge has enough work under present conditions to keep him fully employed when he is not overworked, so much so that the inspection of the subordinate civil courts, no unimportant part of his work, is, we believe, in most districts not done as completely as is desirable and it is difficult to see how he is going to find time to supervise the work of this officer. Some of the Committee thought at first that one object of the separatist party was to free the subordinate magistracy from the administrative supervision of the District Magistrate with a view to make the subordinate magistrate of second or first class more independent in his disposal of cases. It came as something of a shock to us to learn that this supervision is not executive power which is to be destroyed but is an administrative function naturally to be exercised by the Head Magistrate of the district and the reform consists in shifting the power from the District Magistrate, an officer who, whether European or Indian, is an officer of great magisterial experience who has satisfied Government of his fitness for district charge, to a junior officer whose average pay should be Rs. 1,250 in nominal subordination, if the law permits, to the Sessions Judge. He is an officer who *ex-hypothesis* must never have been contaminated by being confronted with facts, must not have any but a limited local knowledge—vide paragraph 25 where this defect is ascribed to the Sessions Judge (as a defect and not a virtue)—and who having no particular responsibility for law and order will not be concerned if a weak magistrate in a turbulent jurisdiction is a positive incitement to crime provided that his

judgments pass the test of legality under the law. It will equally be none of his business—unless he is to transgress into executive functions—if a magistrate takes sides with one of two local factions, perhaps let us say, favours his own community. He is no executive officer and he is not responsible for the peace of the district. His job is administrative, to see that witnesses are not detained, cases unduly prolonged, sentences not illegal, calendars are sent punctually and so forth.

6. We cannot admit that this is a step forward in any direction. The majority report with some qualifications on the part of some at least of its signatories leaves to the District Magistrate and what is left of his Revenue subordinates, divisional officers and Tahsildars, the executive functions provided in Chapters 8-12 of the Code and takes away everything else. It is no question of prestige that is involved but the good order of the district and we maintain that not only in the case of the District Magistrate but of all his assistants the responsibility for law and order with which he is still saddled cannot be divorced with any good result from the other functions that are inherent in a magistrate.

7. We decline also to accept the proposal that the trial of first class cases and the hearing of appeals from second and third class magistrates should be withdrawn from the existing sub-divisional Magistrates and centred in two or three first-class stationary magistrates responsible and subordinate to the Sessions Judge's nominal assistant, graded as a Sub-Judge and invested with powers of an additional District Magistrate. If the interests of the public are to be considered at all the proposal is intolerable. Complainants in first-class cases and appellants have far enough to go in all conscience now in many cases to seek justice. If the number of courts is to be reduced, the average distance of litigants from court must be increased and the hardship to parties in numerous cases need not be described.

8. The objections that can be made to the Sub-Judge *cum* District Magistrate have even more force when applied to similar officers trained to try cases without the experience of the people they are dealing with, such as is quickly gained by a competent sub-divisional first-class magistrate in the existing regime. It surely is not a disqualification for a Magistrate that he should know the characteristics of the people whose cases he has to try and that knowledge is largely gained outside Courts. We agree that much inconvenience can be caused to parties by inconsiderate officers under the present system who take no pains to make their touring fit in with the cases they have under trial. But is no inconvenience caused to parties in civil proceedings through unnecessary adjournments granted on insufficient grounds? The statistics of pendency prove that there is. The majority report offers the best justification apart from sentiment for retaining these officers with their present functions, viz., the fact that "when their judgments go on appeal to a purely judicial officer, i.e., the Sessions Judge, a vast majority of cases are upheld", paragraph 21.

9. As regards sub-magistrates all schemes provide for the retention of this class of magistrate except so far as they can be replaced by the unpaid agency to which we have already referred but their functions according to the majority report are to be confined to the trial of cases. To them "no functions other than trial of criminal cases should be assigned", paragraph 20. This point we shall discuss later. At present we desire to consider the proposal for their recruitment and amalgamation with the cadre of district munsifs. The recruit to the grade of sub-magistrate when the scheme is fully working is to be a man eligible for employment as a district munsif, that is, he must be recruited from the ranks of graduates in law who have taken out a vakil's sanad. Recruitment from the ranks of revenue subordinates is eventually to close. The present class of sub-magistrates is subjected to the usual criticism that they are men trained in clerical work who have passed the Criminal Test and their legal equipment is not much, paragraph 25, and their service in the ranks of clerks will not conduce to the formation of that breadth of view necessary for a judicial officer. Direct recruitment is therefore to be from the Bar, clearly from the junior ranks of the Bar, of men who will presumably have acquired the requisite breadth of view in a few years of struggling practice as a vakil and partly for the present from the revenue service which *ex-hypothesis* has no opportunity of getting the requisite breadth of view.

10. This criticism would have been true ten years ago; it is no longer true now. We think it worth while to point out that the majority report ignores the measures taken to improve the class of revenue subordinates, the direct recruitment of revenue inspectors and deputy tahsildars, many or most of whom are graduates, the training in the field as revenue inspector which supplies a practical knowledge of men. The suggestion ignores the fact that the general administration must suffer if the possibilities of promotion now open to good men in the subordinate revenue service are cut down as is now proposed.

11. We do not wish to be understood to object to any proposals which may have the effect of securing that young magistrates should have on appointment a better legal knowledge than some at least at present have. The cost, however, has to be counted. We ignore such saving as may be effected by the substitution of unpaid agency; for, as we have observed, that substitution is not peculiar to the majority proposals. If sub-magistrates are to be graded as district munsifs, they must be paid as district munsifs. We cannot estimate the extra cost of this proposal, but it will be something considerable. The majority report seems to suggest that the post of sub-magistrate is to be a stepping stone to that of district munsif after two or three years' service as sub-magistrate (paragraph 25). We regard the idea as chimerical, for the flow of promotion can never be so rapid as to allow of a constant absorption into the ranks of district munsifs eligible for employment alternatively as first-class magistrates of the men engaged as sub-magistrates after three years' work in that grade. Apart from that, the public would have a solid objection to the entrustment of by far the greater part of criminal work to learners.

12. The worst feature of the report is the proposal that the Magistracy thus constituted consisting of a sub-judge with the powers of additional district magistrate, first class stationary and second and third class stationary magistrates together with bench, special and honorary magistrates should be divorced from responsibility for law and order and be precluded from doing any of the executive acts which, in our opinion, are inherent in the office of a magistrate. Two co-ordinate jurisdictions are set up: (1) the Collector-Magistrate, the Divisional-Officer-Magistrate in reduced numbers, the Tahsildar and Deputy Tahsildar-Magistrate limited to the functions prescribed in chapters 8-12 of the Criminal Procedure Code and concerned exclusively with maintaining the public peace, and (2) the Sub-Judge District Magistrate, Stationary First class Munsif-Magistrates not doing civil work and Stationary Sub-Magistrates, all concerned exclusively with the trial of cases and practically confined in their outlook to the four walls of their respective courts. They must do no executive act. The report is silent as to their relations with the police in respect of disposing of referred charge sheets, section 173 (3); the conduct of inquests, section 174; the recording of statements, section 164. These, if any, are executive acts; they certainly are not judicial proceedings. These functions cannot be put upon the Magistrates enumerated under (1) above. In short, the majority proposal, in our opinion, goes a long way to create chaos out of an ordered system. We submit, on the other hand, that no case has been made out—prejudice apart—for the complete subversal. We point out that the district magistrate is practically not a trying magistrate at all. In 1921 each district magistrate tried on an average two original cases and heard on an average nine appeals (paragraph 5). He knows nothing of cases tried by the Magistrates subordinate to him unless he is approached for a transfer or calls for the records (section 435 of the Code), until the calendar comes up to him long after. The suspicion that District Magistrates interfere in cases is, so far as our knowledge goes, completely unfounded. The sub-divisional magistrate, in many cases an Indian, in more cases hereafter to be an Indian, is similarly ignorant of the vast majority of cases filed before his sub-magistrates until he sees the calendars or until the case comes up on appeal. The cases he himself tries are the more serious offences against person and property. The majority report effectively clears this class of incompetence when it points out that the great majority of appeals from their convictions heard by a purely judicial officer are confirmed. Coming now to the subordinate magistracy, with the exception of the deputy tahsildar-magistrate, the majority have no functions other than magisterial, the executive acts that they do being such as are inherent in their magistrates' offices. They are subject to no interference in the trial of cases

while under trial. Their conduct of cases and their valuation of offences is subject to control and must be under any system including that of the majority report. The justiciary in England most nearly corresponding to the subordinate magistracy in this Presidency is the Justice of the Peace. Appointments to the office are made by the Crown and not by the High Court and the Home Secretary by admonition and circular points out their mistakes when necessary. Our view is that the control of the courts rightly vests in the District Magistrate and in subordination to him in the Subdivisional Magistrate, and that control cannot be taken away without weakening the bonds of law and order and that the creation of a justiciary in no way responsible for law and order is a retrograde step, while the existence side by side of two magistracies subordinate to different authorities would be a potent source of friction, disunion and inefficiency.

13. We have not yet counted the cost. The question is discussed in paragraph 27 of the majority report. We find it impossible to accept the results tabulated therein. In the first place, only half the pay of the additional District Magistrate is debited on the ground that half of his time will be spent on civil work and therefore half the pay may be debited to civil justice. The purse of the Government is indivisible and if the proposal involves an additional officer who would otherwise not be required, we see no justification for not debiting the whole of his pay which after all Government will have to find. This item therefore accounts for Rs. 4,32,000 on the basis of twenty-four additional appointments being created. More would in fact be necessary to provide for districts which as Malabar and Tanjore contain more than one Sessions Division but against this could be set off perhaps the existing additional District Magistrates, three in number.

14. Next we find it impossible to accept the estimate that the scheme can be worked with only ten additional first-class magistrates. The proposal is only justified on the assumption that the Revenue Department can spare half of the Revenue Divisional Officers for magisterial work, i.e., that a district of four divisions would be reconstituted with two Divisional Officers and two first-class Magistrates. Quite apart from the obvious inadequacy of what we may term preventive magistrates, we have grave doubts whether the Revenue Department would be willing to make a hash of its existing system in so drastic a manner. We understand from the President that the Board of Revenue have expressed an opinion adverse to the proposed reduction of Divisional Officers, but this is nowhere referred to in the report. In any case, it will be obvious that this Presidency with its ryotwari system depends on the revenue side for efficiency on the revenue higher officials acquiring an intimate knowledge of all parts of their jurisdiction, and the Board may very reasonably object that to double the size of the average division would make this an impossible ideal. We consider therefore that it would be most unsafe to estimate for less than twenty-four extra magistrates at a cost of Rs. 1,92,000, if the average pay of Rs. 665, which seems to us rather low, is adopted. This gives us a recurring charge of Rs. 6,24,000 for the pay of officers alone.

15. Next the estimate of the staff required for these officers and of the savings that can be made by the transfer of existing establishments seems to us equally unjustified. Two of us having been District Magistrates are in a position to state with complete confidence that the District Magistrate having been relieved of the calendars to read and act on—work which he does himself—will not be able to surrender more than one clerk. The Sub-Judge-District Magistrate will require at least one more clerk, a typist and at least one additional peon and we estimate on a conservative basis the pay of his establishment at Rs. 110 per mensem or Rs. 1,320 a year, and for the whole Presidency Rs. 31,680. We presume also that as he is to do civil work, he will require the normal establishment of a Sub-Judge or perhaps something less as he is only a half-timer. The establishment of a Sub-Judge costs about Rs. 330 a month. If we allow him an establishment of Rs. 200, we shall not be extravagant. The cost on this side will then come to $200 \times 12 \times 24$ or Rs. 57,600. We step down a grade to first-class magistrates; it is idle to suppose that two officers can be staffed out of the establishment of one, even though the work of the one is split up into work for the two. The divisional officer will still have some magisterial functions and cannot give up all his magisterial establishments and we estimate that

the magistrates taken from the existing establishment will require at least one clerk, one typist and one peon, the cost of which works out at Rs. 110 a month and the total cost at Rs. $110 \times 48 \times 12$, i.e., Rs. 63,360.

16. Admittedly the extra first-class magistrates will have to be given new establishments estimated at Rs. 175 a month. The estimate seems low to us but we take it and adopting our figure of 24 such officers, we calculate the cost of their establishment at Rs. $175 \times 12 \times 24$, i.e., Rs. 50,400 a year. Travelling allowance for the new officers and their staff must be allowed for; the Sub-Judge-District Magistrate will have to visit all his subordinate courts at least once a year (paragraph 24) taking a clerk and a peon with him. Batta and travelling allowance to witnesses will also increase as the average distance to be travelled will be greater with fewer courts. Under these heads therefore a very modest allowance will be Rs. 1,00,000.

17. The estimate of cost next seems to us to deal in a somewhat summary manner with the probable cost of buildings and omits to consider what extra establishment would probably be required by the High Court on which much extra work is piled without compensatory assistance. Tentatively we estimate Rs. 50,000 under this head.

18. Finally no provision has been made for the cost of replacing deputy tahsildar-magistrates who are to be deprived of their magisterial functions. There are 125 deputy tahsildar-magistrates. We have no assurance on the revenue side that deputy tahsildars can be abolished. In heavy taluks the tahsildar cannot do all the work and if deputy tahsildars are to remain without magisterial functions, the pay of sub-magistrates who have to take over their work and of their establishments must be provided. The interests of the public will suffer if they are abolished as magistrates and not replaced. We suggest therefore that at least 60 sub-magistrates will be required to do their work and as better qualified men are to be appointed, we provide Rs. 200 a month for their pay, so that without allowing anything for establishment the cost under this item works out at Rs. $60 \times 12 \times 200$ or Rs. 1,44,000. The total cost comes to Rs. 11,21,040 as follows:—

	Rs.
(1) Pay of officers alone	6,24,000
(2) Pay of establishment of sub-judge-district magistrates	31,680
(3) Do. do. for civil work	57,600
(4) Pay of establishment of first-class magistrates	63,360
(5) Do. do. of extra first-class magistrates	50,400
(6) Travelling allowance for above, etc.	1,00,000
(7) Extra establishment in the High Court	50,000
(8) Extra sub-magistrates to take the place of 125 deputy tahsildar-sub-magistrates	1,44,000
Total	11,21,040

19. So far it must be admitted that our report consists mainly of destructive criticism. We have borne in mind the history of similar committees appointed in other Provinces which have made recommendations more or less on the lines of the majority report of this committee. But we know little of the systems of administration obtaining in those provinces except that they differ radically from ours. We think it probable that the machinery in our Presidency for the administration of criminal justice is in many respects in advance of that obtaining in other Provinces and, while we admit that there are great possibilities of improvement in detail, we are unable to agree that a radical upheaval such as that recommended by the majority of our committee would be anything but disastrous. We favour the lines of cautious advance indicated by Government in the experiment already sanctioned by them for trial in Tanjore and Madura which retains what is to us the cardinal feature of any satisfactory system of administration, viz., the retention of the responsibility of the district magistrate and his subordinate magistracy for the maintenance of law and order which in our opinion cannot be separated with any advantage from the strictly judicial work of trial of criminal complaints and the vindication of the law against persons duly tried and convicted of offences against it.

20. Finally we wish to suggest that this hoary question so often debated by the most instructed non-official opinion requires reconsideration in the light of the Reformed Constitution which has been granted to this country and in the light of the improvements that have been made in the conditions for recruitment and in the higher qualifications required for the public service. If the Reforms mean anything they involve in a two-fold way the far greater association of the people of India with the Government and the administration which regulates their life. They are promised a far larger share of the posts which hitherto were reserved in an overwhelming proportion to non-Indians. The process of Indianisation has commenced and the pace is more likely to be quickened than retarded. Whatever system be adopted for the administration of criminal justice, it will have to be worked in increasing proportion by Indian officers from top to bottom while, on the other hand, the constitution of the Reformed Councils gives wider opportunities to the public to expose errors and correct maladministration and we feel that in bare justice to those who must come after, no less than to the public they have to serve, we should not be consenting parties to the inauguration under whatever pretext of a system of administering criminal justice which we believe cannot but prove unworkable in practice, expensive both in institution and in maintenance and detrimental to the interests of the public in general.

8th May 1923.
7th May 1923.
14th May 1923.

P. L. MOORE.
E. F. THOMAS.
T. W. BLACKSTONE.

