

CURRENT NO.

From

H. W. Foster Esquire,
Registrar of the High Court
of Judicature, Appellate Side Room
Massachusetts.

To

The Honorable J. F. Price,
Chief Secretary to Government,
Fort Saint George.

Sir,

In reply to L. O., dated 28th September 1892, I am directed to forward judicial, confidential, I am directed to forward the minutes recorded by the Chief Justice and the judges on the two points on which the High Court's opinion is asked.

2. I am to point out that as to the first question, whether any change should be introduced as regards the jury system in any particular District, the judges are agreed that there is no necessity for any alteration.

3. On the second question, whether any classes of cases now triable by juries should be excluded from the list of cases so triable, with the exception of Mr. Justice Best, the judges agree in recommending that offences punishable under sections 392 to 395 and 397 to 402 of the Indian Penal Code should be withdrawn from
cogniz

with assessors
does it desirable to remove all
with the number of persons to be jointly
exceeds three, whatever the nature of the
from the category of offences to be tried
is.

The High Court is unanimous in consi-
dering it undesirable to extend the system
of trial by jury to any class of offences to
which it is not now applicable.

I have the honor to be,
Sir,

Your most obedient servant,

P. R. S.
Registrar.

that the States
the minute referred to and I am confir-
the opinion I then gave that trial by jury
this Presidency is not satisfactory. I
strongly recommend that in all cases
robbery or dacoity, the Sessions judge or
assessors should try the accused. I do not
think the proposal to allow the Sessions judge
to take special verdicts from jurors will be
success in the Madras Presidency. I enclose
herewith a printed paper marked off, a copy
which was sent to some, if not all, of the judges
of the High Court the statements in which
if true, throw some light on the system of
trial by jury in Madras.

Justice Sir J. S. S. Aiyar: — We are asked to state our
opinions on two questions. As to the first, I do
not think it is necessary to introduce any change
in the jury system as regards particular dis-
tricts in this Presidency. I am aware of local
peculiarities which render such alteration
desirable. As regards the 2nd, it has long been
my conviction that the juries accept too readily
slender or unsatisfactory evidence of identification
as sufficient for conviction in cases of robbery
and dacoity and these I would exclude from
the list of offences cognizable by them throughout
the Presidency.

Mr Justice Parker: — I was absent in England when the
opinion of the High Court was asked for in 1890.
As to the suitability of the jury system in this Coun-
try and desire now to take this opportunity of
placing on record my concurrence with the
opinion of the Chief Justice and the maj-

Minute

with the assessors
der makes it clear, however, that the Govern-
ment of India is not at present prepared to
the system, and the opinion of the High
Court is asked (1) whether any change should
be introduced in any particular District, and
whether any or, if so, what classes of cases
tried by juries should no longer be so tried.
On the first question, I would not recom-
mend any change. On the second, I think
that offences falling under Part III, Chapter
XVII, of the Penal Code ("of Robbery and
Dacoity") should be excluded from the
cognizance of juries. These offences—now
triable by juries—are those punishable under
Sections 392-395, 397-402, Indian Penal Code.
It is in dacoity cases that the verdicts of
juries are specially unsatisfactory. I am not
in favor of extending the jury system to
offences relating to marriage (Chapter XX,
Indian Penal Code.)

I am in favor of the amendment sug-
gested to Section 303, Criminal Procedure
Code, so as to allow the Judge to take a
special verdict on particular issues of
fact, and I would also amend Section 418
so as to allow an appeal on the facts in
any case in which the Judge had thought
it necessary to record his dissent from the
verdict even though he had not felt himself
bound to refer the matter under Section 307.

With reference to the general question of
the suitability of trial by jury to India and
the affection alleged to be felt for the
system, it is not immaterial to note
that

that the States

(which are under enlightened native
administration) have abstained from intro-
ducing it, while making other parts of the Criminal
Procedure Code applicable to these Territories.
The same course has been taken in the case
of Pudukkottai, though that State is swarmed
by the Tamil Districts in which the system
of trial by jury has been longest in force.

Mr. Justice Wilkinson:—Our opinions are asked for on
two questions.—

(1) I am not aware that the jury system
has been extended to any area in the Madras
Presidency to which it is unsuitable, or that
any change is necessary in any particular
District on account of local peculiarities.

(2) I am decidedly of opinion that offences
falling under Sections 392-402, Indian Penal
Code, should be withdrawn from trial by jury.
There is generally in such cases a large mass
of evidence with which a jury composed of the
material available in this Presidency is
quite incompetent to deal. Evidence of identity,
of the finding of property and the weight
due to confessions are points on which my
experience shows juries are very apt to err.

Mr. Justice Handley:—As to the 1st question upon which
our opinion is now asked, I am not aware
of any reason for making a change in the
jury system in any particular District of
this Presidency.
I consider the system equally unsuited

ade they were made uniformly
District to which the jury system is
indeed.

As to the 2^d question, I am of opinion
that offences punishable under Sections 392
395 and 397 to 402 of the Indian Penal
Code should no longer be tried by juries.

Mr Justice Best:— It is in cases in which
a number of persons are being jointly tried
that the jury system is (there is reason to fear)
often a failure owing to the inability of the ordi-
-nary jurymen to properly weigh the evidence
against each of the accused. I would therefore
make it a rule that no case in which the
number of persons to be jointly tried exceeds
three - whatever the offence - shall be tried
by jury. I see no necessity for excluding
cases of Robbery or even Dacoity in which the
number to be tried at one time does not
exceed three.

Modified as above, the offences now
triable by jury in this Presidency might, I
think, continue to be so tried.

I do not think it advisable to extend
the jury system to any other offences.

(True Copy.)

[Signature]
Registrar.

Remove this paper by post - *Don't*
also

Madras

A

October 1892

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n

*Paper refers to the
Hon. the Chief
Justice's minute.*

MEMORANDUM.

SESSIONS CASE NO. 94 OF 1892.

DACOITY ON THE MELUR ROAD, MADURA DISTRICT.

The following are the particulars of this case:—

The prisoners Nagan, Vellayan, Pethan, Chettikulam Kaluvan, Masor Peyandy and Salai Karuppanan stood their trial on the afternoon of the 7th Sep. 1892 before Mr. T. Weir, Sessions Judge of Madura, on a charge of having on the 6th June 1892 committed dacoity under the following circumstances. At about 10 p. m. on the date in question, Sub Overseer Subbarama Iyer and Maistry Sundram Iyer employed in the Periyar Project started in a bandy from Madura for Narasingampatti which was their headquarters. Near the toll gate north of the town, they waited for about 2 hours for some co-bandies but none having been forthcoming, they continued their journey till about 12 p. m. when near the 5th furlong of the 2nd mile, a gang of 6 dacoits attacked them and robbed them of their jewels, ready cash, cloths &c. and ran away. It was a broad moonlight night, having been 3 nights preceding the full moonday. Maistry Sundram Iyer had had personal acquaintance with some of the dacoits and knew some of them by name. He and the bandyman having been severely beaten, Overseer Subbarama Iyer sent them both to Madura for medical treatment and proceeded to Ottukadai three miles north to inform the Police patrolling the road of the accident. At 3 a. m. he gave a written complaint to a Constable of the Chittampatti Station stating therein that he could identify all the dacoits and that Sundram Iyer knew the names and village of some of them. At 8 a. m. Sundram Iyer arrived at the Madura Taluq Station and gave his written complaint mentioning the names of Nagan, Vellian, two inhabitants of Kilakudi and stating that he could identify the rest. The Madura Taluq Police who had worked at the case got the evidence of one Sadaya Pillai to the effect that he had seen the above 2 men sitting in a matam near the 2nd mile north of Madura (that is five furlongs from the scene of crime) with Pethan, Chettikulam Kaluvan, Masor Peyandi, Salai Karuppanan, Kattai Chockan of Kilakudi and 2 or 3 others whom he could identify. The Village Munsiff of Kilakudi, who kept a roster of all the suspected men in his village and who was in the habit of checking it in his official capacity every midnight, found four of the above men absent and as regards the other two could not say anything as their names had not been entered in the roster. The Police arrested the dacoits who were identified in due course by Subbarama Iyer and Sundram Iyer in a crowd.

The Jurors in this case were chosen from among the natives of Madura. Having regard to the fact that the prisoners in it were the Kallars of Kilakudi to whom it is well-known that some of the well to do inhabitants, merchants, vakeels and Government servants, and even the S. I. R. Company and the American Mission, Madura are paying some fixed

1892
Full Dept.
Clos. No. 1
To
5202

contributions regularly once a month or once a year, the prosecution should have objected to the choice of Jurors from among the natives of Madura. It is not unfrequently that one hears of Kilakkudi Kallars coming to the Courts and threatening the parties, witnesses &c. in broad day-light whenever they themselves or some of their fellow villagers are in difficulty. The case in question was a clear one of dacoity the facts of which were borne ample testimony to by two Government servants who held some social position and some property and who were besides Brahmins—a community which it may be said is not notorious for making false statements. In such a clear case as this, the Jury has returned a verdict of not guilty. It is rumoured that the reason of this verdict is due to the fear they laboured under of incurring the displeasure of Kilakudi men which means the deprivation of their cattle and other properties. Four of the Jurors chosen were the local merchants and one was building a house near the river in an unsafe part of the town.

Another fact which is worthy of mention is that such cases should be taken up in the mornings and disposed of in the evenings without being put off till the next day for further trial. In that case, there would have been no room for suspicion that the Jurors have been tampered with.

Whenever the Kilakudi men are concerned, the Judge will do well to try the case with the aid of European Jury or transfer it to some other District. It is not known how long the people of Madura will have to pay blackmail to these Killakudi men. They are not after all very numerous, counting as they do but about 300 families and it is a matter of surprise that the Government cannot put them down with a strong hand. They sometimes travel beyond this district to satisfy their thieving propensities. Nor is it known why the Criminal Tribes Act is not brought into force in respect of them. There would in that case be a very low percentage of crimes committed at Madura every year. It is also a matter of surprise to observe some of the gentries of Madura encouraging this criminal tribe instead of bringing them to book and making an example of them.

The Judge has therefore done well in referring the case to the High Court for opinion. The High Court have given notice to the prisoners that their case will come on for hearing before them on the 19th instant. The High Court, it is to be hoped, will quash the verdict of the Jury and bring the offenders to meet the ends of justice or direct the Judge to retry the case with a fresh set of Jurors on the grounds already referred to. Either of the above courses the High Court has to adopt, inasmuch as otherwise the Kallars will be let loose upon the world and carry on their depredations without any let or hindrance.

1892
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To
C. No. 5202

Judicial { 1892 } Department.

From The High Court

Dated 9th December 1892.

FOR ORDERS.

C.S. The following questions have to be settled:—

Lagne with the High Court on the first two points.
On the third Lagne with Mr Justice Parker.
Such special verdicts on particular points, without amounting to cross examination of the jury, would often show the necessity of the verdict and induce reference under s. 307 in cases in which they ought to be but are not now made.
The offences now triable by jury are

- (1) Are offences relating to marriage to be made triable by jury?
- (2) Is the jury system to be withdrawn from any districts?
- (3) Is the law to be amended so as to empower the Sessions Judge to require special verdicts from the jurors on particular issues of fact & on the general credibility of particular evidence?
- (4) Shall any offences now on the list of offences triable by jury be withdrawn therefrom?

(1) Theft, (2) Robbery & dacoity (3) Receiving stolen property (4) House breaking & breaking open a closed receptacle.
The Judges of the High Court answer the first two questions with a unanimous negative. (?)

The High Court proposes to remove the second class altogether. The chief reasons are the inability of juries to discriminate the weight of evidence against individual prisoners when large numbers are tried together & to deal with identification evidence. The first reason applies mainly to dacoity cases, for the nature of the case renders it improbable that more than two or three prisoners can be tried together for robbery or house breaking or theft. Often, in dacoity cases there are not more than two or three prisoners on trial, but generally there are more & I think the reason is well founded.

The C. J. objects to the introduction of a system of special verdicts which Mr Justice Parker is in favour of it; he addresses any arguments on the subject. The Judges are unanimous in recommending that offences under s. 392-395 & 397-402 should be withdrawn from the list of jury cases.

Mr Justice Parker also recommends the amendment of s. 418 C.C.P. so as to admit of an appeal on the facts in jury cases. But, as the J. of S. observes, if the verdict of a jury case is to be final the jury-system might as well be abolished at once.
by 14 Dec. 1892

THE REGISTRAR OF THE HIGH COURT OF JUDICATURE AT MADRAS, APPELLATE SIDE.

Dated 9th December 1892.
Received by Reg. 10

No. 3281.
Enc

Forwarding minutes recorded by the Hon. the Chief Justice and the Judges on the two points on which the High Court's opinion is asked regarding the jury system.

regard to such cases. As to identifying
and it ~~appears~~ ^{occurs in} robbery & murder
making cases as frequently found
with the same conditions as in dacoity
cases. It is a very unsatisfactory kind
of evidence to those who have to deal
with cases on papers, but to those who
have the parties before them it may be
useful. And it is conceivable that, in
fact, that native juries may
be more competent to appraise it than
European judges. I don't think ~~possible~~
~~reason~~ therefore that the arguments
about identification evidence is of as
all the same weight as that about
plurality of prisoners.

I am not in favour of doing anything
but if anything is to be done, I would
strike out dacoity from the list, &
retain robbery & the rest as at present

10th
17th Dec

Jury System

Circulate

(For orders)

I think it is evident that no Masons
are shown for extending the Jury
System in Madras.

The chief question for decision is whether
any classes of cases now triable by
juries should be excluded from the list
of cases so triable - and in this
connection the High Court is almost
unanimous in considering that
robbery and dacoity should be so
withdrown. I am disposed to agree
with them in this respect - I am not
able to make the distinction between
robbers and dacoits in this respect.
For as I understand the arguments
brought forward, the offenders under these
cases are usually of the same class - and
it is ⁱⁿ consequence of the way in which
they bring intimidation to bear on
the jurors that failures of justice
occur. As regards the want of discrimi-
nation on the part of jurors when
there are many prisoners at trial to a
inability to distinguish between the
respective individuals. This will of
course apply more to dacoity than
robbery cases - but notwithstanding
this, I think the intimidation alleged
is sufficient to induce me to recommend
that both robbery & dacoity should be
excluded from the list of cases triable
by jury.

I quite agree that the point is clearly

The Jury System

The Pat. of And is in their
letter of 15th Aug. 1892 No.
1105 express the opinion
that they are by no means
satisfied that a defect
has been brought to notice
in connection with the working
of the jury system, an act
in some measure, due to its
present state & the extent
of the defect. They say that the
present state of the jury system
is not satisfactory & suggest
that the ends of justice
are being secured if
the 3034 of the M.C. are
modified - the proposal is
one of the letter, & if the
proposals are excluded
from the question of the jury
any defect which they
can do its extension must
be. They also ask for an
opinion whether officers
of the magistracy should be
made triable by jury.

I don't find that the High
Court has taken the matter
up. It is made triable
by jury - nor that they have
expressed any opinion on the
point in their minutes.
I don't think that the
Commissioners are
unanimously opposed to extending
the list by jury to any offences
not now triable. So that
this comes the point. I
fully agree & I would like

for of India upon on this
point in the negative.

It also points out, in reply
to the allegation that the
extension of the system in
India has been premature,
that the real facts are
as set out in the Hon. Mr.
Stokes' note of Sept. 8th.

At the same time of opinion
that trial by jury should no
longer be allowed in the
Dist. of Tinnevely, Madras
& Coimbatore. In the 2nd part
of the character of the
population and classes of the
population & their habits
being considered, with the
fact that because of its general
backwardness of development
& I do not propose to India
to abolish trial by jury
in the Hon.

I agree with the High Ct.
that the robbery & dacoity
cases should come to the trial
by jury.

I do not see any need for
giving right of appeal to the
High Ct. in jury cases as
question of fact is the
303 of the C. P. C. is altered
in the proposed Indian
they are prepared to alter
it. This will enable the
judges to spend more
time on the jury & upon the
case under the Section 303

7/1/93 J.H.F.

brought out by Sir A. Stokes should
be impressed on the Gov. of India viz:
that it is not the case that trial by jury
has prematurely forced on the jury
system in the Pres.

I am not satisfied as to the desirability
of excluding the jury system from the
districts mentioned by the hon. Mr.
Gardiner - as I believe that if robbery
and dacoity cases are generally withdrawn,
the dissatisfaction from the failure of
justice in those particular districts will
disappear.

I agree with ^{my} Hon. ^{colleague} Mr. Gardiner in
thinking that the alteration proposed
by the Gov. of India in Sec. 303
of the C. P. C. is advisable.

W
J. Law

Papers to be read in Proceedings:—

Again G.O., dated 20 Mar. 1883, No. 811 Ind. abstract }
29 Dec. 1899, No. 2095-6 Ind. abstract }
Again G.O., dated 28 Sept 1892, No. 1827 Ind. In full - }
Current No. of 18 , dated from

Current No. 5202 of 1892, dated 9 Dec from Ref. A.C. In full

I should like to have this matter
discussed in Council next Tuesday
before order issued.

Wes
12 Jan

See my note further
on. J.H.P.
19/1/93

Order ^{see another draft below}
In Home Dept. letter of 25 Aug.
1892, No. 1105, Ind., the G. of
I. has recorded its views upon
the report on the working of the
jury system in Madras which
was submitted with this letter
of 29 Dec. 1890, No. 2096, Ind.
In the course of his remarks A.C.
the G. of I. in C.

- It suggests for the consideration
of the Madras Govt. whether offences
under Chap. III of the Penal
Code, relating to marriages,
might not with advantage
be made triable by jury;
- (1) Expresses a doubt whether
the defects in the working
of the jury system in the
Madras Pres. are not due
to the premature & wholesale
extension of the system to
every District throughout the
Pres.?
- (2) notes for further consideration
the question whether sec. 303
of the Code of Crim. Proc. should
not be so amended as to
empower the Sessions Judge,
whenever he sees fit & either
before or after a general verdict
has been taken, to require

special verdicts from the jurors on particular issues of fact & perhaps on the general credibility of particular evidence; and

(4) Disapproves of the proposals that the law should be so amended as to

(a) require a reference to the High Court whenever the Sessions Judge disagrees with the verdict of the jury;

(b) allow of an appeal on the facts from the verdict of the jury.

2. The Gt. of India's letter was referred to the Hon. the Judges of the High Ct. for favour of remarks by G.O. 21 Sept. 1892, N.E. 1827, R.O. & their views have now been received & have been considered by Gt. 13. The Hon. the Judges are unanimous in deprecating

~~the extension~~ the extension of the system of trial by jury to any class of offences not at present triable in this manner.

~~the withdrawal~~ the withdrawal of the jury-system from any district and

H.E. in C. concurs with the High Court on both these points.

All the Judges, with the exception of the Hon. Mr. Justice Best, also concur in ^{considering} recommending that the system of trial by jury is unsuitable in the case of the offences of robbery & dacoity punishable under sec. 392-395 & 397-402 of the Penal Code;

Butler has written words on no issue the order.

It was agreed in Council that no on Tuesday this direction action in the direction of the reform & the law of the High Court will be issued under sec. 269 of the Code of Crim. Proc. (I think).

The Gt. further agrees with the Hon. Mr. Justice Parker in thinking that sec. 303 of the Code of Crim. Proc. ought to be so amended as to admit of the taking of special verdicts from the jurors on particular issues of fact & the general credibility of particular evidence & the Gt. of India will be addressed on the subject.

I understood in Council that H.E. wished to see the papers again & write a further note.

I don't think any G.O. on the papers should issue at present. but I see no objection to the views of the majority being sent to the Gt. of India by letter.

Very well

H.E.

29/1/93

I think this would be the best plan - I think India ought to be backed up

as far as we can back them up - and the opinion of the High Court of Madras ought to be communicated to them. Bombay is sending up a statement of their High Court that they feel most strongly that murder cases ought to be withdrawn from juries.

My view is that no change should be made at present

W

22 Jan

W

31 Jan

the Hon. Mr. Justice Best too is of opinion that the said offences should not be tried by jury where the number of the accused exceeds three. On this subject, also, the Gt. concurs with the High Court (but deferring taking action for the present) will be issued under sec. 269 of the Code of Crim. Proc. (I think).

The Gt. further agrees with the Hon. Mr. Justice Parker in thinking that sec. 303 of the Code of Crim. Proc. ought to be so amended as to admit of the taking of special verdicts from the jurors on particular issues of fact & the general credibility of particular evidence & the Gt. of India will be addressed on the subject.

4. With regard to the remarks in para. 6 of the letter from the G. of I. now under consideration & the effect that the system of trial by jury was extended in a premature & wholesale manner to the Madras Pres. H.E. the G. in C. is of opinion that this statement is not supported by the facts. In March 1862 the system was first introduced in four districts; two more districts were added during the year; in 1870 the system was withdrawn from one district & up to 1879 it was in force in only five districts; in 1879 three more districts were added & it was not until 1883 that, at the suggestion of the High Court, the system was extended to all parts of the Pres. except the Agency tracts. Thus the system was in restricted operation for twenty

one out of the thirty years which have elapsed since it was first tried.

(From orders)

To the Hon. the C.J. with C.J. ¹¹ Jan. 1893
Notification 11/Jan

In modification of all previous ~~Notif. on the subject~~ the Notif. N-92 published at p. 15 of the Fort St. George Gazette of the 20 Mar. 1893
In exercise of the powers conferred upon him by sec. 267 of the Code of Crim. Proc., 1852, the Govt. in Council is pleased to direct that, in future, ~~the~~ offences punishable under sections 392 to 395, 392, 393, 394, 395, 397, 398, 399, 400, 401 & 402 of the Indian Penal Code shall, ~~be tried~~ in ^{all} Sessions Courts throughout the Presidency, be tried with the aid of assessors, & not by jury.

¹¹ Jan. 1893

Letter has another draft further on ¹¹ Jan
To the Secy. & the G. of I. (H. D.)
In.

With advertisement to your letter of 25 Aug 1892, N-1105, L.H., dealing with the working of the jury system in this Pres^y I am directed to forward to you a copy of the ~~originally~~ ^{revised} Proc^y 24 of ~~this~~ Govt. of this date.

2. It will be observed that this Govt. supports the proposal of Messrs Justice Birdwood, Telang & Landy of the Bombay High Court to the effect that sec. 303 C.P.C. should be amended so as to allow of the taking of special verdicts from juries, a matter referred to in para. 3 of your letter. ¹¹ Jan.

In order
In page 6 of its letter the G. of I. remarked

Jury system

Office

Fill these in. The Notif. is continued in G.O. 20/3/93 N-811, 22

Am + attached further list

P.S.

(From orders)

20/3/93

that the list of offences triable by jury in this Pres^y seems suitable & well-considered in view of the remarks made in the letter of the 11th Jan. 1893. It is suggested that the removal of offences under sec. 392-5 & 397-402 from the list of offences triable by jury be confined to all Sessions Courts & not to the District Courts.

Mr. Secy

The draft order has been revised in red ink in accordance with the orders which, it is understood, were passed in Council on the 17th.

The Hon. members are requested to state whether the revised draft meets with their approval & may now issue.

la
20 Jan.

W. J. P. W.
20/1

C. 20/1
R 31/1

DEPARTMENT.

Papers to be read in Proceedings:—

Again G.O., dated

18, No.

Again G.O., dated

20 Sept

1892, No.

1027 Ind. Printed in full

Current No.

of 18

, dated

from

Current No.

5202

of 1892, dated

9 Dec

from Res. H.C.

Order 6 Feb. 93 No. 267

The following letter will be despatched to the G. of I. (From order)

No. 268

la
31 Jan.

Letter

To the Secy (the G. of I. (H.C.))

Despatched with 5 sep. copies 18/12

W
4 Dec.

J.H.F.
1/2/93

(Exception 3 from 3.)

Wes
17/6.

I am directed, with advantage to your letter dated 25th Aug. 1892, No. 1105, Ind. to communicate to the G. of I. the views of the Hon. the Judges of the High Court upon certain points connected with the working of the Jury system to which a reference is made in your letter under reply.

2. It will be observed that the Hon. the Judges are unanimous in deprecating the extension of the jury system to any classes of offences which are not at present triable in that manner which, at the same time, they are of opinion that the system should not be withdrawn from any locality in which it is at present in force. Upon both these points the G. of I. concurs with the High Court.

with the exception of Mr. Justice Best, all the Judges are also agreed that the system of trial by jury is unsuitable in the case of the offences of Robbery & Dacoity & they would exclude these offences from the list of those triable by jury. The Hon. Mr. Justice Best adopts the same view in respect of all cases where the number of the accused exceeds three.

H.E. in C. is disposed to concur with the majority of the Judges in thinking that Robbery & Dacoity are not offences which ought to be tried by jury.

4. The Hon. Mr. Justice further agrees with the Hon. Mr. Justice Parker in holding that sec. 303 of the Code of Crim. Proc. might with advantage be amended so as to admit of the taking of special verdicts on particular issues of fact & the general credibility of particular evidence. This amendment was proposed in the first instance by Justices Birdwood, Selang & Handley of the Bombay High Court & it is observed that the G. of I. has noted the suggestion proposed for further consideration.

5. With regard to the remark in para 6 of your letter under reply & the effect that the system of trial by jury was extended in a premature & wholesale manner to the Madras Pres. I am directed to state that H.E. in C. considers that this statement is not supported by the facts. In March 1862, the system was first intro-

Jury Supl

307
C.H. & C.

P.S.

(From Order)

Circulate this Dept as the question is an important one & is desirable that Hon. Members should know exactly what has been said.

Cal
31/Jan

duced in four districts; two more districts were added during the year; in 1870 the system was withdrawn from one district & up to 1879 it was in force in only five districts; in 1879 three more districts were added & it was not until 1883 that, at the suggestion of the High Ct., the system was extended to all parts of the Pres. except the Agency tracts. Thus the system was in operation for twenty-one out of the thirty years which have elapsed since it was first tried. Cal 31/Jan

6TH FEBRUARY 1893, Nos. 267, 268, JUDICIAL.

CONFIDENTIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Read again—

G.O., dated 28th September 1892, Mis. No. 1827, Judicial.

Read again—

G.O., dated 9th July 1890, No. 1131, Judicial.

Read—also the following paper:—

From C. J. LYALL, Esq., C.I.E., Secretary to the Government of India (Home Department—Judicial), to the Chief Secretary to the Government of Madras, dated Simla, 25th August 1892, No. 1105.

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 Session 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 Honorable the Chief Justice and Judges of the High Court, with the exception of Mr. Justice Muttusami Aiyar (whose opinion, however, is not altogether favorable), have recorded minutes generally unfavorable to the working of the jury system. The Honorable 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 Muttusami 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
- (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 Honorable 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 *Guru-vadu* 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.

* I.L.R., 15 Calcutta, 269.

† „ 13 Madras, 343.

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 any thing 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. His Excellency in Council would therefore adopt the

Mr. Justice Birdwood.

„ „ Telang.

„ „ Candy.

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.

Order—dated 28th September 1892, Mis. No. 1827, Judicial.

The letter read above will be communicated to the Honorable the Judges of the High Court with the request that they will favour Government 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, and, if so, what classes of cases now tried by juries should no longer be so tried.

(True Extract.)

(Signed) J. F. PRICE,
Chief Secretary.

To the Hon'ble the Chief Justice (with C.L.).

READ—also the following paper:—

From H. W. FOSTER, Esq., Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to Government, dated Madras, 9th December 1892, No. 3281.

In reply to G.O., dated 28th September 1892, No. 1827, Judicial (Confidential), I am directed to forward the minutes recorded by the Chief Justice and the Judges on the two points on which the High Court's opinion is asked.

2. I am to point out that, as to the first question, whether any change should be introduced as regards the jury system in any particular district, the Judges are agreed that there is no necessity for any alteration.

3. On the second question, whether any classes of cases now triable by juries should be excluded from the list of cases so triable, with the exception of Mr. Justice Best, the Judges agree in recommending that offences punishable under sections 392 to 395 and 397 to 402 of the Indian Penal Code should be withdrawn

from the cognizance of juries and left to be tried by the court with assessors, while Mr. Justice Best considers it desirable to remove all cases in which the number of persons to be jointly tried exceeds three, whatever the nature of the offence, from the category of offences to be tried by juries.

4. The High Court is unanimous in considering it undesirable to extend the system of trial by jury to any class of offences to which it is not now applicable.

ENCLOSURE.

Minutes.

The Chief Justice.—Two years have elapsed since I wrote the minute referred to and I am confirmed in the opinion I then gave that trial by jury in this Presidency is not satisfactory. I very strongly recommend that in all cases of robbery or dacoity, the Sessions Judge and assessors should try the accused. I do not think the proposal to allow the Sessions Judge to take special verdicts from jurors will be a success in the Madras Presidency.

Justice Sir T. Muttusami Aiyar.—We are asked to state our opinions on two questions. As to the first, I do not think it is necessary to introduce any change in the jury system as regards particular districts in this Presidency. I am aware of no local peculiarities which render such alteration desirable. As regards the second, it has long been my conviction that the juries accept too readily slender or unsatisfactory evidence of identification as sufficient for conviction in cases of robbery and dacoity and these I would exclude from the list of offences cognizable by them throughout the Presidency.

Mr. Justice Parker.—I was absent in England when the opinion of the High Court was asked for in 1890 as to the suitability of the jury system in this country and desire now to take this opportunity of placing on record my concurrence with the opinion of the Chief Justice and the majority of the Court that the system is not satisfactory. The despatch of the Home Secretary now circulated makes it clear, however, that the Government of India is not at present prepared to abolish the system, and the opinion of the High Court is asked (1) whether any change should be introduced in any particular district, and (2) whether any, or, if so, what classes of cases now tried by juries should no longer be so tried. On the first question, I would not recommend any change. On the second I think that offences falling under part III, chapter XVII, of the Penal Code ("of robbery and dacoity") should be excluded from the cognizance of juries. These offences—now triable by juries—are those punishable under sections 392—395, 397—402, Indian Penal Code. It is in dacoity cases that the verdicts of juries are specially unsatisfactory. I am not in favour of extending the jury system to offences relating to marriage (chapter XX, Indian Penal Code).

I am in favour of the amendment suggested to section 303, Criminal Procedure Code, so as to allow the Judge to take a special verdict on particular issues of fact, and I would also amend section 418 so as to allow an appeal on the facts in any case in which the Judge had thought it necessary to record his dissent from the verdict even though he had not felt himself bound to refer the matter under section 307.

With reference to the general question of the suitability of trial by jury to India and the affection alleged to be felt for the system, it is not immaterial to note that the States of Mysore and Travancore (which are under enlightened native administration) have abstained from introducing it, while making other parts of the Criminal Procedure Code applicable to these territories. The same course has been taken in the State of Pudukota, though that State is surrounded by the Tamil districts in which the system of trial by jury has been longest in force.

Mr. Justice Wilkinson.—Our opinions are asked for on two questions.

(1) I am not aware that the jury system has been extended to any area in the Madras Presidency to which it is unsuitable, or that any change is necessary in any particular district on account of local peculiarities.

(2) I am decidedly of opinion that offences falling under sections 392—402, Indian Penal Code, should be withdrawn from trial by jury. There is generally in such cases a large mass of evidence with which a jury composed of the material available in this Presidency is quite incompetent to deal. Evidence of identification, of the finding of property and the weight due to confessions are points on which my experience shows juries are very apt to err.

Mr. Justice Handley.—As to the first question upon which our opinion is now asked, I am not aware of any reason for making a change in the jury system in any particular district of this Presidency.

I consider the system equally unsuited to all the districts and that, if any changes are made, they should be introduced uniformly in all districts to which the jury system is extended.

As to the second question, I am of opinion that offences punishable under sections 392 to 395 and 397 to 402 of the Indian Penal Code should no longer be tried by juries.

Mr. Justice Best.—It is in cases in which a number of persons are being jointly tried that the jury system is (there is reason to fear) often a failure owing to the inability of the ordinary

juryman to properly weigh the evidence against each of the accused. I would therefore make it a rule that no case in which the number of persons to be jointly tried exceeds three—whatever the offence—shall be tried by jury. I see no necessity for excluding cases of robbery or even dacoity in which the number to be tried at one time does not exceed three.

Modified as above, the offences now triable by jury in this Presidency might, I think, continue to be so tried.

I do not think it advisable to extend the jury system to any other offences.

ORDER—dated 6th February 1893, No. 267, Judicial.

The following letter will be despatched to the Government of India.

(True Extract.)

(Signed) C. A. GALTON,
Ag. Chief Secretary.

LETTER—to the Secretary to the Government of India, Home Department, dated Fort St. George, 6th February 1893, No. 268, Judicial.

I am directed, with advertence to your letter, dated 25th August 1892, No. 1105, Judicial, to communicate to the Government of India the views of the Honorable the Judges of the High Court upon certain points connected with the working of the jury system to which a reference is made in your letter under reply.

2. It will be observed that the Honorable the Judges are unanimous in deprecating the extension of the system of trial by jury to any classes of offences which are not at present triable in that manner, while, at the same time, they are of opinion that the system should not be withdrawn from any locality in which it is at present in force. Upon both these points the Government concurs with the High Court.

3. With the exception of Mr. Justice Best, all the Judges are also agreed that the system of trial by jury is unsuitable in the case of the offences of robbery and dacoity and they would exclude these offences from the list of those triable by jury. The Honorable Mr. Justice Best holds the same view in respect of all cases where the number of the accused exceeds three.

His Excellency in Council is disposed to concur with the majority of the Judges in thinking that robbery and dacoity are not offences which ought to be tried by jury.

4. The Government further agrees with the Honorable Mr. Justice Parker in holding that section 303 of the Code of Criminal Procedure might with advantage be amended so as to admit of the taking of special verdicts on particular issues of fact and the general credibility of particular evidence. This amendment was proposed in the first instance by Justices Birdwood, Telang and Candy of the Bombay High Court and it is observed that the Government of India has noted the proposal for further consideration.

5. With regard to the remark in para. 6 of your letter under reply to the effect that the system of trial by jury was extended in a premature and wholesale manner to the Madras Presidency, I am directed to state that His Excellency in Council considers that this statement is not supported by the facts. In March 1862, the system was first introduced in four districts; two more districts were added during the year; in 1870 the system was withdrawn from one district and up to 1879 it was in force in only five districts; in 1879 three more districts were added and it was not until 1883 that, at the suggestion of the High Court, the system was extended to all parts of the Presidency except the Agency tracts. Thus the system was in restricted operation for twenty-one out of the thirty years which have elapsed since it was first tried.

C. A. GALTON,
Ag. Chief Secretary.

Govt. of {1893} Madras.
JUDICIAL.

CONFIDENTIAL

Issued

Recd.

Encl.

G.O., &c., 6th February 1893,
Nos. 267, 268.

FEBRUARY.

Jury System:

Directing that the Government of India be
addressed regarding the working of the jury
system in the Madras Presidency.

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189 , No.

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[Despatch Abstract.]

Jury System

Communicating to the Govt. of
India the views of the Honble the Judges
the High Court upon certain points
connected with the working of the
Jury system in the Madras Presi-
dency.

V. S.
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