M.R.O. 1—77,006—8-5-37.

(1) Number of pages 10.

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(3) Initials of the Referencer

# MADRAS RECORD OFFICE.

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## Government of Madras.

Finance DEPARTMENT.

G.O. No. 200 Press ~~Mis.~~

42-43

Dated 23-5- 1866.

42-43 6/7

**Not to be folded or roughly handled**

*Proceedings of the Madras Government, Financial Department.*

23*rd May* 1866.

No. 42. Read the following letter from J. R. KINDERSLEY, Esq., Session Judge of Bellary, to the Chief Secretary to Government, Fort Saint George ; dated Bellary, 26th April 1866, No. 12.

I have the honor to acknowledge the receipt of Proceedings of the Government of Madras, in the Financial Department, dated the 20th April 1866.

2. In the second paragraph of those Proceedings, mention is made of the responsibility of the Session Court for batta to witnesses and prisoners. I have the honor to inform you that the prisoners committed for trial before the Courts of Session are usually committed by the Magistrates to the Jail, and the expense of their maintenance is met by the Jail Department. I have the honor to solicit the instructions of Government as to whether any change is intended in that respect.

3. With regard to the payment of the reasonable expenses of complainants and witnesses attending trials before the Courts of Session, Section 438 of the Code of Criminal Procedure has conferred on those Courts certain powers. The orders of the Courts under that Section are judicial acts, for which I scarcely think that the Judges can be made responsible to the Accountant General.

No. 43. ORDER THEREON, 23rd May 1866, No. 200.

The Governor in Council observes that it *was* intended, by paragraph 2 of the Order of Government, dated the 20th April last, No. 149, that Session Judges should pay, and include in their monthly contingent bills, all charges on account of batta to prisoners and witnesses during the trial of cases committed to them. Although the prisoners are necessarily in charge of the Jailer during such trials, they are completely under the orders of the Court, till the cases are finally decided and the prisoners are convicted or acquitted. Subsistence money paid during such a stage is clearly not a Jail charge, and will obviously be more properly accounted for under the authority of the Session Judge than by the Jail Superintendent, who is simply the custodian of the prisoner, and produces him before the Court as often as he is required to do so. Similar charges incurred *after* the prisoner is sentenced to imprisonment, and committed to the Jail to undergo his punishment, will, of course, find a place in the *Jail* Contingent bill.

2. With reference to Mr. Kindersley's remark in paragraph 3 of his letter, there seems no reason why payments ordered by a Session Judge in his judicial capacity, under Section 438 of the Code of Criminal Procedure, should not be made and accounted for by him as the Head of the office over which he presides. The inclusion of such items in the Court contingent bills can in no way make the Judge, in his judicial capacity, amenable to the Accountant General. If the Judge, as the Head of an office, incurs certain expenditure, he is clearly the proper officer to submit that expenditure for audit by the proper Department ; and in the case of payments ordered by the Session Judge, under Section 438 of the Criminal Procedure Code, or any other Law, the Judical order directing such payment will simply have to be referred to in the contingent bill, in support of the charge.

(True Extract).

*Chief Secretary.*

To the Session Judge of
,, Magistrate of
,, Inspector General of Jails.
,, Judicial Department.
,, Accountant General.

Exd. J. H. Burns.

No 12

Session Court Bellary
26th April 1866

From,

J. R. Kindersley Esquire,
Sessions Judge of Bellary.

To,

The Honorable A. J. Arbuthnot,
Chief Secretary to Government,
Judicial department.

Sir,

I have the honor to acknowledge the receipt of Proceedings of the Government of Madras in the Financial Department, dated the 20th April 1866.

2. In the 2nd para of those proceedings mention is made of the responsibility of the Session Court for batta to witnesses and prisoners. I have the honor to inform you that the prisoners committed for trial before the Courts of Session are usually committed by the Magistrates to the Jail, and the expense of their maintenance is met by the Jail Department. I have the honor to solicit the instructions of Government as to whether any change is intended in that respect.

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3. With regard to the payment of the reasonable expenses of complainants and witnesses attending trials before the Courts of Session, Section 438 of the Code of Criminal Procedure has conferred on those Courts certain powers. The orders of the Courts under that section are judicial acts, for which I scarcely think that the Judges can be made responsible to the Accountant General.

I have the honor to be, Sir,
Your Most obedient Servant
J. B. Henderson Esq
Session Judge.

No. 20 dtd 26 April 1866
Act XXIV/1861

Appointed Judicial (1866) Dept
Judicial
From the Session Judge
of Bellary
Dated 26th April 1866
Rec'd 1st May
No 12.
Ex 1555

With reference to para 2 of the Govt Order dated 20th April last No 149 Judicial Dept. I have the honor to submit for the consideration of Government the accompanying Bill for Rs 1490 for the expenses of Prisoners & witnesses attending the Session's Court at Bellary during the Sessions commencing on the 2nd April 1866.

I have also to request that the Bill may be paid direct to the Session Judge.

Financial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Session Judge of Bellary.
Dated 26th April 1866
No 12.

Order thereon 23rd May 1866 No 200.

The Governor in Council observes that it was intended by para 2 of the Order of Government dated the 20th April last No 149 that Session Judges should pay and include in their monthly Contingent Bills all charges on account of batta to Prisoners and Witnesses during the trial of

of cases committed to them. Although the Prisoners are necessarily in charge of the Jailor during such trials, they are completely under the orders of the Court till the cases are finally decided and the Prisoners are convicted or acquitted. Subsistence money paid during such a stage is clearly not a Jail Charge and will obviously be more properly ~~[illegible]~~ accounted for under the authority of the Sessions Judge than by the Jail Superintendent, who is simply the custodian of the Prisoner and produces him before the Court as often as he is required to do so. Similar Charges incurred

incurred after the Prisoner is sentenced to imprisonment and committed to the Jail to undergo his punishment, will of course find a place in the Jail Contingent Bill.

2. With reference to Mr Kindersley's remark in para 3 of his letter, there seems no reason why payments ordered by a Sessions Judge in his judicial capacity, under Sec. 438 of the Code of Criminal Procedure, should not be made and accounted for by him as the head of the office over which he presides. The inclusion of such items in the Court Contingent Bills can in no way make the Judge in his judicial

capacity

capacity amenable to
the Accountant General.
If the Judge, as the head
of an office incurs certain
expenditure, he is clearly
the proper officer to submit
that Expenditure for audit
by the proper department;
and in the case of
payments ordered by the
Sessions Judge, under Sec.
438 of the Criminal
Procedure Code, or any
other Law, the judicial
order directing such
payment will simply
have to be referred to in
the Contingent Bill in
support of the charge.

To the Sessions Judge of Bellary
— Assistant Sessions Judge
— All Magistrates
— Superintendent of Jails
— Medical Officer, Jail Department

Orders
29/5

Financial 1866. Department.

No. 200.

PROCEEDINGS OF GOVERNMENT.

Dated 23rd May 1866.

F. D. No. 1490.

(4)

42 to 43.

Press No. 4266, G. M.—12-4-66—500.

C/5 Mar 1222