MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1440	Press Mis.	
255-256 Dated	30-9-	19-	1864

7/8

Not to be folded or roughly handled

No. 255. Read the following letter from J. W. B. DYKES, Esq., Magistrate of Nellore; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Nellore, 9th June 1864, No. 27.

The Superintendent of Police has brought to notice that one great obstacle to the successful prosecution of crime is the difficulty in procuring witnesses to come forward and speak to what they may know regarding a case, as by so doing they are aware it will in all probability entail on them a long journey to Nellore and the neglect of their daily avocations, &c.

2. The generality of witnesses are people who gain their livelihood by manual labor, and have no other means of support. These men, if drawn away as witnesses to the Criminal Courts, are, as the Superintendent of Police describes, "on the verge of starvation." And rather than come forward and speak to what a man knows concerning a case they, under the circumstances, are strongly tempted to deny all knowledge of the matter, and very often there can be little doubt the successful prosecution of a serious case is thus defeated.

3. To obviate this difficulty the grant of subsistence, or batta, to prosecutors and witnesses in criminal cases has been suggested by Lieutenant Balmer. And, as I quite concur in the propriety of such a measure, and am certain that the probable effects are not exaggerated, I beg to submit the correspondence as per margin for the favorable consideration and orders of Government.

From Superintendent of Police, Nellore.
To Magistrate, Nellore, No. 282, dated 9th May 1864.
To do. from do. „ 134, „ 25th idem.
From do. to do. „ 353, „ 2nd June 1864.

4. Lieutenant Balmer estimates the cost at rather more than Rupees 1000. I would ask in round numbers for Rupees 1200 to be provided for in a Supplemental Budget. And we shall thus give assistance that is found necessary, where a higher standard of morality is looked for.

From Lieutenant A. BALMER, Superintendent of Police, Nellore; to J. W. B. DYKES, Esq., Magistrate of Nellore, dated Nellore, 9th May 1864, No. 282.

I have the honor to draw your attention to a difficulty that meets us in almost every case, which is committed for trial by the Subordinate Magistracy of the District to the Higher Courts, viz., the getting witnesses to come forward, when they see that their so doing will entail their coming to Nellore, and the relinquishment of their every day occupation by which they gain their livelihood.

2. A large proportion of the witnesses in most cases are very poor people who gain their livelihood from day to day by labor, who have no other means by support, and who, if they are withdrawn from their ordinary occupations, unless subsistence is granted to them, are on the verge of starvation.

3. In all cases committed to the Higher Courts, Subordinate Magistrates have, I think, the discretion to pay batta to witnesses for the days they are in attendance at Court, but so far as I am aware they seldom or ever grant batta. And this, I believe, operates seriously against our success in prosecuting, as the poorer classes rather than be subjected to the hardships they must undergo, if they forsake their daily work, deny all knowledge of the case, and thus their evidence is lost.

4. There are doubtless other reasons which prevent people coming forward to give evidence before the Higher Courts, but I am satisfied that were subsistence paid to poor witnesses one very considerable difficulty would be removed.

5. The Court trying the case can, of course, grant batta to the witnesses; but I would suggest that, when cases are committed, the Subordinate Magistrates should pay batta to witnesses, who are so poor as to require it, for the number of days they will be withdrawn from their work, until their appearance at Court; the date on which they are found by recognizance to appear, and the date on which the case is finally disposed of, and their attendance dispensed with, will show

the extra number of days, batta that should afterwards be paid; further, I would suggest that batta should be paid to such witnesses in returning to their homes, according to distance.

6. Many cases have come to my notice of the necessity of paying batta as I recommend. I have personally paid batta from my own pocket when I thought it necessary, and I am aware of some of my Inspectors, who are zealous in prosecuting their cases, doing the same.

7. Should you coincide with me in the view I take of this subject, I beg you will be good enough to issue orders to the Subordinate Magistrates to grant batta to witnesses in cases when it appears necessary.

From J. W. B. DYKES, Esq., Magistrate of Nellore; to Lieutenant A. BALMER, Superintendent of Police, Nellore, dated 25th May 1864, No. 134.

I have the honor to acknowledge the receipt of your letter, No. 282 of the 9th, and fully agree with you as to the propriety of paying batta to witnesses required to leave their occupations and homes to go into Nellore for the purpose of giving evidence, and that by such payment one great obstacle in procuring their testimony would doubtless be overcome. But, before recommending such a course for the sanction of the higher authorities, as no provision for the charge is made in my Budget, I should be obliged by your furnishing me with an estimate of what would, in your opinion, be the probable cost of such a measure, and the amount required for the purpose.

From Lieutenant A. BALMER, Superintendent of Police, Nellore; to J. W. B. DYKES, Esq., Magistrate of Nellore, dated Nellore, 2nd June 1864, No. 353.

I have the honor to acknowledge receipt of your letter, No. 134 of the 25th May, on the subject of batta to witnesses attending the Court of Sessions.

2. I enclose a Statement showing the number of witnesses examined in Sessions cases during the past year, the number of days they were absent from their villages, and the cost of batta at 2 Annas per diem, to each person.

3. Had batta been paid at the rate of 2 Annas per diem to each of those witnesses the cost of Government would have been Rupees 1054-12-0, and this will serve to give a fair idea of what such expense is likely to amount to, in any other year.

4. In calculating the number of days to be allowed to witnesses in proceeding to and returning from Nellore it is assumed that they would travel at the rate of 20 miles a day.

(True Copies.)

(Signed) J. W. B. DYKES,
Magistrate.

No. 256. ORDER THEREON, 30th September 1864, No. 1440.

The Governor in Council observes that there is a misconception on the subject of the authority heretofore exercised by the Magistrates of granting subsistence allowance to indigent prosecutors and witnesses in all cases whether committable to the Sessions Court, or disposable by the Magistracy. The power was conferred on the Magistrates by an Order of Government; whereas it appears to be the general impression that the Magistrates have been divested of it in consequence of the repeal of Section 33 of Regulation X of 1816, in Act XVII of 1862.

2. Section 33 of Regulation X of 1816 was to the following effect:—"The "Criminal Judges are to pay to all prosecutors and witnesses, who may appear to be "actually in need of such assistance, a daily allowance of 2 Annas of a Rupee "each during their attendance on the Court of Circuit, and the same allowance for "as many days as, in their opinion, may be sufficient for such prosecutors and wit-"nesses to come from, and return to their respective homes." In reference to this enactment, the Foujdaree Udalut reported in their letter to Government, dated 7th July 1821, that "there is no provision contained in the existing Regulations autho-"rizing the Magistrates or the Criminal Judges to grant such allowance to witnesses "attending in cases before them." The Judges observed that "it has been the

"practice of these officers to allow batta to such persons as might appear to require "it while in attendance on their Courts, and to include the amount in their contin-"gent charges periodically submitted for the sanction of Government," and thereupon expressed their opinion that "it was expedient and necessary for the adminis-"tration of public justice that this allowance should be granted to such prose-"cutors and witnesses, as may be actually in need of it, during the entire period "of their absence from their homes in attendance on the Criminal Courts; but as "authority is not given for it in the Regulations, an Order of Government is of "course requisite to sanction the disbursement." No orders were passed by Government on this letter; but the Foujdaree Udalut having, on the 9th August 1824, again brought the subject to notice, a general authority to the effect recommended by them was communicated to the Judges in a letter from the Secretary to Government in the Judicial Department, dated 17th August 1824, No. 328, paragraph 3.

3. It is clear from the extracts given in the preceding paragraph that the practice of granting batta to indigent prosecutors and witnesses attending trials before other Courts, besides the Courts of Circuit,* was not based on Section 33, Regulation X of 1816, and that the repeal of this Section could be no reason for discontinuing it. The present law on the subject (Section 438 of the Code of Criminal Procedure), although it is an advance on the repealed Regulation, inasmuch as it sanctions the payment of "reasonable expenses," and not bare subsistence only to needy persons, is still of the same limited application; the compensation being grantable by the Judge only in the case of trials before the Court of Session. There is, therefore, the same necessity as there was originally, that the Magistrates should have authority from the Government to disburse batta to indigent complainants and witnesses in all cases, whether committable to the Sessions Court, or disposable by any other Criminal Court. His Excellency in Council accordingly directs that the former practice be everywhere revived. All such payments will be included in the Magisterial Contingent bills without reference to the Sessions Judges.

* NOTE.—The Courts of Circuit were abolished under the Act (VII of 1843) which established the present Civil and Sessions Courts.

4. As regards Budget provision for payments to complainants and witnesses, it is observed that, in G.O., 4th February 1862, No. 172, it was directed that "batta to prosecutors and witnesses," estimated at Rupees 57,000, *i. e.*, Rupees 3000 for each district, being *Magisterial* charges, should be transferred from the Revenue estimate to that for Law and Justice. The amount appeared in the Budget for 1862-63 under that head, Sub-section "Criminal Courts," item "Other items." In the present year's Budget, the amount entered under the corresponding heads is Rupees 63,000. Besides this provision, a sum of Rupees 16,163 appears as "Batta or diet allowance to witnesses" under "Civil and Sessions Courts."

(True Extract.)

Secretary to Government.

To the Magistrate of
" Sessions Judge of
" Civil Paymaster.
" Deputy Auditor and Accountant General.

Exd. J. Jalloch.

63000
16163

Judicial Department. 7

PROCEEDINGS of the MADRAS GOVERNMENT.

Read letter from the Magistrate of Nellore No. 77 Enter 9. June 64 No. 27.
Orders 30 Septr 1864 No. 1440.

The Governor in Council observes that there is a misconception on the subject of the authority heretofore exercised by the Magistrates of granting subsistence allowances to indigent prosecutors & witnesses in all cases whether committable to the Sessions Courts or disposable by the Magistracy. The power was conferred on the Magistrates by an Order of Govt., whereas it appears

'appears to be the general impression that the Magistrates have been divested of it in consequences of the repeal of §XXXIII of Reg. X-'16 in Act XVII-'62.

2. Section 33 of Reg. X-'16 was to the following effect:- "The criminal judges are "to pay to all prosecutors & witnesses, who may appear to be actually in "need of such assistance, a daily allowance of "two annas of a rupee "each during their attendance on the Court "of Circuit, & the same "allowance for as many "days as, in their opinion "may be sufficient for "such prosecutors and "witnesses to come from, and

'and return to their respective homes." In reference to this enactment the Sonjdarees Adalut reported in their letter to Govt., dated 7th July-1821, that "there is no "provision contained in "the existing Regulations "authorising the Magistrates or the Criminal "Judges to grant such allowances to witnesses attending in cases before "them." The Judges observed that "it has been "the practice of these officers to allow batta to "such persons as might "appear to require it, while "in attendance on their "Courts, & to include the "amount in their contingent charges, periodically "submitted for the sanction of Govt.," & thereupon expressed their opinion that "it was expedient "and necessary for the "administration of jus-

tice

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"sence should be granted
"to such prosecutors & wit-
"nesses, as may be actually
"in need of it, during the
"entire period of their ab-
"sence from their homes
"on attendance on the
"Criminal Courts; but as
"authority is not given for
"it in the Regulations an
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were passed by Govt. on
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Judges in a letter from
the Secretary to Govt. in
the Judicial Dept., dated
17th Augt. 1824 No. 328. para
3.

It is clear from the extracts
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* Note. The Courts of Circuit were abolished under the Act (XII. 43) which estab-lished the present Civil & Criminal Courts.

para 5

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at Rs. 57,000, i.e. Rs. 3,000
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The amount appeared in
the Budget for 62-63 under
that head, Subsection "Crimi-
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The Magistrate of ... 96
" Sessions Judge of ... 66
" Civil Paymaster. } ditto do
" Deputy Auditor Genl.

Judicial 1864. Department.

No. 1440

PROCEEDINGS of GOVERNMENT.

Ex 558/66

1867/67
2047/68
2687
Dated 30 September 1864