

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

192-193	G.O. No. 11.36-1137	Press
		~~Mis.~~
	Dated 17-7-18	18/18

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
17th July 1867.*

Read the following papers:—

No. 192. From G. L. MORRIS, Esq., Magistrate of Tanjore, to the Chief Secretary to Government, Fort Saint George; dated Negapatam, 16th May 1867, No. 100.

I have the honor to reply to the Order of Government, dated 29th April 1867, No. 677, in which I am requested to state my opinion regarding the scale of travelling allowances to be granted to witnesses summoned before the Magistracy.

2. Witnesses should, I think, be divided into two classes: the wealthy and respectable being in the first class, and the poor in the second. This will not leave much to the discretion of the Magistracy, and will not be liable to cause discontent and heart-burning.

3. The first class should be allowed second class fare, and the second class third class fare, if travelling by rail; or one Anna per mile and six Annas for every ten miles, respectively, if travelling by road. In the Great Southern Railway there are no third class carriages, and every witness should, therefore, be allowed second class fare when travelling by it.

4. Regarding batta, I find that it is the custom for witnesses, when they attend the Courts, to be supplied with food at certain houses which are kept for that purpose, and that the poorest are, as a rule, charged 4 Annas per diem for food only, owing to the present very high prices. As there is not much difference in the quality of food eaten by different classes of Natives, I would allow batta at the rate of 6 Annas and 4 Annas per diem to first and second class witnesses, respectively.

5. The statement will, therefore, stand thus—

TRAVELLING EXPENSES.

	<i>First Class.</i>	<i>Second Class.</i>
By Rail	2nd class fare.	3rd class fare.
By Road	1 Anna per mile	6 Annas for every ten miles.

BATTÀ.

6 Annas per day 4 Annas per day.

6. The above rates should be fixed once for all, and should not be allowed to be altered by the Magistracy; discretion in a matter of this kind being, in my opinion, open to serious abuse. If on any particular occasion, a Magistrate should be of opinion that the travelling expenses or batta have not been sufficient, he will, of course, be at liberty to bring the same to the notice of the District Magistrate, as a special case.

No. 193. From D. F. CARMICHAEL, Esq., Magistrate of Ganjam, to the Chief Secretary to Government, Fort Saint George; dated Chatterpore, 20th May 1867, No. 91.

In reply to Government Order, Judicial No. 677, of 29th April ultimo, I have the honor to state that I do not think it is necessary to go beyond the present practice, which provides for the grant of batta by the Magistracy at the public expense to only indigent prosecutors and witnesses.

*Proceedings of the Madras Government, Judicial Department,
17th July 1867.*

No. 194. From R. K. PUCKLE, Esq., Magistrate of Tinnevely, to the Chief Secretary to Government, Fort Saint George; dated Tinnevely, 29th May 1867, No. 184.

As requested,* I have the honor to give my opinion as to the amount of batta that should be granted to witnesses summoned before the Magistracy.

* Government Order, No. 677, dated 29th April 1867.

2. I have consulted with the Session Judge, and he informs me that he has long felt that one of the greatest obstacles to criminal justice in this country is the extreme reluctance of prosecutors and witnesses to come forward, knowing, as they do, that they have to bear their own expenses away from home for an indefinite period.

3. The graver the crime, the greater the likelihood of a protracted attendance at the Courts, and it is only recently that the witnesses in a case that has been brought to the notice of Government were under inquiry before me and the Session Judge for nearly three months.

The Streerygoondam burglary case.

4. The Superintendent of Police reports that it is almost impossible to induce parties to come forward as complainants when the Magistrate's Court is far distant; and, from my own experience, I should say that there are comparatively few cases in which the prosecutor has not to pay more or less liberally for his witnesses' expenses.

5. The general tendency is, therefore, rather to compromise a crime than to prosecute it, and a man must be greatly aggrieved, or be quite hopeless of recovering his property, before he applies for justice in the recognized form. The exertions of the Police are thus baffled, as, even after a complaint is made, the prosecutor will compromise if he can, rather than press the case any further. It stands to reason that a man who has lost a pair of bullocks worth 50 Rupees would rather pay 25 Rupees to recover them quietly, than attend at distant Courts, perhaps in the middle of his harvest, and then pay the same amount, or more than he would otherwise have had to pay to recover the property, for his own and his witnesses' expenses, for the mere abstract advantage of punishing the thieves. To induce prosecutors and witnesses to come willingly forward, the scale of batta should be so liberal that the witnesses need not be paid by the prosecutor, and he should be no loser by an act that is as much for the good of the public as himself.

6. The High Court have laid down a scale of batta and travelling expenses for witnesses before that Court, but nothing is allowed up-country to any but the very poorest.

7. The cost of paying witnesses on anything like a remunerative scale will doubtless be very great, but I feel sure that the money so laid out will be for the advancement of justice, and will facilitate the detection of crime.

8. Mr. Pochin's scale of batta seems very fair, but his rate of travelling allowance by road is rather anomalous. A conveyance cannot be procured at an Anna a mile—here, it costs twice that sum. It is true a wealthy man may travel in his own conveyance, but if *bona fide* bandy hiro is to be paid, it should be at the current rate. First class witnesses would be comparatively few. Second class witnesses might draw half the rate paid the 1st class; and the 3rd class, who also have the trouble and

*Proceedings of the Madras Government, Judicial Department,
17th July 1867.*

inconvenience, if not the actual expenses of travelling, might draw two Annas for ten miles. Most of the witnesses would be 3rd class; and in a District where a cooly gets from four to six Annas a day, two Annas for ten miles marching, and three Annas a day batta, is nothing very excessive. The knowledge that they are paid (besides batta which is less than they could get at home) some slight remuneration for travelling, would induce many to come forward who would not otherwise do so, and the experiment, though costly, would have doubtless a beneficial effect.

No. 195. From P. GRANT, Esq., Magistrate of Coimbatore, to the Chief Secretary to Government, Fort Saint George; dated Ootacamund, 8th June 1867, No. 49.

In reply to the Proceedings of Government, Judicial Department, dated 29th April 1867, No. 677, I have the honor to inform you that, with one exception, viz. the rate allowed to a first class witness travelling by road, which I would raise to 1½ Annas, I think the rates of travelling allowance and batta recommended by Mr. Pochin may be adopted with advantage. The reason why I recommend the above increase is that, in this part of the country, a common bandy is not to be had for less than Annas one and Pies six per mile. It is to be observed that the rates now recommended are maximum rates, and that it will not always be necessary to adopt them.

No. 196. ORDER THEREON, 17th July 1867, No. 1136.

In this correspondence the opinions of the Magistrates of the Districts of Tanjore, Ganjam, Tinnevely, and Coimbatore are submitted on the question referred to these Officers in G. O., dated 29th April 1867, No. 677, as to the proper rate of travelling and subsistence allowances to be made to witnesses summoned before the Magistracy.

2. Before passing final orders on this subject, the Governor in Council resolves that the practice in respect of allowances to witnesses, in force in the Bengal and Bombay Presidencies should be ascertained.

3. Resolved, accordingly, that the following letters be despatched to the Secretaries to the Governments of Bengal and Bombay, respectively.

(Signed) R. S. ELLIS,
Acting Chief Secretary.

No. 197. To the Secretary to the Government of Bengal, dated Fort Saint George, 17th July 1867, No. 1137.

I am directed to inform you that the subject of the grant of subsistence, and payment of travelling expenses by road and railway, to complainants and witnesses summoned to attend before Criminal Courts in the interior, is now under the consideration of the Madras Government. It has been pointed out that, while under the local rules now in force, subsistence allowance may be granted only to indigent complainants and witnesses attending before any Criminal Court, no provision is made for the payment of the *bona fide* travelling expenses and subsistence allow-

*Proceedings of the Madras Government, Judicial Department,
17th July 1867.*

ances which, in the Magistrate's opinion, complainants and witnesses in cases before the several Magisterial Courts ought to receive, equally with those who appear on summons and give evidence before the High Court, and to whom such allowances are granted under a special order of this Government.

2. Before passing final orders on the subject, the Governor in Council desires to ascertain the practice prevailing in the Bengal Presidency, with reference to the grant of subsistence allowance, and payment of actual travelling expenses, to prosecutors and witnesses before Magisterial Courts in the interior, and I am accordingly instructed to request that, with the permission of His Honor the Lieutenant Governor, you will be so good as to communicate to this Government the desired information.

(Signed) R. S. ELLIS,
Acting Chief Secretary.

The same to the Government of Bombay.

Ed. J. H. Burns.

N. 100. -

*Tanjore District Magistrate's Office
Negapatam, Negapatam Taluk
16th May 1867*

From

*G. Lee Morris Esq
Magistrate of Tanjore*

*To The Hon^{ble} A. J. Arbuthnot
Chief Secretary to Government
Madras*

Sir

*I have the honor to reply to the
order of Government dated 29th April 1867, in
which I am requested to state my opinion regarding
the scale of travelling allowances to be granted
to Witnesses summoned before the Magistracy—*

*2 Witnesses should, I think, be divided
into two classes: the wealthy and respectable being
in the first class, and the poor in the second.
This will not leave much to the discretion of the
Magistracy, and will not be liable to cause dis-
content and heartburning—*

*3 The first class should be allowed
Second class fare, and the second class third class
fare, if travelling by rail; or one anna per mile
and six annas for every ten miles respectively,
if travelling by road. On the Great Southern
Railway there are no third class Carriages, and
every witness should therefore be allowed 2^d class
fare when travelling by it—*

*4 Regarding Duties, I find that it is
the Custom for witnesses when they attend
the*

the Courts, to be supplied with food at certain houses which are kept for that purpose, and that the poorest are as a rule, charged 4 annas per diem for food only, owing to the prevailing high prices. As there is not much difference in the quality of food eaten by different classes of natives, I would allow batta at the rate of 6 annas and 4 annas per diem to first and second class witnesses respectively—

5 The statement will therefore stand thus—

Travelling Expenses	
By Rail — 2 nd Class fare	1 st class fare
By Road — 1 anna per mile	3 annas for every ten miles
Batta	
6 annas per day — 4 annas per day	

but for 100 here is no need to say it

6 The above rates should be fixed once for all, and should not be allowed to be altered by the Magistrate's discretion in a matter of this kind being in my opinion open to serious abuse. If on any particular occasion, a Magistrate should be of opinion that the travelling expenses or Batta have not been sufficient, he will of course be at liberty to bring the same to the notice of the District Magistrate as a special case—

I have the honor to be

Yours Most Obedt. Servant

J. E. Morris
Magistrate

No. 29 April 1867 No. 222/30

Dist. 1867 No. 17 July
Department

The Magistrate
J. P. & Jangore
The Chief Secretary
to Government

Dated 18th May 1867
No. 21 }
A. 100.

No. 1132-8

No. 1132

No. 1132-8

Giving Opinion regarding
the scale of travelling
allowances to be granted
to witnesses summoned
before the Magistrate.

C. 24 June
R. 1 July
C. 15 July 192

N^o 184

5
Sinnerly 29th May 1867

From R. R. Puckle Esq
Magistrate

To The Honorable A. J. Arbuthnot
Chief Secretary to Government
Fort Saint George

Sir,

Government Order
No 677 dated
29 April 1867.

As requested, I have the honor to give my opinion as to the amount of batta that should be granted to witnesses summoned before the Magistrate.

2 I have consulted with the Sessions Judge, and he informs me that he has long felt that one of the greatest obstacles to Criminal justice in this country is the extreme reluctance of Prosecutors and witnesses to come forward, knowing as they do that they have to bear their own expenses away from home for an indefinite period.

3 The graver the crime the greater the likelihood of a protracted

The Sessions Judge.

attendance at the Court and it is only recently that the witnesses in a case that has been brought to the notice of Government, were undergoing before me and the Sessions Judge for nearly three months.

The Superintendent of Police reports that it is almost impossible to induce parties to come forward as complainants when the Magistrates Court is far distant, and from my own experience I should say that there are comparatively few cases in which the Prosecutor has not to pay more or less liberally for his witnesses expenses.

The general tendency is therefore rather to compromise a crime than to prosecute it, and a man must be greatly aggrieved, or be quite hopeless of recovering his property before he applies for justice in the recognized form. The exertions of the Police are thus baffled, as even after

The Superintendent
of Police

1/11/11
1/11/11
1/11/11

a complaint is made the Prosecutor will compromise if he can, rather than press the case any further. It stands to reason that a man who has lost a pair of bullocks worth 50 Rupees would rather pay 25 Rupees to recover them quietly, than attend at distant Courts, perhaps in the middle of his harvest and then pay the same amount or more than he would otherwise have had to pay to recover the property for his own and his witnesses expenses for the mere abstract advantage of punishing the thieves. To induce Prosecutors and witnesses to come willingly forward the scale of batta should be so liberal that the witnesses need not be paid by the Prosecutor and he should be as loser by an act that is as much for the good of the public as himself.

notes - the
Sd/- did
this.

6 The High Court have laid down a scale of batta and travelling expenses

The District Court

for witnesses before that Court, but nothing is allowed up country to any but the very poorest.

7 The cost of paying witnesses on any thing like a remunerative scale will doubtless be very great, but I feel sure that the money so laid out will be for the advancement of justice, and will facilitate the detection of crime.

8 Mr. Pechini's scale of batta seems very fair, but his rate of travelling allowance by road is rather anomalous. a Conveyance cannot be procured at an anna a mile. here it costs twice that sum. it is true a wealthy man may travel in his own conveyance, but if bona fide bandy hire is to be paid, it should be at the current rate.

1st Class witnesses would be comparatively few. 2nd Class witnesses might draw half the rate paid the 1st Class, and the 3rd Class who also have the trouble and inconvenience, if not the actual

Memorandum.

With reference to J.O. dated the 24th April '67; No 677, requiring to be furnished with the opinion of the Magistrates of Fort St. John, Tanjore, Srirangam and Rinnerally in respect of the travelling allowances proposed by the Magistrate of Salem to be granted to witnesses summoned before the magistracy. The Magistrate of Srirangam states that he does not think it is necessary to go beyond the present practice.

Letter No. 91-920.
May '67

which proceeds for
the grant of Batta
by the magistracy
to only indigent
prosecutors and
witnesses.

With one exception
the magistracy of
Coimbatore recom-
mends the adoption
of the allowance
and batta proposed
by Mr Pochin. The
exception refers to
the raising of the
rate allowed to
a 1st Class witness
travelling by road
being raised from 1
to 1 1/2 annas.

The magistracy
of Tanjore however
think

Letter No. 44.
of 8. June/67.

Letter No. 100. of
16. May/67.

By Rail —
By Road —

thinks that the bill
incapable should be di-
vided into two Clauses.
and for reasons
stated proposes the
following scale

Travelling Expenses

1st Class — 2nd Class
2nd Class fare — 3rd Class fare
1 anna per mile — 6 annas per
every 10 miles

Batta

6 annas per day — 4 annas per day

The rates should
be fixed once for all,
and should not be
allowed to be altered
by the magistracy.

The magistracy
of Ponnacilly has
consulted with the
Sesam Judge and
Superintendent,
and

L. No. 184. of 29.
May/67.

and, under the
circumstances
stated by him,
feels that the
money laid out
in paying wit-
nesses will be for
the advancement
of justice. He
considers his Poshin
scale of better value
fair, but thinks
his scale of traveling
allowance rather
an over-allowance. He
bonâ-fide believes
him to be paid
at the
current rate.

2^d Class witnesses
should draw half
the rate paid the
1st Class - and the

but without stating
what is - I apprehend
however he means the rules
contained in Gov. Proc. 30 Sept 64?

3^d Class should draw
2 annas per 10 miles

From the foregoing Memorandum
it will be seen that with
the exception of the Magistrate
at Gangam, who would
leave the present state of
things unaltered and
would only give better
to independent Prosecutors &
witnesses, there is very
little difference in opinion
between the Magistrates,
to whom reference has
been made, and the
Magistrate of Salem
who raises the question.
It seems unnecessary

to have more than two
classes of recipients of
batta, and the scale

proposed by Mr. Munis

the Magistrate of Yangon

for travelling expenses at Batta, provides all
that is ~~required~~ ^{required}.

and is ~~not~~ ^{not} ~~unreasonable~~ ^{reasonable}.

and is ~~not~~ ^{not} ~~unreasonable~~ ^{reasonable}.

Rules are requested

M.E.

12
10
Mr. Fochin's proposal will entail
a very serious additional outlay
on the public exchequer; but,
as the matter has been brought
forward, it cannot well be
declined, though I fear that
what was only Rs 79000 and
odd in 1863/64, will be 8 or
10 times that amount when
the rules we cannot avoid
framing, shall have come into
full operation.

We should recognize, I consider,
only ^{two} classes of recipients of
an allowance for food and
travelling when required to
attend at our criminal courts.
These, I would designate as
the "upper" and "lower" class;

and such sum as may be fixed
on for the allowance, should not be
susceptible of reduction at the dis-
cretion or pleasure of the Magistrate
or Sub-Magistrate. That is, it should
not be regarded, as some of the Magis-
ters have suggested, as a "maximum" rate.
I feel satisfied that the power of
dealing with such a rate would lead
to all sorts of petty irregularities &
create confusion & injustice. —

A day's journey, such as a
native would make on foot, on
his own private business, would
ordinarily be not less than 15 miles,
& this distance should, I think,
be taken as a proper 'day's march'
for both the upper & the lower
class, where no railway is avail-
able.

I do not think we ought to have

12
a cart or carriage rate for the
upper class where a line of rail is
not to be had. Should we determine
to establish one, I am sure that
money will be made out of the
100% allowance, for where there are
2 or 3 cart or carriage witnesses they
will surely club their allowance
and use a single cart. The person
admitted to be one of the Magistrates
who would selfishly occupy an
entire cart by himself, will be a
"kara avis". At any rate, he will
be one who can well afford to
pay for a cart by adding a trifle
to what he will receive as his
travelling allowance.

Again, I do not wish to allow 2nd
class railway fare to both class,
of witnesses, except in the district of Bangalore,
where, as there are no 3rd class
carriages, the indulgence will for
the present, be unavoidable.

It should, however, cease on the
starting of 3rd class carriages.

As my reason for not giving 2nd class
rail carriage fare, I would not that
natives of the highest respectability
when travelling by rail on their
own business, seat themselves
without objection in 3rd class
carriages. If they do not, we
may safely assume them to be
persons in easy circumstances who will
not suffer by paying the difference
between what is allowed them and
the cost of a 2nd class seat.

Thus, in my view, a day's journey
should be 15 miles: - for that
distance, I would allow six
annas, without distinction, to
persons of the upper & lower classes:
- I would give, in addition, to the
first of these classes, five annas
as daily batta, and to the lower
class, four annas: -

12
class rail way carriage fare
being paid to both classes where
a line of rail is available, within
of the travelling allowance -
20 June 67 W. B. M.

Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters:-

From the Magistrate of Tanjore - Dated 18th May 1867 No 100.
 do - - - - - 20th - - - - - 91.
 do - - - - - 29th - - - - - 184.
 do - - - - - 8th June - - - - - 49.

Order thereon

The Governor in Council having carefully considered the opinions of the Magistrates to whom the question raised by the Magistrate of Salem has been referred, resolves that the subsistence money and travelling allowance to be paid to witnesses summoned before the magistracy shall be calculated according to the following Rules.

1st That all persons summoned to attend at any Magisterial Court shall, at the discretion of the Magistrate, be divided into an upper and a lower Clap.

2nd That for the purpose of estimating the travelling allowances to which witnesses are entitled a day's journey, by Road, shall be calculated for both the upper and lower clapses at not less than 15 miles.

3rd That the travelling allowance by road, shall for each person of either clap be Six Annas per diem.

4th That persons of both clapses when travelling by Rail shall be entitled to the payment of 3rd Clap fares for the distance so travelled on all lines of Railway on which there are 3rd Clap carriages. On every

every line on which there are no 3rd Clap carriages, persons of both the upper and lower claps of witnesses shall be entitled to the payment of 2nd Clap fares for the distance travelled.

5th A subsistence allowance of 5 Annas per diem shall be granted to persons who are included by the Magistrate in the upper claps; and of 4 Annas per diem to those persons included in the lower claps of witnesses.

6th That in all cases where travelling by Railway and Road ^{are both} available the travelling allowance shall be calculated on the scale laid down for witnesses travelling by Rail-way.

To the Magistrate of Police
"Inspector General of Police"
Account General.

Travelling Allowance to
Witnesses.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters:-

From the Magistrate of Tanjore.	Dated 16 th May 1867	No. 100.
— do —	Gangaim	20 — — — 91.
— do —	Tinnevely	29 — — — 184.
— do —	Coimbatore	8 th June — — 119.

Order thereon No 1136 of 17th July 1867

In this correspondence the opinions of the Magistrates of the Districts of Tanjore, Gangaim, Tinnevely and Coimbatore are submitted on the question referred to these officers in G.O. dated 29th April 1867 No 677 as to the proper rate of travelling and subsistence allowances to be made to witnesses summoned before the Magistrate.

2. Before passing final orders on this subject, the Governor

1104

Dated.

PROCEEDINGS OF GOVERNMENT.

No.

186 Department.

Governor in Council re-
solves that the practice in
respect of allowances to wit-
nesses in force in the Bengal
and Bombay Presidencies shall
be ascertained

3. Resolved accordingly
that the following letters
be despatched to the Secretaries
to the Government of Bengal
and Bombay respectively.

10/11/37

despatch
No. 1137
The Secretary to the
Government of Bengal
(Bombay)
Sir, I am directed to inform you that
The subject of the grant
of ^{subsistence} ~~compensation~~ and
payment of ^{travelling} ~~subsistence~~ expenses
by road & railway
to complainants and
witnesses summoned to
attend before Criminal
Courts in the Interior, is
now under the consideration
of the Madras Government.

I have more than
trifled with the
matter. The difficulty
created by 5438 L.C.P.
is not to be taken into
account in the present
case.

It has been pointed out that
while under the ^{local rules} ~~rules~~ now
in force, subsistence allow-
ance may be granted
only to indigent complainants
and witnesses attending before
any Criminal Court, no
provision is made for the
payment of ^{bona fide} ~~bona fide~~
travelling expenses, and
^{subsistence allowances} ~~other compensation~~,
which, in the Magistrates
opinion, complainants
and witnesses in cases before
the several Magisterial ~~Courts~~ ^{ought}
~~Courts~~ ^{to receive}
~~are~~ ^{entitled} equally with those
who appear ^{and} ~~to give evidence~~
~~in cases~~ before the High
Court ^{and} to whom such
allowances are granted
under a special order of
this Government.

2. Before passing final
orders on the subject the
Governor in Council
desires

desires to ascertain the
practices prevailing in the
Bengal Presidency with
reference to the grant of
subsistence allowance,
payment of actual travelling
expenses, ~~and compensation~~
to prosecutors and witnesses
before ^{Magisterial} ~~criminal~~ courts
in the interior, and I am
accordingly instructed to
request that with the
permission of His Honor
the Lieutenant Governor, you
will be so good as to com-
municate to the Government
the desired information.

Full

The same to the Chief Secretary to the ~~Adm~~
Government of Bombay.

/ Bombay /

(For Bombay) His Ex.
The Governor General

7. 10. 1867
46. 10. 1867
10. 10. 1867

17
Judicial 1867. Department.

No 1135. 1137

PROCEEDINGS OF GOVERNMENT.

File 1719-2241.

Dated 17 July 1867

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