M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1619 Press ~~Mis.~~

67-68

Dated 16-11- ~~19~~68.

Not to be folded or roughly handled

No. 67. Read the following letter from G. F. EDMONSTONE, Esq., Secretary to the Government of India, with the Governor General; to T. PYCROFT, Esq., Chief Secretary to Government, dated Allahabad, 21st October 1858, No. 462.

SIR,

Home Department.

With reference to the Extract from the Home Department at the Presidency, under date the 29th July last, No. 1964, regarding the system of trying petty Criminal cases *viva voce*, I am directed to forward to you a copy of the documents noted in the margin, and to invite the suggestions of the Right Honorable the Governor in Council, for the further introduction of English notes in petty cases, in supersession of the detailed Vernacular record.

From the Secretary to the Chief Commissioner, Oudh, to the Judicial Commissioner, Oudh, of 21st May, No. 103, with enclosures.

(Copies.)

From T. D. FORSYTH, Esq., Secretary to Chief Commissioner, Oudh; to GEORGE CAMPBELL, Esq., Judicial Commissioner, Oudh, dated Lucknow, 21st May 1858, No. 103.

Judicial.

SIR,

The Chief Commissioner is desirous to see some more simple system of procedure, than that in force in our old Provinces, introduced into our Courts in the Province of Oudh.

2. He wishes to know, whether in criminal cases you have thought of introducing any such reform, and would be glad to hear of your devising and working out at Lucknow, under your own eye, as an experiment, a simple procedure which shall secure all the record that is necessary, and yet release our Officers from the thraldom of Thannahdars and Sudder Amla.

3. Perhaps at your leisure, you will draw out a working plan for the Chief Commissioner's approval.

From GEORGE CAMPBELL, Esq., Judicial Commissioner, Oudh; to T. D. FORSYTH, Esq., Secretary to the Chief Commissioner, Oudh, dated Lucknow, 12th June 1858, No. 83.

Judicial.

SIR,

With reference to your letter, No. 103, dated 21st Ultimo, I beg to say that, as regards ordinary procedure, I do not think that the rules now prevailing in the Punjab, can be with advantage materially simplified. On the contrary, it may perhaps be necessary to lay down some more precise and arbitrary rules, with a view to eventual simplification of practice, and chiefly to avoid the somewhat over-natural and slipshod way, in which parties and witnesses come dropping in at all sorts of times, just as it suits their convenience, and are disposed of in detail without much of the form, and face to face conflict of a proper trial. Still more is it necessary to insist on Judicial Officers doing their duty properly, in regard to the all-important subject of evidence.

2. With respect to criminal cases, more particularly mentioned in your letter, it is no doubt constantly necessary to keep down the tendency of Thannahdars to do too little, and write too much; but as far as theory goes, I do not think that the Thannah record can be with advantage reduced below the Punjab standard. Some record of the investigations on the spot is desirable and advantageous. I would only, when we have Thannahs again, make Magistrates see that instructions are carried out.

3. Regarding the record in the Sudder Court, I am not prepared at once to go to a very great length in the way of reducing it. It must be remembered, that clerical labor and paper are cheap in this country; and that there are no newspaper reporters, or public ear, to supply the place of a record as in England. The Judges also are not to the same degree amenable to public opinion; and I must at once say, that I have not sufficient confidence in them all, or in

most of them, to be satisfied that they should decide cases, without a trustworthy record available for review.

4. If this be so, I have no doubt whatever, that if a Mohurrir were confined to his proper duty of merely reporting the evidence, his notes could do no harm, and might be extremely useful. The evil, and it is a very great one, consists in this, that the real duty of examining witnesses, is too often delegated by the Judge to the Mohurrir. The only way to ensure sufficient attention on the part of the Judge, is to insist on his himself taking down the evidence. But how are we to secure this? I have tried it, and my experience has been, that in nine cases out of ten, it is at present impossible to get Officers to do it properly. It is suggested, "abolish the vernacular record, and then they must do it." But of this, I am not at all clear: why should the Officer who tries the case, care to preserve a good record? Even if he finds it absolutely necessary for his own use, or in compliance with orders, to take some kind of note, it may be as careless and incomplete and illegible, as can be. Not that he will suffer the inconvenience of that, but those whose duty it may be to refer to, or review his work. Many Officers may even think, the impossibility of adequately over-hauling their proceedings an advantage. But even supposing the notes to be honestly taken, what is to ensure their completeness? How can he be sure, that the points which tell against an Officer's views, are as well put as those which tend the other way, and that nothing essential is omitted; if we have no check, and nothing to compare with? We should be entirely at the mercy of the Officer himself. I am quite clear, that every Officer ought to learn to take proper notes, and to be forced to do so, and when we see that in fact, they do so, we may perhaps get rid of parts of the present record. But I repeat, that in practice as things now stand, most Officers cannot be got to make satisfactory notes of evidence, and I do not think that, to free them from any check, would improve them. I believe, that very many Officers, and almost all evidence writers, do not understand what evidence is.

5. What therefore I should like to do first, is to introduce this knowledge to make Officers take notes, and insist on their doing so, in a satisfactory way as a *sine quâ non* of their appointments, and to transform the old evidence writers into trained and tested reporters, taking notes of the evidence apart from the Judge.

6. I enclose a Circular, which, as a commencement of reform in the sense suggested by the Chief Commissioner, I have just written, and if he concurs, I hope that he will add the weight of his authority to mine.

CIRCULAR No. 14 of 1858.

From GEORGE CAMPBELL, Esq., Judicial Commissioner, Oudh; to all Commissioners in Oudh, dated Lucknow, 12th June 1858.

Judicial.

SIR,

I have the honor to request, that you will see that, in the trial of all cases, whether under the special Acts or otherwise, an intelligible note of the essential points of the statement and evidence is taken *at the time,* from the mouths of the parties and witnesses, by the officer who tries the case. This note is to be filed, and is to be the primary record. It may not, under present circumstances, be always possible to take down in writing detailed Vernacular evidence, but when it is so, the Mohurrir's text is to be looked on merely as a collateral report of the evidence, for the purpose of comparison and reference. It will in fact, be more like a newspaper report, and is not to be signed by the officer, but by the Mohurrir, who is responsible for its truth. He, however, should not put questions, or in any sense take the depositions. He should merely sit by, and take down what he hears, questions being generally omitted, except when necessary, to render intelligible the answer.

2. It must be quite understood, that the object is, that when the Presiding officer does his duty, his notes should be alone a sufficient record of the case. But in case any thing should be wanting, the notes of a good Mohurrir will be very useful to refer to. In consequence of his more exclusive attention to the sole duty of reporting, and the conciseness of the Persian character, they will be more full than the Judge's notes.

From T. D. FORSYTH, Esq., Secretary to the Chief Commissioner, Oudh; to G. CAMPBELL, Esq., Judicial Commissioner, Oudh, dated Lucknow, 23rd June 1858, No. 184.

Judicial.

SIR,

I am directed to convey the Chief Commissioner's approval of your Circular, forwarded with your letter No. 83, dated 12th Instant, which is a step in the right direction.

2. In petty cases, such as assault, petty theft and small misdemeanours, the Chief Commissioner considers that the English notes taken by an Officer, or in the case of a Native Extra-Assistant, his own notes might be entirely substituted for any other proceedings; and I am directed to suggest, that you introduce this plan, and I forward as a specimen, a case decided by Lieutenant Chamier, in political charge of the Kupoorthulla Contingent.

3. In minor cases, some such record would suffice, and form a great contrast to the bulky file of a marfeet case of former times.

4. In more serious cases, such as felony, the Vernacular proceedings will be necessary, but should be reduced as far as possible.

5. No plan, however perfect, will ever succeed, unless strictly watched in the manner of its being carried out.

6. The Chief Commissioner desires, that you will call monthly for cases from each Officer and examine them, to see whether they are conducted in accordance with orders.

7. The Chief Commissioner would occasionally like to see some of the cases, and will be obliged by your forwarding some after recording your remarks.

From G. CAMPBELL, Esq., Judicial Commissioner, Oudh; to T. D. FORSYTH, Esq., Secretary to Chief Commissioner of Lucknow, dated 25th June 1858, No. 108.

SIR,

Judicial. With reference to your letter No. 184, dated 23rd June, regarding criminal procedure, I have the honor to say, that I have no objection to the experiment of the English record in petty cases suggested by the Chief Commissioner in your second paragraph, and will give orders accordingly.

2. I have no doubt whatever, that properly taken, an English note is quite sufficient. My only fear is, that these petty cases are those in which it will be most difficult to get officers to take good and sufficient notes; and I may add, that it is difficult to define which are to be considered petty cases, since many cases classed under petty heads in the statements, involve the largest amount of strong feeling and litigation, and many results, important to the parties; and in such cases, a careless and imperfect note is in this country, a practical deprivation of the right of appeal. However, we may well try the system. The Chief Commissioner will observe, that the case decided by Lieutenant Chamier, is an unusually simple one, in which the defendant confessed and was reprimanded. Unfortunately we have few so easily arranged.

From T. D. FORSYTH, Esq., Secretary to the Chief Commissioner, Oudh; to G. CAMPBELL, Esq., Judicial Commissioner, Oudh, dated Lucknow, 30th June 1858, No. 203.

Judicial.

SIR,

I have the honor to acknowledge the receipt of your letter No. 108, dated 25th Instant, and in reply am directed to suggest that, for the first two or three months, you cause all cases decided

in English notes to be sent to you, to enable you to supervise the working of the system, and issue such further rules as may appear to be called for.

(True Copies.)

(Signed) T. D. FORSYTH,
Secy. to the Chief Commissioner, Oudh.

(True Copies.)

(Signed) R. SIMSON,
Under Secy. to the Govt. of India,
With the Governor General.

No. 68. ORDER THEREON, No. 1619; dated 16th November 1858.

This communication will be recorded. It is observed that the Government of India has very recently been furnished with the opinion of this Government on the subject under reference.

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

Exd. F. Cartledge.

No. 402

FROM G. F. EDMONSTONE, ESQ.,
Secy. to the Govt. of India,
With the Governor General.

To *T. Bycroft, Esquire,*
Secretary to Government

SIR,

HOME DEPT.

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From the Secy. to the Chief Commissioner Oudh, to the Judicial Commissioner Oudh, of 21st May, No. 103, with enclosures.

I have the honor to be,
Sir,
Your most obedient Servant,

G. F. Edmonstone

Secy. to the Govt. of India,
With the Governor General.

ALLAHABAD:
The 25th Octr. 1858.

Cirs 14 Sept/58 — 12-13

Judicial. 1858. Dept.t

From the Secretary to the Govt. of India with the Governor General. 462.

R/21st Oct
R/4 Nov/58.

Copied.
Encl.s

With reference to the system of trying petty criminal cases viva voce, forwards copy of certain papers, and invites the suggestions of this Govt for the further introduction of English Notes in petty Cases, in supercession of the detailed Vernacular record. —

Notes

This communication will be recorded.

It is observed that the Govt of India has very recently forwarded with the Governor's Minute of 5th Oct on the subject under reference.

For A. Mc George
10th November 1858.

D. Fitz 8/11/58

C 8 Nov
R 15 "

67468.

Govt Genl 16 November

Judicial. 1858. Dept.t

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