

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1430	Press Mis.
Dated	5 th 10	19-1865

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
5th October 1865.*

No. 26. Read the following letter from F. S. CHILD, Esq., Session Judge of Cuddapah, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Cuddapah, 16th September 1865, No. 475.

With reference to the Proceedings of Government, dated 21st September 1864, No. 156, I have the honor again to bring forward the question of the necessity for providing some person to attend to the wants of the Juries while trying Session cases.

2. The Juries are constantly engaged from morning till late in the evening, and sometimes for two days together in one case, and of course are not allowed, while the trial lasts, to communicate with any persons other than those authorized by the Court, strict guard being maintained. When the trial lasts more than one day, the Jury are not allowed to return to their homes, but are compelled to sleep in the Jury room.

3. It is obviously necessary that there should be some one to supply them with what they require.

4. The Government, in their Order referred to, objected to the proposal on the ground that no other Court had made a similar application; but I have learned that no other Court is so strict as I am, and that when the cases last more than one day the Jury are allowed to go home.

5. Should this be decided to be correct, I should immediately recommend that trial by Jury should cease; for, when a Jury in England is kept isolated during a Criminal trial, the necessity of at least equal care in this country need not be urged.

6. The reason why I have brought the matter to the notice of the Government a second time is, that I have hitherto kept a Brahmin for the service of the Jury at my own expense, and being now about to leave the District, I see no reason to expect that my successor will do the same.

No. 27. ORDER THEREON, 5th October 1865, No. 1430.

On a re-consideration of the subject, the Governor in Council resolves to authorize the Session Judge of Cuddapah to employ a Brahmin cook on ten Rupees a month for attendance on Juries. The amount already disbursed on this account by Mr. Child will be refunded to him, the charge being defrayed from Savings under Law and Justice.

2. Adverting to some recent occurrences, in connexion with trials by Jury in the Provinces, the Governor in Council desires that the measures taken by the Session Judge of Cuddapah, to prevent access to jurymen during the progress of a trial, be generally adopted in all the Courts into which the system has been introduced. He directs that the annexed extract from a letter from the Government of

*Proceedings of the Madras Government, Judicial Department,
5th October 1865.*

Bengal to the Government of India on the subject, be furnished to the Session Judges of the Zillahs named in the margin, and to the Agent in Vizagapatam, for their information.

Cuddapah.
Chittoor.
Cuddalore.

Negapatam.
Rajahmundry.
Tanjore.

(True Extract).

Acting Secretary to Government.

To the Session Judge of Cuddapah.

„ „ of Chittoor.
„ „ of Cuddalore.
„ „ of Negapatam.
„ „ of Rajahmundry.
„ „ of Tanjore.
„ Agent in Vizagapatam.
„ Accountant General.
„ Collector of Cuddapah.

Extract from a letter from the Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department, dated 13th June 1865, No. 3844, communicated to the Madras Government with letter of 9th August 1865, No. 846.

Para: 8. The Lieutenant-Governor is of opinion that, in order to render the Jury system applicable under all circumstances to the Districts in which it has been, or may hereafter be introduced, provision should be made by Law for empanelling a Special Jury whenever the Judge may think it necessary for the ends of justice to adopt this course. His Honor is also of opinion that the time has arrived when an attempt may be made to prevent access to the Jury during the progress of a trial. On both these suggestions, the opinion of the High Court has been asked; but the Court, without expressing any opinion as to the expediency or practicability of either course, merely state that, in the opinion of the majority of the Judges, these expedients would not be sufficient to meet the exceptional state of things prevailing in the District of Nuddea.

9. It would be quite practicable, the Lieutenant-Governor thinks, when the area of selection has been extended, to have in each District a Special Jury List consisting of fifty or sixty persons, and comprising the most respectable and intelligent residents of the District, within easy reach of the Court, without unduly reducing the numbers in the Common Jury List. Many of those who are now exempt by law from liability to serve as Jurors, or Assessors, might very properly be required to serve as Special Jurors, and many who, though not legally exempt from such liability, are excused from attendance on account of having other public duties to discharge would not seek to be excused if their attendance were confined to the rare occasions in which a Special Jury were to be empanelled, and if admission to the Special Jury List were regarded as a social distinction.

10. With regard to the proposal of shutting up the Jury, during the continuance of a trial, I am desired to say that the evil to be apprehended from the present freedom of the Jurors from any such restraint is not so much that any direct attempt will be made to tamper with them by bribes (though instances of this kind have occurred) as that their judgment is likely to be

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biased by hearing out of Court all sorts of rumours and conjectures connected with the case under trial, and that, forming their opinions from what they hear outside (probably from persons interested), their verdicts are not founded upon the evidence placed before them in Court. It is to be feared that most Native Jurors placed more reliance on information which they pick up in conversation as to the real story (the *asl bāt*) of a case, than upon any amount of evidence taken on oath before the Court. The evil is admitted, and so is the necessity for correcting it; but the difficulty lies in finding a remedy owing to the social customs of Hindus and Mahomedans in regard to their food. The difficulty, however, is by no means insuperable. In the immediate vicinity of most Courts, there are buildings which could be made available for the accommodation of Jurors during the night, and if a separate room be provided for Hindu, and another for Mahomedan Jurors, and if their servants be permitted to attend them, under proper precautions, the object in view may be sufficiently attained without subjecting the Jurors to any breach of caste observances, or to more than a minimum of personal inconvenience.

Exd. R. H. Lee.

Judicial Department
N^o 1981

From
The Session Judge of Juddepar.

Dated 16 September 1865

For Orders.

I think that Mr Childs application
should be acceded to. They must be
supplied with refreshment during
a protracted case, and it would be
do to allow them to go to their homes or
to communicate with outsiders.

For when it is permitted in one
Court it must be so in any other in
which trial by Jury obtains, but
advising to what we have lately learnt
it may be a question whether the Judge
of all such Session Court should not.

to warrant against showing any
intercourse between the Indians, which
a case may be under trial, and this
printed on the outside for the public, and
to permit the adoption of the same
provision on which the Judge of
Cuddalore has employed

WJ

Mr. Chief's proposal opens a very wide and a
very difficult question. The subject of it has only
recently come down from Simla and a few days ago
was referred to the High Court for an expression
of their views on the points raised in para 8 & 10 of
Mr. Chief's letter to the Local Govt.

I am wholly against the Pory system, but
as it has, unfortunately in my opinion, been
applied in six districts and one cannot disturb
it without some proper case, ^{or more of them} than those
already known to have occurred, I think Mr.
Chief's proposal should be approved as a
palladium of the law - of course the

14
instructions arising out of Mr. Chief's system
will be under review on a point more difficult
to popular than here & I am not clear
that the Code furnishes any warrant for
subjecting persons to the inconvenience they
will now experience. But, it is better that
they should suffer than that ^{there} should be
a repetition of that wretched Paurah. Vellam
and carriage of justice - WJ

Should circulate to the Judges who are
authorized to use the Pory system - para
8 & 10 of Mr. Chief's letter - WJ

Learn

WD

will now be refunded to him, the charge being defrayed from savings under Law and Justice.

2. Adverting to some recent occurrences in connection with trials by Jury in the provinces, the Governor in Council ^{desires} ~~considers~~ that the measures taken by the Session Judge of Cuddapah to prevent access to jurors during the progress of a trial, might be ^{generally} ~~advantageously~~ adopted in all the Courts into which the system has been introduced. He directs that ^{the annexed} ~~an~~ extract from a letter from

Cuddapah
Chittoor
Cuddalore
Negapatam
Rajahmundry
Tanjore.

from the Govt. of Bengal to the Govt. of India on the subject, be furnished to the Session Judges of the Zillahs named in the margin & to the Agent in Tiragapatam for their information.

HA

Extract from a letter from the Govt. of Bengal to the Govt. of India, dated 13th June '65 No. 3844, communicated with letter of 9th Augt. '65 No. 846. Home Dept.

[Here enter paras: 8 to 10]

The Session Judge of Cuddapah
Chittoor
Cuddalore
Negapatam
Rajahmundry
Tanjore.
Agent in Tiragapatam.
Acct. Genl.
Collector of Cuddapah.

The settlement
The points on which
Sub. Secy. have called
for an opinion & also
we have asked the
Resd. Comd. to forward
us with
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1000-

1480
Brahmin Cook
for the Survey
Ciddalah.

26-27

No. 2700

Inst. 1865. Department.

No. 1430

PROCEEDINGS OF GOVERNMENT.

2555
2195-2290.

Dated 5 October 1845.

Letter of 9. Sept. 1845. to the
Hon. Secy. of the Interior
at Wash. D. C. in relation to
the land of the Indians
of the State of Georgia.

10. 10. 1845.

Survey for
the
Department of the Interior
at Wash. D. C.
10. 10. 1845.

229-230