M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1607-1608 ~~Mis.~~ Press

47-49

Dated 18-11- ~~19~~ 1878

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 16th November 1858.

No. 47. Read the following letter from C. F. CHAMIER, Esq., Acting Register to the Court of Foujdaree Udalut ; to T. PYCROFT, Esq., Chief Secretary to Government, dated 19th October 1858, No. 31.

SIR,

1. I am directed by the Judges of the Foujdaree Udalut to acknowledge the receipt of Extract from the Minutes of Consultation, under date the 9th Ultimo, and to forward for the information of the Government, copies of letters received from the Agents of Ganjam and Vizagapatam, regarding the proposal therein contained for introducing into the non-Regulation portions of those districts, " the system of trying petty Criminal cases vivâ voce."

2. The Judges have already, in their report to Government for the new modelling of the Judicial system of this Presidency, recommended that the method of examination now in question, should be adopted for all cases, Civil and Criminal, in all the Courts ; and they observe that every reason given in the correspondence forwarded to them by the Government, in advocacy of this method, is such as to favor the universality of its adoption.

3. The Government will notice that both the Agents likewise feel that the benefits to be expected from it, are such as to make it applicable to a wider field of Judicial investigation, than that of petty Criminal cases.

4. If the Government, however, should deem it expedient to place a limit upon the cases to be brought under the system of vivâ voce examination, the Judges consider, in view of the example pointed out by the Agent of Vizagapatam, of a trial conducted upon that system, wherein sentence of two years' imprisonment was passed, that the limit may extend to Criminal cases falling within the jurisdiction of a Subordinate Criminal Court.

5. The Judges regard the rule which requires the presiding Judge to take down his own notes of the trial, as a good and salutary one ; but as the hand-writing of many Judicial Officers is very indistinct, the Judges think that the notes should be fair-copied and signed by the officer ; and both the original and fair copy deposited with the records of the Court.

From G. S. FORBES, Esq., Agent to the Governor in Ganjam ; to C. F. CHAMIER, Esq., Register to the Court of Foujdaree Udalut, Fort St. George, dated Chutterpore, 2nd October 1858, No. 338.

SIR,

1. I have the honor to acknowledge the receipt of copy of a letter from the Under Secretary to the Government of India, communicating to the Government of Madras, a Resolution by the President in Council, which directs the introduction into all non-Regulation Provinces, of a system of vivâ-voce process in petty Criminal trials.

2. In forwarding this despatch and the documents which accompany it in illustration of the system referred to, the Court desire a statement of my opinion as to the expediency of introducing a similar summary course of procedure in Ganjam ; I have carefully read these papers and beg to submit the following remarks on the subject.

3. The last para. of the letter quoted in Appendix E of these papers, points out forcibly the inconvenience and loss of time occasioned by transacting business in a language unknown to the population of Assam. These remarks are precisely applicable (" mutatis mutandis") to the greater part of this province, where the Oreya language alone is spoken, while Telugu, the language of business, is not understood. The careful examination of a witness under these circumstances, takes little less than two hours, as every sentence is translated to the deponent, both before and after being committed to paper. The Court will perceive how fatal a clog this must be to the despatch of business in an office where Revenue, Political, and Magisterial functions demand attention as well as the Civil and Criminal proceedings.

4. As regards the results to be anticipated from the introduction of the system pursued in Assam, I beg to refer the Court to para. 7 of the Deputy Commissioner of Assam's letter of the 19th December 1856, (which accompanies Mr. Secretary Chapman's despatch) the evils which are there stated to be disappearing from the Assam Courts, exist in this district to the fullest extent, I can only say that, I see no reason why similar effects should not here follow the

adoption of the system which has been so successful in Assam, and if it were permitted to have the extended operation described in para. 10 of the same letter, I should hail its introduction as the means of rescuing this district from a state of corruption disgraceful to our administration.

5. The Court will remember that, I have already addressed them on the subject of pursuing a summary course of investigation in Civil causes.

From C. W. READE, Esq., Agent to the Governor; to C. F. CHAMIER, Esq., Acting Register to the Court of Foujdaree Udalut, Fort St. George, dated Nursepatam, 1st October 1858, No. 52.

SIR,

Para. 1. I have the honor to acknowledge an Extract from the Minutes of Consultation, Judicial Department, No. 1234, dated the 9th September last, held on review of certain papers submitted by the Government of India, on the proposed introduction in non-Regulation Provinces of the system of vivâ-voce examinations in petty Criminal cases, and I am requested to give my opinion as to what extent and under what arrangements the same system may be brought into practice in the non-Regulation portion of this district.

2. The advantages arising from the vivâ voce system are fully recognized throughout these papers, as well by the authority from whom the system originated, as by the executive on whom it has devolved to carry that system out, and its satisfactory working in a single province has been so fully developed that the Government both in India and in England are desirous that the system should at once be introduced throughout all non-Regulation districts, and the propriety of this appears to me so obvious that I have only to express my advocacy of the immediate introduction of the system in the Zemindary portions of the district under my charge.

3. The plan may be novel as a general one, but I fancy this summary mode of dealing with petty Police and Magisterial cases, is by no means rare throughout the districts of the Madras Presidency.

4. One of the great evils perhaps of our administration is the lengthy and minute character of the record in matters of the most ordinary and trifling kind, and I do not hesitate to give my opinion that the proposed summary mode of dealing with petty cases might, with very great advantage to all parties, be introduced, not merely into non-Regulation Provinces, but into every district throughout India.

5. If the system be proved to be so beneficial and has been attended with such "admirable results" in the one case, the question naturally arises why the limitation, and for what reason is the rest of the country to be debarred the privilege of an improvement in the administration of Criminal justice enjoyed by a portion; for after all, its introduction affects only the Executive and not the Legislative, and hence the system may as easily be introduced into Regulation as into non-Regulation districts.

6. The Court limit their enquiry "to petty Criminal cases," am I to understand this to mean Police and Magisterial only?

7. I observe that of the 3 cases quoted in illustration of the proposed new system, one was for the serious offence of "Breach of Trust" and was punished with 2 years, under Act XIII of 1850, which suggests the belief that this vivâ voce record of the proceedings may be extended to all cases within the jurisdiction of a Subordinate Judge, and I certainly think such extension both desirable and advisable, at all events in this district as well as in all other non-Regulation Provinces, where the Magistracy exercise these extended powers; and I would accordingly recommend it.

8. I desire definite instructions on the above important point, for the guidance of myself and my Assistants.

(True Copies.)

(Signed) C. F. CHAMIER,
Acting Register.

No. 48. ORDER THEREON, No. 1607; dated 13th November 1858.

This letter, with its enclosures, will be communicated to the Government of India, with reference to the letter of the Under Secretary, in the Home Department, dated 28th July last, No. 1191.

(Signed) W. H. BAYLEY,
Acting Secretary to Govt.

Ordered that the following letter be despatched.

No. 49. To the Secretary to the Government of India, Home Department, dated Fort St. George, 15th November 1858, No. 1608.

SIR,

Dated 28th July 1858, No. 1191, regarding the proposed introduction in the non-regulation provinces, of the system of trying petty criminal cases, *vivâ voce*.

Your Under Secretary's letter, as per margin, with its enclosures, having been communicated to the *Sudder Udalut*, the Judges have now submitted their opinion on the system proposed, together with the reports of the Agents to the Governor of Fort Saint George, in *Ganjam* and *Vizagapatam*, large portions of which Districts are exempted from the general Regulations, under the operation of Act No. XXIV of 1839. These opinions, it will be observed, are entirely in favour of the practice proposed. The *Sudder Court* indeed has already submitted a scheme to this Government, suggesting that the method in question shall be adopted for all cases, civil and criminal, in all Courts.

2. Pending, meanwhile, the discussion of this question, and referring to the matter immediately before them, the Court recommend that the system of trying criminal cases *vivâ voce* shall be extended to the *Ganjam* and *Vizagapatam* Agencies in all cases falling within the jurisdiction of a Subordinate Criminal Court—the limit of the penal powers of which tribunal is 2 years' imprisonment. The Government would be glad to see this suggestion carried out, and to extend its operation to the proceedings of all Subordinate Criminal Courts and Magistrates in *Regulation* provinces, when those authorities are trying cases adjudicable under Section VII, Regulation X of 1816. The punishment enacted by this law is "imprisonment exceeding 6 months, and fine not exceeding Rupees 200, committable, if not paid, to further imprisonment not exceeding 6 months." The system should also, in their opinion, be extended to the trial of the still minor offences cognizable by the Magistracy and Heads of Police.

(Signed) W. H. BAYLEY,
Acting Secretary to Govt.

Exd. F. Cartledge.

(Sep.te 18th)

No 1108 of 1854 Judicial Dept

To the Secretary to the Govt of India
Home Dept.

Sir.

Your Under Secy's letter, as per margin, with its enclosures, having been communicated to the Sudder Dewanut, the Judges have now submitted their opinion on the system proposed, together with the reports of the Agents to the Govr of Fort St George, in Ganjam & Vizagapatam, large portions of which districts are exempted from the general Regulations, under the operation of Act No XXIV of 1839. These opinions, it will be observed, are entirely in favour of the practice proposed. The Sudder Court indeed has already submitted a scheme to this Govt, suggesting that the method in question shall be adopted for all cases, civil & criminal, in all Courts.

2. Pending, meanwhile, the discussion of this question, & referring to the matter immediately before them, the Court recommends that the system of trying criminal cases viva voce shall be extended to the Ganjam & Vizagapatam Agencies in all cases falling within the jurisdiction of a Subordinate Criminal Court - the limit of the penal powers of which tribunal is 2 years imprisonment

* 5/28th July/58
No 83 & 91
regarding the proposed introduction in the non-regulation provinces, of the system of trying petty criminal cases, viva voce.

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Fort St. George
13th November 1858.

D.L.C. 5/11/58.

Sent 13th Sept. 1858 No 12-13

In Dy. to Comm: 15 November

Judicial 1858 Departt.

No. 1688

To, The Secretary to the
Govt. of India,
Home Departt.

Dated 13th November 1858

Communicating copy of the Court's Despatch letter approving the System proposed by the Govt. of India of trying petty Criminal Cases viva voce.-

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