

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	538	Press Mis.
Dated	11-4-	1951

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
11th April 1866.*

No. 99. Read the following letter from J. W. B. DYKES, Esq., Magistrate of Nellore, to the Chief Secretary to Government, Fort Saint George; dated Devarayapalli, 21st March 1866, No. 13.

The High Court, on a reference from the Session Judge, having declined* to decide whether an accused can be a witness against another accused in the

* 15th February 1866.

same trial and indictment, I have the honor to request that the Government will be pleased to obtain the opinion of the Advocate General on the point.

2. In a case committed for trial to the Court of Session in January last, the Subordinate Magistrate, who committed the case, made the 2nd accused a witness against the 1st accused. The Session Judge drew my attention to the accused *being jointly charged with the same offence*; and inferring that he did not consider the course pursued correct, I issued orders accordingly.

3. The Evidence Act, No. II of 1855, recognizes, however, as incompetent to testify, only children and insane persons, whilst the former, and people of defective religious belief, may give evidence on a simple affirmation.

4. And it would appear, as the law stands now, that the evidence of one accused can be taken against another, under any circumstances, for what it is worth—a course that may be occasionally of great assistance to justice, but so opposed to previous notions, that, should the supposition be correct, I would still wish to avail myself of the authority sought for.

No. 100. ORDER THEREON, 11th April 1866, No. 538.

The Magistrate of Nellore requests that the opinion of the Advocate General may be taken on the question whether the statement of an accused person is evidence against another prisoner, in the same trial, charged with the same offence.

2. The Governor in Council does not deem it necessary at present to refer the question to the Advocate General. Mr. Dykes does not appear, from his letter, to have made himself acquainted clearly with the views of the Session Judge on the point. He is directed, therefore, to place himself in communication with that Officer, for the purpose of ascertaining the view taken by the Session Court of the course pursued by the committing Sub-Magistrate in the case out of which the present reference has arisen. If, after such communication, the Magistrate should still entertain any doubt on the question he has raised, the Government will then determine whether any necessity exists for consulting their Law Officer on the point.

(True Extract).

Chief Secretary.

To the Magistrate of Nellore.

Ed. J. H. Burns.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
letter from the Magistrate
of Bellare.

Received 21 March 1861.

Order thereon

The Magistrate of
Bellare requests that the
opinion of the Advocate
General may be taken
on the question whether
the statement of an
accused person is evidence
against another prisoner
in the same trial charge
with the same offence.

2. The Governor in
Council does not deem it
necessary to refer the
question to the Advocate
General

General. The confession
of a prisoner under trial
is no evidence for or
against another prisoner
in the same trial, unless
he shall have been
granted a conditional
pardon under Sec 209
of the Code of Criminal
Procedure, in which case
he becomes a competent
witness, though his testimony
may be entitled to little
credit.

Y/A

A prisoner who has received
a conditional pardon is no doubt
accountable as a witness in the case on
which he was arraigned - but it is not
certain that the converse holds & that unless
he has been pardoned his evidence
against his confederates is not admissible.

Something of this sort took place in
England last year. Two women were tried
at the Exeter Assizes for child murder - The
jury could not agree & were discharged - The
prisoners were however not released & at
the ensuing Assizes one of them was again
brought to trial - the fellow prisoner altho
pardoned on the first trial was made a wit-
ness against her & she was convicted - The
case was brought by a writ of error before
the 15 Judges & the conviction was
upheld -

To the Magistrate of Calicut

I recollect the trial of Mr. Pyroft. - The elder Perrier
was largely employed in causing abortions & in getting rid
of their two children ^{consequently} born out of wedlock - The
first Perrier had employed the second in getting rid of
a child of the kind. But I never could trace the extent
or character of the commerce between the first & second
trial of the elder Perrier, had taken place between
the two species & the first Perrier. It seemed to

* we think she had become Queen's evidence though I believe no
statement to that effect was ever formally made -
In the present case Lord Thurst. Mr. Dyke, showed he allowed to pass
over the former trial in the manner proposed. Mr. D. held that he inferred
the 1st trial did not consider as a whole correct & that he inferred
from a certain circular to the 2nd jury - After doing all this he turned to
the evidence of 2 of 53, and then he began to doubt whether he has right to
what apparently I did do. It appears to me that Mr. D. was bound to be

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 I find some he understood
 the meaning of the substance
 before the Court and result
 forth and I would now
 direct him to place himself
 in court with the Judge
 and in view to that functioning
 having an opportunity of
 claiming away any evidence
 or any other thing he might
 have but it is not yet seen
 I find has not yet seen
 I find add that it after
 his court has been made
 and answered, the magi
 has still any doubt as to
 the propriety of allowing any
 course. Now that that is
 prescribed in Sec 109 of
 the C. Proc, the Judge will
 determine whether any
 further steps are necessary
 in the case of the
 falling, then Law Officer
 I think it is better to
 refuse this measure
 binding on the part of
 the Magistrate of Mellore, to
 split a hair & then ask
 for special aid in endeavoring
 to come to a proper
 satisfaction

Press No. 2782, G.M. - 14-11-65 - 500.

Dated 11 April 1866.

27/4/567.

PROCEEDINGS OF GOVERNMENT.

No. 538

Judicial 1866. Department.

Business Book

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
 letter from the Magistrate
 of Mellore.
 Here enter 21 March 1866 H: 13.

Order thereon 11 April 1866 H: 538.

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W.D.

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 opinion of the Advocate
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 on the question whether
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2. The Governor in
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Mr. Dykes does not ap-
pear from his letter
to have made himself
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the views of the Session
Judge on the point. He
is directed therefore to
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munication with that
Officer, for the purpose of
ascertaining
the view taken by the
Session Court of the
course pursued by the
committing Sub magis-
trate in the case out of
which

which the present re-
ference has arisen.
If after such commu-
nication, the Magistrate
should still entertain
any doubt on the question
he has raised, the Govern-
ment will then deter-
mine whether any
necessity exists for con-
sulting their Law
Officer on the point.

LDK

To the Magte of the Court despt 14/4 18 240

186 Department.

No.

PROCEEDINGS OF GOVERNMENT.

Dated

Press No. 2765, G. M.—14.11.65—500.