M.R.O. 1—33,000—16-10-22.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1503 Press ~~Mis.~~

118-120 Dated 17-10-1864

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
17*th October* 1864.

Read the following papers:—

No. 118. From T. WILKINS, Esq., Deputy Registrar of the High Court of Judicature at Madras, Appellate Side; to J. D. SIM, Esq., Secretary to Government, Fort Saint George, dated Madras, 5th September 1864, No. 60.

With reference to the Proceedings of Government, dated 1st June 1863, No. 845, I am desired by the Judges of the High Court to forward, for the information of Government, an Extract from their Proceedings of this day's date, regarding the application of Section 196 of the Code of Criminal Procedure to the Session Judges and Magistracy.

2. I am further directed to request that effect may be given to the recommendations contained in the concluding paragraph of those Proceedings, as the officers there named appear to possess the necessary qualifications.

Proceedings of the High Court of Judicature at Madras, 5th September 1864.

Read replies from the several Session Judges to the Circular, dated 8th March 1864, requesting them to report whether favorable results have attended the operation of Sections 196 and 364 of the Code of Criminal Procedure, and whether they are of opinion that it would be advisable to extend the provisions of the former Section to all Judicial and Magisterial Officers.

1. These reports were called for in pursuance of a request made by Government in their Proceedings 1st June 1863, No. 845, the object in view being the laying down of some principle by which the application of Sections 196 and 364 of the Code of Criminal Procedure should in future be regulated. The Judges will first refer to the various opinions which have been laid before them. They will then proceed to state their own views on the question.

2. Under Section 196 the Government are empowered to direct that, in any District or part of a District, the evidence of witnesses shall be taken down by the Magistrate with his own hand, in his own Vernacular language. Section 364 provides for the extension of this and other rules of procedure to Session Judges.

3. Section 196 has been extended to all grades of Magistrates in three Zillahs, viz., Nellore, Cuddalore, and Cuddapah. The Session Judges and Magistrates of these Districts are all of opinion that it works beneficially, but the Session Judge of Nellore expresses a hope that "it may not be made imperative," that is to say, that the Magistrates may be left a discretion to avail themselves of it or not as they find themselves able, or the reverse, to take down the evidence of particular witnesses with ease and correctness. Mr. Story instances the Yenadies and other wandering tribes, "who speak a patois uninfelligible to most Europeans."

4. Besides the officers above-mentioned, there are nine Session Judges, seven Magistrates and two Agents, who regard the Section favorably and recommend its extension to all Judicial and Magisterial Officers. Among the advantages of the new system, the following have been pointed out:—(1) the obvious saving of time; (2) the necessity of the presiding Magistrate concentrating his attention on the facts of the one case before him; and (3), which is a necessary consequence of (2), the increased confidence spread among the people, who, as Mr. Morris observes, have at last begun "somewhat to modify their opinion, that the Gumastahs have everything to do with the decision of each case."

5. There are other officers in favor of a general application of the Section, though with some reservation. The Session Judge of Tellicherry thinks the extension should not be altogether indiscriminate, because some of the Subordinate Magistrates cannot write legibly. The Magistrate of the Kistna District, that it should be confined to cases disposable by the Magistrates themselves, as in committable cases it would impose on them too much labor. The Magistrate of Tanjore, that in any case the signature of the deponent should be taken.

6. Three other Session Judges and five Magistrates approve of the measure theoretically, but doubt the fitness of the present class of Subordinate Magistrates. The Acting Magistrate

of Madras says he has only one subordinate sufficiently qualified, and whose work is so heavy as to require the relief. The Magistrate of Madura suggests that he should be allowed at his discretion to apply the Section to any subordinate he thinks proper. The Magistrate of Coimbatore remarks that both intelligence and morality must be considered in determining whether an officer has or has not the requisite qualifications. The Session Judge of Chittoor thinks the Section should be extended to all Covenanted Officers with full powers.

7. Two Magistrates and one Judge have given no opinion.

8. The opinions of four Session Judges are adverse to any further application of the new system. The Session Judge of Guntoor doubts if the statements, as taken down, would be fully explained to the deponents or the prisoners. The Session Judge of Ootacamund considers that the Memorandum, required to be made under Section 195, is sufficient to ensure the attention of the Magistrate, and to afford a check on the Gumastah. In this place, however, it will be proper to mention a suspicion entertained by Mr. Carmichael, that these Memoranda are often made afterwards from the deposition taken by the Gumastah. The remarks of the Session Judge of Rajahmundry apply chiefly to the preliminary inquiry in Session cases, but he observes that a statement recorded in English under Section 196 can hardly be taken as conclusive evidence that the witness has said what is written down; that the effort required to record every word distracts the Judge's attention from the general features of the case; and that, although the system may be expeditious in proportion to its celerity, there will be a risk of error. The Session Judge of Vizagapatam considers that, if the Section be fully acted up to, the new system will be not less but more tedious than that prescribed by Section 195, and that it is only popular with the Magistracy because it is not fully acted up to. The evidence, he says, as at present recorded by Magistrates to whom Section 196 has been applied, is often a mere abstract and very unsatisfactory.

9. With regard to the application of Section 196 to Session Judges under Section 304, the Judges of Bellary, Coimbatore, Guntoor, Nellore, and Tranquebar have given no opinion. The Judge of Rajahmundry is opposed to it, for reasons which have already been adverted to, and apparently the Session Judge of Vizagapatam also. The Session Judges of Mangalore and Trichinopoly do not wish to avail themselves of the new procedure. The Session Judge of Ootacamund, though of opinion that it operates disadvantageously in some respects, as by compelling the Judge to waste time on details, is on the whole in its favor. The late Acting Civil Judge of Mangalore, Mr. Thompson, approves of the new system on the ground of its celerity, though he considers it dangerous, however carefully it may be administered. The Session Judge of Chittoor is already vested with the power in Jury cases, and he now requests that he may be authorized to exercise it at his discretion in cases tried with Assessors also. All the other Session Judges are unanimous in favor of the general introduction of the new procedure in Session cases.

10. It appears to the High Court that the following are the principal considerations upon which the propriety of adopting Section 196 depends. Are the officers, to whom it is to be applied, sufficiently acquainted with the language in which the evidence is given? Have they the dialectic skill to transfuse the meaning? and are they to be trusted?

11. The recording of evidence is by no means a simple matter. It requires great accuracy and industrious conscientiousness. With respect to the European Judges and Magistrates, the High Court are by no means prepared to say that they all possess these qualities. Constant errors will creep in, and sometimes errors of a very serious character, which will be obviated by the record of a witness' statement in his own words. As a general principle, of course, where a Judge is capable, the person to decide is he who should record. His notes, however, as the Judges regret to see, often degenerate into a mere abstract, or what he is pleased to call the substance of the statement. As regards Sub-Magistrates, the Judges fear that there are a number of persons in this position whose inaccuracy will not merely have an intellectual source.

12. For these reasons, the Judges are decidedly opposed to any general application of Section 196 to all Judicial and Magisterial Officers. Each case must be treated by itself with reference to the considerations already indicated.

Proceedings of the Madras Government, Judicial Department,
17th October 1864.

13. With respect to the general recommendation made by the Judges of Madura, Bellary, Calicut, Salem, and Tanjore, that all the Judicial and Magisterial Officers within their Districts should be authorized to take down evidence under the provisions of Section 196, a nominal list of the officers who really possess the qualifications above-mentioned should be submitted.

14. In pursuance of the request of the Magistrate and Session Judge of Mangalore, the High Court resolve now to recommend to Government the extension of the Section to the Subordinate Magistrates mentioned in the margin. A similar recommendation will be made in behalf of P. Achuta Ramiyar, Subordinate Magistrate of Cocanada, as desired in the Magistrate's letter, dated 1st July last. The High Court will also recommend the application of Section 196 under Section 364 to the Session Judge of Chingleput, and that the same authority which has already been given to the Session Judge of Chittoor in cases tried by Jury, may be extended to cases tried with the assistance of Assessors. The Session Judge requests that a discretion may be specially reserved to him to follow this procedure or not as he thinks proper. This is unnecessary. It will of course be open to the Session Judge to have regular depositions recorded whenever he pleases, provided of course that he makes a contemporaneous Memorandum as provided in Section 195.

Ramappa, Taluk Sub-Magistrate of Managalore.
T. Subba Rau, Town do. do.
G. Narayana Rau, Taluk do. of Udipy.
Rama Rau, do. do. Kundapur.
Aunajy Rau, do. do. Kassergode.
Mahomed Ali, Sub-Magistrate of Buntwal.
Lakshmana Rau, Acting do. of Beltangady.

(True Extract.)

(Signed) T. WILKINS,
Deputy Registrar, Appellate Side.

No. 119. OFFICIAL MEMORANDUM.

With reference to the Memorandum from the Secretary to Government in charge of the Judicial Department, dated 8th instant, No. 483, the undersigned is directed to state that the Judges of the High Court intended, in paragraph 14 of their Proceedings, dated the 5th instant, to recommend that the Subordinate Magistrates therein named should be authorized to record evidence in Canarese, the Vernacular of the District in which they are serving.

(Signed) T. WILKINS,
Deputy Registrar Appellate Side.

HIGH COURT OF JUDICATURE,
MADRAS, *23d September* 1864.

To the Secretary to Government in charge of the Judicial Department.

No. 120. ORDER THEREON, 17th October 1864, No. 1503.

Ordered that it be notified in the *Fort Saint George Gazette* that the Subordinate Magistrates in the Mangalore Zillah, and the Subordinate Magistrate of Cocanada, who are named in paragraph 14 of the Proceedings of the High Court, dated 5th ultimo, are authorized to take down the evidence of witnesses with their own hand in the Vernacular language of their Districts respectively, and the Session Judge of Chingleput similarly in English.

2. With reference to the recommendation of the High Court, that "the same "authority which has already been given to the Session Judge of Chittoor, in cases "tried by Jury, may be extended to cases tried with the assistance of Assessors," the Governor in Council observes that the Session Judge in question already has the authority, now proposed to be granted to him, under the latter clause of the

Proceedings of the Madras Government, Judicial Department,
17th October 1864.

Notification of the 15th March 1862, as explained by the Honorable the Judges in paragraph 3 of the High Court's Proceedings of the 3rd March 1863, No. 31, and in the amended Notification of the 1st June following, published at page 911 of the *Gazette*.

(True Extract.)

Chief Secretary.

To the Honorable the Judges of the High Court.
~~Magistrate~~ Collector of South Canara.
" Do. of the Godavery District.

Exd. J. Tulloch.

Judicial Department.

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PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters & Orders from the High Court

Enter 5" & 23" Sept. '64. No. 60 & x.

Order — of October 18th No. 1563

Ordered that it be notified in the Fort Saint George Gazette that the Subordinate Magistrates in the Mangalore Zillah & the Subordinate Magistrate of Cocanada; who are named in para 14 of the Proc: of the High Court dated 5. ults., are authorised to take down the evidence of witnesses with their own hands in the vernacular language of their districts respectively & the Sessions Judge of Chingleput

...Chingleput similarly in
English.

2. With reference to the pa-
ragraph of the Commendation of the
High Court that "the
"same authority which
"has already been given
"to the Sessions Judge of
"Chittoor in cases tried by
"him, may be extended
"to cases tried with the
"assistance of Assessors,"
the Governor in Council
observes that the Sessions
Judge in question al-
ready has the authority
now proposed to be
granted to him, under
the latter clause of the
Notification of the 15th
March '62, as explained
by the Honble the Judge
in para 3 of the High
Court's Proceedings of
the

the 3rd Mar. '63 No. 31, & the amended Notification of the 1st June following published at page 911 of the Gazette.

The Honble the Judges of the High Court.
The Collector of South Canara.
" do —— of the Godavery District.
—— 3 Notifs in Gazette.
" Civil Judge of Chittoor dupsy.

Judicial 1864. Department.

No. 1503.

PROCEEDINGS *of* GOVERNMENT.

Pro. No. 677
1/11/63

Dated 17th October 1864.