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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No.	538	Press.
~~B.P. No.~~		Mis.
Dated	1 - 3 - 1888	~~AE~~

25

Not to be folded or roughly handled.

1st March 1888,

J. JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper:—

From Colonel T. WELDON, Commissioner of Police, to the Chief Secretary to Government, dated Madras, 10th January 1888, No. 2.

I have the honor, in reference to paragraph 3 of G.O., dated 21st December 1887, No. 2907 (Judicial), to submit proposed rules for the payment of the expenses of complainants and witnesses attending the Criminal Courts in the Presidency town.

2. As it is obvious that a person's expenses will be the same whatever court he attends, there does not appear to be any reason for having more than one set of rules, and these may be held applicable to all cases in which it may be proper to pay on behalf of Government the expenses of persons attending criminal trials. The rules now proposed, or such other rules as Government may finally approve, might be notified as in supersession of all previous rules in order to avoid raising doubts on the subject.

3. The scale of expenses adopted is, with slight exception, that which has been in force since 1878 as applicable to the Presidency Magistrate's Courts, and which has been found to be equitable and easy to apply in several claims.

4. The exception referred to in paragraph 3 is the maximum carriage hire to be allowed to a witness in the first class. This has been raised from Rs. 2½ to 3 per diem, the latter sum being the actual charge for the hire of a carriage for the day both by custom and under the Hackney Carriage Act. This is also the sum which is payable to witnesses attending the High Court under the rules of 1863 and was specially fixed as the amount to be granted in such cases by G.O. 2nd August 1870. The carriage hire for a native witness in the first class has also been raised to Rs. 2 per diem.

5. Government, in their order, dated 25th February 1879, No. 397, have already decided that a witness resident in the Presidency town is entitled only to be reimbursed actual money out of pocket paid as expenditure rendered necessary by the obligation to attend the courts in furtherance of justice. This principle should, I think, be maintained, and a discretion allowed to the Commissioner as paying officer, who will probably be in the best position to examine the grounds on which the claim is based, the courts merely giving a certificate, as is now the practice in the Crown Office of the High Court, that the witness attended the court and is entitled to receive the reasonable expenses of such attendance.

ORDER—dated 1st March 1888, No. 543, Judicial.

Ordered that the rules as revised be sent to the High Court, Chief Presidency Magistrate and Commissioner of Police, for further revision and opinion.

(True Extract.)

H. E. STORES,
Chief Secretary.

To the Honorable the Judges of the High Court, W. C. L.
" Chief Presidency Magistrate.
" Commissioner of Police.

Edw. A. Hall.

[Appendix.]

APPENDIX.

RULES under Section 544 of the Code of Criminal Procedure for regulating the payment of the expenses of complainants and witnesses attending the Criminal Courts in the Town of Madras.

Under the provisions of section 544 of the Code of Criminal Procedure, the Governor in Council, with the sanction of the Governor-General in Council, has made the following rules for regulating the payment, on the part of Government, of the expenses of witnesses (including complainants) attending the Criminal Courts in the town of Madras:—

I.—Subject to the provisions hereinafter contained, the expenses of witnesses will be paid on behalf of Government in the following classes of cases, viz.—

- (a) Cases shown in the second schedule to the Code of Criminal Procedure as not bailable.
- (b) Cases in which the prosecution is instituted or carried on under the orders or with the sanction of the Governor in Council or of any public servant acting as such.
- (c) Where the witness in question is issued under section 106 of the Code.
- (d) Cases in which the Court directs that the witness should be summoned directly in furtherance of the ends of justice.

II.—For the purposes of these rules, witnesses shall be divided into three classes, and the Magistrate of the district for which they appear, or the Commissioner of Police, shall fix the class with due regard to the station in life of each witness.

Note.—For the purposes of this rule, the Magistrate of the district may delegate his powers to any Subordinate Magistrate.

III.—The following are the maximum rates which may be awarded to the several classes of witnesses, and no expenses shall be allowed:—

Witness.	Class.	Subsistence allowance.	Cartage hire allowable for days of actual attendance.	Travelling expenses, if any, incurred.		
				By rail.	By road.	By sea or canal.
Europeans and Eurasians.	1st class.	6 rupees per day.	3 rupees per day.	1st class fare.	8 annas per mile.	Actual expense of passage.
	2nd "	3 " "	1 " "	2nd "	4 " "	
	3rd "	1 1/2 " "	1/2 " "	3rd "	2 " "	
Natives.	1st class.	2 " "	1 " "	1st "	6 " "	Actual expense of passage.
	2nd "	1 " "	1/2 " "	2nd "	3 " "	
	3rd "	5 annas	Nil	3rd "	2 annas per 10 miles.	

IV.—All disbursements under these rules shall be made by the Commissioner of Police, to whom witnesses coming from the mofussil should report themselves on arrival at Madras.

V.—Witnesses resident in the Presidency town will be entitled only to such actual expenses as they may show to the satisfaction of the Commissioner of Police that they have been obliged to incur in obedience to the process or order of the Courts.

VI.—Witnesses sent from the mofussil will be furnished with a certificate by the despatching Magistrate showing the class to which they belong; the date of their departure, and the correct distances (if any) to be travelled by road; and unless such certificate is produced before the Commissioner of Police, that officer may disallow all or any of the expenses claimed.

VII.—Mofussil Magistrates may make advances to witnesses summoned by the High Court or Presidency Magistrate requiring such advances to enable them to reach Madras, but shall in every case note the same on the certificate referred to in Rule VI. The Commissioner of Police should also be advised of such advances, and he will refund the amount to the officer making the advance.

VIII.—Whenever it is practicable for witnesses to travel by rail or steamer, they shall be allowed no more than the rates prescribed for those modes of conveyance.

IX.—The subsistence allowance at Madras shall cease as soon after the conclusion of the inquiry or trial as the means of quitting Presidency become available.

X.—The expenses of witnesses will be paid on production of a certificate signed by the presiding Magistrate, or in the case of the High Court by the Clerk of the Court, setting forth the inquiry or trial in which their attendance was required and the days on which they attended.

XI.—It shall be competent to the Court before which a witness appears, to disallow payment of any expenses on behalf of Government, if for any cause such Court thinks fit to do so.

XII.—No expenses shall be granted to a complainant in any case dismissed under Section 250 as frivolous or vexatious.

Govt. of (1888) Madras.

JUDICIAL.

Issued

Recd.

Encl.

G.O., 1st March 1888, No. 538.

MARCH.

Criminal Procedure Code.

Circulating, for further revision and opinion,
revised rules for regulating the payment of the
expenses of complainants and witnesses attending
Criminal Courts in the town of Madras.

RULES under Section 514 of the Code of Criminal Procedure for regulating the payment of the expenses of complainants and witnesses attending the Criminal Courts in the Town of Madras.

Under the provisions of section 514 of the Code of Criminal Procedure, the Governor in Council, with the sanction of the Governor-General in Council, has made the following rules for regulating the payment, on the part of Government, of the expenses of complainants and witnesses attending the Criminal Courts in the town of Madras:—

I.—Subject to the provisions hereinafter contained, the expenses of complainants and witnesses will be paid on behalf of Government in the following classes of cases, viz., all cases which are shown in column (a) of the second schedule appended to the Code of Criminal Procedure as not bailable; all cases in which the prosecution is instituted or carried on under the order or with the sanction of the Governor in Council or of any public servant acting as such; all cases in which witnesses are compelled to attend by any Criminal Court under the provisions of section 510 of the Code; and in all other cases in which the Court shall certify that the attendance of such complainant or witness was directly in furtherance of the interests of public justice.

II.—For the purposes of these rules Europeans, Eurasians and Natives shall be divided into three classes, and the Magistrate before whom they are required to appear, or the Commissioner of Police, in the case of complainants and witnesses from the mofussil, the Magistrate of the District from which they come, shall be careful to fix the class with due regard to the station in life occupied by each complainant and witness.

NOTE.—For the purposes of this rule, the Magistrate of the district may delegate his powers to any Subordinate Magistrate.

III.—The following are the maximum rates which may be awarded to the several classes of complainants and witnesses, and to expenses in excess of, or other than, those here provided for shall be allowed:—

Witness.	Class.	Subsistence allowance.	Carriage hire allowable for days of actual attendance.	Travelling expenses, if any, incurred.		
				By rail.	By road.	By sea or canal.
Europeans and Eurasians.	1st class.	5 rupees per day.	per day.	1st class fare.	8 annas per mile.	Actual expense of passage.
	2nd „	3 „ „	„	2nd „	6 „ „	
	3rd „	1½ „ „	„	3rd „	4 „ „	
Natives ..	1st class.	2 „ „	„	1st „	6 „ „	Actual expense of passage.
	2nd „	1 „ „	„	2nd „	2 „ „	
	3rd „	At the rate of 10 annas per day.	Nil.	3rd „	2 annas per 10 miles.	

IV.—All disbursements under these rules shall be made by the Commissioner of Police, to whom all complainants and witnesses coming from the mofussil should report themselves on arrival at Madras.

V.—Witnesses resident in the Presidency town will be entitled only to such actual expenses as they may show to the satisfaction of the Commissioner of Police that they have been obliged to incur in obedience to the process or order of the Courts.

VI.—Complainants and witnesses sent from the mofussil will be furnished with a certificate by the despatching Magistrate showing the class to which they belong, and the date of their departure, also, when any part of the journey is performed by road, the correct distances to be travelled; and unless such certificate is produced before the Commissioner of Police, the officer may disallow all or any of the expenses claimed.

VII.—Mofussil Magistrates may make reasonable advances to complainants and witnesses summoned by the High Court or Presidency Magistrates and requiring such advances to enable them to reach Madras, but shall in every such case note the same on the certificate referred to in Rule VI. Intimation of such advances must also be

in separate clauses (a) (b) (c) (d)

(including complainants)

(c) where the action in question has been by a process issued under

individual

(7-11-11)

2000

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...in the case of such a case...
immediately made to the Commissioner of Police who will refund the amount to the officer making the advance.

VIII.—Whenever it is practicable for complainants and witnesses to travel by rail or steamer, they shall be allowed no more than the rates prescribed for those modes of conveyance.

IX.—The subsistence allowance at Madras will cease as soon after the conclusion of the inquiry or trial as the means of quitting the Presidency become available.

X.—The expenses of complainants and witnesses will be paid on production of a certificate signed by the presiding Magistrate, or in the case of the High Court by the Clerk of the Crown, setting forth the inquiry or trial in which their attendance was required and the days on which they attended.

XI.—It shall be competent to the Court before which a complainant or witness appears, to disallow payment of any expenses on behalf of Government, if for any cause such Court thinks fit to do so.

XII.—Whenever a Presidency Magistrate dismisses a case as frivolous or vexatious under section 250 of the Code of Criminal Procedure, no expenses under these rules shall be granted to a complainant in such case.

...as frivolous or vexatious...

[22]

NOTE FOR THE UNDER SECRETARY.

I am issuing this as
a reference with the
Rules only. But will
you please say whether
the official letter from
the Board of Police did
accompany the Reform
to all addresses?

Ch.

7/3.

*Mrs. Geo. Lee, Jr.,
Spring Branch*

I think 'Cool' ought to be protected if possible from the too ready complaisance of a Magistrate who may be very generous with public money and give expenses freely for the sailing. I have just received an application from Messrs Bondy and Morgan for Rs 400-00-00 for two witnesses whom they summoned in Dr Furness's preliminary inquiry, of course if I pay them no all the other will follow. These two witnesses are, the Chief Officer of a B.S.S. K vessel and a Mr Dacoon who comes from Pangoon. The former in addition to a "Quack" and "Lifter" while waiting for the lawyer. Charges his full wages for all the time he is on board his ship. This is private prosecution! But it says persecution by the B. S. S. K. & Co. would easily get some damages in their hands for both these witnesses. No doubt there will be a similar

8
claim after the lessons but Judge
may not be so easy going as the Magistrate.
I simply replied that I was not author-
to pay this claim. B. & M. produced none
from the Court under S. 544. but if they go to
Mr. Scharlieb he will probably accommodate
them. If Government have to pay all the
expenses in this Cerri Case it will be a
very long bill. I confess I do not quite
see how Govt. can protect itself from
exorbitant demands of this kind in
cases of no real public interest or importance.
If the Court - High or Low - gives an order
apparently the bill - long or short - must be
paid, unless the words "subject to audit"
in Sec: 544. C.P. afford any opening for
tempering justice with reasonable economy.
Under the late Code only payment for attendance
at final trials could be claimed, now the provision
extends to "enquiry or other proceedings" J. P. M.
M. C. M.

From

The Commissioner of Police
Madras

To

The Chief Secretary to Govt.
Fort St. George

Dated 10th January }
Recd } 1883.

No. 2.

Encl^d: 503.

Submits as directed proposed
rules for the payment of
expenses of the Complainants
and witnesses attending
the Criminal Courts in the
Presidency Town.

No. 2

CURRENT NO.

City Police Office.

Madras, 10th January 1883

From

Colonel S. Weldon

THE COMMISSIONER OF POLICE,
MADRAS.

To

The Honble H. E. Stokes

Chief Secretary to Government
Fort St. George

Sir,

I have the honour in reference to
para. 3 of the Order of Government
dated 21st December 1882 ~~and~~ ^{and} ~~of~~ ^{of} ~~the~~ ^{the} ~~President~~ ^{President}
to submit proposed rules for the payment
of the expenses of complainants and
witnesses attending the Criminal Courts
in the Presidency Town.

2— As it is obvious that a person's
expenses will be the same whatever
Court he attends there does not appear
to be any reason for having more than
one set of rules and these may be held
applicable to all cases in which it may
be proper to pay on behalf of Government
the expenses of persons attending Criminal
Trials.

Trials. The rules now proposed, or such other rules as Government may finally approve, might be notified as in supersession of all previous rules in order to avoid raising doubts on the subject.

3—The scale of expenses adopted is with one slight exception, that which has been in force since 1848 as applicable to the Presidency Magistrates' Courts and which has been found to be equitable and easy to apply to the several claims.

4—The exception referred to in para. 3 is the Maximum Carriage hire to be allowed to a witness in the 1st class. This has been raised from 2½ to 3 Rupees per diem the latter sum being the actual charge for the hire of a Carriage for the day borne by custom and under the Hackney Carriage Act. This is also the sum which is payable to witnesses attending the High Court under the rules of 1863 and was specially fixed as the amount to be granted in such cases / vide

G.O.

G.O. 2nd August 1870 / The carriage hire for a witness attending the High Court was raised to Rs. 3 per diem by Government in their Order dated 25th February 1879 No. 394 have already decided that a witness resident in the Presidency Town is entitled only to be reimbursed actual money out of pocket paid as expenditure rendered necessary by the obligation to attend the Court in furtherance of justice. This principle should I think be maintained and a discretion allowed to the Commissioner as paying Officer, who will probably be in the best position to examine the grounds on which the claim is based, the Court merely giving a Certificate as is now the practice in the Crown Office of the High Court that the witness attended the Court and is entitled to receive the reasonable expenses of such attendance.

I have the honour to be,
Sir,
Your most obedient servant.

James A. Hall
Commissioner of Police
Jm.

Pl

J. 4. no 2907 21 12 87 km
file of paper

CURRENT NO.

From

The Commissioners of Police,
Madras.

To The Chief Secretary to Govt.
Fort St George.

Dated 10th January 3
Recd. 1888

No. 2.

Enclos: one.

Submits as directed
proposed rules for the
payment of expenses of
the complainants and
witnesses attending the
Criminal Courts in the
Presidency, &c.

Rules under Section 544 of the Code of Criminal
Procedure for regulating the payment of the
expenses of Complainants and witnesses attending
Criminal Trials in the Courts in the Town of Madras.

Under the provisions of Section 544 of
the Code of Criminal Procedure, the
Governor in Council has been pleased to
make the following Rules for regulating
the payment, on the part of Government,
of the expenses of complainants and
witnesses attending Criminal Trials
in the Courts in the Town of Madras.

I. — The expenses of complainants and
witnesses attending before the said Courts
will be paid according to the rates
specified in Rule III, in cases in which
the prosecution is instituted, or carried
on by, or under the orders, or with the
sanction of, the Government, or of any
Judge, Magistrate, or other public Officer,
or when it shall appear to the presiding
Judge or Magistrate to be directly in
furtherance

showing the class to which they belong and the date of their departure, also when any part of the journey is performed by road the correct distance so to be travelled; and unless such certificate is produced before the Presidency Court, their expenses shall not be allowed.

VI — The expenses of complainants and witnesses will be paid on production of a certificate granted by the Clerk of the Crown for attendance at the High Court or by the presiding Magistrate for attendance at a Presidency Magistrate's Court setting forth the number of days they attended, and, if public servants, whether they attended in their official or private capacity.

VII — It shall be competent to the Judge or the presiding Magistrate before whom a complainant or witness appears, to disallow payment of any expenses on behalf of Government for any cause he thinks fit to do so.

VIII — Whenever it is practicable for

Complainants and witnesses to travel by rail or steamer, they shall be allowed no more than the rates prescribed for those modes of conveyance.

IX — The subsistence allowance at Madras will cease as soon after the trial as the means of quitting the Presidency become available.

X — Mofussil Magistrates will make reasonable advances to complainants and witnesses summoned by the High Court or Presidency Magistrates, and requiring such advances to enable them to reach Madras, noting the same on the certificate. Intimation of such advances must also be immediately made to the Commissioner of Police who will refund the amount to the officer making the advances.

XI — Whenever a Presidency Magistrate dismisses a case as frivolous or vexatious under Sect. 250 of the Code of Criminal Procedure, no travelling or subsistence allowance shall be granted to

to a complainant in such case.

XII — Witnesses resident in the Presidency Town will be entitled only to such actual expenses as they may show to the satisfaction of the Commissioner of Police that they have been obliged to incur in obedience to the process or order of the Courts.

C. N. 119.

From the Comm^r of Police, Madras, no 2, dated
10th January 1898.

For Orders

As directed in para. 3 of G. O. 21st Dec^r 1897, the Comm^r of Police submits a report on the rules for payment of witnesses in Madras City & a draft of the rules wh^{ch} he proposes sh^d be issued. In an accompanying O. O. to the Chief Sec^y, he draws attention to the demands wh^{ch} have already been made on him in connection with the trial of S^r Currie, & remarks that he does not see how govt^{mt} can protect itself from exorbitant demands.

The Hon^r Member's Note of the 12th Dec^r observes that the simplest plan for the future would be to extend the Rules of 1878 to the High Court, with such additions as may be necessary for the Rules of 1878. This is what the Comm^r of Police has in effect done (see para. 3). Referring to the contents of the Draft Rules ^{of the Com^r} ~~series~~, the following points seem to deserve notice: —

- (1) heading: for last line read — "attending for the purposes of any inquiry or trial under the Code before ^{Com^r} Courts within the City of Madras."
- (2) preamble: insert the words "and with the sanction of the Gov^t Gen^l in Council" after the word "Procedure", & alter last 2 lines as above.
- (3) rule 1. This should, it is submitted, be re-drafted & re-arranged: the following is submitted for approval: —

"Subject to the provisions hereinafter contained, the expenses of complainants and witnesses will be paid on behalf of Gov^t in the following classes of cases, namely: — all cases which are shown in cols^{ns} of the second schedule appended to the Code of Criminal Procedure ~~as~~ is not available; all cases in which the prosecution is instituted or carried on under the orders or with the sanction of the Governor in Council or of any public servant acting as such; all cases in which

witnesses are compelled to attend by any criminal Court under the provisions of section 520 of the Code as aforesaid: and in all other cases in which the Court shall certify that the attendance of such ~~person~~ ^{witness} was directly in furtherance of the interests of public justice."

II. ~~As unaltered.~~

"The following are the maximum rates which may be awarded to the several classes of complainants & witnesses, & no expenses in excess of or other than those here provided for shall be allowed:—

H.S. Schedule."

It is submitted that this re-casting of rule I will give the Govt. considerable protection from the exorbitant demands referred to in Col. Waldron's D.O. It requires that in all suitable cases in which Govt. is not the direct prosecutor, the Court shall certify the presence of the witness was directly in furtherance of the interests of public service. Considering the class of cases to which the provision will apply, it seems justifiable, & it is permissible under sec. 520 C.P.C. The re-arrangement of the Rules is, it is submitted, a necessity, as putting the more general class of cases first. The change in the 3rd rule seems desirable in order to make it clear that the rates fixed are maximum rates & that no other claims (such as for "tiffin while waiting for the lawyer") are admissible.

It seems desirable to re-arrange the order of the rest of the rules & the following is suggested:—

Rule XII	to be IX	VII to be VI
XI	to be V	XI
VII	to be II	
VIII	to be VII	
IX	to be VIII	
VI	to be IX	
X	to be X	
V	to be XI	
IV	to be XII	

(5) the scale of expenses in Rule 3 mt. be accepted, with ref. to the Commr's remarks in para. 4 of his letter.

(6) the drafting of the rules IX to XII might be improved: the changes marked in pencil in the draft are suggested

(7) it is submitted that the last 3 lines of rule V should be ~~altered~~. Of course, they are not enforced, when Mr. Malli appeared for Calicut for the defence in Morgan v. Ross, he did not, it may be assumed, produce any certificate.

Rule V might run:—

"When Compt's & witnesses are deposed for the purpose of a Magt. they ~~shall~~ ^{will} be furnished with a certificate showing the class ^{etc.} . . . down to "travelled". & the expenses of a compt. or witness so deposed shall not be allowed, unless they produce such certificate before the disbursing officer."

If the proposal to post Rules IV & V as Rules XII & XI respectively is approved, Rule IV might then run (last 2 lines)

"and witnesses deposed for the purpose of the Magt. under the last preceding rule should report themselves to the Commr. on arrival at Madras."

(8) rule VI might be improved: perhaps the following would do:—

"Compt's & witnesses will be entitled to receive the expenses allowed them by these rules on producing a certificate, signed in the case of the High Ct. by the Clerk of the Crown & in the case of any other court by the presiding Judge, setting forth the inquiry or trial in which their attendance was required & the number of days on which they attended ~~on the~~ for the purposes of the inquiry or trial."

The Rules will have to be sent up to India for previous sanction.

If desired, a proof of the Rules as proposed to be amended, can be printed & submitted.

APP
9/3

Expenses of witnesses before Courts in Madras

For orders

H.M.

Received of the Court
for the expenses of witnesses
before the Court in Madras

Order 8/1/1872

The rules as revised 25th Dec 1871
to the H.C., Chief Presy Mag
& Commr of Police for further
revision & opinion

22 Feb

C. 10/2 C. 20/2
R. 13/2 R. 23/2

15/11/71
13/11/71
14/7/71
30/11/71

