

Confidential.

N^o 355.

Tanjore,
5th August 1892.

From

J. A. Davies, Esquire, I. C. S.,
District and Sessions Judge,
Tanjore.

20

J. B. W. Foster Esquire,
Registrar of the High Court,
Appellate Side,
Madras

Sir,

I have the honor to acknowledge the receipt yesterday of your No. 2000, dated 2^d instant, forwarding to me an extract (which I herewith return) from a confidential report from the Superintendent of Police, Tanjore District, dated 9th April last and requesting me to make answering to the description it contains of the alleged treatment of the witnesses ⁱⁿ -
-thammall referred to therein.

(2) In reply I at once declare the whole account to be a gross misrepresentation. Mr Thomas, the Superintendent of Police, has apparently ^{over} ^{ruled} the report of his Inspectors as without making any inquiry the

obtaining any confirmation thereof and the charges he makes against me upon their uncorroborated information may be formulated under three heads, viz: (1) that I intentionally insulted the witness by ordering her to uncover her head, (2) that I abused her personally in court with opprobrious epithets and disgraced her to her brother my Sheristadar, and (3) that I intimidated her with a threat of committal for perjury.

(3) Conscious of the complete falsehood of these charges and desirous that any contradiction of them should not stand alone, I wrote the note (A) to the Public Prosecutor who conducted the prosecution and to the pleader who appeared for the defense in the case, to give me their independent accounts of what happened in the matter. I enclose their replies B & C which speak for themselves.

(4) They show first the reasons why it was necessary for me to order the witness to remove her cloth from her head, namely for observing her eyesight and for hearing what she had said. I may add that I had not the slightest intention of insulting

her and that as she is a woman of the age of 54 and a Christian by religion, she could not have felt insulted. Secondly, the pleaders' letters are also unanimous in showing that her demeanour in the witness box was most unsatisfactory, that she repeatedly prevaricated and shuffled and that all I said to her after finding that she was not giving true evidence was that she was a disgrace to her religion and could not be a Vellala as Vellalas were not in the habit of lying as she was doing. To this I may add that I pointed out to the jury in my charge, copy of which (D) I beg to submit for perusal, three instances in which according to the evidence taken together she must have been lying, and how with her prevarications she had kept the court five hours examining her when one hour would have sufficed had she given satisfactory answers. The letters also explain the circumstances under which I sent for the Sheristadar, not knowing that he was her brother, and how after ascertaining that fact I dismissed him with an apology. I may state that he has no grievance in the matter.

against me of intimidating the witness, the fact is just the other way. The woman was guilty of clear perjury on her own deposition for she has made a direct contradiction therein in regard to the third accused in the case.

I enclose that deposition in original for perusal (E). In one place she has distinctly stated that she never saw the 3rd accused before the dacoity, while in another place she says she had seen him the day previous with the 2^d accused. These contradictory statements were not made carelessly but after due warning and the latter statement is inconsistent with previous statement of hers. Instead of committing her for perjury which I might well have done I leniently let her off probably as far as I can remember because she was a woman and because she was a sufferer in the dacoity.

(6) It remains for me to refer to the abusive epithets which I am said to have used. While I emphatically deny that any one of them was addressed or communicated to the woman herself, I am ready to admit that I uttered all or most of them to myself in soliloquy.

They were muttered expletives of my own, not intended to reach any one in court. Even had they reached the ears of the woman herself or of the jury it would not have been understood what they meant, for they were in English - a language not understood by either her or any of the jury men. So that not a soul was affected by them. When I have a witness speaking falsely for hours before me I frequently find the divine afflatus of indignation involuntarily venting itself in subdued explosives like these. No body suffers any harm thereby for the true proceedings of the court are all in Tamil.

(7) I have already referred to Mr Thomas' conduct in making his complaint trusting to the mere words of his Court Inspector and the Town Inspector. There was special reason why he should not have implicitly trusted the Court Inspector Jagan-natha Pillai. This man is the nephew of the woman Thangathammal, was engaged in getting up the case and was one of the chief witnesses in it. And it was alleged for the defence that he had concealed evidence in it.

W. S. K. N.
Registrar.

He is moreover a man to whom
I have refused employment. The
question then arises why should Mr.
Thomas lend so readily a ear to a
complaint against me - the Sessions Judge.
He knows as well as any one that
I make searching enquiry into every
case that comes before me and that
my endeavour always is to reach
the truth if possible. Is it because
I discover in the majority of Police
cases some offence committed by
them against public justice - either
perjury, subornation of perjury,
fabrication of false evidence or
falsification of documents. The
High Court will remember that
some 3 or 4 years ago there was
a Police conspiracy against me where
they got a shorthand writer down
from Madras to take notes of proceedings
in my Court and pick holes wherever
he could and then got a leading
article written in the "Madras Mail"
against me. I should not be surprised
if this were a resuscitation of that
agitation. My own belief is that
their object is to intimidate me to
the Police to their malpractices
all or most of them to my injury

and to believe that every witness
they put forward is a saint - in
short to give convictions in every
case they prosecute. Otherwise I
cannot understand why an unfounded
accusation such as this is brought
against me in support of a witness
proved to be false and therefore dis-
reputable. I should be sorry to think
the Superintendent of Police could
have acted from private pique, but
it is a singular coincidence that a
few days prior to the date of his
report I had a personal dis-
agreement with him of which I
shall make no further mention unless
desired to do so. By whatever motive
he was actuated however - whether
personal or official - I submit that
he had no right to make this unjust
attack upon me. And if the High
Court and Government are satisfied from this
my explanation with its attendant papers
that the attack was an unjust one, I
beg respectfully to urge that Mr. Thomas
be removed from this District as both our
official and private relations cannot
after this be harmonious.

I have ^{you}
(Signed) J. A. Davies
District & Sessions Judge
High Court of Judicature (Tr. 2-11)
Registrar.

Confidential.

No. 1105

FROM

C. J. LYALL, Esq., C.I.E.,
Secretary to the Government of India,

TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF
MADRAS.

Home Department.
Judicial.

Simla, the 25th August 1892.

SIR,

I AM directed to reply to your letter No. 2096 (Judicial), dated the 29th December 1890, forwarding, with enclosures, a report on the working of the jury system in Sessions Courts in the Madras Presidency.

2. It is understood that under existing orders the jury system is in force in all the Sessions Divisions of the Presidency except those comprised in the Agencies of Ganjam, Vizagapatam and Godavari, and that all offences falling within the following sections of the Penal Code: 379, 380 and 382 (theft), 392 to 395, 397 to 399 and 400 to 402 (robbery and dacoity), 411, 412 and 414 (receiving or possessing stolen property), 451 to 459 and 461 (house-trespass in order to commit theft, &c.), and also abetments of and attempts to commit any such offences, are triable by jury before the Court of Sessions.

3. The result of the recent inquiry, so far as the Madras Presidency is concerned, is to show that the system of trial by jury, as hitherto carried out, has not worked in a satisfactory manner. The Government of India have not received the opinions of any District Executive officers who may have been consulted on the subject by the Madras Government. Among the Sessions Judges whose reports have been forwarded there is, as might have been expected in such a matter, a wide divergence of opinion as to the merits and working of the system. The Honourable the Chief Justice and Judges of the High Court, with the exception of Mr. Justice Muttuswami Aiyar (whose opinion, however, is not altogether favourable), have recorded minutes generally unfavourable to the working of the jury system. The Honourable the Chief Justice, Mr. Justice Handley and Mr. Justice Weir recommend that a right of appeal should be granted on the facts against the verdicts of juries; and this recommendation seems also to be concurred in by Mr. Justice Best. Mr. Justice Muttuswami Aiyar, Mr. Justice Handley and Mr. Justice Weir also recommend that extension should be given to the principle of section 307 of the Criminal Procedure Code so as to admit of a reference being made by the Sessions Judge under this section in all cases in which he differs from the verdict returned by the jury.

4. His Excellency the Governor in Council is of opinion that the jury system is unsuited to the country. He supports the recommendation that section 307 of the Procedure Code should be extended so as to render a reference to the High Court obligatory in every instance in which the Sessions Judge takes a different view of the case from that adopted by the jury. A similar proposal has been made by His Honour the Lieutenant-Governor of Bengal, who has further suggested the following changes in the law with a view to remove the defects which exist in the present system of trial by jury in that Province:—

(1) that it should be made incumbent upon the Sessions Judge to ascertain and fully record the reasons of the jury for their verdict; and

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Encls. No. 6

To

No. 3575

- (2) that a right of appeal should be granted on the facts against the verdict of a jury, when the jury is not unanimous, unless the Judge records his agreement with the majority.

5. I am now to communicate the conclusions at which the Governor General in Council has arrived after careful consideration of the entire question. In the opinion of His Excellency in Council, derived from a review of the reports from other Provinces as well as from the Madras Presidency, the defects of the present system of trial by jury appear to be mainly attributable to two causes—

- (1) to the extension of the jury system (a) to areas to which it is unsuitable and (b) to classes of offences which, as the experience now gained has shown, ought not to be cognizable by juries;
- (2) to the fact that the provisions of section 307 of the Criminal Procedure Code, which were intended to give Sessions Judges and the High Courts power to remedy and correct wrong verdicts, have failed to fulfil this intention.

6. As regards the first of these causes, section 269 of the Criminal Procedure Code confers on Local Governments and Administrations complete liberty of action in respect of the determination of the areas within which offences shall be tried by juries as well as of the classes of offences which shall be so triable. The Governor General in Council has no desire to interfere with, or to limit by legislation or otherwise, the discretion entrusted to Local Governments in the matter; but he is constrained to express his concurrence in the opinion stated in the reports of Messrs. Davies and Irvine forwarded with your letter under reply, and also in many of the reports received from other Local Governments, that cases of murder and culpable homicide should be excluded from the cognizance of juries, and he is further inclined to agree in the view that cases of rioting under chapter VIII of the Penal Code should be excluded. These offences, however, are not now triable by jury in the Madras Presidency. The classes of cases which have been declared so triable seem to be well chosen and suitable, and the only change in this respect which the Governor General in Council desires to suggest for the consideration of the Madras Government is whether offences under chapter XX of the Penal Code, relating to marriage, might not with advantage be made over to juries. On the other hand, the Government of India doubt whether the jury system is thoroughly suitable to all the areas to which it has been extended; and they are by no means satisfied that the defects which have been brought to notice in the working of the system are not, in some measure, due to its premature and wholesale extension to every district throughout the Presidency. This, however, is a matter entirely for the consideration of the Local Government.

7. The difficulty under the second head seems to arise from the interpretation which Sessions Judges and Judges of the various High Courts place or have placed on their duty in making or dealing with references under section 307 of the Criminal Procedure Code. In many instances a strong disinclination has been exhibited by the High Courts to interfere with the verdicts of juries, and as a consequence Sessions Judges are often reluctant to make references under this section. It has been proposed by the Governments of Madras and Bengal that the law should be so amended as to make such references compulsory in every case in which a Sessions Judge disagrees from the verdict of the jury. The Governor General in Council is, however, unwilling to adopt this course. Section 307 in its present form prescribes that the Sessions Judge shall refer such cases when he considers that there has been a substantial failure of justice, and it confers on the High Court the fullest power to deal with such references. It does not seem to the Government of India to be desirable that the Judge should be bound to refer cases in which the failure of justice is not quite clear—such as cases in which he differs from the jury on some minor point, or those in which the evidence is possibly so nearly balanced that even trained Judges might differ in their conclusions on it. His Excellency in Council has not overlooked the fact that there is a strong body of opinion among the Honourable Judges of the Calcutta and Madras High Courts in favour of the proposal in question; but on the whole he would prefer not to make an alteration in the law which might have the effect of encouraging unnecessary references. If the practice of the High Court is

based on the principles laid down in 1887 by Prinsep and Pigot, JJ. in the case of Itwari Sahu*, and in 1890 by Collins, C. J., and Handley, J., in the case of Guruvadu and another, no such alteration of the law is required; while on the other hand, if a different and narrower practice is allowed to prevail, the mere fact of reference under section 307 being obligatory on the Sessions Judge would probably not affect the view which the High Court is likely to take of its duty in dealing with these references.

8. It has, however, been suggested by the Bengal Government that, in order to facilitate the disposal of references under section 307 of the Code, the Sessions Judge should be specifically empowered or required to ascertain and record the reasons of the jury for their verdict. The Governor General in Council admits that the present system is defective in so far as the Judge, although bound by the Code to refer to the High Court cases in which he considers this course to be necessary for the ends of justice, is not in a position to place before the High Court in a proper shape materials for determining whether the verdict is a wrong one or not. His Excellency in Council, however, is averse to requiring or authorizing Sessions Judges to question juries as to the reasons for their verdict except in cases already provided for by section 303 of the Code. In the first place, no room should be allowed for anything approaching to a cross-examination of the jury by the Judge. Besides, not only would it be difficult for untrained men, such as the jurors would be in most cases, to formulate their reasons in a satisfactory shape; but it is doubtful whether a mere statement of their reasons would help materially towards the disposal of the case. It seems to the Government of India that a statement of the facts found by the jury, rather than of the reasons for their finding, is what is desired for the purpose of enabling a satisfactory decision to be arrived at as to the correctness of their verdict.

Mr. Justice Birdwood,
" " Telang.
" " Candy.

His Excellency in Council would therefore adopt the alternative proposal made by the Judges of the Bombay High Court named in the margin, and amend the law so as to empower the Sessions Judge, if he thinks fit, whether before or after a general verdict has been taken, to require special verdicts from the jurors on particular issues of fact, and perhaps on the general credibility of particular evidence. Such an amendment of section 303 would be sufficient both to place the Sessions Judge in a position to decide whether a reference should or should not be made to the High Court under section 307 and to furnish the High Court with proper materials for determining whether the verdict is one which should be upheld or not. This point has accordingly been noted for further consideration when the Criminal Procedure Code may next come under revision.

9. Lastly as to the question of allowing an appeal on the facts from the verdict of a jury. The concession of a right of appeal in one form or another is advocated by the Bengal Government, by a strong majority of the Judges of the Calcutta High Court, and by some of the Judges of the Madras High Court; and it has been forcibly contended that mistakes on the part of a jury, like other supposed judicial errors, should be left to be brought before the appellate Court by the parties concerned instead of by the presiding Judge. Accordingly the Government of India have very anxiously considered whether section 418 of the Code should not be amended by allowing an appeal on the facts either when the jury is not unanimous and the Judge does not approve of the verdict of the majority, or when the opinion of the jury is unanimous but the Judge expresses a positive disapproval. The latter rule would be in accordance with section 307 as it now stands, while the former would do little more than extend to Sessions Courts, *mutatis mutandis*, the rule which prevails in High Courts under section 305.

But after due deliberation, and while attaching full weight to the expressions of opinion above quoted, the Governor General in Council has come to the conclusion that it is not expedient, at all events without some further trial, to permit an appeal to be made against the decision of a jury. It is not clear to His Excellency in Council what advantage there would be in retaining the jury system at all, if it is to be reduced so nearly to the level of a trial with assessors; and he is

reluctant to abolish the distinctive feature of trial by jury, the comparative finality of the verdict, until all other available methods for the improvement of the system have been exhausted. The Government of India are, moreover, of opinion that no such change in the law will be really necessary in the Madras Presidency, where capital offences and other cases unsuitable for trial by juries are already excluded from their cognizance; and that the ends of justice will be adequately secured if the safeguard against failures of justice provided by section 307 of the Criminal Procedure Code is strengthened in the manner proposed in the preceding paragraph, and if any districts which the Madras Government may on consideration find unsuitable for the jury system are excluded from its operation.

I have the honour to be,

SIR,

Your most obedient Servant,

Edgall

Secretary to the Government of India.

Lapse - but Sir? also ask
them whether they consider any
of the classes of cases now tried
by juries & D. no longer
best tried & if they do think
it to give their grounds for their
opinion.

14/9/92

W

20 Sep

factory in cases where a large number of
prisoners are assigned, such as in cases
of dacoity. In this opinion I ^{think there are} ~~do not~~ ^{some grounds}
~~do not~~ so far as the proposal of the very nu-
merous judgments in jury cases which come
before us enable me to form an opinion. I
was not a party to the letter of Decr. 1890
to which the Council is a reply, and I
think the opinion expressed therein far
too sweeping. I would not at present
extend the classes of cases to be tried by
jury, ~~and~~ ^{but} I do not think there is suffi-
cient detailed evidence as to failures of
justice in any class of cases to necessitate
the exclusion of any to which the system
now applies.

As to the areas to which it has been extended
I observe that the original selection was
based on the rather curious principle of
the personality of the judges of the Zillas
chosen. But owing regard to the fact
that the areas from which juries are sum-
moned is a small tract of some 20 miles
radius round the chief station, & that in all
classes this area is the most advanced portion
of the several districts, I think there is no
such difference in their circumstances
as would necessitate the exclusion of any.
This was the opinion of the H.C. in 1883.

I think the Council may be asked to
the H.C. and they may be asked whether
they can show cause as regards any
particular districts for making any
change.

W
Sep.

R249

3707

St. W. C. W.

Submitted for orders.

From

The G. of I.

Home Dept.

No. 1105

Dated 25. 8. 92.

Received 1. 9. 92.

Enclosures Seven spare copies

SUBJECT.

Jury System Replying to
letter of 29. 12. 90. No. 2096
regarding working of —
in Sessions Courts.

For Orders

The only two points that appear to require consideration at the hands of this Govt. are—

(1) whether any restriction should be made in the area to which the system of trial by jury has been extended in this Presidency.

(2) whether offences under Chap. XX. of the I. P. C. should be made triable by jury.

At present the system of trial by jury has been extended to all the Courts of Sessions in the Presy except the 3/9. Agency Courts in Ganjam, Vizag & Godavari. The classes of cases triable by jury are enumerated in para 1 of the Notification ordered to be published by G.O. of 20. 3. 93. No. 811 Jd. (in the file).

With reference to 56 of the current in which the Govt. of India attribute the alleged failure of the jury system to its premature & wholesale extension to every district in the Presidency, the facts do not support them. In March 1862, the system was first started in 4 districts & two more were added in 1870, owing to the incapacity of the judge, in 1879 was in force only in 5 districts. In that year, 3 more were added; and only in 1883 at the recommendation of the High Court, was it extended to all Sessions Courts except Agency. Thus it was in restricted operation for 21 out of the 30 years in which it has been in force. It was first tried, and it was made general only on the recommendation of the High Court as then constituted. It is only in very recent years, in fact since Mr. Arthur Collins became Chief Justice that its working has been seriously impeded. Mr. Justice Duttman's report

Papers to be read in Proceedings:—

Again G.O., dated 9. July 1890, No. 1131.

Again G.O., dated 18, No.

Current No. of 18, dated from

Current No. 3707 of 1892, dated 25 Aug from The G. of I.

Order of 28. 9. 92 No. 1827

The letter read above will be communicated to the Hon'ble the Judges of the High Court with the request that they will favour Govt. with their opinions ^{together with} the grounds for the same, as to—

- (1) whether any change should be introduced as regards the jury system in any particular district of this Presidency;
- (2) whether any ^{of the} classes of cases now tried by juries should no longer be so tried.

[From Orders]

The Hon'ble the Chief Justice (with C.L.) Despatched 29/9.
(with spare copy).

C.S.
22/9.

has 23. 9. 92. 20/9/92.

Jury System

From Orders

The Honble Sir H. Stokes K.C.S.I

READ AGAIN ORDER OF GOVERNMENT, DATED:
17, No.

ENCLOSURES.

CURRENT No.

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[Despatch Abstract.]

Jury System Forwarding
to the Hon'ble the Judges of
the High Court for favour &
opinion letter from the G.O.
regarding the working of
the - in the Madras
Presidency.

Advised Madras Office
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CP

9/15

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February 1893. No 267-8.