M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 161 Press ~~Mis.~~

-13-

Dated 3.2.1863 ~~19~~ .

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 3rd February 1863.

No. 13. Proceedings of Government, dated 3rd February 1863, No. 161.

His Excellency the Governor in Council has had under his consideration the expediency of requiring all Session Judges and Magistrates in this Presidency, under the provisions of Sections 196 and 361 of the Code of Criminal Procedure to take the evidence of witnesses with their own hands and in their own Vernacular language.

2. Up to this date the provisions of these Sections have been applied in their entirety to the Session Judges in seven Zillahs,* to the Agents and Magistrates in Ganjam and Vizgapatam and their Assistants, to the Joint Magistrate of Malabar, to the Principal Sudder Ameens of Tellicherry and Cuddapah, and to the Subordinate Magistrates of the several grades in the District of Cuddapah; and as regards trials by Jury to the Session Judges of Chittoor, Cuddapah, Masulipatam, Rajahmundry and Cuddalore; the application of the rule in each case having originated in a recommendation made by the Honorable the Judges of the High Court or of the late Foujdarry Court.

* Salem.
Cuddapah.
Negapatam.
Tinnevelly.
Tellicherry.
Madura
Chittoor.

3. In eleven Zillahs the rule has not been applied to the Session Judge, and in only two Zillahs has it been applied to any of the Officers of the Magistracy, or to the Principal Sudder Ameen. In one of those Districts (Cuddapah) the rule has been applied to every Officer of the Magistracy including the Native Deputy Magistrates, Taluq Magistrates and Sub-Magistrates.

4. It appears to His Excellency in Council that the application of this important rule should be regulated by some more definite principle than has hitherto been observed. There is no apparent reason why in the Session Court of Nundial the depositions of witnesses should be recorded by a Jawabnaviss in Telugu, while in the adjoining District, Cuddapah, they are recorded by the Judge in English. Nor is it easy to understand why the application of the rule should in the case of the Session Judge of Chittoor be confined to trials by Jury, while the Session Judge of Salem is empowered to act on it, in all trials held before the Court.

5. The Governor in Council would be disposed to apply the rule to all trials held before a Session Judge, Subordinate Judge, Principal Sudder Ameen, Magistrate of a District or Joint Magistrate, and before any subordinate Officer of the European Magistracy, who has passed the Assistant's examination according to the higher standard, as well as before the Native Deputy Magistrates, provided that the presiding Officer be duly conversant with the Vernacular language of the District. Assuming the possession of this important qualification there can be no question that the Judge or Magistrate is far more likely to give his uninterrupted attention to the examination of a witness, if his own notes are to be the only record of the evidence, than if it has to be recorded by a Native Jawabnaviss. But it may be doubtful whether this course can be adopted with safety when the Judge or Magistrate is not conversant with the language in which the depositions are given. As a general rule, the European Judges and Magistrates in this Presidency are well acquainted with the languages of their respective Districts, and under the operation of the examinations which all assistants are required to pass before attaining the grade of Head Assistant, and the passing of which is a guarantee for the possession of a good practical knowledge of two Vernacular languages, it may be expected that in the course of a few years the appointment of an Officer to a District the Vernacular of which he is unacquainted with, will seldom or never occur. But at present it sometimes happens that owing to the exigencies of the public service, an Officer is promoted in a District in which he has never served before, and the language of which is new to him. A Judge or Magistrate so situated must of course carry on his work with the aid of an Interpreter, and as thoroughly efficient Interpreters are not always available at up-country Courts, it may be a question whether in difficult cases the records of which might eventually come under the revision of a higher Court either in appeal or in cases of life and death, on a reference for confirmation of sentence, it would not be safer to have the record of the evidence taken down by a Native Clerk. It may be said on the other hand that when the presiding Officer is ignorant of the language of the witness, it is all the more necessary that he should have that incentive to giving his close attention to the examination which is supplied by the obligation of recording the evidence with his own hand. This is a point on which the Governor in Council would wish to have the views of the Honorable the Judges of the High Court. Before

therefore extending to any other Courts the provisions of the Sections above quoted, the Governor in Council requests that he may be furnished with the opinion of the Honorable the Judges of the High Court as to the principle by which the application of the rule should in future be regulated. If it is to depend upon the knowledge possessed by the Judge or Magistrate of the Vernacular language of the District, it will be a matter for consideration, whether in the orders of Government the names of the Officers authorized to act on the provisions of Section 196 should not be specified, or if this course would be opposed to the wording of the Section, whether on the appointment of an Officer to a Court to which the rule may have been applied, who is not sufficiently acquainted with the language of the District to examine witnesses without the aid of an Interpreter, the previous order should not be cancelled.

6. When furnishing the report now called for, the Honorable the Judges will be good enough to state whether the last part of Section 195 of the Code, which provides that in cases in which the evidence is not taken down in writing by the Magistrate (or Judge) the Officer presiding shall make a Memorandum of the substance of what each witness deposes and shall annex the same to the record, is duly observed in the Mofussil Courts. The records of two trials which recently came before the Government had no such Memoranda annexed to them.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Judges & Magistrates directed to take down the evidence of witnesses with their own hand in English.

No. 210 – 12	Feb. 62	Sessions Judge,	Salem.
" 588 – 12	Apl	do	Cuddapah.
			Negapatam.
			Tinnevelly.
" 1,112 – 14	July	do	
		Principal Sudder Ameen.	Pondicherry.
		Sr. Magistrate	
" 1,684 – 13	Oct.	Magistrate & Assistants	Ganjam.
		Agent & do	
" 362 – 4	Mar.	Sessions Judge,	Madura.
" 2,094 – 23	Decr	Magistrate & Assistants	Viragapatam.
		Agent & do	
" 2,117 – 24	do	Sessions Judge	Chittoor.
			Cuddapah.
			Masulipatam.
			Rajahmundry.
			Cuddalore
			Negapatam
		Agent	Viragapatam.

In Trial by Jury

In Circulation — Sessions Judge, Principal Sudder Ameen, Magistrate & Agent

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Judicial Department.

V

PROCEEDINGS *of the* **MADRAS GOVERNMENT.**

Dated 3d Feby 1863 No. 167

His Excellency the Governor in Council has had under his consideration the expediency of requiring all Sessions Judges and Magistrates in this Presidency under the provisions of Sections 196 and 364 of the Code of Criminal Procedure to take the evidence of witnesses with their own hands and in their own vernacular language.

2. Up to this date the provisions of these Sections have been applied in their entirety to the Sessions Judges in Seven Zillahs, to the Agents and Magistrates in Ganjam and Vizagapatam and their Assistants to the Joint Magistrate of Nellore to the Principal Sudder Ameens of Pellicherry and Cuddapah and to the Subordinate Magistrates of the several grades in the

+ Salem
Cuddapah
Vizagapatam
Tinnevelly
Pellicherry
Nellore
Chittoor

District

District of Cuddapah, and as regards trials by Jury to the Sessions Judges of Chittoor, Cuddapah, Madura, Tanjore, Rajahmundry and Cuddalore; the application of the rule in each case having originated in a recommendation made by the Honble the Judges of the High Court or of the late Supreme Court.

3 In Calicut & Malabar the rule does not seem to appear to the Sessions Judge, and in only two Districts does it seem to be applied by the Magistracy, or the Principal Sudder Ameen. In one of these Districts (Cuddapah) the rule has been extended to every Officer of the Magistracy including the Native Deputy Magistrates, Talook Magistrates and Sub Magistrates.

4 It appears to His Excellency in Council that the application of this important rule should be regulated by some more definite principle than has hitherto been observed. There is no apparent reason why in the Sessions Courts Jurisdiction the Sessions Judge should

be

be recorded by a Jawabnavis in Telugu, while in the adjoining District, Cuddapah, they are recorded by the Judge in English. Nor is it easy to understand why the application of the rule should in the case of the Sessions Judge of Chittoor be confined to trials by Jury, while the Sessions Judge of Salem is empowered to act on it, in all trials held before the Court.

5. The Governor in Council would be disposed to apply the rule to all trials held before a Sessions Judge, Subordinate Judge, Principal Sudder Ameen, and before any Officer of the European Magistracy, who has passed the Assistants Examination according to the higher standard as well as before the Native Deputy Magistrates, provided that the presiding Officer be duly conversant with the vernacular Language of the District. Assuming the possession of this important qualification there can be no question that the Judge or Magistrate is far more likely

likely to give his uninterrupted attention to the examination of a witness, if his own notes are to be the only record of the evidence, than if it has to be recorded by a Native Jamabandy. But it may be doubtful whether this course can be adopted with safety when the Judge or Magistrate is not conversant with the language in which the depositions are given. As a general rule, the European Judges and Magistrates in this Presidency are well acquainted with the languages of their respective Districts, and under the operation of the examinations which all Assistants are required to pass before attaining the grade of Head Assistant, and the passing of which is a guarantee for the possession of a good practical knowledge of two vernacular languages, it may be expected that in the course of a few years the appointment of an Officer to a District the vernacular of which he is unacquainted with, will seldom or never occur. But at present it sometimes happens

happens that owing to the exigencies of the public service, an Officer is promoted in a District in which he has never served before, and the language of which is new to him. A Judge or Magistrate so situated must of course carry on his work with the aid of an interpreter, and as thoroughly efficient interpreters are not always available in the up country Courts, it may be a question whether in difficult cases the records of which might eventually come under the revision of a higher Court either in Appeal or in cases of life and death, on a reference for confirmation of sentence, it would not be safer to have the record of the evidence taken down by a Native Clerk. It may be said on the other hand that when the presiding Officer is ignorant of the language of the witness, it is all the more necessary that he should have that incentive to giving his close attention to the examination which is supplied by the obligation

obligation of recording the evidence with his own hand. This is a point on which the Governor in Council would wish to have the views of the Honble the Judges of the High Court. Before therefore extending to any other Courts the provisions of the Sections above quoted, the Governor in Council requests that he may be furnished with the opinion of the Honble the Judges of the High Court as to the principle by which the application of the rule should in future be regulated. If it is to depend upon the knowledge possessed by the Judge or Magistrate of the Vernacular language of the District, it will be a matter for consideration, whether in the orders of Government the names of the Officers authorised to act on the provisions of Section 196 should not be specified, or if this course would be opposed to the wording of the Section, whether on the appointment of an Officer to a Court to which the rule may have been applied, who is not sufficiently

sufficiently acquainted with the language of the District to ~~record the evidence~~ write himself to record the evidence without the aid of an interpreter, the previous order should not be cancelled.

6 When furnishing the report now called for, the Honble the Judges will be good enough to state whether the last part of Section 195 of the Code, which provides that in cases in which the evidence is not taken down in writing by the Magistrate (or Judge) the Officer presiding shall make a Memorandum of the substance of what each witness deposes and shall annex the same to the record, is only observed in the Mofussil Courts. The record of a trial which recently came before the Govt had no such Memorandum annexed to it.

To the Honble the Judges of the High Court. 3 Despts

Judicial 1863. Department.

No 161.

PROCEEDINGS OF GOVERNMENT,

Feb 27th
Feb 478.

Dated 3d Feb 1863.

Relative to the expediency of requiring all Sessions Judges and Magts in this Residency under the provisions of Sections 196 & 004 of the Code of Criminal Procedure to take the evidence of Witnesses under their own hands and in their own Vernacular Language.

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