

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1504

Press
Mis.

157-60

Dated 21. 10. 1865 III .

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
21st October 1865.

No. 159. Read the following letter from the Officiating Commissioner of Police, to the Acting Secretary to Government, Fort Saint George; dated Madras 9th October 1865, No. 107.

I have the honor to submit, for the decision of Government, the question of defraying the expenses of witnesses for the defence sent from the Mofussil to give evidence, in trials of European British subjects, before the High Court.

2. At the August Sessions of the High Court, witnesses for the defence, as per

ARAVA LUTHERIAN versus KEATING AND READY.									
								Rs.	A. P.
Ramasawmy...	..	..	..	..	..	..	..	9	10 10
Ranga Row ..	..	..	..	..	..	..	..	9	10 10
CHINNASAWMY versus BAKE.									
Reverend S. Jones ..	..	..	..	..	..	..	..	93	12 0
Mr. McDonald ..	..	..	..	..	..	..	..	53	11 8
Mr. Long ..	..	..	..	..	..	..	..	14	4 5
Marapen ..	..	..	..	..	..	..	..	14	4 5
Shivengiam ..	..	..	..	..	..	..	..	14	4 5
Shadayappen ..	..	..	..	..	..	..	..	14	4 5
Marimuth ..	..	..	..	..	..	..	..	14	4 5

margin, appeared to give evidence in the cases mentioned. They had been duly subpoenaed to attend and claimed their expenses. The Committing Magistrates had made advances to the witnesses, and included their names in the list forwarded. I ascertained from the office Records that charges for defence witnesses had

occasionally been paid, though the claim would not appear to have been made as a matter of course in all cases. Having, therefore, verbally communicated with the Government Solicitor on the subject, and taking into consideration the broad wording of Proceedings of Government, No. 1437, of 7th September 1863, which speaks of "prosecutors and witnesses" generally, I defrayed the expenses of these witnesses, there being no time for reference.

3. But thinking it advisable to place the question beyond doubt, I submitted it to the Law officers of the Crown, and enclose a copy of the opinion given.

4. It will be seen that the Advocate General considers that the Government are not legally bound to pay such expenses, and further that the Proceedings of Government quoted refer only to prosecutors and witnesses for the prosecution. This opinion will bar payment to defence witnesses in future. But I would submit, for the consideration of Government, that the payment of such witnesses in certain cases would seem to accord with the general principles of the administration of justice. Section 438 of the Code of Criminal Procedure leaves this matter to the discretion of the Court of Sessions in the Mofussil, and there would seem no reason why the same principle should not be extended to trials before the High Court. The Legislature provides that European British Subjects shall be tried by the High Court only, but if the indigence of the defendant and his witnesses should prevent the latter from proceeding to the Presidency to give evidence, then the privilege accorded to the accused might be turned into a downright calamity.

5. I, therefore, venture to suggest that a discretion should be accorded to Committing Magistrates in this matter, and that, whenever they may deem it necessary in the interests of justice, they should have power to add defence witnesses to the list of those whose expenses are to be defrayed by the Commissioner of Police. The decision cannot well rest with the Superior Court (as in Section 438, Criminal Procedure Code), since indigent witnesses must receive an advance before they can start on a long journey from distant Districts.

6. I may mention that in the case of Chinnasawmy versus Bake, the defendant was said to be a wealthy man, and some of the witnesses were cited to give evidence on apparently trivial points. A defendant might produce such witnesses at his own expense.

Proceedings of the Madras Government, Judicial Department,
21st October 1865.

COPY—OPINION.

I do not think that the Government is under any legal liability to defray the charges of a prisoner's witnesses, when the trial of such prisoner takes place before the High Court on its Original Side.

2. In the up-country Courts, such payment is left to the discretion of the Court of Sessions. Section 433 of the Criminal Procedure Code is large enough in its terms to justify the payment of the reasonable expenses of any witness attending for the purpose of a trial, whether such witness be for the defence or the Crown.

3. But the Criminal Procedure Code does not extend to Madras. The High Court, in the trial of Criminal offences, in its Original Side, is still guided and governed by the old Procedure of the late Supreme Court, except in so far as such Procedure has been altered by Special Acts of the Legislature as to Juries, &c.

4. The Proceedings of Government, No. 1437, of 7th September 1863, I have always understood to refer only to prosecutors and witnesses for the prosecution. The practice of the Crown Office has always been, since I can recollect it, to furnish any witness for the defence with a Certificate of his attendance and examination, upon his applying for it. Whether the Commissioner of Police or other authority has been in the habit of paying such witnesses their expenses upon presentation of the certificate, I cannot say. This the Officiating Commissioner of Police can ascertain. In my opinion, the Government is not bound to pay such witnesses.

15th September 1865.

(Signed) J. B. NORTON,
Advocate General.

(True Copy).

(Signed) J. R. BOYSON,
Government Solicitor.

No. 160.

ORDER THEREON, 21st October 1865, No. 1501.

The Government are of opinion that, under Sections 227 and 228 of the Code of Criminal Procedure, the Committing Magistrates are bound to make primary provision for the expense of procuring the attendance of any witnesses for the defence whose evidence they are satisfied is materially necessary; but, under the circumstances stated in paragraph 6 of Captain Hearn's letter, the Government consider that he might with propriety have awaited an answer to his reference before paying Rupees 270 on account of Government, for the expenses of the witnesses cited by a "wealthy" defendant.

2. Adverting to the statement made in the same paragraph, that "some of the witnesses were cited to give evidence on apparently trivial points," the Governor in Council resolves to call upon the Magistrate who committed the case, to explain why he did not strictly apply the provisions of Section 228 of the Code of Criminal Procedure, and require the defendant to deposit the necessary amount to defray the expenses of the witnesses in question.

3. Looking to the increasing frequency of commitments to the High Court, the Governor in Council directs that the Committing Officer shall on each occasion furnish the Commissioner of Police with a Memorandum stating the condition and position in life of the witnesses for the prosecution and the defence, in order that the Commissioner of Police may be able satisfactorily to determine at what rates travelling and other allowances shall be granted to them severally. Copies of these Proceedings will be accordingly communicated to all Magistrates of Districts.

(True Extract).

Acting Secretary to Government.

To the Commissioner of Police, Madras.

" Magistrate of

Ed. J. H. Burns.

N^o 107

Madras Police
Commissioner's Office
9th October 1865

From

Captain C. S. Hearn
Offs. Commissioner of Police

To

J. Hudson Esq.
Secy. Secretary to Government
Fort Saint George

Sir

I have the honor to submit for the decision of Government the question of defraying the expenses of witnesses for the Defence sent from the Mofussil to give evidence, in trials of European British Subjects, before the High Court.

2

At the August Sessions of the High Court witnesses for the Defence

Shiva Subrahmaniam	9	10	10	as per Hearn appeared to give
Vincent Theobald and Brady	9	10	10	evidence in the cases mentioned.
Manasa Swamy	9	10	10	They had been duly subpoenaed to
Manya Row	9	10	10	attend and claimed their ex-
Chinnaswamy K. S. S. S.	95	12	"	expenses. In the cases of
Mr. J. J. J.	58	11	8	Shiva Subrahmaniam, Vincent Theobald
Mr. McDonald	58	11	8	and Brady, Chinnaswamy K. S. S.
Mr. Ling	11	4	5	Based on the Committing Magistrate
Mr. Raju	11	4	5	had made advances to the witnesses and
Shivagiam	11	4	5	included their names in the list con-
Shaduyappan	11	4	5	forwarded. I ascertained from the
Marimuthu	11	4	5	Office

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Course in all Cases. Having therefore
verbally Communicated with the
Government Solicitor on the Subject
and taking into Consideration the
broad wording of Proceedings of
Government dated 14th of 7th September
1863 which speaks of "Prosecutors
and Witnesses" generally, I do pay to the
expenses of these Witnesses there
being no time for reference.

3. But thinking it advisable
to place the question beyond doubt
I submitted it to the Law Officers of
the Crown, and enclose a Copy of the
opinion given.

4. It will be seen that the Advocate
General considers that the Government
are not legally bound to pay such
expenses, and further that the Proceedings
of Government quoted refer only to
Prosecutors and Witnesses for the
Prosecution. His opinion will bear
payment.

7
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But I would submit for the Consider-
ation of Government that the payment
of such witnesses in certain Cases
would seem to accord with the
general principles of the administra-
tion of Justice. Section 138 of the Code
of Criminal Procedure leaves this
matter to the discretion of the Court
of Sessions in the Mofassil and
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same principle should not be
extended to trials before the High
Court. The Legislature provides
that European British Subjects shall
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the indigenous of the defendant and
his witnesses should present the latter
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For the
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the
Commission
of the
Court

necessary in the interests of justice, they should have power to add defence witnesses to the list of those whose expenses are to be defrayed by the Commissioner of Police. The decision cannot well rest with the Superior Court (as in Section 438-C: P. C.) since indigent witnesses must receive an advance before they can start on a long journey from distant Districts.

6 I may mention that in the case of *Chinnasamy Versus Wadd* the Defendant was said to be a wealthy man, and some of the witnesses were cited to give evidence on apparently trivial points. A Defendant might produce such witnesses at his own expense.

Have the honor to be,
Sir,
Your Most Obedt. Servant
Sheen
Offg. Commr. of Police

Copy Opinion.

I do not think that the Government is under any legal liability to defray the charges of a prisoner's witnesses when the trial of such prisoner takes place before the High Court on its original side.

2. In the Up Country Courts such payment is left to the discretion of the Court of Sessions. Section 438 of the Criminal Procedure Code is large enough in its terms to justify the payment of the reasonable expenses of any witness attending for the purpose of a trial, whether such witness be for the defence or the Crown.

3. But the Criminal Procedure Code does not extend to Madras. The High Court in the trial of Criminal Offences, on its original side, is still guided and governed by the old procedure of the late Supreme Court, except in so far as such procedure has been altered by Special Acts of the Legislature as to juries &c.

4. The Proceedings of Government No. 1137 of 7th September 1863 I have always understood to refer only to prosecutors and witnesses for the Prosecution. The practice of the Crown Office has always been since I can recollect it to furnish any witness for the defence with a Certificate of his attendance and examination, upon his applying for it. Whether the Commissioner of Police or other authority has been in the habit of paying such witnesses their expenses upon presentation of the Certificate, I cannot say. This the

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15th September 1865.

Signed John Bruce Norton.

True Copy
L. A. Boyce
Govt. Secy.

Adverting to what is stated by Captain Meane in para 6 of his letter, I don't understand why he should have paid away Rs 271.5- in the easy manner shown at the close of para 2.

Such a sum would have sufficed to line the wipers just enough to carry them back to where they came, pending the settlement of the doubt we had arisen. If eventually the point were determined in their favor, there would have been no difficulty in remitting what was due to them through the local Collector or Magistrate.

As regards the law of the matter, I am inclined to consider that the framers of the Code Crim. Proc. took a different view of the duty of Govt. to that of Mr. Norton is impugned with. Sections 227 and 228 of that Code relate to the citation of wipers for the defence and the inference to be

drawn from the latter Section is, I think, clear to the Commission that they being refused to pay the expenses of defence wipers, if he sees no reason for supposing that they are included in the wiper list for the purpose of taxation, or delay, or of defeating the ends of "justice". -

In the case under notice, it seems necessary, with reference to para 6 of Captain Meane's letter, to call on the Commissioner Magistrate to explain under what duties he felt at liberty to subject Govt. to the cost of these expenses to & from the Presidency, of the wipers mentioned by Captain Meane, when, if the provisions of Section 228 had been intelligently and strictly applied, the accused would probably have dispensed with their attendance altogether.

Referring, further, to the increasing frequency of commitments to the High Court, I would order the Magistrate on each occasion of a commitment to transmit to the Comr. of Police a Memo. stating the condition & position in life of the wiper for prosecution & defence in order that the Comr. may be in a position at once to determine at what rate he can bear the allowance to them. In the present case a Rev. gentleman friendly to the Prisoner has drawn from Govt. Rs 65.000 for his retainer fee. What he got in the first instance from the Comr. Magistrate, we know not. - 11-10-65 -

1865
No. 2138.

(Read letter from the Commissioner
of Police) ————— Entered 9th Oct. '65 N^o 107.

Order - 215 & 216 of 1847

The Secretary of the Committee on the subject of the proposed amendment to the Constitution of the United States, in relation to the admission of new States, has the honor to acknowledge the receipt of your letter of the 22d inst. and to inform you that the same has been forwarded to the Committee on the subject of the proposed amendment to the Constitution of the United States, in relation to the admission of new States, for their consideration.

Very respectfully,
J. M. Smith, Secretary.

[illegible]

with propriety

have awaited an answer to his reference before paying Rs. 270 on acct. of Govt., for the expenses of the witnesses cited by a "wealthy" defendant. Adverting to the statement made in the same para., that ^{some of} the witnesses were cited "to give evidence on apparently trivial points,"

Governor in Council
resolves to call upon the
Magistrate who commit-
ted the case, to explain
why he did not strictly
apply the provisions of
§ 228 of the Code of Crimi-
nal Procedure, & re-
quire the defendant to
deposit the necessary a-
mount to defray the ex-
penses of the witnesses in
question.

3. Looking to the increasing
frequency of commit-
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the Governor in Coun-
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of Police with a memo-
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condition & position
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for

for the prosecution and
the defence in order that
the Commissioner of
Police may be able sa-
tisfactorily to determine
at what rates travelling
& other allowances shall
be granted to them re-
spectively. Copies of these
Procs: ^{will be} ~~are~~ accordingly
~~circulated~~ ^{communicated} among all
Magistrates of Districts.

L.R.

The Commissioner of
Police, Madras } des/24/10
" Magistrates of all Districts

159.100.

Pen. & Prison
McK 1865 Department.

No. 1574

PROCEEDINGS OF GOVERNMENT.

McK 2391.
11-17-66.

Dated 21 October 1865.

219.101.
1820