

MADRAS RECORD OFFICE.

Government of Madras.

Provincial DEPARTMENT.

G.O. No.	<i>858</i>	Press <i>Mis.</i>
<i>11-12</i>		
Dated	<i>1-6</i>	<i>19 1886</i>

3/4

Not to be folded or roughly handled

Proceedings of the Madras Government, Financial Department,

23rd May 1866.

No. 42. Read the following letter from J. R. KINDERSLEY, Esq., Session Judge of Bellary, to the Chief Secretary to Government, Fort Saint George; dated Bellary, 26th April 1866, No. 12.

I have the honor to acknowledge the receipt of Proceedings of the Government of Madras, in the Financial Department, dated the 20th April 1866.

2. In the second paragraph of those Proceedings, mention is made of the responsibility of the Session Court for batta to witnesses and prisoners. I have the honor to inform you that the prisoners committed for trial before the Courts of Session are usually committed by the Magistrates to the Jail, and the expense of their maintenance is met by the Jail Department. I have the honor to solicit the instructions of Government as to whether any change is intended in that respect.

3. With regard to the payment of the reasonable expenses of complainants and witnesses, attending trials before the Courts of Session, Section 438 of the Code of Criminal Procedure has conferred on those Courts certain powers. The orders of the Courts under that Section are judicial acts, for which I scarcely think that the Judges can be made responsible to the Accountant General.

No. 43. ORDER THEREON, 23rd May 1866, No. 200.

The Governor in Council observes that it was intended, by paragraph 2 of the Order of Government, dated the 20th April last, No. 149, that Session Judges should pay, and include in their monthly contingent bills, all charges on account of batta to prisoners and witnesses during the trial of cases committed to them. Although the prisoners are necessarily in charge of the Jailer during such trials, they are completely under the orders of the Court, till the cases are finally decided and the prisoners are convicted or acquitted. Subsistence money paid during such a stage is clearly not a Jail charge, and will obviously be more properly accounted for under the authority of the Session Judge than by the Jail Superintendent, who is simply the custodian of the prisoner, and produces him before the Court as often as he is required to do so. Similar charges incurred *after* the prisoner is sentenced to imprisonment, and committed to the Jail to undergo his punishment, will, of course, find a place in the *Jail* Contingent bill.

2. With reference to Mr. Kindersley's remark in paragraph 3 of his letter, there seems no reason why payments ordered by a Session Judge in his judicial capacity, under Section 438 of the Code of Criminal Procedure, should not be made and accounted for by him as the Head of the office over which he presides. The inclusion of such items in the Court contingent bills can in no way make the Judge, in his judicial capacity, amenable to the Accountant General. If the Judge, as the Head of an office, incurs certain expenditure, he is clearly the proper officer to submit that expenditure for audit by the proper Department; and in the case of payments ordered by the Session Judge, under Section 438 of the Criminal Procedure Code, or any other Law, the Judicial order directing such payment will simply have to be referred to in the contingent bill, in support of the charge.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Session Judge of
,, Magistrate of
,, Inspector General of Jails.
,, Judicial Department.
,, Accountant General.

Exd. J. H. Burns.

Th. J. P. 224 11/18/60 60/29

Dec 18/60 10/5 18/61

W. J. 8/58

For God's sake & all right
No 200

1863 May/63

No 1166.

Noting that the
value should include
their account the charge
for better to purchase and
inducement during the time
of your commitment to the

1st June 1861 No 858.
The record

out of 5 years

11-12

6/11