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Judicial Department

G. O. No. 318
Dated 17-2-1879

A. H.

318
GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

17th February 1879, No. 318.

Trial by Jury.

Read the following paper:—

No. 112. *From T. WEIR, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Acting Chief Secretary to Government, dated Madras, 15th January 1879, No. 45.*

In the order of Government, dated 30th July 1878, reviewing the High Court Administration Report for 1877, Government observed that the statistics relating to the offences against property tried by Jury spoke well for the success of the system, and requested the High Court to ascertain and report the opinion of the Sessions Judges in whose districts the system of trial by Jury had not been introduced as to the propriety of extending this form of trial with the limit as to the class of offences triable hitherto existing.

2. The opinions of the several Sessions Judges have now been ascertained, and I am to transmit, for the information of Government, a tabular statement in which the purport of each Session Judge's opinion is stated, together with the original letters conveying the opinion of such Judges.

3. It will be observed that the opinion of the majority of those consulted is unfavorable to any extension of the system. One gentleman (Mr. Wilkinson) expresses no opinion, and Mr. Brandt's opinion may perhaps be regarded as dubious.

4. Mr. Justice Innes, Mr. Justice Kernan, and Mr. Justice Muttusami Aiyar think that the system of trial by Jury might be extended experimentally to those districts in which the Sessions Judges are in favor of the extension, viz., Chingleput, Coimbatore, Madara, South Canara, Nilgiris, Trichinopoly, but not elsewhere.

5. Mr. Justice Forbes (who has had a large experience as a Sessions Judge), on the other hand, would not recommend the extension of the system to any new district except the Nilgiris.

No. 113. ORDER THEREON, 17th February 1879, No. 318.

Having considered the recommendation of the Honorable the Judges of the High Court, and the views of the Session Judges as set forth in the papers accompanying the foregoing letter, His Grace the Governor in Council resolves to extend the system of trial by Jury to the districts of South Canara, Madura, and the Nilgiris; and directs that the following Notification be published accordingly in the *Fort St. George Gazette* and in the Gazettes of the abovementioned districts:—

NOTIFICATION.

In continuation of Notification under date the 14th April 1863 and Notifications previous thereto, His Grace the Governor in Council is pleased, under the provisions of Section 233 of the Code of Criminal Procedure, to order that the trial of offences described in the undermentioned sections of the Indian Penal Code shall be by Jury in the Session Courts of South Canara, Madura, and the Nilgiris.

JUDICIAL DEPARTMENT, 17TH FEBRUARY 1879, No. 318.

Sections 370, 380 and 382, (theft);
Sections 392, 393, 394, 395, 397, 398, 399, 400, 401 and 402 (Robbery);
Section 411 (dishonestly receiving stolen property);
Section 412 (dishonestly receiving stolen property stolen in the commission of a felony);
Section 414 (assisting in concealment or disposal of stolen property);
Sections 451, 452, 453, 454, 455, 456, 457, 458, and 459 (house trespass);
and,
Section 461 (dishonestly breaking open any closed receptacle containing property).

(By Order of His Grace the Governor in Council.)

C. G. MASTER,
Acting Chief Secretary.

To the Honorable the Judges of the High Court,
(with covering letter to Chief Justice), with original enclosures.
To all Sessions Judges.
„ all District Magistrates.

No 45.

2/1
From

3/8/83

of Mr. Esquerr,

Acting Registrar of the High Court
of Judicature at Madras.

2/1
To

C. G. Master Esquerr,

Acting Chief Secretary
to Government.

Sir,

In the Order of Government
dated 30th July 1878 reviewing the High Court
Administration Report for 1877, Government
observed that the Statistics relating to the
affluence against property tried by Jury
spoke well for the success of the system,
and requested the High Court to ascertain
and report the opinion of the Sessions
Judges in whose Districts the system of
trial by Jury had not been introduced
as to the propriety of extending this form
of

Code of 1870

JUDICIAL

2.

THE HONORABLE THE JUDGES
OF THE HIGH COURT
OF MADRAS

Per Mr. Esquerr

1/1

A. M.

G.O. 1704 T. 10000 1500, M. 312.

RECEIVED
NOV. 12-1883.

Printed by Mr. Esquerr—The Government of India by Mr. Esquerr
Printed to the Government of India by Mr. Esquerr
Printed, and the Government

of trial with the limit as to the class of
offences triable hitherto existing.

The opinions of the several Sessions
Judges have now been ascertained, and I
am to transmit for the information of
Government a tabular statement in which
the purport of each Sessions Judge's
opinion is stated together with the
original letters conveying the opinions
of such Judges.

It will be observed that the
opinion of the majority of those consulted
is unfavorable to any extension of the
system. One gentleman (Mr. Wilkinson)
expresses no opinion, and Mr. Brandt's
opinion may perhaps be regarded as dubious.

Mr. Justice Dune, Mr. Justice
Larnan and Mr. Justice Muttusami Aiyar
think that the system of trial by jury
might be extended experimentally to
those districts in which the Sessions
Judges are in favor of the extension.

218/4
Viz. Chingleput, Caimbatore, Madras, South
Canara, Nilgiris, Trichinopoly, but not elsewhere.

Mr. Justice Fortescue (who has had
a large experience as a Sessions Judge)
on the other hand, would not recommend
the extension of the system to any new
District except the Nilgiris.

I have the honor to be,

Sir,

Your most Obedient Servant,

High Court of
Judicature, Madras,
15 January 1877.

P.
De.

Acting Registrar,
Appellate Side.

318/5

Replies to the Circular letter dated 4th September 1878 in respect of the propriety of extending the system of trial by Jury of offences against property.

District	Name	Purport of reply.
Arrest (South)	O. B. Irvine Esq.	States that unless the services of a sufficient number of really intelligent persons can be secured, he would deprecate a change from the present system both on public grounds as well as in justice to accused persons placed on their trial.
	<u>Against</u>	
Bellary	J. H. Williams Esq.	Made a very short experience in the District Court and states that he would not venture to record an opinion on a subject on which the opinion of the Honorable Mr. Justice Fortes would be of much weight.
	<u>No opinion</u>	
(South) Canara	J. W. Brat Esq.	States that he sees no reason why the system should not be attended with the same success as appears to have attended it elsewhere.
	<u>For</u>	

See 302 July 1878 and 1879-7

1879 Department

(with Mr. Irvine)

The Acting Registrar of the High Court of Judicature, Madras.

The Acting Chief Secretary to Government

Madras 16th January 1879.

No. 495. Enclosure 20-1878

Transmitting the original letters containing the opinions of certain Honorable Judges as to the propriety of extending the system of trial by Jury to this District together with a tabular statement showing the purport of such opinions and conveying the opinions of the Queen's Judges of the District and the District Judge.

Chingapat J. Hope Esq. Thinks that the system of Jury-trial
may be extended to the District and
states that if the system is introduced
the area from which qualified persons
are selected, must be considerably
enlarged, adding that this could be
done without much inconvenience to
the public as the South India Railway
passes through a great part of the
District and persons might easily
come if they reside at any of the
stations on the line.

... J. Hope Esq. Thinks that the system of trial by
Jury might well be introduced
in the District and that there would be
no difficulty in obtaining the
necessary number of Jurors of
due intelligence.

... J. Hope Esq. Does not consider it advisable to
extend the system of trial by Jury
and states that there would not be
a sufficient number of persons
qualified by education and intelligence
to act as both Jurors and Assessors.

Ganjam G. D. Chaman Esq. Doubts the possibility of getting a
sufficient number of intelligent
persons in the station, Bitterpore, to
form a Jury and adds that as the Asses-
sors Court is for some 4 months moving
about, there would be most serious
delay in the disposal of Cases if the
system were introduced.

Kistna J. Kilsall Esq. Does not consider that the system
should be extended even for a limited
number of Cases as a proper verdict
could not be looked for, the present
Assessors having no idea of the value
of circumstantial evidence and most
of them being unwilling to take the
responsibility of finding a prisoner guilty.

Kurnool The Hon. J. B. V. Chinn States that the introduction of the system is
undesirable and would be attended with
no advantage, that the number of Assessors
available at present is very small and
that the majority of them are quite incapable
of forming a correct and independent opinion.
Is in favor of extending the system to all the
Districts with which he has any personal
acquaintance. States that the people are
quite accustomed to trial by Panchayats
and thinks that the obvious advantages of
the system preponderate far above its
possible dangers.

(North)
Malabar J. H. Woodroffe Esq. Fails to discover any solid *a priori* ground
for the extension, and with reference to his
experience of Juries deprecates any extension
of the system. Doubts whether the swelling of
the system really commends itself to intelligent
and respectable natives.

(South)
Malabar J. Wigram Esq. Is not in favor of extending the system
of trial by Jury. States that the introduction
of the system would be hailed with delight
(1) by the wealthy receivers of State property
principally Moplas, as one or two of their
countrymen would always be on the Jury to
bring in a verdict of not guilty, also
(2) by the practitioners of the Court whose
arguments are generally better fitted to
move a flexible jurymen than a stolid
Judge.

Nellore J.D. Goldingham Esq. Againt States that he is decidedly opposed to the measure as education has not made a sufficient hold on the masses of the people to render their decisions really sound, that nothing would be gained by converting into Jurors the Paddies now serving as Assessors and that as in 20 years time things may be different, he would leave things as they are.

Nilgiris P.H. Barlow Esq. Jud. Commr. States that respectable and intelligent Europeans and Natives are numerous in his district and that the system of Jury-trial if introduced would prove successful.

Salem J.C. Hughesdon Esq. Againt States that it would be inexpedient to introduce the Jury system into the District as the number of assessors barely exceeds 80 and as it is to be presumed that under Section 408 of the Code of Criminal Procedure all men competent for the post of jurymen are already on the list, the numbers therefore cannot be increased.

Simerville J.F. Smith Esq. Againt Does not think it advisable to extend the system or that it would work well in the District. Believes that there would be great difficulty in getting the number of men required to serve as Jurors, while the Collector is of opinion that those required to serve would look upon it as an additional grievance.

Trichinopoly T. Brandt Esq. For States that any discussion on the abstract question whether the introduction of the system of Jury-trial is desirable or not would appear to be out of place inasmuch as the principle has been resolved upon, but thinks that the experiment might be tested in his District as elsewhere.

Tirupatnam B. Boushugh Esq. Againt States that his opinion is decidedly against extending the system of trial by Jury to the Sessions Division.

Abstract.

For	Against	No opinion expressed.
Canara (South)	Arcoot (South)	1. Bellary.
Chingleput	Ganjam (Sess. Judge)	
Covimkator	Ganjam (Agent)	
Madura	Kistna	
Nilgiris (Jud. Commr.)	Kurnool	
Trichinopoly	Malabar (N)	
	Malabar (S)	
	Nellore	
	Salem	
	Simerville	
	11. Tirupatnam (Sess. Judge)	

P.O.
By Registrar
opposite side

DEPARTMENT.

From the Ag. Rep., Wash Com., 15 Jan 7/79, p. 45.

Dated

187

C.O. 30 July 78, N^o 1527, para
5, noticing favorably the success of
the jury system in the 5 districts
in which it now obtains, requests
the High Ct to ascertain the opinion
of the remaining Circuit Judges as
to the propriety of ^{extending} the system.

The obj. is that
6 Judges are pro, and 11 against,
Any extension of the system, as
Judge of Bellamy offering no opinion;
and the Judges (Forbes & dissenting)
recommend the experimental extension
of the system to those districts in which
the Judges are in favour.

<i>Silene</i>	<i>Madura</i>
<i>Chingifolia</i>	<i>Nilgiris</i>
<i>Coriariensis</i>	<i>Kuchingfolia</i>

High Court of Judicature
Madras, dated 15 January 1899.
N^o 45.

10

820-9279.

Postholder.

3/5/9

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381. History etc. etc.
382. History etc. etc.
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FOR ORDERS.

From

Dated

No.

15th Jan 79.

FOR ORDERS.

The new Code of Crim. Pro - came first into force in '62; and it is substantially the same code, though patched & mended since.

It introduced Juries; i.e. every case must be tried by the Judge & jury or a Judge alone.

All crimes, on certain classes of crime, may, by a C.D. apply to the

to any or all of these, be tried by a Jury -

In this Part, the only crimes so are offences against property.

It was thought best to begin cautiously, and only those judges who desired to work the system, were entrusted in these other cases in which -

In the H. Ct. Annual Report for 77, we noted (last para) that the results are satisfactory; and from inquiries made, it appears that the other judges are ready to have juries - I propose that the

Do not introduce in
formation re the
decision in the absence
of the Judge & jury
with the Judge alone
& the Judge alone
sanction - Do not sanction
& do not sanction
in these other cases in which -
Do not sanction in
form of it.

22.6.79

I am not aware

Then be accepted.

43 - The differences are -

- (1) into appeals - Tho' the Judge agrees
with them, there is an appeal
to the H. C.

- (2) into June's - If the Judge agrees
with the Jury (on majority)
there is no appeal, except
on a point of Law.

- (a) into a free port. If he judges proper,
he proceeds on his own
view, to convert on a capit.

- the entire - If he judge proper,
he suspends judgment,
& refers to Hyltse for their
opinion, which is final.

2. Personally, from my own experience of Turies (5 years) I don't incline to introduce him (into the Com. as we now have as to enemies) in every Co.: but perhaps others will not agree to this.

In Bengal, they are established for
all crimes; but that I sh^d. strongly
oppose.

5.7.18/4

To a cautious development of the jury system
but I would not extend it too widely or
where there is any doubt of competent
jurors in sufficient number & where
present any real inconvenience to those
summoned - That as this & attendances
as jurors is a considerable tax on individuals
~~S. 226~~ which the system will inevitably fail &
being almost lost in the system and
on justice if tried with insufficient
number of really competent jurors
reading the record - I would say let
it be extended to Madras & Mysore

I agree with the ~~Medical~~ ^{Medical} as regards
Cain's case — in Memphis — it is clear
the finger cannot be obtained without going
for a field for them — I am sure I
cannot get by ⁱⁿ ~~while~~ ^{Malabar} it
is objected to — I do not think
Dr. W. has had that experience
of Mississippi that I should like to try it.

12318 of 17 February 1799

who very much
appears

FOR ORDERS.

17/2/79

17/2/79

17/11 1/2 3/2

318
12

Jud. Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter :-

From the Ag. Rep. High Court, Madras, dated 15 Jan 7/79, No 45.

Order of Feb 7/79 No 318.

Having considered the recommendations of the Honble the Judges of the High Court & the views of the Session Judges, as set forth in the papers accompanying the foregoing letter, His Grace the Governor in Council resolves to extend the system of trial by jury to the Districts of South Arcot, Madurai, and the Nilgiris; and directs that the following Notification be published accordingly, in the Fort St. George Gazette & in the Gazettes of the abovesaid Districts.

SM
concurring

Notification

In continuation of Noti.

decision under date the 14th
 April 1863 ^{Notifications} & previous thereto,
 His Grace the Gov^r in Council
 is pleased, under the provisions
 of section 233 of the Code of
 Criminal Procedure, to order
 that the trial of offences de-
 scribed in the undermentioned
 sections of the Indian Penal Code
 shall be by jury in the Session
 Courts of South Canara, Madras,
 and the Nilgiris.

- Sections 379, 380, & 382 (Theft);
- Sections 392, 393, 394, 395, 397, 398,
399, 400, 401, & 402 (Robbery);
- Section 411 (Dishonestly receiving
stolen property);
- Section 412 (Dishonestly receiving
stolen property in the
commission of a dacoity);
- Section 414 (Assisting in concealment
or disposal of stolen pro-
perty);
- Sections 451, 452, 453, 454, 455, 456,
457, 458, & 459 (House Trespass);
- Section 461 (Dishonestly breaking open
any closed receptacle con-
taining property).

2. The evidence in the trial

(To be taken in Court
 and entered in the Court
 records and the trial
 shall be conducted in
 accordance with the
 provisions of the Code
 of Criminal Procedure
 and the Indian Penal
 Code.)

shall be taken down ³¹⁸ by the pre-
 siding Judge with his own hand
 in the English language, under
 the provisions of section 335 of the
 said Code of Criminal Procedure.
 (By order of His Grace the
 Gov^r in Council)

M.S.

To
 The Honble. the Judges of the
 High Court (with covering letter to C.J.) with original
 All Session Judges. 6x20-126
 All District Magistrates. 130
 Garetto. 4/3
 12.2.79.

*History of the
System of Slavery
in America, & the
West Indies.*

Capt. of 1879
Judicial

Dated 17th
Recd. July. 1879. No. 318

Nos. 112-113

Trial by Jury - The
system of trial by
jury referred to the
District of Columbia
- Mary, Alexander, Jr.
The challenge.

*History of the
System of Slavery
in America, & the
West Indies.*