

*Proceedings of the Madras Government, Judicial Department,
16th November 1865.*

No. 161. Read the following letter from the Magistrate of Coimbatore, to the Chief Secretary to Government, Fort Saint George; dated Ootacamund, 2nd November 1865, No. 134.

With reference to paragraph 2 of the Proceedings of Government, Judicial Department, dated 21st October 1865, No. 1504, I have the honor to forward an original letter from my Acting Head

Dated 27th October 1865, No. 108.

Assistant, Mr. Foster, containing the explanation called for in the case of Chinna-sawmy *Versus* Bake, alluded to in paragraph 6 of Captain Hearn's letter to Government, dated 9th idem, No. 107.

From the Acting Head Assistant Magistrate, Coimbatore, to the Magistrate of Coimbatore; dated Coimbatore, 27th October 1865, No. 108.

With reference to the Order of Government in the Judicial Department, dated 21st October 1865, No. 1504, paragraph 2, I have the honor to state that I did strictly apply the provisions of Section 228 of the Code of Criminal Procedure. I did require the defendant to deposit the amount necessary to defray the expenses of two witnesses, and as the amount was not deposited, the witnesses were not summoned to appear before the High Court. By the Criminal Procedure Code, the Magistrate is not allowed to examine the witnesses named for the defence. I did not therefore examine them. The defendant told me what points each witness was called to prove, and with the exception of the two witnesses I have before mentioned, I considered these witnesses to be so essential that if they proved what it was expected they would, they would have gone very far towards obtaining the defendant's acquittal. Most of the witnesses called for the defence were examined in the High Court. The Officiating Commissioner of Police has no means of judging whether the others were not examined on account of their being likely to give evidence of a trivial nature, or evidence opposed to the defendant. He must judge only with reference to the evidence that was produced. The defendant was defended by counsel, and as these witnesses were called on to give evidence, I suppose that even the Counsel for the defence, with much more information as to the evidence they could give than I had, considered their evidence essentially necessary. It may be true, they broke down in their evidence, but that does not shew it was wrong in me to send them to the High Court. I could not assume they would break down.

2. I beg further to remark that, under Section 228 of the Code of Criminal Procedure, it is not left to the discretion of the Magistrate to make the defendant deposit the necessary expenses for a witness "cited to give evidence on apparently trivial points," unless "the witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice." I certainly do not consider any of the witnesses cited for the defence, except the two already alluded to, could be said to have been included for any of such purposes.

No. 162. ORDER THEREON, 16th November 1865, No. 1644.

To be recorded.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

Erd. J. H. Burns.

Pro. 21st Oct. 1865 at 159-160

1865 - Judicial Dept.
From Hon. J. R. R.

The Magistrate of Calicut

To The Chief Secy of Govt

Dated 2nd November 1865

Recd. 7

No. 134 of 2391

With the Enclosure

Forward an original
letter from Mr. Foster of
affording the explanation
called for in the case of
Chinnasamy Versus
Bake

16 November 1865 No. 1664.

J. P. R. R. R.
W. R. R.

1111
R16

161-162.