M.R.O. 1—59,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1301 Press Mis.

228-29

Dated 9 2 8 - ~~19~~ 1866

Not to be folded or roughly handled

1851

Proceedings of the Madras Government, Judicial Department, 22nd August 1866.

No. 228. Read the following letter from the Commissioner of Police, to the Chief Secretary to Government, Fort Saint George; dated Madras, 6th August 1866, No. 79.

With reference to enclosed correspondence (to be returned), I have the honor to request instructions as to the payment of travelling expenses to witnesses Whitbread and Piper, of Her Majesty's 76th Regiment, who proceeded from Bellary to Madras, to give evidence for the defence in the case as per margin, at the 2nd Sessions of the High Court in May last.

Viziaragavooloo Naidoo
VERSUS
Thomas Kelly and William Joseph Marshall, for wrongful confinement.

2. This case was committed by Colonel Colbeck, from the Royapett Police Court; but the defendant Kelly, while awaiting trial, appears to have applied, through the Sheriff, for permission to summon these two Soldiers of Her Majesty's 76th on his defence. Accordingly, these two witnesses were subpœnaed by the High Court direct. So far as I can recollect, their evidence was immaterial, and of no value whatever. I do not consider that existing rules authorize me to pay defence witnesses under the circumstances; and on the Brigade Major, Fort Saint George, applying to me for the travelling expenses of these witnesses, I declined to pay them, on the ground that G. O., No. 1504, of the 21st October 1865, provided for witnesses forwarded from the Mofussil, but not for witnesses subpœnaed direct by the High Court, and that the Advocate General, in his Opinion quoted in the same Proceedings, had stated that the Procedure of the High Court did not sanction payment of expenses to defence witnesses. It now appears from the letter* of the Magistrate of Bellary that an advance of 50 Rupees was paid by the Quarter Master General's Department at that station, to provide transit for these two men as far as Bangalore; this sum the Magistrate is called upon to refund. He, therefore, requests me to pay the amount, and, to save further correspondence, I request the decision of Government as to whether I am to pay this sum of Rupees 50, and any other travelling expenses (within the prescribed limits) that may have been incurred by these witnesses. I conclude that their journey back to Bellary was provided for by the Military authorities.

G. O., No. 1504, 21st October 1865.

* No. 1055, dated 28th July 1866.

From the Sheriff of Madras, to the Magistrate of Bellary; dated Madras, 23rd April 1866, No. 118.

The Queen, on the prosecution of S. Viziaragavooloo Naidoo, against Edward Thomas Kelly and William Joseph Marshall. } For wrongful confinement.

I have the honor to enclose a writ of Subpœna issued out of Her Majesty's High Court of Judicature at Madras in the above matter, together with two copies thereof, for service on the individuals named in the margin, who are said to be residing within the jurisdiction of your Magistracy, and to request you will be so good as to return the original Subpœna to me without delay, with a Memorandum of the date of service endorsed thereon, in order that I may be enabled to make a return to the Writ in question at the next Sessions, which will commence on Tuesday the 1st proximo.

Charles Whitbread and Stephen Piper.

From the Acting Joint Magistrate in charge, Bellary, to the Commissioner of Police, Madras; dated Bellary, 19th May 1866, No. 266.

DOCKET.—With reference to copy of the above, herewith sent, informs him that the two individuals therein referred to were despatched to Bangalore on the 27th April last, from whence they will proceed on to Madras by rail.

2. An advance of Rupees 50 was made to them for their travelling purposes. Further particulars will be communicated, on receipt of the same from the Deputy Assistant Quarter Master General.

3. The men should be ranked in the 3rd Class, as per Government Notification, at page 539 of the *Fort Saint George Gazette*, dated 22nd September 1863.

From the Brigade Major, Fort Saint George, to the Commissioner of Police, Madras; dated Fort Saint George, 11th May 1866, No. 1209.

I have the honor to request you will be good enough to inform me whether the two men of Her Majesty's 76th Regiment, who came down from Bellary to give evidence at the last Sessions of Her Majesty's High Court, are entitled to any remuneration.

From the Commissioner of Police, to the Brigade Major, Fort Saint George; dated 12th May 1866, No. 25.

In reply to your letter, No. 1209, of the 11th instant, I have the honor to inform you that the two men of the 76th Regiment alluded to were summoned direct by the High Court as witnesses for the *Defence*, in case No. 10 of the recent Sessions, Vigiaragavooloo *versus* Kelly. The Advocate General has recently given an opinion that Government are not bound to pay the expenses of defence witnesses, and that the procedure of the High Court does not sanction the payment of such charges. Consequently, although provision has been made for the payment of defence witnesses sent up by Magistrates from the Mofussil under the Criminal Procedure Code, I have no authority to defray the charges in the present case, without the special sanction of Government.

Government Order, No. 1504, dated 21st October 1865.

From the Collector of Bellary, to the Commissioner of Police, Madras; dated Bellary, 28th July 1866, No. 1055.

With reference to the Notification of the Chief Secretary, dated 7th September 1863, which appeared on page 539 of the *Fort Saint George Gazette* for that year, I have the honor to request you will be good enough to remit Rupees 50 to this Office, as the charge (as per accompanying copy of letter, No. 999, from the Deputy Assistant Quarter Master General, Bellary, dated 4th May 1866) of the transit to Madras of the two individuals named in the margin, who were cited by Subpœna, received with letter, No. 118, from the Sheriff of Madras, dated 23rd April last, to appear as witnesses in the High Court of Judicature in the case "Regina *versus* Edward Thomas Kelly and William Joseph Marshall," for wrongful confinement.

Charles Whitbread, and Stephen Piper.

From the Deputy Assistant Quarter Master General, Ceded Districts, to the Sub-Collector in charge, Bellary, dated Bellary; 4th May 1866, No. 999.

With reference to a conversation I had with you regarding the despatch of two men of Her Majesty's 76th Regiment, summoned to attend the High Court of Madras, I have the honor to inform you that they were despatched to Bangalore on the 27th ultimo, in one of the Indian Carrying Company's Transits, for which a charge of Rupees 50 has been sent in. I should be obliged, therefore, by your favoring me with this sum, to adjust the same, as I am unauthorized to charge it in my accounts, it being purely a Civil charge, and was only incurred by the Military Authorities to save time; the men being summoned to appear on the 1st instant. As soon as I receive the charge for their further transit by Rail from Bangalore to Madras, it shall be forwarded to you.

No. 229. ORDER THEREON, 22nd August 1866, No. 1301.

The Governor in Council sanctions the payment of the expenses actually incurred on account of the witnesses referred to in the foregoing letter.

2. The Commissioner of Police is authorized in all similar cases to pay, without reference to Government, the reasonable expenses of witnesses for the defence, summoned, after commitment of the case, through the Sheriff, provided the condition of the defendant is such as to require such payment on the part of Government.

(True Extract).

Secretary to Government.

To the Commissioner of Police, with enclosures, returned.
" Sheriff of Madras.
" Accountant General.
" Examiner of Claims.

Exd. J. H. Burns.

Judicial Department

3

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Commissioner of Police Here under 6th August 1866. No 79.

Order 22nd August 1866. No 1301.

The Governor in Council sanctions the payment of the expenses actually incurred on account of the witnesses referred to in the foregoing letter

2 The Commissioner of Police is authorized in all similar cases to pay, without reference to Government, the expenses of witnesses for the Defence summoned, after commitment of the case, there the Sheriff, provided the condition of the Defendant is such as to require such payment on the part of Government.

To the Commissioner of Police
Sheriff of Madras
for information and necessary action
Secretary to Board of Revenue
Secretary to Chamier

Copy
28/8

PROCEEDINGS OF GOVERNMENT

No. 186 . Department.

Dated.

Judicial Department

To

The Hon'ble Sir C. A. Scotland Kt.
Chief Justice of the High Court of Judicature
Madras.

From the Commr. of Police - 6th Augt 66 No 79
G. O. 21st October 1865 No 1504.

Hon'ble Sir,

In forwarding the accompanying Papers relative to the question of the liability of Government to defray the expenses of a Prisoner's witnesses in a trial before the High Court on its Original Side, I am directed by the Governor in Council to request that you will be so good as to favor the Govt with the opinion of the Honorable the Judges as to whether there is any objection to the adoption by the High Court of the procedure prescribed by Section 438 of the Code of Criminal Procedure, in regard to the payment of the expenses of witnesses attending the Sessions Courts for purposes of

of trial. Prima facie, the Prisoner
is bound to pay the charges of
his witnesses, but where he is
unable to do so from poverty
or other sufficient cause, it
becomes necessary for Govt
to defray them in order to
prevent the possibility of a
failure of justice which
might otherwise happen. It
appears therefore to the Governor
in Council that the exercise
by the High Court of a
discretion similar to that vested
in Courts of Sessions will best
meet the necessities of the
case, by securing the Govt
on the one hand from un-
necessary payments in cases
where a party at whose in-
stance the witnesses are sum-
moned is able to pay their
expenses and by guarding
against a failure of justice
on the other.

BR

Sent to Dept 1866

Judicial 1866 Departt

№ 1301

Proceedings of Govt

Dated 22d August 1866

228.224

Sept. 1866