

Judicial (1895) Department.

ORDINARY PRINTED.

G.O., No 1515

Dated 18th July 1895

INDEXED.

[Despatch Abstract.]

TRIAL BY JURY.

Recording letter from the Government of India forwarding copies of the despatches to and from the Secretary of State on the subject of the several amendments of the law which had been proposed in reference to the system of --- in India.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Govt. of {1895} Madras. JUDICIAL.

Issued

Recd.

Encl.

G.O., No. 1515, 18th July 1895.

JULY.

Trial by Jury.

Recording letter from the Government of India forwarding copies of the despatches to and from the Secretary of State on the subject of the several amendments of the law which had been proposed in reference to the system of — in India.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper :—

From J. P. HEWETT, Esq., C.I.E., Officiating Secretary to the Government of India, Home Department (Judicial), to the Chief Secretary to the Government of Madras, dated Simla, the 17th June 1895, No. 919.

In continuation of my letter, No. 989, dated the 10th September 1894, I am directed to forward, for the information of the Governor in Council, copies of the despatches * to and from Her Majesty's Secretary of State noted in the margin on the subject of the several amendments of the law which had been proposed in reference to the system of trial by jury in India.

* Despatch to the Secretary of State, No. 37 (Judicial), dated the 21st August 1894.
Despatch from the Secretary of State, No. 3 (Judicial), dated the 31st January 1895.

2. The legislation necessary in order to give effect to the proposals approved by the Secretary of State will be undertaken in the Council of the Governor-General for making Laws and Regulations. The Governor-General in Council does not, for the present, propose to enact an amendment of the law to provide an appeal against the verdict of a jury on a matter of fact.

ENCLOSURES.

Despatch from the Government of India, Home Department (Judicial), to the Right Hon'ble Her Majesty's Secretary of State for India, dated Simla, the 21st August 1894, No. 37 of 1894.

With reference to the correspondence ending with the despatch from the Government of India, No. 17 (Judicial), dated the 29th March 1893, we have the honour to address you on the subject of the report of the Commission appointed to consider the question of trial by jury in Bengal.

2. We consulted the different Local Governments and the High Court at Calcutta on the matter, and copies of the letters and replies are forwarded herewith. It will be seen that we—

- (1) asked for opinion on the various proposals made by the Jury Commission for amending the Criminal Procedure Code;
- (2) in regard to the question of amending section 303 of the Criminal Procedure Code, repeated the view (which the Commission did not share) that the section should be amended so as to empower the judge to require special verdicts on particular issues of fact; and
- (3) enquired from the Local Governments whether they had any objection to section 269 of the code being amended so as to require that action under that section should be taken by Local Governments only with the previous sanction of the Governor-General in Council.

The Governments of Madras and Bombay were at the same time asked to state generally what changes, if any, in the jury system as now established in those Presidencies were recommended by them.

3. It will be convenient to discuss first the proposals (2) and (3), mentioned above, with reference to the replies received. The question in (2)—as to whether power should be given to Sessions Judges to put specific issues of fact before the jury—appears to us to have been discussed by many of those who have given their opinion upon it under the impression that the power to require a verdict on specific issues of fact would, if granted, allow an indefinite and extended cross-examination of the jury, who might be questioned as to their reasons for arriving at their verdict and as to their belief in the evidence of any particular witness. We do not dispute that if powers of this nature were given to a judge there would be a possibility of abuse. But our proposal to amend section 303 of the Criminal Procedure Code does not contemplate anything in the nature of the cross-examination of a jury, and we desire to express our concurrence in the view of the Bombay Government (*vide* paragraph 4 of their letter, No. 5946 †, dated the 23rd September 1893) that if the particular

† No. 8 in the list of enclosures to this despatch.

issue of fact, on which a special verdict is desired, is carefully reduced to writing, with a close regard to the definition of the offence charged, there is no danger of the jurors becoming confused.

4. In civil cases in India the functions of the jury and the judge are combined in the presiding officer. The law * requires that officer, before he proceeds to a decision, to frame issues which set forth the conditions necessary to the establishment of the claim, and to record a separate finding on each issue. At present no such obligation is imposed in criminal cases. But in many criminal trials the questions regarding the offence committed are quite as complicated as they are in suits respecting a civil claim. The Code of Criminal Procedure (section 297) requires the judge "to lay down the law by which the jury are to be guided," but great difficulty is often experienced by Sessions Judges in bringing the minds of the jury in contact with the various essential considerations on which in difficult cases depends a proper verdict as to the exact offence committed. In these circumstances it would, in our opinion, not only be a great assistance to the judge, but also a great assistance to the jury themselves in arriving at a decision, if, as the Bombay Government suggest, the judge were to cause the material issues upon which a finding is required to be laid before the jury and were to require them to give a separate verdict upon each issue.

* Civil Procedure Code, section 146.

necessary to the establishment of the claim, and to record a separate finding on each issue. At present no such obligation is imposed in criminal cases. But in many criminal trials the questions regarding the offence committed are quite as complicated as they are in suits respecting a civil claim. The Code of Criminal Procedure (section 297) requires the judge "to lay down the law by which the jury are to be guided," but great difficulty is often experienced by Sessions Judges in bringing the minds of the jury in contact with the various essential considerations on which in difficult cases depends a proper verdict as to the exact offence committed. In these circumstances it would, in our opinion, not only be a great assistance to the judge, but also a great assistance to the jury themselves in arriving at a decision, if, as the Bombay Government suggest, the judge were to cause the material issues upon which a finding is required to be laid before the jury and were to require them to give a separate verdict upon each issue.

5. We are, therefore, of opinion that the judge should be allowed to require from the jury separate findings on any questions of fact which he may think material. The statement of these issues will in itself be calculated to assist the jury. Whether this can be more suitably done before the jury have delivered their general verdict or afterwards is a matter which we are disposed to leave to the Select Committee if a Bill is introduced; but as at present advised we think that it can be more suitably done before the general verdict is given as a general rule, though in particular cases and to clear up doubtful points it might doubtless be usefully done afterwards. It is, however, to be noticed that if after a jury have returned a general verdict they are required to bring in separate findings on subordinate points, there will be some difficulty in avoiding at least the appearance of cross-examination. We think that an amendment of section 303 could be drafted without difficulty which would, on the one hand, admit questions on particular issues of fact material to a charge, and on the other, exclude questions relating to the reasons for a decision or the credibility of particular evidence.

6. There is a very large consensus of opinion among the authorities consulted in favour of the general course which we recommend. It is supported by the Governments of Madras and Bombay, by most of the officers consulted in Bengal, by the High Court of the North-Western Provinces, and by the Lieutenant-Governor of the North-Western Provinces and Oudh. On the other hand, the members of the Jury Commission and the Judges of the Calcutta and Bombay High Courts are opposed to our proposal. We have given full consideration to the opinions expressed by these authorities, but we are unable to agree that the views which they put forward should be allowed to prevail. The Jury Commission, while reluctantly concluding that the proposed procedure would be liable to create greater evils than it would remedy, did not state the nature of the evils which they apprehended. The objection of the Judges of the Bombay High Court is, it appears to us, based upon a misapprehension of the proposed amendment which has led them to surmise that the jurors will virtually be called upon to give their reasons for their conclusion. It seems to us, however, that any possible danger of this nature could be obviated by such an amendment as is suggested in the last foregoing paragraph.

The Judges of the Calcutta High Court seem to have treated together the two proposals discussed in paragraphs 32 and 33 of the report of the Commission; but, as we have already pointed out, these two proposals are entirely distinct. The Honourable Court think that to allow the judge to state issues of fact for the finding of the jury "would furnish an additional ground for appeal from a conviction on the verdict of a jury" on the basis, substantially, of misdirection by the judge. We are, however, disposed to conclude that, on the contrary, appeals on the ground of misdirection by the judge would be likely to become rarer than at present if it were the practice for judges to break up a complicated charge into its elements, and to ask the jury to come to a decision upon each of them separately. It would also, we think, be always evident if the issues were stated and separate findings taken upon them, whether an erroneous direction by the judge had had any influence on the general verdict.

7. After carefully considering the replies of the Local Governments to our letters of the 6th May 1893, regarding the question of amending section 269 of the Criminal Procedure Code, we are of opinion that the law should be amended so as to require the previous sanction of the Governor-General in Council when action is proposed to be taken under the section.

8. We now proceed to the proposals of the Jury Commission for amending the Criminal Procedure Code. These we have fully considered with reference to the replies received, and we shall now state our conclusions.

- (i) The Commission recommended that, for the words "so completely that he considers it" in the first paragraph of section 307, the words "and is clearly of opinion that it is" should be substituted: and that the last paragraph of the section should provide that the High Court should consider the entire evidence in a referred case, and after giving due weight to the opinions of the Sessions Judge and jury should exercise the powers conferred by the paragraph. We think that the Commission's proposal may in substance be accepted, it being left to the Select Committee to decide on the exact wording of the amendments to be made in section 307.

Paragraphs 24 to 26 of the Report.

- (ii) While agreeing with the conclusion previously arrived at by the Government of India that it was not desirable to have special juries, in so far as these might tend to weaken common juries, the Commission considered that cases might arise in which it might be highly desirable, in the interests of justice as well as to satisfy public opinion, to employ a special jury. They suggested that this object could be attained without weakening the common juries if out of the general list of jurors some of the more highly qualified persons were held to be special jurors and summoned when a special jury was required, remaining liable to be summoned with common jurors for ordinary cases. After further consideration, and examination of the diverse opinions received on this subject, we support the proposal of the Commission for the amendment of the law so as to enable the Local Government to put the suggested arrangements in force where it is found advisable to do so. The Local Government should, we think, have power to declare in which districts trials by special jury may be held, and the Sessions Judge should determine, on application made, whether or not a particular case should be tried by a special jury.

Paragraph 34 of the Report.

- (iii) In paragraph 37 of their Report the Commission recommended that, as under the earlier Codes, the Local Government should be empowered to fix the area for which each jury list should be prepared, since the district, which is the prescribed area under section 319 of the present Code, is of varying extent, and facility of communication varies. Under the provisions contained in this section all persons between the prescribed ages are liable to serve as jurors at any trial within the district in which they reside. It would appear that in some Provinces there is a practice of exempting all persons dwelling beyond a certain distance from the Court. We think that it would be appropriate to add to the existing section some such words as the following:—

"or, if the Local Government on consideration of local circumstances have fixed any other area in this behalf, within the area so fixed."

This would confer a power either to extend or to reduce the area.

- (iv) In paragraph 38 the Commission recommended that Honorary Magistrates should, as such, be included in all lists of jurors. They also took exception to certain exemptions granted by the Bengal Government under clause (k) of section 320 of the Criminal Procedure Code, and to the provisions of section 10 of Act VIII of 1878, under which the chief Customs authority or chief Customs officer is exempted from liability to serve as a juror, and also has power to exempt any other officer of Customs on grounds of public duty.

Honorary Magistrates are "Judges" within the meaning of section 320 of the Criminal Procedure Code, and as such are, at present, exempt from liability to serve as jurors or assessors. On this point we would prefer to make no change, as we consider it on the whole advisable to maintain the exemption of Honorary Magistrates. The exemption of Customs officers appears to be necessary, and in regard to the exemptions under clause (k) of section 320, sufficient reason has not, we think, been established for interference with the discretion vested in the Local Government.

- (v) On the question of allowing an appeal from the verdict of a jury, the Commission gave a somewhat uncertain judgment. While, however, they observed that opinion in England was inclined to an appeal, and remarked that

Paragraph 42 of the Report.

high authority had recommended that an appeal should be allowed when the jury were not unanimous and the judge dissented from the verdict, they held that the alterations which they had proposed in section 307 (*viz.*, that a Sessions Judge should refer the case to the High Court whenever he thought it clearly necessary, and that the High Court should consider the whole evidence) would sufficiently provide against failures of justice.

The Government of Madras regard it as essential to upholding the jury-system, that "under no circumstances should an appeal upon the facts be permitted" from a verdict and this is also the opinion of nearly all the authorities consulted by that Government. It is represented that the judge and jury before whom the case proceeds have better opportunities of judging than the High Court, which only sees the record: and that if the Sessions Judge does not consider a reference necessary, it is highly improbable that the High Court could interfere with good effect in appeal. The Bombay Government invite attention to a suggestion that the opinion of a bare majority of jurors should not be accepted as a verdict, but that, if a verdict is to be final, it should be a unanimous one or that of a majority not less than three-fourths. We are not, however, prepared to consider this point at present. The Bengal Government understands the proposal to be only to allow an appeal by Government against acquittal, and does not advocate this. There is nothing material on the question under notice in the replies from the Government of the North-Western Provinces and Oudh, the Chief Commissioner of Assam and the Calcutta High Court. As the Jury Commission did not advocate the proposal to allow an appeal on the facts, and the only opinions which we have received are strongly against it, we do not think that the proposal need be further considered unless and until the alterations which we propose in sections 303 and 307 of the Criminal Procedure Code are found in practice to be insufficient to provide against failures of justice.

(vi) Section 367 of the Criminal Procedure Code provides that, in trials by jury, the

Paragraph 43 of the Report.

Court need not write a judgment, but shall record the heads of the charge to the jury. The majority of the Jury Commission were of opinion that the suggestions which had been made for a *verbatim* record of the Sessions Judge's charge to the jury were impracticable; but the point was nevertheless urged by the two native members of the Commission—Sir Romesh Chunder Mitter and Maharaja Sir Jotindro Mohan Tagore. Neither of them, however, thought it practicable to require the judge himself to write out his charge; and Maharaja Sir Jotindro Mohan Tagore was doubtful about the plan, which Sir Romesh Chunder Mitter advocated, of attaching a short-hand writer to the Sessions Court. It will be seen that the Madras Government also, who alone have thought it necessary to take up the matter, hold that it is impossible to require the judge to record the charge *verbatim* with his own hand, and we are not prepared to press on Local Governments the suggestion that a short-hand writer should be provided in each Sessions Court where jury trial is held in order to record the charge. The present law requires that the Court shall record "the heads of the charge." There is no evidence that, under the practice thus prescribed, the recorded heads differ from the charges delivered, and it seems clear from the papers before us that no general need is felt for any change in the existing law. It would, therefore, in our opinion, be best to leave the subject untouched.

9. Coming now to the question of the operation of the jury-system, as it at present exists in the Madras Presidency, it will be seen that the Government of Madras are against any extension of the list of offences triable by jury there, and concur with the Jury Commission that offences relating to marriage should not be made triable by jury. They consider, however, that attempts

* Theft, robbery, receiving or concealing stolen property, house-trespass, and breaking a closed receptacle.

to commit, and abetments of, the offences * which are at present triable by jury in the Madras Presidency should also be made triable by jury. We should have been prepared to agree to the extension of the jury-system to offences relating to marriage (Chapter XX, Indian Penal Code) had it been proposed by the Local Government; but as matters stand we accept the views of the Governor in Council and shall inform the Madras Government that we do so.

10. The Government of Bombay are not now desirous to withdraw the privilege of jury trial in murder cases, where it has once been granted, but with a view to minimize such evils as arise from its exercise they propose that use should be made of the provisions of sections 277 to 279 of the Criminal Procedure Code, by challenging every juror who belongs to a class having a religious objection to the death sentence. They have also suggested that clause (h) of section 278 should be amended in such a way that discretion in allowing or disallowing the objection shall not rest with the Court. We are not prepared to support the proposed amendment, which would be contrary to section 279 of the Code.

The remaining suggestions of the Bombay Government are that in the districts of Surat, Thana and Belgaum, offences against the State and offences relating to the Army and Navy (Chapters VI and VII, Indian Penal Code) should be withdrawn from the cognizance of juries;

† Submitted with the letter from the Government of Bombay, No. 614, dated the 27th January 1893, a copy of which was forwarded to the India Office with despatch, No. 9 (Judicial), dated 9th February 1893.

and that, as suggested in the Minute † of the Honourable Mr. Justice Fulton, dated 3rd January 1893, "Jury districts" should be divided into two classes, in the first of which jury trials for all cases except those under Chapters VI and VII of the Penal Code should be allowed, while in the second, offences resulting in death should also be excluded.

We consider it preferable not to take the action proposed by the Bombay Government, and we will, in view of our proposal that the law should in future require our sanction to action under section 269 of the Criminal Procedure Code, request the Governor in Council not to extend the jury-system at present to the Sholapur district as proposed in paragraph 11 of the Bombay Government's letter * of 23rd September 1893.

* No. 8 in the list of enclosures.

11. It remains only to state the views of the Bengal Government on the subject of the extension of jury trial in that province. The Jury Commission forbore, upon the information before them, to give an opinion on the question of extending the system in the districts in which it is now in force to offences which are not at present triable by jury. Sir Romesh Chunder Mitter suggested that offences not exclusively triable by Courts of Session should be triable by jury in those Courts, and both he and Maharaja Sir Jotindro Mohan Tagore thought that all offences tried in the Sessions Courts in jury districts might be made triable by jury, save those which the Local Government might specifically except. His Honour the Lieutenant-Governor is in favour of making offences tried by the Sessions Court under Chapters XXI (Defamation) and XXII (Intimidation, Insult, and Annoyance), and also Chapter XX (Offences relating to Marriage) of the Indian Penal Code triable by jury in districts in which other offences are so triable. After carefully considering the question we are of opinion that matters should be allowed to remain as they are in Bengal for the present in respect of offences under Chapters XXI and XXII. We think, however, that offences under Chapter XX might be included in the list of offences triable by jury. In coming to this conclusion we have not failed to give weight to the contrary opinion expressed by the Jury Commission in regard to these offences, but we are not satisfied that the considerations urged in paragraph 29 of their report are of sufficient weight to justify us in overruling the opinion of the Local Government on this point.

The Jury Commission expressed no opinion upon the question of the extension of trial by jury in Bengal to districts in which it is not now in force. The subject is discussed in paragraphs 11 to 13 of the Bengal Government's letter, † No. 1350-J., dated the 5th March 1894,

† No. 9 in the list of enclosures.

and local opinion seems to be much divided about it. We are not entirely in agreement with the Lieutenant-Governor as to the districts to which extensions should be made, and it will be observed that his recommendation is made subject to the proviso that the amendments of sections 303 and 307 of the Criminal Procedure Code, which we have proposed in this despatch, should be carried out. We prefer to postpone discussion of the question of extending the jury system to other districts in the Lower Provinces until after the proposed amendment of the law has been effected.

Despatch from the Right Honourable Mr. H. H. FOWLER, Her Majesty's Secretary of State for India, to His Excellency the Right Honourable the Governor-General of India in Council, dated India Office, London, 31st January 1895, No. 3, Judicial.

I have considered in Council your Government's letter, No. 37, dated the 21st August 1894, in which you discussed the several amendments of the law which had been proposed in reference to the system of trial by jury in India. I accept generally the conclusions at which your Excellency in Council has arrived, but there are a few points as to which I have to make some observations.

2. In paragraph 10 of your letter you discuss and reject a suggestion of the Bombay Government for the amendment of section 278, clause (h). I do not regard this proposal as open to the remark that it is inconsistent with the provisions of section 279, but I agree that it should not be entertained at present. It seems probable that any judge would hold it to be a "sufficient" objection to a juror in a capital case that he is strongly opposed on religious grounds to doing anything which might lead to a sentence of death.

3. In the concluding paragraph of the letter under reply you deal with the question of extending trial by jury in Bengal to districts in which it is not now in force. The Lieutenant-Governor has recommended such extension to six districts on the understanding that the proposed amendments of sections 303 and 307 of the Code of Criminal Procedure are to be carried out, and that juries in those districts are not to take cognizance of charges of riot or murder. Your Government appear to favour some such extension, but have postponed the discussion of the question until sections 303 and 307 have actually been amended. The reason stated is that you are not entirely in agreement with Sir Charles Elliott as to the districts to which the system should be extended, but it would seem that there must be some districts as to which your opinion coincides with his, and I request that the extension may be conceded to those districts without further delay.

4. I observe, however, that Sir Charles Elliott is anxious to make the extension in the case of each district experimental in the first instance and subject to reconsideration year by year. There are obvious objections to the withdrawal of a privilege which has once been conceded, and it is inexpedient that the concession should be made to any district where it is not fairly certain of success.

5. The last point to which I wish to refer is the question of allowing an appeal from the verdict of a jury, or a majority of the jury. I do not altogether approve of the doctrine that "under no circumstances should any appeal upon the facts be admitted" from the verdict even of a bare majority. There could not, in my opinion, be any reasonable objection to legislation which will merely serve to make the practice of the Courts of Session more conformable to that which obtains in the Presidency towns. Section 305 relates to the High Courts and requires that the jury shall be discharged, with the object of holding a new trial, unless either the jury are unanimous or as many as two-thirds of them are of one opinion and the judge agrees with them. It has occurred to me that a similar rule might well be enacted for Courts of Session in lieu of that contained in section 306, merely substituting for the new trial the remedy which is more appropriate to those Courts, namely, an appeal to the High Court. The unanimous verdict of a jury would then continue to be conclusive upon the facts, subject to the provisions of section 307 as amended—but the verdict of a majority would be subject to appeal, unless such majority included at least two-thirds of the entire jury, and their opinions were expressly concurred in by the presiding judge.

6. I shall be glad if your Excellency will take this suggestion into consideration in Council. I am not disposed to overrule your decision that an appeal should not be allowed until there has been time to test the effect of the amendment of sections 303 and 307 in providing against failures of justice, but if the suggestion which I have made commends itself to your Government I shall have no objection to its being incorporated in the Bill which you are about to bring forward.

ORDER—No. 1515, Judicial, dated 18th July 1895.

Recorded.

(True Extract.)

Chief Secretary.

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

Ed. A. Raitt.

Judicial Dept.
CURRENT NO. 3068.

2364 - 28934

From, The Govt of India
Home Dept. (Jud.)

NO. 919

Dated 17th June 1895
Recd 27th June 1895

Encs: 2 & 7 each of the 2 of Rs. No. 2

Subj: Subj

Forwarding copies of the Despatches to and from the Sgts on the subject of the several amendments of the law which had been proposed in reference to the system of trial by jury in India.

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and 1/10/93

28/6

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So. 2364. 28 Sep 94 50

To 1747/8. 28 Aug 93 50

1658: 17.8.93 and

1022/93

582/93

H.M.

1022/93
582/93

d/18th July 1895 No. 1515

1517/95

Recorded.

11-7-95
13/7/95

show me file before
despatch. 1/10/95

b.s.c. sent 12/10/95

To the Hon. Mr. J. C. (C.L.)
deputy in M.S.
thru. Madras office
18/7/95

note

A copy of this will be
placed on Mr. Forbes' table.

Mr. Herbert in my notes
8/7/95.

T.T.

Issue & show both
files to Mr. Forbes, giving
him a copy of

the heads etc.

16.7

Judicial,
No. 3.

India Office,
London, 31st January 1895.

To His Excellency the Right Honourable the Governor General of
India in Council.

MY LORD,

I have considered in Council your Government's Letter, No. 37, dated the 21st August 1894, in which you discussed the several amendments of the law which had been proposed in reference to the system of trial by jury in India. I accept generally the conclusions at which your Excellency in Council has arrived, but there are a few points as to which I have to make some observations.

2. In paragraph 10 of your Letter you discuss and reject a suggestion of the Bombay Government for the amendment of Section 278, Clause (h). I do not regard this proposal as open to the remark that it is inconsistent with the provisions of Section 279, but I agree that it should not be entertained at present. It seems probable that any Judge would hold it to be a "sufficient" objection to a juror in a capital case that he is strongly opposed on religious grounds to doing anything which might lead to a sentence of death.

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I think we shall have to upon the question of appeals against the verdict of juries - at all events in cases in which they acquit. As I understand the law, I see no other way of dealing with the recurring scandal of acquittals of persons guilty of crimes in the Pres. & Towns.

contained in Section 306, merely substituting for the new trial the remedy which is more appropriate to those Courts, namely, an appeal to the High Court. The unanimous verdict of a jury would then continue to be conclusive upon the facts, subject to the provisions of Section 307 as amended— but the verdict of a majority would be subject to appeal, unless such majority included at least two-thirds of the entire jury, and their opinions were expressly concurred in by the presiding Judge.

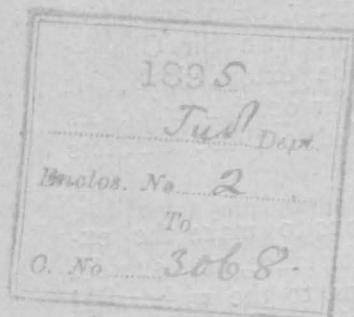
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I have the honour to be,

My Lord,

Your Lordship's most obedient humble Servant,

HENRY H. FOWLER.



No. 37 OF 1894.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

JUDICIAL.

TO THE RIGHT HONOURABLE H. H. FOWLER,

Her Majesty's Secretary of State for India.

Simla, the 21st August 1894.

SIR,

WITH reference to the correspondence ending with the Despatch from the Government of India, No. 17 (Judicial), dated the 29th March 1893, we have the honour to address you on the subject of the Report of the Commission appointed to consider the question of trial by jury in Bengal.

2. We consulted the different Local Governments and the High Court at Calcutta on the matter, and copies of the letters and replies are forwarded herewith. It will be seen that we—

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- (2) in regard to the question of amending section 303 of the Criminal Procedure Code, repeated the view (which the Commission did not share) that the section should be amended so as to empower the Judge to require special verdicts on particular issues of fact ; and
- (3) enquired from the Local Governments whether they had any objection to section 269 of the Code being amended so as to require that action under that section should be taken by Local Governments only with the previous sanction of the Governor General in Council.

The Governments of Madras and Bombay were at the same time asked to state generally what changes, if any, in the jury-system as now established in those Presidencies were recommended by them.

3. It will be convenient to discuss first the proposals (2) and (3), mentioned above, with reference to the replies received. The question in (2)—as to whether power should be given to Sessions Judges to put specific issues of fact before the jury—appears to us to have been discussed by many of those who have given their opinion upon it under the impression that the power to require a verdict on specific issues of fact would, if granted, allow an indefinite and extended cross-examination of the jury, who might be questioned as to their reasons for arriving at their verdict, and as to their belief in the evidence of any particular witness. We do not dispute that if powers of this nature were given to a Judge there would be a possibility of abuse. But our proposal to amend section 303 of the Criminal Procedure Code does not contemplate anything in the nature of the cross-examination of a jury, and we desire to express our concurrence in the view of the Bombay Government (*vide* paragraph 4 of their letter No. 5946,* dated the 23rd September 1893) that if

* No. 8 in the list of enclosures to this Despatch.

the particular issue of fact, on which a special verdict is desired, is carefully reduced to writing, with a close regard to the definition of the offence charged, there is no danger of the jurors becoming confused.

4. In civil cases in India the functions of the jury and the Judge are combined in the presiding officer. The law* requires that officer, before he proceeds to a decision, to frame issues which set forth the conditions necessary to the establishment of the claim, and to record a separate finding on each issue. At present no such obligation is imposed in criminal cases. But in many criminal trials the questions regarding the offence committed are quite as complicated as they are in suits respecting a civil claim. The Code of Criminal Procedure (section 297) requires the Judge "to lay down the law by which the jury are to be guided," but great difficulty is often experienced by Sessions Judges in bringing the minds of the jury in contact with the various essential considerations on which in difficult cases depends a proper verdict as to the exact offence committed. In these circumstances it would, in our opinion, not only be a great assistance to the Judge, but also a great assistance to the jury themselves in arriving at a decision, if, as the Bombay Government suggest, the Judge were to cause the material issues upon which a finding is required to be laid before the jury and were to require them to give a separate verdict upon each issue.

5. We are, therefore, of opinion that the Judge should be allowed to require from the jury separate findings on any questions of fact which he may think material. The statement of these issues will in itself be calculated to assist the jury. Whether this can be more suitably done before the jury have delivered their general verdict or afterwards, is a matter which we are disposed to leave to the Select Committee if a Bill is introduced; but as at present advised we think that it can be more suitably done before the general verdict is given as a general rule, though in particular cases and to clear up doubtful points it might doubtless be usefully done afterwards. It is however to be noticed that if after a jury have returned a general verdict they are required to bring in separate findings on subordinate points, there will be some difficulty in avoiding at least the appearance of cross-examination. We think that an amendment of section 303 could be drafted without difficulty, which would, on the one hand, admit questions on particular issues of fact material to a charge, and, on the other, exclude questions relating to the reasons for a decision or the credibility of particular evidence.

6. There is a very large consensus of opinion among the authorities consulted in favour of the general course which we recommend. It is supported by the Governments of Madras and Bombay, by most of the officers consulted in Bengal, by the High Court of the North-Western Provinces, and by the Lieutenant-Governor of the North-Western Provinces and Oudh. On the other hand, the members of the Jury Commission and the Judges of the Calcutta and Bombay High Courts are opposed to our proposal. We have given full consideration to the opinions expressed by these authorities, but we are unable to agree that the views which they put forward should be allowed to prevail. The Jury Commission, while reluctantly concluding that the proposed procedure would be liable to create greater evils than it would remedy, did not state the nature of the evils which they apprehended. The objection of the Judges of the Bombay High Court is, it appears to us, based upon a misapprehension of the proposed amendment which has led them to surmise that the jurors will virtually be called upon to give their reasons for their conclusion. It seems to us, however, that any possible danger of this nature could be obviated by such an amendment as is suggested in the last foregoing paragraph.

The Judges of the Calcutta High Court seem to have treated together the two proposals discussed in paragraphs 32 and 33 of the Report of the Commission; but, as we have already pointed out, these two proposals are entirely distinct. The Honourable Court think that to allow the Judge to state issues of fact for the finding of the jury "would furnish an additional ground for appeal from a conviction on the verdict of a jury" on the basis, substantially, of misdirection by the Judge. We are, however, disposed to conclude that, on the contrary, appeals on the ground of misdirection by the Judge would be likely to become rarer than at present, if it were the practice for Judges to break up a complicated charge into its elements, and to ask the jury to come to a decision upon each of them separately. It would also, we think, be always evident if the issues were stated

and separate findings taken upon them, whether an erroneous direction by the Judge had had any influence on the general verdict.

7. After carefully considering the replies of the Local Governments to our letters of the 6th May 1893, regarding the question of amending section 269 of the Criminal Procedure Code, we are of opinion that the law should be amended so as to require the previous sanction of the Governor General in Council when action is proposed to be taken under the section.

8. We now proceed to the proposals of the Jury Commission for amending the Criminal Procedure Code. These we have fully considered with reference to the replies received, and we shall now state our conclusions.

(i) The Commission recommended that, for the words "so completely that he considers it" in the first paragraph of section 307, the words "and is clearly of opinion that it is" should be substituted: and that the last paragraph of the section should provide that the High Court should consider the entire evidence in a referred case, and after giving due weight to the opinions of the Sessions Judge and jury should exercise the powers conferred by the paragraph. We think that the Commission's proposal may in substance be accepted, it being left to the Select Committee to decide on the exact wording of the amendments to be made in section 307.

(ii) While agreeing with the conclusion previously arrived at by the Government of India that it was not desirable to have Special Juries, in so far as these might tend to weaken Common Juries, the Commission considered that cases might arise in which it might be highly desirable, in the interests of justice as well as to satisfy public opinion, to employ a Special Jury. They suggested that this object could be attained without weakening the Common Juries if out of the general list of jurors some of the more highly qualified persons were held to be Special Jurors and summoned when a Special Jury was required, remaining liable to be summoned with Common Jurors for ordinary cases. After further consideration, and examination of the diverse opinions received on this subject, we support the proposal of the Commission for the amendment of the law so as to enable the Local Government to put the suggested arrangements in force where it is found advisable to do so. The Local Government should, we think, have power to declare in which districts trials by Special Jury may be held, and the Sessions Judge should determine, on application made, whether or not a particular case should be tried by a Special Jury.

(iii) In paragraph 37 of their Report the Commission recommended that, as under the earlier Codes, the Local Government should be empowered to fix the area for which each jury list should be prepared, since the district, which is the prescribed area under section 319 of the present Code, is of varying extent, and facility of communication varies. Under the provisions contained in this section all persons between the prescribed ages are liable to serve as jurors at any trial within the district in which they reside. It would appear that in some Provinces there is a practice of exempting all persons dwelling beyond a certain distance from the Court. We think that it would be appropriate to add to the existing section some such words as the following:—

"or, if the Local Government on consideration of local circumstances have fixed any other area in this behalf, within the area so fixed."

This would confer a power either to extend or to reduce the area.

(iv) In paragraph 38 the Commission recommended that Honorary Magistrates should, as such, be included in all lists of jurors. They also took exception to certain exemptions granted by the Bengal Government under clause (k) of section 320 of the Criminal Procedure Code, and to the provisions of section 10 of Act VIII of

1878, under which the Chief Customs Authority or Chief Customs officer is exempted from liability to serve as a juror, and also has power to exempt any other officer of Customs on grounds of public duty.

Honorary Magistrates are "Judges" within the meaning of section 320 of the Criminal Procedure Code, and as such are, at present, exempt from liability to serve as jurors or assessors. On this point we would prefer to make no change, as we consider it on the whole advisable to maintain the exemption of Honorary Magistrates. The exemption of Customs officers appears to be necessary, and in regard to the exemptions under clause (k) of section 320, sufficient reason has not, we think, been established for interference with the discretion vested in the Local Government.

(v) On the question of allowing an appeal from the verdict of a jury, the Commission gave a somewhat uncertain judgment.

Paragraph 42 of the Report.

While, however, they observed that opinion in England was inclined to an appeal, and remarked that high authority had recommended that an appeal should be allowed when the jury were not unanimous and the Judge dissented from the verdict, they held that the alterations which they had proposed in section 307 (*viz.*, that a Sessions Judge should refer the case to the High Court whenever he thought it clearly necessary, and that the High Court should consider the whole evidence) would sufficiently provide against failures of justice.

The Government of Madras regard it as essential to upholding the jury-system; that "under no circumstances should an appeal upon the facts be permitted" from a verdict and this is also the opinion of nearly all the authorities consulted by that Government. It is represented that the Judge and jury before whom the case proceeds have better opportunities of judging than the High Court, which only sees the record: and that if the Sessions Judge does not consider a reference necessary, it is highly improbable that the High Court could interfere with good effect in appeal. The Bombay Government invite attention to a suggestion that the opinion of a bare majority of jurors should not be accepted as a verdict, but that, if a verdict is to be final, it should be a unanimous one, or that of a majority not less than three-fourths. We are not, however, prepared to consider this point at present. The Bengal Government understands the proposal to be only to allow an appeal by Government against acquittal, and does not advocate this. There is nothing material on the question under notice in the replies from the Government of the North-Western Provinces and Oudh, the Chief Commissioner of Assam and the Calcutta High Court. As the Jury Commission did not advocate the proposal to allow an appeal on the facts, and the only opinions which we have received are strongly against it, we do not think that the proposal need be further considered unless and until the alterations which we propose in sections 303 and 307 of the Criminal Procedure Code are found in practice to be insufficient to provide against failures of justice.

(vi) Section 367 of the Criminal Procedure Code provides that, in trials by jury, the Court need not write a judgment, but shall record the heads of the charge to the jury. The majority of the Jury Commission were of opinion that the suggestions which had been made for a *verbatim* record of the Sessions Judge's charge to the jury were impracticable; but the point was nevertheless urged by the two native members of the Commission—Sir Romesh Chunder Mitter and Maharaja Sir Jotindro Mohan Tagore. Neither of them, however, thought it practicable to require the Judge himself to write out his charge; and Maharaja Sir Jotindro Mohan Tagore was doubtful about the plan, which Sir Romesh Chunder Mitter advocated, of attaching a short-hand writer to the Sessions Court. It will be seen that the Madras Government also, who alone have thought it necessary to take up the matter, hold that it is impossible to require the Judge to record the charge *verbatim* with

Paragraph 43 of the Report.

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his own hand, and we are not prepared to press on Local Governments the suggestion that a short-hand writer should be provided in each Sessions Court where jury trial is held in order to record the charge. The present law requires that the Court shall record "the heads of the charge." There is no evidence that, under the practice thus prescribed, the recorded heads differ from the charges delivered, and it seems clear from the papers before us that no general need is felt for any change in the existing law. It would, therefore, in our opinion, be best to leave the subject untouched.

9. Coming now to the question of the operation of the jury-system, as it at present exists in the Madras Presidency, it will be seen that the Government of Madras are against any extension of the list of offences triable by jury there, and concur with the Jury Commission that offences relating to marriage should not be made triable by jury. They consider, however, that attempts to commit, and abetments of, the offences* which are at present triable by jury in the Madras Presidency should also be made triable by jury. We should have been prepared to agree to the extension of the jury-system to offences relating to marriage (Chapter XX, Indian Penal Code) had it been proposed by the Local Government; but as matters stand we accept the views of the Governor in Council and shall inform the Madras Government that we do so.

10. The Government of Bombay are not now desirous to withdraw the privilege of jury trial in murder cases, where it has once been granted, but with a view to minimize such evils as arise from its exercise, they propose that use should be made of the provisions of sections 277 to 279 of the Criminal Procedure Code, by challenging every juror who belongs to a class having a religious objection to the death sentence. They have also suggested that clause (h) of section 278 should be amended in such a way that discretion in allowing or disallowing the objection shall not rest with the Court. We are not prepared to support the proposed amendment, which would be contrary to section 279 of the Code.

The remaining suggestions of the Bombay Government are that in the districts of Surat, Thana and Belgaum, offences against the State and offences relating to the Army and Navy (Chapters VI and VII, Indian Penal Code) should be withdrawn from the cognizance of juries; and that, as suggested in the Minute† of the Honourable Mr. Justice Fulton, dated 3rd January 1893, "Jury Districts" should be divided into two classes, in the first of which jury trials for all cases except those under Chapters VI and VII of the Penal Code should be allowed, while in the second, offences resulting in death should also be excluded.

We consider it preferable not to take the action proposed by the Bombay Government, and we will, in view of our proposal that the law should in future require our sanction to action under section 269 of the Criminal Procedure Code, request the Governor in Council not to extend the jury-system at present to the Sholapur District as proposed in paragraph 11 of the Bombay Government's letter‡ of the 23rd September 1893.

11. It remains only to state the views of the Bengal Government on the subject of the extension of jury trial in that Province. The Jury Commission forbore, upon the information before them, to give an opinion on the question of extending the system in the districts in which it is now in force to offences which are not at present triable by jury. Sir Romesh Chunder Mitter suggested that offences not exclusively triable by Courts of Session should be triable by jury in those Courts and both he and Maharaja Sir Jotindro Mohan Tagore thought that all offences tried in the Sessions Courts in jury districts might be made triable by jury, save those which the Local Government might specifically except. His Honour the Lieutenant-Governor is in favour of making offences tried by the Sessions Court under Chapters XXI (Defamation)

* Theft, robbery, receiving or concealing stolen property, house-trespass, and breaking a closed receptacle.

† Submitted with the letter from the Government of Bombay, No. 614, dated the 27th January 1893, a copy of which was forwarded to the India Office with Despatch No. 9 (Judicial), dated 9th February 1893.

‡ No. 8 in the list of enclosures.

*Not in the margin
as to be incomplete
Society is triable by
jury, but perhaps
the same and robbery
is intended to cover
Society*

and XXII (Intimidation, Insult, and Annoyance), and also Chapter XX (Offences relating to Marriage) of the Indian Penal Code triable by jury in districts in which other offences are so triable). After carefully considering the question we are of opinion that matters should be allowed to remain as they are in Bengal for the present in respect of offences under Chapters XXI and XXII. We think, however, that offences under Chapter XX might be included in the list of offences triable by jury. In coming to this conclusion we have not failed to give weight to the contrary opinion expressed by the Jury Commission in regard to these offences, but we are not satisfied that the considerations urged in paragraph 29 of their report are of sufficient weight to justify us in overruling the opinion of the Local Government on this point.

The Jury Commission expressed no opinion upon the question of the extension of trial by jury in Bengal to districts in which it is not now in force. The subject is discussed in paragraphs 11 to 13 of the Bengal Government's letter* No. 1350-J., dated the 5th March 1894, and local opinion seems to be much divided about it. We are not entirely in agreement with the Lieutenant-Governor as to the districts to which extensions should be made, and it will be observed that his recommendation is made subject to the proviso that the amendments of sections 303 and 307 of the Criminal Procedure Code, which we have proposed in this Despatch, should be carried out. We prefer to postpone discussion of the question of extending the jury-system to other districts in the Lower Provinces until after the proposed amendment of the law has been effected.

We have the honour to be,

SIR,

Your most obedient, humble Servants,

ELGIN.

G. S. WHITE.

A. E. MILLER.

H. BRACKENBURY.

C. B. PRITCHARD.

J. WESTLAND.

A. P. MACDONNELL.

* No. 9 in the list of enclosures.

LIST OF ENCLOSURES.

1. Letter to the Governments of Madras and Bombay, Nos. 545 and 546, dated the 6th May 1893.
2. Letter to the Government of Bengal, No. 547, dated the 6th May 1893.
3. Letter to the Government of the North-Western Provinces and Oudh, No. 548, dated the 6th May 1893.
4. Letter to the Chief Commissioner of Assam, No. 549, dated the 6th May 1893.
5. Letter to the Registrar of the Calcutta High Court, Appellate Side, No. 550, dated the 6th May 1893.
6. Letter from the Government of Madras, No. 1748, dated the 28th August 1893, and enclosures.
7. From the Government of Madras, No. 727-A., dated the 21st March 1894.
8. Letter from the Government of Bombay, No. 5946, dated the 23rd September 1893, and enclosures.
9. Letter from the Government of Bengal, No. 1350-J., dated the 5th March 1894.
10. Letter from the Government of the North-Western Provinces and Oudh, No. 2664, dated the 20th September 1893, and enclosures.
11. Letter from the Chief Commissioner of Assam, No. ^{86 L.L.}₇₃₃₁-J., dated the 9th September 1893.
12. Letter from the Registrar, Calcutta High Court, Appellate Side, No. 2554, dated the 18th July 1893.

No.

1894.

GOVERNMENT OF INDIA.
HOME DEPARTMENT.

JUDICIAL.

No. 37, DATED SIMLA, THE 21ST AUGUST 1894.

(Copy.)

LETTER TO HER MAJESTY'S SECRETARY OF
STATE FOR INDIA.

SUBJECT.

With reference to previous correspondence,
forwards copies of papers and communicates
the views of the Government of India on
the proposals of the Bengal Jury Commis-
sion and connected questions.

G. C. Press, Simla.—No. 594 H. D.—18-8-94.—16

CURRENT NO. 3068

No. 919

FROM

J. P. HEWETT, ESQ., C.I.E.,
Offg. Secretary to the Govt. of India.

TO

The Chief Secretary to the Govt. of Madras.

Home Department.
Judicial.

Simla, the 17 June 1895.

SIR,

IN continuation of my letter No. 989, dated the 10 Sept. 1894,
I am directed to forward, for the information of the Governor
in Council, copies of the

* Despatch to the Secretary of State, No. 37
(Judicial), dated the 21st August 1894.
Despatch from the Secretary of State, No. 3
(Judicial), dated the 31st January 1895.

reference to the system of trial by jury in India.

2. The legislation necessary in order to give effect to the proposals approved
by the Secretary of State will be undertaken in the Council of the Governor
General for making Laws and Regulations. The Governor General in Council
does not, for the present, propose to enact an amendment of the law to provide
an appeal against the verdict of a jury on a matter of fact.

I have the honour to be,

SIR,

Your most obedient Servant,

J. P. Hewett.

Offg. Secretary to the Govt. of India.

NOTE FOR THE H.B.

This y.o. was commd to the High Court in msl. baly copy of the current and order was sent. No spare copies of the mss have been received. Without enclosures the y.o. will be unintelligible.

Therefore, please print the y.o. now and send spare copies to the High Court. On the msl copy I made a note to the effect that printed copies of the full y.o. would follow

1/10/18 12/1

First copy sent to Press.

Returned for signature.

Despatched in print.

READ AGAIN G.H. No. 139

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.

N.B. -

A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.