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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.G.O. No. 1747-8 Press Mrs.Dated 28.8.1898 ~~1877~~Not to be folded or roughly handled*Trial by Jury*

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following paper :—

G.O., dated 16th May 1893, No. 1022, Judicial.

ABSTRACT.—Referring, for remarks, to the Honorable the Judges of the High Court, the Advocate-General and certain officers, letter from the Government of India forwarding certain papers regarding the system of trial by jury in Bengal, and requesting opinion on the various proposals for amending the Criminal Procedure Code dealt with in the report on the Jury Commission.

READ—also the following papers :—

From the Sessions Judge, Kistna, to the Chief Secretary to Government, dated Masulipatam, 10th June 1893, No. 761.

I have the honour to reply to G.O., No. 1022, Judicial, dated 16th May 1893.

2. A Sessions Court must not be regarded solely from the narrow point of view of a police officer as a machine to pronounce convictions. It is not enough that a prisoner should have a fair trial. It is desirable that both he and the public should believe that he has had a fair trial. From this point of view the system of assessors and juries has its advantages. The presence in Court even of somnolent assessors, who, at the close of a case which they have not thoroughly heard, express a negligent opinion, at least involves publicity and the explanation in the vernacular of the points that arise in the case and thus enables the public in Court to understand what is going on. So the trial before a jury at least ensures that the case has been heard in a manner intelligible to the audience who crowd to listen to a Sessions trial.

3. I have been Sessions Judge now for nearly six years, and one point that has forcibly struck me is that jurors pay much more attention to their duties than is given by assessors. The assessors know that their opinion is not decisive. They know that the Judge will not hesitate to differ from their opinion. They appear to me very often to say to themselves that if the accused is guilty the Judge is sure to convict, and that they themselves may safely obtain the reputation of being merciful. Jurors, on the other hand, know that their verdict is decisive and they pay much more attention to the case.

4. For this reason I hope that section 307 will not be altered so as to compel a Judge to refer every case in which he differs. That would reduce jurors to the level of assessors, and jurors would quickly learn that there was a change.

5. Upon this point I beg to draw the attention of the Government to the case of *The Queen-Empress v. Guravadu*, I.L.R. XIII, Madras, 343. The High Court has directed Sessions Judges to refer every case in which a jury convicts against the opinion of the Judge. This is a direction which the High Court has no legal power to give. It is not warranted by section 307 and it will give rise to the "mischievous results" anticipated in paragraph 25 of the report. A Tanjore juror will say to his fellows :—"We may as well convict these dacoits, because the Judge is bound to refer the case if he does not agree with us."

6. Also, this direction at I.L.R. XIII, Madras, is one-sided. The Judge is not directed to refer every case of acquittal against his opinion. This leads me to remark that the Madras High Court thinks that the fault of juries is that they convict too readily, but the complaint in Bengal and Bombay is the exact opposite, that juries do not convict. For myself I must say that Masulipatam juries are slow

to convict. This is a prosperous and peaceful corner of the district and dacoity cases are brought in a hundred miles from the Kurnool frontier or from the Nizam's frontier, about which the Masulipatam juror knows nothing, so that he is slow to convict.

7. I think that the alteration of section 307 which is proposed in paragraph 24 of the report is a good alteration. It leaves a discretion to the Judge and is not as rigid as the direction at I.L.R. XIII, Madras 343.

8. I hope that no rule will be passed compelling a Judge to write out his charge before he orally delivers it. I always attempt to do this, but it is not possible always to do it and it is important that the charge be delivered at once while the attention of the jurors is fresh. Any such rule would necessitate often an adjournment until the morrow, which means that the jurors, dispersed to their homes, would be open to improper solicitations.

9. On this subject I beg respectfully to submit that the charges of Sessions Judges are criticised with undue severity. A charge is often delivered to a weary jury and sometimes to a jury who evidently have long since made up their minds in the same direction as the Judge has made up his. In such circumstances, a Judge is prone to deliver a very brief charge, but the charge afterwards is scrutinised by the High Court and is expected to contain a sufficient narrative of the facts of the case and a discussion of each point of law. I have especially in mind a case in which the jury and myself had long since made up our minds that the prisoner was innocent. The Public Prosecutor saw this and, after saying a few words, sat down. I had then to read to the impatient jury the long charge which I had written for the satisfaction of the High Court. I submit that in criticising a charge, it ought to be remembered that the primary object of a charge is to guide the jury aright and that the Judge on the spot knows best how much guidance the jury require. The secondary object is to give information to the High Court.

10. I think that special verdicts are desirable. As an instance I may quote the difference of opinion in this district on the meaning of section 401 of the Penal Code. The District Magistrate and Police Superintendent think that this section applies to men born and bred in the wandering tribes of Yanadis and Yerikulas. It is true that these tribes habitually steal, but these men never knew any other home. They have their wives and children with them in the encampment. I hold that section 401 does not apply to such men and was intended to meet the case of men who joined a gang of thieves. I so charged the jury in two cases committed to the Sessions and the juries gave verdicts of "not guilty." The Public Prosecutor moved the High Court, but the High Court refused to interfere. In such cases a special verdict on the facts might have been taken and the doubtful question of law might have been referred to the High Court.

11. If a class of special jurors is selected, it will lower the status of common jurors unless the special jurors take their share of the ordinary work. When I came here in 1887 I found that the list had been divided into an upper class of jurors and a lower class of assessors and that the two classes were kept separate. Jurors never served as assessors and looked down on assessors. The assessors were considered to be an inferior class of men. I abolished this distinction and amalgamated the two lists.

12. I beg to suggest that the Executive Government can improve matters by insisting upon District Magistrates taking more trouble in the preparation of the jury list. The Judge can do little, for he cannot know the people of the district in the way in which the District Magistrate knows them. Moreover, the District Magistrate can have the assistance of the Superintendent of Police and of the Deputy Collectors and Tahsildars in discussing the persons to be placed on the list. But the list appears to be prepared in the Collector's office as a matter of routine by some subordinate, and the District Magistrate himself appears to me not to have seen the list until he comes to the Sessions Court to sit with the Judge to hear objections. Then the idea of some District Magistrates seems to be that they are to sweep as many fish as possible into the net. I think that if the Collector, Police Superintendent, Head-quarter Deputy Collector and Head-quarter Tahsildar met to discuss the list beforehand, a very much

better list could be prepared. I may give an instance of what I mean. Last April I sat in Court with the Acting Collector to hear objections to the jury list. I noticed that the occupation of one man was given as "pleader's gumastah." I said: "That is a most objectionable class of man to be placed on the list." The Acting Collector said: "Then a man has only to call himself a pleader's gumastah and you will strike him off the list."

13. I am averse to extending jury trials to murder cases and marriage cases. In murder cases, assessors shrink from saying that an accused is guilty, and in marriage cases, especially in cases under the Indian Christian Marriage Act, there are sometimes very intricate questions of law.

(Signed) G. T. MACKENZIE,
District and Sessions Judge.

From the Government Solicitor, Madras, dated 13th June 1893, No. 201, forwarding the following opinion of the Advocate-General, dated 10th June 1893:—

[In the matter of the proposals for amending the Criminal Procedure Code dealt with in the report of the Commission appointed to consider and report on certain questions connected with trial by jury in Bengal.]

OPINION.

1. The discussion of the jury system as carried out in the Sessions Courts in the interior may be roughly divided under two main heads, viz.—

- (a) the extension or restriction of the system both with regard to localities and to the classes of offences to which it has from time to time been applied; and
- (b) amendment of the Criminal Procedure Code so as to minimise the risk of failure of justice due to the causes, or alleged causes, referred to in the report.

I understand the reference to me to be confined to the second and more limited head.

2. The proposals for amending the Code dealt with in the report relate to the composition of juries; charges to juries; reasons for verdicts; amendment of section 307, Criminal Procedure Code; and appeals against the decision of a jury.

3. With regard to the number of jurors, their ages, the area of their selection, exemption from service on juries, and the seclusion of those serving as jurors during a trial and until delivery of their verdict, I see no reason for making any alteration in the existing law.

The establishment of special juries is in my opinion uncalled for and inexpedient. What is required is the improvement of existing juries by careful selection of jurors and the creation of those feelings of respect for the office and responsibility in the discharge of the duties of a juror which I fear do not at present exist to any great extent.

4. The importance of the "charge" to a jury cannot be overrated, but such guidance can only be secured by careful selection of Judges, not by any amendment of the Code of Criminal Procedure. That code provides for the heads of his charge to the jury being recorded by the Judge.

5. It is very desirable that the reasons of the jury for their verdict should be elicited without subjecting the jurors to a cross-examination or to undue catechism by the presiding Judge. I think that Sessions Judges should be empowered to require from the jury special verdicts as suggested, but the power conferred should be so clearly stated and limited to the object sought as to preclude the chance even of the inquiry degenerating into a cross-examination.

6. I think that the amendment of, and addition to, section 307, Criminal Procedure Code, suggested in paragraph 24 of the report under consideration, should be made. At present, and until juries in this country prove that they have that respect for their office and sense of responsibility which they ought to possess, there ought to be some selection against "perverse verdicts."

7. On the other hand, I think that, ordinarily, the verdict of a jury should be final, and that no appeal therefrom should be allowed.

(Signed) J. H. SPRING BRANSON,
Advocate-General.

From the Sessions Judge, South Malabar, Calicut, to the Chief Secretary to Government, dated Calicut, 13th June 1893, No. 160.

With reference to G.O., dated 16th May 1893, No. 1022, Judicial, I have the honour to submit the following remarks on the proposals made by the recent Jury Commission for the amendment of the law relating to trial by jury in India. The enclosures are returned, as requested.

2. I think that the wording of section 307 of the Criminal Procedure Code may with advantage be revised, with a view to make its intention more clear and to leave less room for that diversity of

Section 307, Criminal Procedure Code. practice on the part of both Sessions Judges and of the High Court which has undoubtedly hitherto existed in acting under its provisions. I would substitute the words "and is clearly of opinion that it is" for the words "so completely that he considers it" in the first paragraph of the section which deals with the duty of the Sessions Judge.

In the third paragraph, which deals with the duty of the High Court, I would add after the words "High Court" and before the words "may exercise," the words "shall consider the entire evidence, giving due weight to the verdict of the jury and to the opinion of the Sessions Judge and of the dissentient jurors, if any, and". It is believed that these words would state the practice as now followed by the best Judges, and would leave no room for diversity of opinion as to the intention of the Legislature. I am wholly opposed to the proposal which has been made in some quarters that it should be the duty of the Sessions Judge to refer to the High Court every case in which he differs from the view taken by the jury. I not infrequently differ from the jury without being so confident that I am right and that they are wrong as to lead me to think it necessary, or even desirable for the ends of justice, to submit the case to the High Court. To refer such cases to the High Court would weaken, or destroy, that sense of responsibility on the part of the jury which it is so desirable to encourage and strengthen; it would impose a large mass of additional work on the High Court and would lead to no improvement in the administration of justice, for the High Court would hardly ever interfere, and if it did interfere it would probably be wrong in as many cases as right.

3. The same considerations lead me to conclude that the proposal to allow an appeal on the facts against the verdict of the jury is altogether undesirable. It would weaken the sense of responsibility on the part of the jury, and increase the work of the High Court, without, as I venture to think, securing justice in a larger number of cases. The jury and the Sessions Judge have the immense advantage of hearing the evidence of each witness as it is given and of observing his demeanour. The Sessions Judge is almost invariably a man with from 15 to 30 years' experience of native evidence and of native customs and modes of thought. If he and a jury of natives agree as to the verdict, it is wholly unlikely that a Bench of the High Court would, on the bare record and without the special advantages possessed by the Judge and jury, be able to arrive at a more correct conclusion as to the facts. It must not be forgotten that one at least of the Judges of the High Court Bench may, and often will, be a Judge fresh from England, whose acquaintance with native evidence and customs is necessarily small and obtained chiefly at second hand. If the Judge's disagreement with the jury is of such a kind that he does not consider a reference necessary in the interests of justice, the probability of useful interference by the High Court is only one degree less remote. If the Sessions Judge does consider a reference necessary, he can make it under

Appeal on the facts.

section 307, and if the High Court then deals with the whole case on its merits, as proposed in paragraph 2 *supra*, giving due weight to the opinion of the jury and of the Judge and of any dissentient jurors, I think there will be every reasonable safeguard against a failure of justice.

4. I am opposed to anything like cross-questioning of juries as to their reasons for arriving at their verdict. It might often be impossible to record them fairly or intelligibly without writing a separate statement, amounting to a judgment, for each juror, but I think that section 303 of the Criminal Procedure Code should be amended so as to enable the Judge to require the jury to give a special verdict on particular issues of fact. Such a course will rarely be necessary, but it may be so occasionally, to enable the Judge to appreciate the ground on which the general verdict rests, and sometimes, too, in order to assist him in deciding on the appropriate penalty. Such a case occurred in a trial held before me yesterday. Three prisoners were being tried by a jury for dacoity. The acts of the prisoners might have been either simple extortion (section 383), or aggravated extortion (section 386), or robbery (section 390), or dacoity (section 391), according to the view taken of the violence used and the number of persons taking part in the extortion. The jury found the prisoners not guilty of dacoity, but found that one of them was guilty of extortion. I was able under section 303, Criminal Procedure Code, as it stands, to ascertain that the verdict was "guilty of simple extortion" (punishable under section 384, Indian Penal Code), not aggravated extortion (punishable under section 386), but I was unable to frame a special issue as to the violence used, though I would have valued a finding by the jury on that matter as a guide to me in determining the penalty appropriate to the offence.

5. I do not see any objection to section 269 of the Criminal Procedure Code being so amended as to require that action under that section shall only be taken by Local Governments with the previous sanction of the Governor-General in Council. Action under it will always be taken with deliberation. Considering the far-reaching political effects of such action and the general interest likely to attach thereto, it is probably desirable that it should be approved by the Governor-General in Council before it is finally taken.

6. For the reasons stated in paragraph 18 of the letter of the 21st December 1892 of the Government of India to the Secretary of State, I think (though with some hesitation) that special juries are

inadvisable at present. If adopted, they should be sparingly resorted to and the special jurors should certainly not be excluded from the general jury list, but service as a special juror should give exemption from service on an ordinary jury for six months.

7. I am uncertain whether the present reference invites my opinion as to whether the system should be extended in this Presidency to a larger number of offences than are at present triable by juries.

Extension of trial by jury.

My opinion has been expressed in the Criminal Administration Reports of the past five years and in special reports. I think that the system "works fairly well on the whole," and is likely to work better as time goes on. I neither decry nor extol it. It fails when it does fail not so much from the corruption or perversity of the jury as from deficient mental power in dealing with a great mass of evidence as it affects each of many prisoners who are being tried together, as in some cases of dacoity. There would, perhaps, be somewhat fewer failures of justice if the system were abolished, but even of this I am not sure. The collateral and political advantages of the system are, however, in my opinion, so important that I would rather see the system extended than curtailed. If it is determined to extend it, the offences to which it should be first made applicable are in my opinion the following:—Sections 363 to 369, 372 and 373 (kidnapping and abduction); section 376 (rape);

sections 403 and 404 (criminal misappropriation); and sections 426 to 432, 434 to 436, and 440 (mischief), together with attempts to commit, and abetments of, these offences.

I may take this opportunity of bringing to notice that, though abetments of offences triable by jury in this Presidency are also triable by jury (G.O., No. 2477, dated 16th September 1886 (Judicial)), I am unable to find any notification directing the trial by jury of attempts to commit such offences. This is an omission for which there appears to be no reason.

(Signed) R. S. BENSON,
Sessions Judge.

From the Registrar of the High Court of Judicature, Appellate Side, Madras, to the Chief Secretary to Government, dated Madras, 16th July 1893, No. 1592.

With reference to G.O., dated the 16th ultimo, No. 1022, Judicial, forwarding certain papers regarding the system of trial by jury in Bengal and requesting the opinion of the High Court on the proposals for amending the Criminal Procedure Code dealt with in the report on the Jury Commission, I am directed to submit herewith a transcript of the minutes recorded by the Honorable the Chief Justice and Judges Sir T. Muttusami Aiyar, Shephard and Davies.

2. Any minutes that may be recorded by the Honorable Mr. Justice Benson will be duly submitted.

(Signed) H. W. FOSTER,
Registrar.

ENCLOSURE.

Minutes.

THE CHIEF JUSTICE.—I am of opinion that the suggested alteration of section 307, Criminal Procedure Code, is desirable. I see no objection to the proposed amendment of section 303 of the Code empowering the Sessions Judge to require a special verdict on particular issues of fact.

JUSTICE SIR T. MUTTUSAMI AIYAR.—I think it very desirable to amend, as suggested by the Jury Commission, section 307 of the Code of Criminal Procedure. The wording of that section, as it stands at present, is somewhat obscure, and has given rise to the construction that English precedents are intended to be followed in all cases in regard to the finality of the verdict of the jury and that such verdict is absolutely conclusive on matters of fact. The intention, however, of those who framed section 307 was, as explained by the Commissioners, that the verdict should be open to be revised by the High Court on a reference made by the Judge in those cases in which it is clear upon the evidence that it is manifestly erroneous and has resulted in failure of justice. The erroneous construction put upon the section by the several High Courts is due partly to the use of the words "so completely, &c.," and partly to the absence of a clear indication of the true intention of the Legislature. The proposed amendment tends to remove both these defects and to execute the true intention. On this ground I am of opinion that it is worthy of adoption.

Another question which I have considered in this connection is whether section 307, if amended as proposed, would provide an adequate safeguard against possible miscarriage of justice from erroneous verdicts of the jury on questions of fact. I have always considered that it is not desirable to abolish trial by jury and that it is sufficient to safeguard it. Referring to section 418, Code of Criminal Procedure, I observe that as against failure of justice from errors of law, an appeal is allowed to the High Court. Thus in cases in which the exposition of law by the Judge is inaccurate or in which he misdirects the Jury or omits to direct them on a material point and also in cases in which the verdict is perverse or rests on no legal evidence or on a mere scintilla of such evidence, the best remedy known to the Code of Criminal Procedure is provided. As regards erroneous findings of fact, however, the section follows English precedents generally and declares that they are final. Thus in cases in which the

Judge concurs in the verdict or in which, though he disagrees with the verdict and does not come upon the evidence to the same finding, he is unable to say that the verdict is clearly wrong or that it is one which no reasonable men acting with care and caution ought to have come to, the English doctrine of the finality of the verdict is maintained. I do not think it unsafe to adopt what is substantially the concurrent finding of the jury and the Judge as to the justice of the verdict as final and conclusive. But in that class of cases in which the verdict has clearly occasioned failure of justice, section 307 as proposed to be amended authorises the Judge to refer them to the High Court and the High Court to consider the evidence and to alter or set aside the verdict when it agrees with the Judge. To this extent the law in India departs from the English law on the subject. In effect the section introduces an exception to the rule of the finality of the verdict of the jury and makes it liable to be set aside if the High Court should, upon consideration of the evidence, come to the conclusion that justice has clearly miscarried. Having regard to the fact that trial by jury in the form in which it is regulated by the Code of Criminal Procedure was not an indigenous institution and only introduced into India, I am of opinion that a departure from the English principle to the extent indicated above is nothing more than what the paramount claim of justice demand.

As regards section 303, I see no objection to amending it so as to enable the Judge to require a special verdict on particular issues of fact. On the other hand, I think that such amendment is an additional safeguard. It is not clear to me whether the amendment is likely to initiate a system of cross-examining the jury as to their decision. In his charge to the jury the Judge is bound to tell them what issues of fact arise for decision in each case under trial and what the findings ought to be on the several issues to warrant either a conviction or an acquittal. This being so, the power to call for a special verdict on particular issues of fact will enable the Judge to see that effect is given to his directions and accustom the jury to consider whether their verdict is the outcome of their findings on the several issues. I do not, however, understand the amendment to permit the jury to be questioned as to the reasons for their finding on each issue, and there appears to be no weight in the objection that the power to call for a special verdict would be an initiating a system of vexatious cross-examination as to the reasons of the verdict of the jury.

Another defect in the existing law is, the absence of a *verbatim* record of the Judge's charge to the jury. Admitting this to be a defect, the majority of the Commission consider that it is not practicable to remedy it. The heads of charge the Judges now submit to the High Court are in the nature of judgments written several days after the case is orally decided and are not a satisfactory substitute for the actual charge as interpreted to the jury in their own vernacular. It seems to me to be feasible to remedy this defect. A short-hand writer may be attached as a clerk to each Court, and with his assistance an accurate record of what was actually said to the jury at the time may be prepared and preserved so as to afford increased facilities to the Appellate Court towards ascertaining whether there has really been a misdirection.

As regards the class of offences triable by the jury, I am inclined to think that the classification adopted in this Presidency is open to amendment; but I do not desire to suggest any addition to those offences until the system of trial by jury with the safeguards now proposed and explained shall have been found to give complete satisfaction.

As for special juries, it seems to me that the recommendation made by the Jury Commission in paragraph 34 of their report sufficiently obviates the inconvenience pointed out by the Government of India.

MR. JUSTICE SHEPHARD.—The most important proposals on which our opinion is asked relate to sections 303 and 307 of the Criminal Procedure Code. I would strongly deprecate any proposal to give Sessions Judges a general power to examine the jury as to the ground and reason for their verdict, but I do not see why a Sessions Judge should not be empowered, after a verdict with which he does not agree has been given, to put specific issues to the jury of a general character. For instance,

in such a case as that stated by the Government of India (paragraph 3) there might be (1) a question as to whether any theft was committed; (2) a question as to recent possession; (3) a question as to the inference to be drawn from it; and, further, (4) a question might arise on evidence adduced to prove an *alibi*. It seems to me, it would be proper and unobjectionable to ask the jury questions of this sort. The answers to them would afford great assistance as well to the Sessions Judge in deciding what action he should take as to the High Court in case of a reference. The power to put questions of the kind stated would be particularly useful in the case of forgeries when such offences are triable by a jury, for the prevailing notions about this offence are not in harmony with our English ideas, and a jury would be quite capable of returning a verdict of "not guilty" on such a charge, although they believed that the accused had altered the document in such a manner as to make him clearly guilty of forgery. Other illustrations might no doubt be given.

Provided that it is made clear that the Judge is not to cross-examine the jury about the grounds on which they have arrived at their verdict, and that the questions are directed to ascertaining their opinion on the fundamental issues which the case involves, I think proposed amendment of the law would be decidedly useful.

With regard to the proposed amendment of the first paragraph of section 307, although the alteration of the words is slight, I think it may perhaps tend to relieve Sessions Judges of the difficulties which hitherto, apparently, they have felt. I fully agree with what the Commissioners say in paragraph 25 of their report, being of opinion that if jury trial is ever to succeed, it is absolutely essential that the responsibility should be with the jury and that their verdict should not be invalidated or open to question by the mere fact that it does not command the assent of the Judge. Doubtless there will be erroneous and unjust verdicts but that is the price which has to be paid for the institution of trial by jury.

As regards the power of the High Court on a case being referred by a Sessions Judge, I think it might be well to define it in some such terms as those proposed by the Commissioners (paragraph 24). In Madras, it has certainly been the practice to interfere with a verdict only when it is clearly shown to be perverse or unreasonable. The risk of injustice will, I think, be materially diminished by giving the Court power to deal with referred cases in the same manner as they do with cases tried by a Judge and assessors. Although the existence of such a power tends to qualify the finality of the verdict, it still leaves it on a level distinctly higher than that of the opinion of assessors.

These provisions are designed to guard against the infirmity of juries, and provide no safeguard against the mistakes which may be made by the Judge.

In my opinion, one reason among several why trial by jury has been a comparative failure is the inexperience and want of skill on the part of the Sessions Judges, many of whom rarely have an opportunity of presiding at such a trial. Extension of the system may do something to remedy this defect, but the fact must remain that the difficult art of presenting a case to a jury is not likely to be acquired by the average Judge. This being so and in the absence of a bar which may be relied upon to take note of any misdirection on the part of the Judge, it seems to me of greatest importance that a full report of the Judge's summing up should be secured in order that the High Court may be able to see whether there has been a misdirection. I do not understand how there can be any difficulty in the matter except from the want of competent shorthand writers, which, however, is a want that would very soon be supplied.

Section 307 of the Criminal Procedure Code being under discussion, I may perhaps be allowed to take this opportunity of making some further observations upon it. In the case of trial by jury, the conviction or acquittal, unless set aside by the High Court, ought surely to be the act of the jury, and it is only because the case is submitted that judgment is not recorded accordingly. When on a case being submitted, the High Court resolves to set aside the verdict, there must necessarily be a conviction or acquittal by the High Court. But in the contrary case when the High Court disagrees with the Judge and does not disapprove the verdict, the conviction or acquittal, as the case may be, stands good and all that is required is that the suspended

judgment should be recorded and, if necessary, sentence passed. It seems anomalous to say, as the last clause of the section does, that the Court acquits or convicts a man already acquitted or convicted by the verdict of a jury.

With regard to the sentence also it may be a question whether power should not be given to the High Court to direct the Sessions Judge to pass sentence.

MR. JUSTICE DAVIES.—I endorse the views of Mr. Justice Shephard in their entirety and especially with regard to an accurate record being kept of the Judge's summing up. I may mention that for the past 4 or 5 years, as Sessions Judge of Tanjore, I invariably had my charges to the jury recorded in short-hand by a clerk, and his transcript, subject, of course, to correction by me, was treated as the record of the heads of charge directed to be kept under the last clause of section 367 of the Code of Criminal Procedure. It seems to me there would be no practical difficulty in requiring all Courts of Session in this Presidency to adopt a similar course. But should it be found impracticable anywhere, I would strongly recommend, as suggested by Sir Romesh Chunder Mitter in paragraph 4 of his minute, that it should be made obligatory upon the Judge to write out his summing up before he proceeds to charge the jury. Objection as to delay should count as nothing against the paramount importance of knowing exactly what the Judge did say to the jury.

Further, to ensure that the charge to the jury should be complete, I would venture to urge that it be laid down in distinct terms what the charge is to contain, just as in the no more important case of the judgment it is laid down (section 367, Code of Criminal Procedure) what its contents should be. It is in regard to trials where several prisoners are concerned that the general opinion is the jury are apt to fail in proper discrimination. It should therefore be made a special rule that in cases where more than one accused is under trial, the particular evidence against each accused, and the particular offence it would constitute as against him, should be separately set forth in the charge. Some Judges never think of doing this, but it is, in my opinion, a most essential direction and should be enforced.

From the Registrar of the High Court of Judicature, Appellate Side, Madras, to the Chief Secretary to Government, dated Madras, 27th June 1893, No. 1620.

In continuation of my letter, dated the 16th instant, No. 1592, I am directed to forward herewith a transcript of the minute recorded by the Hon'ble Mr. Justice Best on the proposals for amending the Criminal Procedure Code dealt with in the report of the Jury Commission.

(Signed) H. W. FOSTER,
Registrar.

ENCLOSURE.

Minute.

MR. JUSTICE BEST.—I am decidedly in favour of the amendment of section 307 of the Code of Criminal Procedure in the manner suggested in paragraph 24 of the report of the Jury Commission. I am also of opinion that the law should be altered so as to allow the Judge to put to the jurors, after the verdict is delivered, such questions as may be thought necessary to enable him to determine whether he should refer the case to the High Court.

I see no necessity for a list of special jurors—nor is the material for two lists available in the present condition of the mofussil of this Presidency.

I think the number of the jury should not be less than five and that the law on this head requires no alteration. Nor do I see any necessity for alteration of the law as to the age of jurors. As to the area of selection, if I mistake not, in this Presidency, it is still fixed by the Government, notwithstanding the declaration in section 319 of the Code as to the liability to serve of all male persons of the prescribed age residing within the district.

From the Acting Sessions Judge, Salem, to the Chief Secretary to Government, dated Salem, 27th June 1893, No. 415.

I have the honour to reply to G.O., No. 1022, Judicial, dated 16th ultimo, calling for my opinion on the jury question.

2. The first suggestion discussed by the Commissioners (in paragraph 32 of their report) is whether section 303 of the Criminal Procedure Code should be so amended as to enable a Sessions Judge to ascertain the opinion of a jury on portions of a case submitted to them. I am clearly of opinion that this should be done. The Commissioners deprecate—and rightly—anything like the cross-examination of a jury. But such appearance of cross-examination would, in my opinion, be avoided (a) by allowing the Sessions Judge to ask the jury the necessary questions *before* their final verdict of guilty or not guilty is delivered (though, of course, only at the close of the trial and charge), and (b) by defining in the statute the nature and scope of such questions.

3. I give an example. Take a case of dacoity brought against five prisoners, A, B, C, D and E. Against A and C there is only the evidence of witnesses who say they identify them as the actual dacoits; against B and D there is only evidence of recent possession of property stolen; against E there are both kinds of evidence. I would permit the Judge to put the following questions:—

(1) Having regard to the definition of "dacoity" as now explained to you, do you find that a dacoity really took place?

(2) If you do, are you satisfied with the evidence of identification against A, C and E, or against any of them (if so, against which?)

(3) Do you find that the property produced was found in the (exclusive) possession of B, D and E, or in that of any of them?

(4) Was that property, to their knowledge, stolen in the dacoity?

(5) Do you find A guilty or not guilty? (Similar question in respect of each prisoner).

I fail to see that any one of questions 1, 2, 3 and 4 can, if put *before* question No. 5, be called a "cross-examining" question (for such questions tend to *form*, not *shake*, an opinion), while I am certain that the putting of such questions and the recording thereof and of the answers given to them (such recording is, of course, imperative and should be done *at the time*) would not only simplify and accelerate the work of the High Court in disposing of cases referred to them, but enable the Sessions Judge to see clearly what cases he ought to refer.

4. It may be said that it will be difficult to word the section so as to regulate the nature of the questions to be asked. But a little must always be left to the common sense of the presiding Judge. And it will be in every case open to the High Court in revision to point out that the questions were wrongly framed and put. In fact, the High Court would in this way be enabled to see into the working of the Judge's mind and into the real disposal of the case far better (as I think) than where, as at present, they are only aided by a perusal of the prescribed abstract charge; while, on the other hand, assuming the Judge's questions rightly put, the answers given to them by the jury would, at a glance, disclose any weakness in logical reasoning or perversity in finding. It is precisely the difficulty jurors feel in expressing a logical conclusion (see the words used by the Commissioners) which the above proposal will obviate by assisting them in doing so.

5. It must also be pointed out that the Commissioners have failed, in my humble opinion, to see that, *even now*, a referred case can legally be, and to a great extent is, reheard by the High Court on the evidence. Their remedy (*cf.* clause 2 of paragraph 32) is, therefore, no adequate remedy at all.

6. The above remarks and proposal render wholly unnecessary anything like a "special verdict" on issues framed—a procedure cumbrous in itself and savouring rather of the Civil than of the Criminal Law.

7. In the Madras mofussil, special juries (except in the case of the trial of European British subjects) are, in my opinion, unnecessary, while a special jury list would

be very small, and at the same time excludes perhaps for years together from ordinary juries the very persons most fitted to serve on them.

8. I agree with the Commissioners in thinking that the statutory list of exemptions from jury service should be carefully looked into. There is, I find, a tendency, both on the part of the legislature and on that of heads of departments, to withdraw Government servants from the work. Not seldom in this district, I receive applications from officers (such as the Executive Engineer, District Forest-officer, Treasury Deputy Collector, &c.) asking for the exemption on the ground of "public duty" of some one of their clerks or accountants who has been summoned to serve. I am of opinion that this should be legally discountenanced, and that only persons who produce a certificate of illness from a Government medical officer should be exempted at any Sessions. The result of the broad exemptions in the Code, and of the frequent applications to excuse particular persons from service, is the weakening of the jury list, to (I cannot but think) the permanent disadvantage of the administration of criminal justice, which administration is, after all, one of the most important duties of the State.

9. As to the right of appeal on the facts. It would be contrary to the essence of the whole jury system to allow this where the jury are unanimous. But I am inclined, after some consideration, to think it should be allowed where the verdict is only that of a majority. In such cases, it might be laid down that the Judge should ask the prisoner at the termination of the trial whether or not he intends to appeal; and I would also permit the appeal to be laid before the Sessions Judge, who should be then bound to refer the case (and appeal memorandum) to the High Court with his opinion on the facts. I suggest this procedure on the grounds (a) that it would save time and thus promote rapid finality, and (b) that it would facilitate disposal by the High Court.

10. I agree in the Commissioner's proposed amendments of section 307, Criminal Procedure Code. They give the Sessions Judge more latitude in referring cases, and wisely emphasize by enactment what, I believe, is now more or less the actual practice of the various High Courts.

11. No opinion of mine seems necessary on paragraph 4 of the Government of India's letter, No. 545, under reference, the question therein raised being exclusively one affecting the powers of Government.

(Signed) W. J. TATE,
Ag. Sessions Judge.

From the Sessions Judge, Bellary, to the Chief Secretary to Government, dated Bellary, 12th July 1893, No. 1287.

I have the honour, in reply to G.O., No. 1022, Judicial, of the 16th May 1893, to report as follows.

2. The Commission propose to make certain amendments in section 307 of the Criminal Procedure Code and also to introduce such alterations in the provisions of the Criminal Procedure Code as may be necessary in order to carry out certain recommendations made by them as regards special juries and the area from which jurors should be chosen. The amendments proposed in section 307 should in my opinion most decidedly be adopted. As far as the Courts in the mofussil are concerned I cannot see that any advantage could be expected from the employment of special juries. It also does not appear to me to be necessary to make any alteration in section 319 of the Criminal Procedure Code. That section renders all males between the ages of 21 and 60 resident in any district liable to serve as jurors in that district. Section 320, however, gives the Local Government the power of exempting any persons from the liability to serve, and the Government of Madras have accordingly, by G.O., No. 2962, Judicial, of the 17th November 1884, exempted all persons residing outside certain areas. It would therefore appear that, under the existing law, the Local Governments have the power which the Commission in paragraph 37 of their report consider should be conferred on them.

3. I am strongly of opinion that section 303 should be modified so as to give a Sessions Judge power either to require a special verdict on particular issues of fact or to demand from the foreman after the delivery of the verdict a statement of the grounds on which it is based. During the recent controversy as to trial by jury in India, one fact has been brought prominently to notice, namely, that while Judges and others engaged in the administration of justice express themselves dissatisfied with a considerable number of the verdicts returned by juries, Sessions Judges make references to the High Court and the High Court interfere in a very small percentage of the cases tried. The reason in my opinion why so few references are made and so few verdicts set aside is that in the absence of any information as to the grounds on which a verdict is based, the Judges feel bound to assume that the jurors have considered the case in a rational and reasonable manner. Reference may be made to the case reported at I.L.R. 9, Calcutta 53, where the Sessions Judge put certain questions to the jury after they had returned their verdict. The answers given to these questions showed that the jury had arrived at certain somewhat foolish conclusions upon the evidence, but the learned Judges of the High Court refused to consider these answers on the ground that the Sessions Judge had no power to put the questions to the jury; and Mr. Justice Norris, having pointed out that there were rational grounds on which the jury might have disbelieved certain evidence, observed that he had a right to assume that the estimate of the evidence arrived at by the jury corresponded with the one formed by himself. The opinions given by the assessors in a large number of cases show that they have not taken a rational view of the evidence put before them and, if we had the power to ascertain the reasons which have led jurors to return their verdicts, we should often, I fear, find that they are not entitled to very great respect. In the only case in which I felt it possible to make a reference to the High Court under section 307 last year, the foreman of the jury having delivered the verdict volunteered a statement as to the grounds on which it was based. That statement was duly recorded by me, and as it showed that the jury had rejected evidence on most unreasonable grounds the verdict was set aside, and what would have been a palpable failure of justice was prevented. As observed by Mr. Justice Candy in the case reported at I.L.R. 15, Bombay 452 (at page 482) "a clear and concise idea as to the grounds of the verdict is of the greatest aid in the furtherance of justice. On the one hand, it may show the Sessions Judge that the verdict is not unreasonable; on the other, it may indicate on the part of the jury such an inability to appreciate the evidence that the Sessions Judge will have less hesitation in disagreeing with the verdict."

4. I regret the delay in submitting this letter. It is due to my absence in England during the recess.

(Signed) LEWIS MOORE,
Sessions Judge.

From the Sessions Judge, North Arcot, to the Chief Secretary to Government,
dated Chittoor, 25th July 1893, No. 10.

I have the honour to submit the report called for in G.O., dated 16th May 1893, No. 1022, Judicial.

2. The first proposed alteration of the law is contained in paragraph 20. The alteration is described as "slight" in paragraph 25; it might almost have been called microscopic. The motive of it is stated to be to make the law clearer. That being so, it seems not out of place to remark that to describe a man as being "clearly of opinion" is slipshod English. A man can only properly be described as "clearly of opinion" when he makes it clear to other people that he holds the opinion. It is evident that what is meant is that the Judge should be "decidedly of opinion that it is, &c., &c.," though even then the phrase is not as direct as it might be. It would, in my opinion, be better to go straight to the point and let the section run:—
If the Judge disagrees with the verdict tried, and in case of an acquittal thinks the evidence sufficient to establish the guilt of the accused,

or in case of a conviction thinks the evidence insufficient, &c., he shall submit the case to the High Court, &c.

3. No verdict of acquittal should be interfered with by the Judge if he does not think the evidence sufficient to establish the guilt of the accused. If he does think it sufficient, he cannot fail to be decided in the opinion that the acquittal of the accused is a failure of justice. The same remarks *mutatis mutandis* apply to a verdict of conviction.

4. But the change is not likely—at all events, in this Presidency—to make any difference in the number of trials referred.

5. With regard to section 32, I think that the proposal to question the jurors would be likely to lead to great confusion and often considerable delay. The jury might have to retire and discuss the questions put to them in order to be able to say if they were unanimous in their answers. If they were unanimous in their verdict, but not in their answers, there might be considerable doubt as to what they did really mean, and a wide field would be opened for the misapplied ingenuity of vakils.

6. Section 33.—I am of opinion that it would be of advantage to everybody that the jury should be called upon to return a special verdict on issues framed by the Judge. It would, in case of a disagreement between the Judge and jury, narrow the difference to clear and defined questions and greatly diminish the Judge's labour in referring the verdict and that of the High Court in considering it.

7. As far as my experience goes, juries are apt to be prejudiced by facts brought out in the evidence of which they disapprove, and to give such facts a weight not at all warranted by their bearing on the question of the prisoner's guilt or innocence. Thus if one or two witnesses are manifestly speaking falsely, a jury is very apt to disbelieve true evidence of other witnesses for or against the same accused person. A verdict on special issues would indicate more distinctly the part of the evidence about which this had been done.

The greater difficulties spoken of in the report do not occur to me.

8. In this Presidency there is no distinction between special and common juries; these are only jurors and assessors. I think it might be a change well worth trying to have a separate list for jurors as distinguished from assessors. The duties of jurors are of much more importance than assessors, since the Judge is at liberty to, and very frequently does, disregard the opinion of the assessors. If, therefore, the most intelligent and experienced of the men on the joint list were set apart for the jury list, their verdicts would, in all probability, seldom call for any revision.

9. It would be a great improvement if jurors and assessors too were paid their travelling expenses and batta, and the expense to Government would not be great. Probably Rs. 20,000 a year would cover the cost, and yet the relief would be much felt by the men who have to serve.

10. In this Presidency almost the only cases which are in fact tried by a jury are robberies and dacoities and thefts by old offenders. Unwillingness to convict on clear evidence is not common in such cases, so that the matter has not the importance here which it has been given in Bengal.

11. I suppose there is no one who would recommend the extension of the system in this Presidency.

(Signed) E. J. SEWELL,
Sessions Judge.

From the Under Secretary to the Government of India, Home Department
(Judicial), dated Simla, 2nd August 1893, No. 934.

ABSTRACT.—Requesting an early reply to letter, No. 545, dated 6th May 1893, relative to the amendments proposed by the Jury Commission in the Criminal Procedure Code, and the question of modifying the jury system as now established in the Madras Presidency.

ORDER—dated 28th August 1893, No. 1747, Judicial.

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

2. Several of the Honorable the Judges of the High Court have expressed an opinion in favour of the proposal that a *verbatim* record of the Sessions Judge's charge to the jury should be required in every case. The Government recognizes the value of such a document, but there are numerous objections to any legislation which would require the Sessions Judge to record the whole of the charge in his own hand. The only practicable way of giving effect to the proposal would be to attach a competent shorthand writer to each Court and the Government doubts if there is a sufficient supply of such writers available. The Government would suggest that the High Court should make enquiries on the point and would be glad to be informed at an early date of the result.

3. The attention of all Collectors will be called to Mr. Mackenzie's remarks upon the compilation of lists of jurymen; it is hardly necessary to dwell upon the importance of exercising discrimination in the selection of men to perform the important duties of jurymen.

[Here enter No. 1748, dated 28th August 1893.]

(True Extract.)

Chief Secretary.

To the Honorable the Chief Justice, with C.L.
„ the Government Solicitor.
„ all Sessions Judges.
„ all Collectors.

Gobt. of {1893} Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O., 28th August 1893, No. 1747.

AUGUST.

Trial by Jury.

Directing, with remarks, that the Government of India be addressed on the various matters discussed in the report of the Commission appointed to consider and report on certain questions connected with — in Bengal.

28TH AUGUST 1893, No. 1748, JUDICIAL.

JUDICIAL DEPARTMENT.

LETTER—from

THE CHIEF SECRETARY TO THE GOVERNMENT OF
FORT ST. GEORGE,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT.

SIR,

In response to your letter, dated 6th May 1893, No. 545, Judicial, I am directed to communicate to you the views of His Excellency the Governor in Council, of the Honorable the Judges of the High Court, and of certain selected officers upon the various matters discussed in the Report of the Commission appointed to consider and report on certain questions connected with trial by jury in Bengal. His Excellency in Council regrets the delay which has occurred in the transmission of this reply, but as the Courts were in vacation when your letter was received, it could not be avoided.

2. The first point to be considered is whether section 307 of the Code of Criminal Procedure should be amended so as to make it clearer—

- (1) when Sessions Judges should refer cases to the High Court;
- (2) what the High Court should take into consideration when disposing of references under section 307, Code of Criminal Procedure.

It is the opinion of the Commission that Sessions Judges should not be required to refer every case in which they disagree with the verdict to the High Court but that they certainly should do so whenever they are decidedly of opinion that a failure of justice would otherwise occur. Further, the Commission considers that, when dealing with cases referred under section 307, the High Court should be required to form an independent opinion of the case upon the evidence.

The High Court and all the officers consulted agree with the views expressed by the Commission on this subject and they have the concurrence of His Excellency in Council.

This Government accordingly supports the proposal in paragraph 24 of the report that section 307 of the Code should be amended in the following way:—

(1) By substituting for the words "so completely that he considers it" the words "and is decidedly" [not 'clearly' as suggested by the Commission] "of opinion that it is;"

(2) By inserting after the words "High Court" in the third clause the words "shall consider the entire evidence, giving due weight to the verdict of the jury and to the opinion of the Sessions Judge and of the dissentient jurors, if any, and."

3. The next question for consideration is whether offences against marriage should be triable by jury.

In this connection I am to invite attention to Mr. Galton's letter, dated 6th February 1893, No. 268, Judicial, in which it is stated that this Government does not consider it advisable to add to the list of offences which are triable by jury in this Presidency. As regards the particular class of offences now in question the Commission shows excellent reasons in paragraph 29 of its report why they should not be tried by jury and the Government concurs with the Honorable Sir T. Muttusami Aiyar that it will be time enough to think of extending the list of offences when the system of trial by jury, safeguarded as now proposed, is found to give complete satisfaction.

4. In paragraph 32 of the report the Commission deals with the question of amending section 303 of the Code of Criminal Procedure in such a way as to empower the Sessions Judge to—

(1) obtain from the jury its opinion on parts of the evidence in order to enable him to learn the grounds for the verdict;

(2) question the jury as to the reasons for the verdict in view to deciding whether a reference to the High Court is called for.

The majority of the authorities consulted is opposed to amending section 303 in the manner indicated on the ground that anything approaching to a cross-examination of the jury is to be deprecated. The Government of India expressed a similar opinion in paragraph 8 of Home Department letter, dated 25th August 1892, No. 1105, Judicial; the Commission also is opposed to the amendment of section 303 in the manner suggested.

I am to say that His Excellency in Council concurs in thinking that the arguments which have been brought against the proposed amendment outweigh those which have been urged in its favour.

5. In the same paragraph (32) the Commission pronounces against a further proposal that section 303 should be so amended as to empower the Sessions Judge to direct the jury to return special verdicts upon issues framed by him.

This suggestion has been considered on a previous occasion and in Mr. Galton's letter, dated 6th February 1893, No. 268, Judicial, an opinion was expressed in favour of the amendment of section 303 so as to enable the Judge to take special verdicts regarding particular questions of fact and the general credibility of particular evidence.

Among the authorities now consulted by this Government there is a consensus of opinion in favour of the amendment and His Excellency in Council fully concurs with the Government of India that the vague assertion by the Commission that the amendment would be likely to create greater evils than it would remedy ought not to be accepted as sufficient in the face of the obvious advantages which will result from the introduction of a system of special verdicts. It is understood that the Judge is to have the power of calling for verdicts upon special issues either before or after the general verdict is delivered; Mr. Justice Shephard, it will be observed, takes it to be the intention that special verdicts shall be called for only (1) after the general verdict has been given, (2) if the Judge disagrees with the general verdict.

6. In paragraph 34 of the Report the Commission suggests that jurymen should be classified as "special" and "common," subject to the proviso that special jurymen shall be liable to serve on common juries.

The object of this proposal is to provide for the selection of specially-competent jurymen in cases of peculiar difficulty or importance.

There is a consensus of opinion that the preparation of two entirely distinct lists of jurymen is inadvisable because—

(1) in many cases the supply of competent jurymen is so small that such a course would be impossible;

(2) the separation of the special jurymen from the common jurymen would appreciably lower the quality of common juries.

A few of the officers consulted have, however, no objection to the classification of jurymen as "special" and "common" on the understanding suggested by the Commission, namely, that special jurymen will be liable to serve on common juries.

On the whole His Excellency in Council considers it inexpedient to adopt the proposal of the Commission. The necessity for the change has not been made out and the list of offences triable by jury is so small that it would be extremely difficult to find any principle upon which the cases for special juries could be discriminated from those for common juries.

7. The question whether an appeal upon the facts against the verdict of a jury should be allowed is considered in paragraph 42 of the Report and the Commission expresses an opinion adverse to allowing such an appeal.

The Government of India has adopted a similar view as stated in paragraph 9 of Mr. Lyall's letter, dated 25th August 1892, No. 1105, Judicial.

Of the officers now consulted by this Government one only (Mr. Tate) has declared himself to be in favour of allowing an appeal upon the facts and even he would allow it only when the verdict is not unanimous.

This Government, however, concurs with the Government of India in thinking that the adoption of the proposal would greatly weaken the arguments for the continuance of the jury-system and would therefore recommend that under no circumstances should an appeal upon the facts be permitted.

8. In paragraph 43 of the Report the Commission observes that it cannot see its way to recommending that provision should be made for requiring Sessions Judges to record *verbatim* their charge to the jury.

The question here touched upon is important and it will be observed that three of the Honorable Judges of the Madras High Court are strongly of opinion that some such provision should be made.

On the other hand Mr. Mackenzie considers that this would necessitate adjournments which would not only result in delay but also expose the jury to the danger of having improper influences brought to bear upon it; he further dwells upon the importance of delivering the charge while the evidence is still fresh in the mind of the jury.

It seems to be generally conceded that the difficulties in the way of requiring the judge to record the charge *verbatim* with his own hand are insuperable. At the same time the importance of having a complete record of the charge cannot be gainsaid. It appears to His Excellency in Council that the only way out of the difficulty is to have the charge taken down by a clerk in shorthand as it is delivered; at the same time it is doubtful if the supply of competent shorthand writers in this Presidency is at present sufficient to render this plan feasible. It will be seen from the accompanying proceedings of this date that the High Court has been asked to make enquiries as to the possibility of procuring shorthand writers. Even if the supply is insufficient at present it would soon increase under the influence of a certain demand.

9. The Honorable Mr. Justice Davies, it will be seen, is of opinion that the Code should distinctly state what the charge to the jury shall contain and that it should further provide that the particular evidence against each accused and the particular offence it would constitute against him shall be separately set forth to the jury. I am directed to commend these suggestions to the Government of India.

10. In paragraph 4 of your letter now under reply this Government is asked whether it has any objection to the amendment of section 269 of the Code of Criminal Procedure in such a way as to render the assent of the Governor-General in Council necessary to any extension of the system of trial by jury.

On this subject I am to invite attention to paragraph 20 of the despatch, dated 21st December 1892, No. 32, from the Government of India to the Secretary of State, and to say that the reasons against the proposal which are therein set out appear to His Excellency in Council to be conclusive.

11. Finally, and with reference to paragraph 5 of your letter under reply, I am to ask whether the Government of India would have any objection to the issue of a notification declaring that attempts to commit and abetments of offences which are now triable by jury shall also be triable by jury.

The following offences are at present triable by jury in this Presidency :—

Theft—Sections 379, 380, 382.

Robbery—Sections 392—395, 397—402.

Dishonest dealing with property—Sections 411, 412 and 414.

House trespass—Sections 451—459.

Breaking open a closed receptacle—Section 461.

In 1886 it was decided to make abetments of these offences also triable by jury and a Government order to this effect was issued, but it has recently been pointed out that, as no notification was published in the Gazette as required by section 269 of the Code of Criminal Procedure, the Proceedings of 1886 is destitute of legal force. In deference to the wishes of the Government of India this Government has refrained from remedying the formal defect by notifying the Proceedings of 1886 in the Gazette. But it is desirable that this should now be done and it has also been represented that attempts to commit offences triable by jury should also be declared to be similarly triable.

I have the honour to be,

Sir,

Your most obedient servant,

J. F. PRICE,
Chief Secretary.

Ootacamund,
28th August 1893.

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HOME 1893 DEPT.

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From the Government of
Fort St. George.

Issued

Recd.

Encl.

Letter, 28th August 1893, No. 1748.

AUGUST.

Trial by Jury.

Communicating the views of this Government,
of the Honorable the Judges of the High Court
and of certain selected officers upon the various
matters discussed in the report of the Commission
appointed to consider and report on certain ques-
tions connected with — in Bengal.

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9. On this subject I beg respectfully to submit that the charges of Sessions Judges are criticised with undue severity. A charge is often delivered to a weary jury and sometimes to a jury who evidently have long since made up their minds in the same direction as the Judge has made up his. In such circumstances a Judge is prone to deliver a very brief charge, but the charge afterwards is scrutinised by the High Court and is expected to contain a sufficient narrative of the facts of the case and a discussion of each point of law. I have especially in mind a case in which the jury and myself had

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had long since made up our minds
that the prisoner was innocent. The
Public Prosecutor saw this and, after
saying a few words, sat down. I had
then to read to the impatient Jury
the long charge which I had written
for the satisfaction of the High Court.
I submit that in criticising a charge
it ought to be remembered that the
primary object of a charge is to
guide the Jury aright and that
the Judge on the spot knows
best how much guidance the
Jury require. The secondary object
is to give information to the High Court.

10. I think that special verdicts
are desirable. As an instance I may
quote the difference of opinion in
this District on the meaning of
section 401 of the Penal Code.
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The District Magistrate and Police
Superintendent think that this
section applies to men born and
bred in the wandering tribes of
Yanadis and Yerikulas. It is true
that these tribes habitually steal,
but these men never knew any
other home. They have their wives
and children with them in the
encampments. I hold that section
401 does not apply to such men
and was intended to meet the case
of men who joined a gang of thieves.
I so charged the Jury in two cases
committed to the Sessions and the
juries gave verdicts of not guilty.

The Public Prosecutor moved the
High Court but the High Court
refused to interfere. In such
cases

cases a special verdict on the facts might have been taken and the doubtful question of law might have been referred to the High Court.

11. If a class of Special Jurors is selected it will lower the status of common Jurors unless the Special Jurors take their share of the ordinary work. When I came here in 1887 I found that the list had been divided into an upper class of Jurors and a lower class of Assessors and that the two classes were kept separate. Jurors never served as Assessors and looked down on Assessors. The Assessors were considered to be an inferior class of men. I abolished this distinction and amalgamated the two lists.

12. I beg to suggest that the Executive Government can improve matters by insisting upon District Magistrates taking more trouble in the preparation of the Jury list. The Judge can do little for he cannot know of the people of the District in the way in which the District Magistrate knows them. Moreover, the District Magistrate can have the assistance of the Superintendent of Police and of the Deputy Collectors and Tahsildars in discussing the persons to be placed on the list. But the list appears to be prepared in the Collector's Office as a matter of routine by some subordinate and the District Magistrate himself appears to me not to have seen

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the list until he comes to the Session Court to sit with the Judge to hear objections. Then the idea of some District Magistrates seems to be that they are to sweep as many fish as possible into the net. I think that if the Collector, Police Superintendent, Head Quarter Deputy Collector and Head Quarter Tahsildar met to discuss the list before hand, a very much better list could be prepared. I may give an instance of what I mean. Last April I sat in Court with the Acting Collector to hear objections to the jury list. I noticed that the occupation of one man was given as "Pleader's Gomastah." I said, "That is a most objectionable class of man to be placed on the list." The Acting
Collector

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Collector said, "Then a man has only to call himself a Pleader's Gomastah and you will strike him off the list."
13. I am averse to extending jury trials to murder cases and marriage cases. In murder cases Assessors shrink from saying that an accused is guilty and in marriage cases, especially in cases under the Indian Christian Marriage Act, there are sometimes very intricate questions of law.

I have the honour to be
Sir

Your most obedient servant

Print name here J. T. Walker
District and Sessions Judge

compd.
V.R.
Clerk.

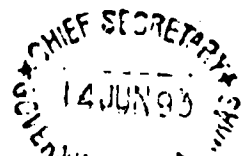
From

The Sessions Judge
Ristua.

Dated 10-6-93

Despatched 80

Received 14th June 1893



no. 761
Enclosures Printed papers.

Submitting reply to

G. O. no 1022 Judicial,
dated 16th May 1893.

80 A P 31
In the matter of the proposals for amending
the Criminal Procedure Code dealt with in
the Report of the Commission appointed to con-
sider and report on certain questions connected
with trial by Jury in Bengal.

Opinion

1. The discussion of the jury system as
carried out in the Sessions Courts in the
interior may be roughly divided under
two main heads, viz:-
 - (a) the extension or restriction of the system
both with regard to localities and to the classes
of offences to which it has from time to time
been applied; and
 - (b) amendment of the Criminal Procedure
Code so as to minimise the risk of failure
of justice due to the causes, or alleged causes
referred to in the Report.

I understand the reference to me to
be confined to the second, and more limited
head.

2. The proposals for amending the Code
dealt with in the Report relate to the
Composition of juries;
Charges to juries;

reasons for verdicts;
 amendment of section 307. C.P.C; and
 appeals against the decision of a jury.

3. With regard to the number of jurors, their ages, the area of their selection, exemption from service on juries, and the seclusion of those serving as jurors during a trial and until delivery of their verdict, I see no reason for making any alteration in the existing law.

The establishment of special juries is in my opinion uncalled for and inexpedient. What is required is the improvement of existing juries by careful selection of jurors, and the creation of those feelings of respect for the office and responsibility in the discharge of the duties of a juror which I fear do not at present exist to any great extent.

4. The importance of the "charge" to a juror cannot be overrated, but such guidance can only be secured by careful selection of judges, not by any amendment of the Code of Criminal Procedure. That Code provides for the heads of his charge to the jury being recorded by the Judge.

5. It is very desirable that the reasons of the jury for their verdict should be elicited without subjecting the jurors to a cross-examination or to undue catechism by the presiding Judge. I think that Sessions Judges should be empowered to require from the jury special verdicts as suggested but the power conferred should be so clearly stated and limited to the object sought as to preclude the chance even of the enquiry degenerating into a cross-examination.

6. I think that the amendment of and addition to section 307. C.P.C., suggested in para. 24 of the Report under consideration, should be made. At present, and until juries in this country prove that they have that respect for their office and sense of responsibility which they ought to possess, there ought to be some protection against "perverse verdicts".

7. On the other hand I think that ordinarily the verdict of a jury should be final and that no appeal therefrom should be allowed.

Not a command } (at J. H. Spring Branson
 10th June, 1893 } (a true copy) Advocate General
 J. H. Spring Branson
 Government Solicitor

(1893) Department

From
Ernest Barclay
Government Solicitor
Madras

To
The Chief Secretary
to Government
Colacumund

N° 201

Dated 13 June 1893
Recd



Forwarded with reference
to the Order of Government
dated 16 May 1893, judicial

Ernest Barclay
Government Solicitor

Abstract - Forwarded of the
following papers of the C. Secy.
G. L.

Sessions Court, S. Malabar

Calicut, 13th June 1893

From

(R. P. Benson Esq. M.A., LL.B., Barrister-at-Law)
The Sessions Judge, South Malabar
Calicut

To

The Hon'ble J. F. Price.
Chief Secretary to Government,
Judicial Department
Madras.

Sir,

With reference to G.O. dated 15th May
1893, No 1022, Judicial, I have the honor to submit
the following remarks on the proposals made by
the recent Jury Commission for the amendment of
the law relating to trial by jury in India. The
enclosures are returned, as requested.

Section 307 Cr. P. C.

2. I think that the wording of Section 307
of the Criminal Procedure Code may with advantage
be revised with a view to make its intention
more clear, and to leave less room for that
diversity of practice on the part of both
Sessions Judges and of the High Court, which
has unfortunately hitherto existed in acting under
its provisions. I would substitute the words "and
is clearly of opinion that it is" for the words "so
completely that he considers it" in the first
paragraph of the section which deals with

duty of the Sessions judge.

In the third paragraph, which deals with the duty of the High Court, I would add after the words "High Court" and before the words "may exercise", the words "shall consider the entire evidence, giving due weight to the verdict of the jury, and to the opinion of the Sessions judge and of the assessors to give a fair verdict." It is believed that these words would stop the practice now followed by the best judges, and would leave no room for diversity of opinion as to the intention of the Legislature. I am wholly opposed to the proposal which has been made in some quarters that it should be the duty of the Sessions judge to refer to the High Court every case in which he differs from the view taken by the jury. I not infrequently differ from the jury without being so confident that I am right and that they are wrong, as to lead me to think it necessary, or even desirable for the ends of justice, to submit the case to the High Court. To refer such cases to the High Court would weaken, or destroy, that sense of responsibility on the part of the jury which it is so desirable to encourage and strengthen; it would impose a large mass of additional work on the High Court and would lead to an improvement in the administration of justice. The High Court would hardly ever interfere, and it is not intended

Appeal on the facts.

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12P
it would probably be wrong in as many cases as right.
3. The same considerations lead me to conclude that the proposal to allow an appeal on the facts against the verdict of the jury is altogether undesirable. It would weaken the sense of responsibility on the part of the jury and increase the work of the High Court, with, as I venture to think, securing justice in a large number of cases. The jury and the Sessions judge have the immense advantage of hearing the evidence of each witness as it is given, and of observing his demeanour. The Sessions judge is almost invariably a man with from 15 to 30 years' experience of native evidence and of native customs and modes of thought. If he and a jury of natives agree as to the verdict it is almost unlikely that a Bench of the High Court would, on the bare record, and without the special advantages possessed by the judge and jury, be able to arrive at a more correct conclusion as to the facts. It must not be forgotten that one at least of the Judges of the High Court Bench may, and often will, be a Judge fresh from England, whose acquaintance with native evidence and customs is necessarily small, and obtained chiefly at second hand. If the Judge's disagreement with the jury is such a find that he does not consider enough

necessary in the interests of justice, the probability of useful interference by the High Court is only one degree less remote. If the Sessions Judge does consider a reference necessary, he can make it under Section 307, and if the High Court then deals with the whole case on its merits, as proposed in para 2 supra, giving due weight to the opinion of the jury and of the Judge and of any dissentient jurors, I think there will be every reasonable safe guard against a failure of justice.

4. I am opposed to anything like cross-questioning of juries as to their reasons for arriving at their verdict. It might often be impossible to record them fairly or intelligibly without writing a separate statement, amounting to a judgment, for each juror, but I think that Section 303 of the Criminal Procedure Code should be amended so as to enable the Judge to require the jury to give a special verdict on particular issues of fact. Such a course will rarely be necessary, but it may be so occasionally, to enable the Judge to appreciate the ground on which the general verdict rests, and sometimes, too, in order to assist him in deciding on the appropriate penalty. Such a case occurred in a trial held before me yesterday. Three prisoners were being tried by a jury for dacoity. The motive of the prisoners

Section 303 C.P.C.

might have been either simple extortion (Section 383), or aggravated extortion (Section 384), or robbery (Section 390), or dacoity (Section 391), - according to the view taken of the violence used and the number of persons taking part in the extortion. The jury found the prisoners not guilty of dacoity, but found that one of them was guilty of extortion. I was able under Section 303, Criminal Procedure Code, as it stands, to ascertain that the verdict was "guilty of simple extortion" (punishable under Section 384, I. P. C.), not aggravated extortion (punishable under Section 385), but I was unable to frame a special issue as to the violence used though I would have valued a finding by the jury on that matter as a guide to me in determining the penalty appropriate to the offence.

Section 269 C.P.C.

5. I do not see any objection to Section 264 of the Criminal Procedure Code being so amended as to require that action under that section shall only be taken by Local Governments with the previous sanction of the Governor General in Council. Action under it will always be taken with deliberation. Considering the far reaching political effects of such action, and the general interest likely to attach thereto, it is probably desirable that it should be approved by the Governor General in Council before it is finally done.

6. For the reasons stated in para. 10 of the Special Jurors letter of the 21st December 1872 of the Government of India to the Secretary of State, I think (though with some hesitation) that Special Jurors are inadvisable at present. If adopted they should be sparingly resorted to and the Special Jurors should certainly not be excluded from the general jury list, but service as a Special Juror should give exemption from service on an ordinary jury for 6 months.

7. I am uncertain whether the present Extension of trial reference invites my opinion as to whether the Special Jury system should be extended in this Presidency to a larger number of offences than are at present triable by juries. My opinion has been expressed in the Criminal Administration Reports of the past five years and in special reports. I think that the system "works fairly well on the whole," and is likely to work better as time goes on. I neither decry nor extol it. It fails, when it does fail, not so much from the corruption or perversity of the jury, as from deficient mental power in dealing with a great mass of evidence as it affects each of many prisoners who are being tried together, as in some cases of dacoity. There would perhaps, be somewhat fewer failures of justice if the system were abolished, but even if this were not so, the collateral and political advantages of the system

are, however, in my opinion so important that I would rather see the system extended than curtailed. If it is determined to extend it the offences to which it should be first made applicable are in my opinion the following:-
Sections 363 to 369, 372 and 373 (Kidnapping and abduction), Section 376 (rape), Sections 403 and 404 (criminal misappropriation) and Sections 426 to 432, 434 to 436, and 440 (mischief), together with attempts to commit, and abetments of, these offences.

I may take this opportunity of bringing to notice that though abetments of offences triable by jury in this Presidency are also triable by jury (G.O. N^o 2477 dated 16th September 1886, Judicial), I am unable to find any Notification directing the trial by jury of attempts to commit such offences. This is an omission for which there appears to be no reason.

I have the honor to be,
Sir,

Your most obedient servant.

Print name
here

A. K. M. S.
Sessions Judge.

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From
The Sessions Judge
Calicut

To
The Chief Secretary
to Govt
Judicial Dept.

Dated 13th June 1893

Despatched 14th June 1893

Received



No 168

Enclosures - 3

Remarks on certain
papers from the Govt of
India with regard to
the Trial by Jury.

No. 1592

High Court of Judicature,
Madras, 16th June 1893.

From

H. W. Foster Esquire,
The Registrar of the High Court of Judicature,
Appellate Side, Madras.

To

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

Sir,

With reference to G.O. dated the 16th ultimus, No. 1022, judicial, forwarding certain papers regarding the system of trial by jury in Bengal and requesting the opinion of the High Court on the proposals for amending the Criminal Procedure Code dealt with in the report on the Jury Commission, I am directed to submit herewith a transcript of the minutes recorded by the Honorable the Chief Justice and Justices Sir J. Munter, Sami Aiyar, Shephard and Davies.

2. Any minutes that may be recorded by the Honorable Mr. Justice Best will be duly submitted.

I have the honor to be,
Sir,

Your most obedient servant



Registrar.

Minutes

Minutes

1684

The Chief Justice:- I am of opinion that the suggested alteration of Section 307, Criminal Procedure Code, is desirable. I see no objection to the proposed amendment of Section 303 of the Code empowering the Sessions Judge to require a special verdict on particular issues of fact.

Justice Sir F. Muthusami Aiyar:- I think it very desirable to amend, as suggested by the Jury Commission, Section 307 of the Code of Criminal Procedure. The wording of that section, as it stands at present, is somewhat obscure, and has given rise to construction that English precedents are intended to be followed in all cases in regard to the finality of the verdict of the jury and that such verdict is absolutely conclusive on matters of fact. The intention, however, of those who framed Section 307 was, as explained by the Commissioners, that the verdict should be open to be revised by the High Court.

on a reference made by the judge in those cases in which it is clear upon the evidence that it is manifestly erroneous and has resulted in failure of justice. The erroneous construction put upon the section by the several High Courts is due partly to the use of the words "so completely &c" and partly to the absence of a clear indication of the true intention of the Legislature. The proposed amendment tends to remove both these defects and to execute the true intention. On this ground I am of opinion that it is worthy of adoption.

Another question which I have considered in this connection is whether Section 307, if amended as proposed, would provide an adequate safeguard against possible miscarriage of justice from erroneous verdicts of the jury on questions of fact. I have always considered that it is not desirable to abolish trial by jury and that it is sufficient to safeguard it.

Referring to section 418, C. C. P., I observe that as against failure of justice from errors

of

of law, an appeal is allowed to the High Court. Thus in cases in which the exposition of law by the judge is inaccurate, or in which he misdirects the jury or omits to direct them on a material point and also in cases in which the verdict is perverse or rests on no legal evidence or on a mere scintilla of such evidence, the best remedy known to the Code of Criminal Procedure is provided. As regards erroneous findings of fact, however, the section follows English precedents generally and declares that they are final. Thus in cases in which the judge concurs in the verdict or in which, though he disagrees with the verdict and does not come upon the evidence to the same finding, he is unable to say that the verdict is clearly wrong or that it is one which no reasonable men acting with care and caution ought to have come to, the English doctrine of finality of the verdict is maintained. I do not think it unsafe to adopt what is substantially

the concurrent finding of the jury and the judge as to the justice of the verdict as final and conclusive. But in that class of cases in which the verdict has clearly occasioned failure of justice, section 307, as proposed to be amended, authorises the judge to refer them to the High Court and the High Court to consider the evidence and to alter or set aside the verdict when it agrees with the judge. To this extent the law in India departs from the English law on the subject. In effect, the section introduces an exception to the rule of the finality of the verdict of the jury and makes it liable to be set aside if the High Court should, upon consideration of the evidence, come to the conclusion that justice has clearly miscarried. Having regard to the fact that trial by jury in the form in which it is regulated by the Code of Criminal Procedure was not an indigenous institution and only recently introduced into India, I am

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of opinion that a departure from the English precedent to the extent indicated above is nothing more than what the paramount claims of justice demand.

As regards section 303, I see no objection to amending it so as to enable the judge to require a special verdict on particular issues of fact. On the other hand, I venture to think that such amendment is an additional safeguard. It is not clear to me how the amendment is likely to initiate a system of cross-examining the jury as to grounds of decision. In his charge to the jury the judge is bound to tell them what material issues of fact arise for decision in each case under trial and what the findings of the jury ought to be on the several issues to warrant either a conviction or an acquittal. This being so, the power to call for a special verdict on particular issues of fact will only enable the

judge to see that effect is given to his directions and accustom the jury to consider whether their verdict is the outcome of their findings on the several issues. I do not, however, understand the amendment to permit the jury being questioned as to the reasons for their finding on each issue, and there appears to me, therefore, no weight in the objection that the power to call for a special verdict will end in initiating a system of vexatious cross-examination as to the reasons of the decision of the jury.

Another defect in the existing law is, the absence of a verbatim record of the judge's charge to the jury. Admitting this to be a defect, the majority of the Commissioners consider that it is not practicable to remedy it. The heads of charge the judges now submit to the High Court are in the nature of judgments written several days after the case is orally decided and are not

a satisfactory substitute for the actual charge as interpreted to the jury in their own vernacular. It seems to me to be feasible to remedy this defect. A short-hand writer may be attached as a clerk to each Court and with his assistance an accurate record of what was actually said to the jury at the time may be prepared and preserved so as to afford increased facilities to the Appellate Court towards ascertaining whether there has really been a misdirection.

As regards the class of offences triable by the jury, I am inclined to think that the classification adopted in this Presidency is open to amendment, but I do not desire to suggest any addition to those offences until the system of trial by jury with the safeguards now proposed and explained shall have been found to give complete satisfaction.

As for special juries, it seems to me that the recommendation made by the Jury Commission, in paragraph 34 of their report sufficiently obviates the inconvenience pointed out by the Government of India.

Sir Mr. Justice Shephard:-

The most important proposals on which our opinion is asked relate to sections 303 and 307 of the Criminal Procedure Code. I would strongly deprecate any proposal to give Sessions Judges a general power to examine the jury as to the ground and reason for their verdict, but I do not see why a Sessions Judge should not be empowered, after a verdict with which he does not agree has been given, to put specific issues to the jury of a general character. For instance, in such a case as that stated by the Government of India (paragraph 3)

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there might be (1) a question as to whether any theft was committed, (2) a question as to recent possession, (3) a question as to the inference to be drawn from it and further (4) a question might arise on evidence adduced to prove an alibi. It seems to me, it would be proper and unobjectionable to ask the jury questions of this sort. The answers to them would afford great assistance as well to the Sessions Judge in deciding what action he should take as to the High Court in case of a reference. The power to put questions of the kind stated would be particularly useful in the case of forgeries when such offences are triable by a jury, for the prevailing notions about this offence are not in harmony with our English ideas and a jury would be quite capable of returning a verdict of not guilty on such a

charge although they believed that the accused had altered the document in such a manner as to make him clearly guilty of forgery. Other illustrations might no doubt be given.

Provided that it is made clear that the judge is not to cross-examine the jury about the grounds on which they have arrived at their verdict, and that the questions are directed to ascertaining their opinion on the fundamental issues which the case involves, I think proposed amendment of the law would be decidedly useful.

With regard to the proposed amendment of the first paragraph of Section 307, although the alteration of the words is slight, I think it may perhaps tend to relieve Sessions Judges of the difficulties which hitherto apparently they have felt. I fully agree with what the Commissioners say in para. 25 of their Report, being of
opinion

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opinion that if jury trial is ever to succeed, it is absolutely essential that the responsibility should be with the jury and that their verdict should not be invalidated or open to question by the mere fact that it does not command the assent of the judge. Doubtless there will be erroneous and unjust verdicts but that is the price which has to be paid for the institution of trial by jury.

As regards the power of the High Court on a case being referred by a Sessions Judge, I think it might be well to define it in some such terms as those proposed by the Commissioners (para. 24). In Madras, it has certainly been the practice to interfere with a verdict only when it is clearly shown to be perverse or unreasonable. The risk of injustice will, I think, be materially diminished by giving the Court power to deal with referred cases in the same manner as they do with cases tried by a Judge and Assessors. Although the existence of such a power tends to qualify the finality of the verdict, it still leaves it on a level distinctly higher than that of the opinion of assessors.

These provisions are designed to guard

against the infirmity of juries and provide no safeguard against the mistakes which may be made by the judge.

In my opinion, one reason among several why trial by jury has been a comparative failure is the inexperience and want of skill on the part of the Sessions judges, many of whom rarely have an opportunity of presiding at such a trial. Extension of the system may do something to remedy this defect but the fact must remain that the difficult art of presenting a case to a jury is not likely to be acquired by the average judge. This being so and in the absence of a bar which may be relied upon to take note of any misdirection on the part of the judge, it seems to me of greatest importance that a full report of the judge's summing up should be secured in order that the High Court may be able to see whether there has been a misdirection. I do not understand how there can be any difficulty in the matter except from the want of competent shorthand writers which, however, is a want that would very soon be supplied.

Section

Section 307 of the Criminal Procedure Code being under discussion. I may perhaps be allowed to take this opportunity of making some further observations upon it. In the case of trial by jury, the conviction or acquittal, unless set aside by the High Court, ought surely to be the act of the jury and it is only because the case is submitted that judgment is not recorded accordingly. When on a case being submitted, the High Court resolves to set aside the verdict, there must necessarily be a conviction or acquittal by the High Court. But in the contrary case when the High Court disagrees with the jury and does not disapprove the verdict, the conviction or acquittal, as the case may be, stands good and all that is required is that the suspended judgment should be recorded and if necessary sentence passed.

It seems anomalous to say as the last clause of the section does that the Court acquits or convicts a man already acquitted or convicted by the verdict of a jury.

With regard to the sentence also it may be a question whether power should not be given to the High Court to direct the Sessions Judge to pass sentence.

Mr. Justice Davies.

I endorse the views of Mr. Justice Shephard in their entirety and especially with regard to an accurate record being kept of the Judge's summing up. I may mention that for the past 4 or 5 years, as Sessions Judge of Tanjore, I invariably had my charges to the jury recorded in shorthand by a clerk, and his transcript, subject of course to correction by me, was treated as the record of the Heads of Charge - directed to be kept under the last

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last clause of section 367 of the Code of Criminal Procedure. It seems to me there would be no practical difficulty in requiring all Courts of Session in this Presidency to adopt a similar course. But should it be found impracticable anywhere, I would strongly recommend, as suggested by Sir Ramerh Chunder Mitter in para. 4 of his minute, that it should be made obligatory upon the Judge to write out his summing up before he proceeds to charge the jury. Objections as to delay should count as nothing against the paramount importance of knowing exactly what the Judge did say to the jury.

Further to ensure that the charge to the jury should be complete, I would venture to urge that it be laid down in distinct terms what the Charge is to contain just as in the no more important

important case of the judgment
it is laid down (Section 367, Code
of Criminal Procedure) what its
contents should be. It is in
regard to trials where several
prisoners are concerned that the
general opinion is the jury are
apt to fail in proper discrimination.
It should therefore be made a
special rule that in cases where
more than one accused is under
trial, the particular evidence
against each accused and the
particular offence it would consti-
tute against him should be separately
set forth in the charge. Some judges
never think of doing this, but it is
in my opinion a most essential
direction and should be enforced.

(True copy.)



Registrar,
Appellate Side.



Judicial {1893} Department.

No.

FROM

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

Dated 16th June } 1893.
Received 19th Do

No. 1592-
Enc.

Submitting a transcript
of the minutes recorded by
the Honble the Chief Justice and
Justices Sir T. Muthusami
Aiyar, Shephard and Davies,
on the proposals regarding
the system of trial by Jury.

N^o 1620 High Court of Judicature,
Madras, 27th June 1893.

From

H. W. Foster Esquire, 24th
Registrar of the High Court
of Judicature, Appellate Side,
Madras.

To

The Honorable J. H. Price,
Chief Secretary to Government,
Fort St. George.

Sir,

In continuation of my letter dated
the 16th instant, N^o 1592, I am directed
to forward herewith a transcript
of the minute recorded by the
Honorable Mr. Justice Best on the
proposals for amending the Criminal
Procedure Code dealt with in the
report of the Jury Commission.

I have the honor to be,
Sir,
Your most obedient servant,

Print name. H. W. Foster
1000
Registrar.

Ex 284

Minute

Minute.

Mr. Justice Best.— I am decidedly in favour of the amendment of section 307 of the Code of Criminal Procedure, in the manner suggested in para. 24 of the report of the Jury Commission. I am also of opinion that the law should be altered so as to allow the Judge to put to the jury, after the verdict is delivered, such questions as may be thought necessary to enable him to determine whether he should refer the case to the High Court.

I see no necessity for a list of Special Jurors— nor is the material for two lists available in the present condition of the alfofussil of this Presidency.

I think the number of the jury should not be less than five and that the law on this head requires no alteration. Nor do I see any necessity for alteration of the law as to the age of Jurors. As to the area of selection, if I mistake not, in this Presidency, it is still fixed by the Government, notwithstanding the declaration in section 319 of the Code as to the liability to serve of all male persons of the prescribed age residing within the district.

(True copy.)

W. J. B.

Registrar.

End P.V.

Judicial {1893} Department.

No.

From
The Registrar of the
High Court of Judicature,
Appellate Side, Madras.



Dated 27th June } 1893.
Received 30th do }

No. 1620.

Sec. 1.

Forwarding a transcript
of the minute recorded by the
Hon. Mr. Justice Best on the
proposals regarding the
system of trial by jury.

No. 1115

Sessions Court, Salem,

27 June 1893

From,

to. J. Late Esquire,
The Ag. Sessions Judge,

SALEM.

To,

The Chief Secretary, to Government,
Madras.

SIR,

I have the honor to reply to
G. O. No. 1022 judicial dated 16th ultimo,
calling for my opinion on the jury
question.

2. The first suggestion discussed by
the commissioners (in para 32 of their
report) is whether Section 303 of the
Criminal Procedure Code should be
so amended as to enable a Sessions
judge to ascertain the opinion of
a jury on portions of a case sub-
mitted to them. I am clearly of
opinion that this should be done
the commissioners deprecate, and right
anything like the cross-examination.

of a jury. But such appearance
of cross-examination would, in
my opinion, be avoided, (a) by allowing
the Sessions judge to ask the jury
the necessary questions before their
final verdict of guilty or not guilty
is delivered (though, of course, only
at the close of the trial and charge)
and (b) by defining in the statute
the nature and scope of such questions.

3. I give an example. Take a case
of dacoity brought against 5 prisoners,
A, B, C, D, and E. Against A and C there
is only the evidence of witnesses who
say they identify them as the actual
dacoits; against B and D there is only
evidence of recent possession of
property stolen; against E there are
both kinds of evidence. I would permit
the judge to put the following questions:
(1) Having regard to the definition
of "dacoity" as now explained to you,
do you find that a dacoity really

took place?

(2) If you do, are you satisfied with
the evidence of identification
against A, C, and E, or against any
of them (if so, against which?)

(3) Do you find that the property
produced was found in the (exclusive)
possession of B, D and E, or in that
of any of them?

(4) Was that property, to their
knowledge, stolen in the dacoity?

(5) Do you find A guilty or not
guilty? (Similar question in respect
of each prisoner).

I fail to see that any one of
questions 1, 2, 3, and 4, can, if put
before question no. 5, be called a
"cross-examining" question, (for such
questions tend to form, not shake,
an opinion) ^{while} ~~which~~ I am certain
that the putting of such questions
and

and the recording thereof and of
the answers given to them (such
recording is of course imperative
and should be done at the time)
would not only simplify and
accelerate the work of the High Court
in disposing of cases referred to them,
but enable the Sessions judge to see
clearly what cases he ought to refer.

4. It may be said that it will be
difficult to word the section so as to
regulate the nature of the questions
to be asked. But a little must
always be left to the common sense
of the presiding judge. And it will
be in every case open to the High
Court in revision to point out
that the questions were wrongly
framed and put. In fact, the
High Court would in this way
be enabled to see into the working
of the judge's mind and into the

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real disposal of the case far better
(as I think) than where, as at present,
they are only aided by a perusal of
the prescribed abstract charge;
while, on the other hand, assuming
the judge's questions rightly put,
the answers given to them by the
jury would, at a glance, disclose
any weakness in logical reasoning,
or perversity in finding. It is precisely
the difficulty jurors feel in expressing
a logical conclusion (see the words
used by the commissioners) which
the above proposal will obviate by
assisting them in doing so.

5. It must also be pointed out
that the commissioners have
failed, in my humble opinion,
to see that, even now, a referred
case can — legally be, and to a
great extent is, reheard by the
High

High Court on the evidence. Their remedy (cf. clause 2 of para 32) is, therefore, no adequate remedy at all.

6. The above remarks and proposal render wholly unnecessary anything like a "special verdict" on issues framed, a procedure cumbersome in itself, and savouring rather of the civil than of the criminal law.

7. In the Madras Provisions, Special juries (except in the case of the trial of European British subjects) are, in my opinion, unnecessary, while a special jury list would be very small, and at the same time exclude, perhaps for years together, from ordinary juries the very persons most fitted to serve on them.

8. I agree with the Commissioners in thinking that the Statutory list of exemptions from jury service

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should be carefully looked into. There is, I find, a tendency both on the part of the legislature and on that of heads of departments to withdraw Government servants from the work. Not seldom in this district, I receive applications from officers (such as the Executive Engineer, District Forest Officer, Treasury Deputy Collector, &c) asking for the exemption on the ground of "public duty" of some one of their clerks or accountants who has been summoned to serve. I am of opinion that this should be legally discountenanced, and that only persons who produce a certificate of illness from a Government Medical Officer

should be exempted at any sessions. The result of the broad exemptions in the Code, and of the frequent applications to excuse particular persons from service, is the weakening of the jury list, to (I cannot but think) the permanent disadvantage of the administration of criminal justice, which administration is, after all, one of the most important duties of the State.

9. As to the right of appeal on the facts. It would be contrary to the essence of the whole jury system to allow this where the jury are unanimous. But I am inclined, after some consideration, to think it should be allowed where the verdict is only that of a majority. In such cases, it

might be laid down that the judge should ask the jury at the termination of the trial whether or not he intends to appeal; and I would also permit the appeal to be laid before the Sessions judge who should be then bound to refer the case (and appeal Memorandum) to the High Court with his opinion on the facts. I suggest this procedure on the grounds (a) that it would save time and thus promote rapid finality, and (b) that it would facilitate disposal by the High Court.

10 I agree in the Commissioner's proposed amendment of section 307 Criminal Procedure Code. They give the Sessions judge more latitude.

latitude in referring cases, and wisely
emphasize by enactment what, I
believe, is now more or less the actual
practice of the various High Courts.

11. An opinion of mine seems
necessary on para 4 of the Govern-
ment of ^{India's} ~~India's~~ letter No. 545 under
reference, the question therein
raised being exclusively one affecting
the powers of Government.

I have the honor to be,

Sir,

your most obedient servant,

Paul ^{Went} ~~Went~~ ^{Went}
C. J. W. W.
Sg. Sessions Judge.

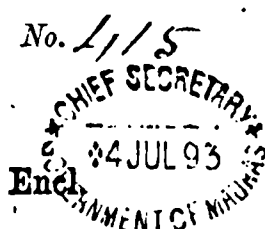
FROM

The Sessions Judge,
SALEM.

TO

The Chief Secretary
to Government
Madras

Dated 27th June
Despatched 3rd July 1893.
Received 4th



Subject.

Submitting his opinion
on the jury question

No. 1287

From,

Lewis Moore Esquire,
The Sessions Judge, Bellary.

To,

The Chief Secretary to Government,
Madras.

Sir,

I have the honor in reply to G.O.
No. 1022 Judicial of the 16th May 1893
to report as follows.

2. The commission propose to make
certain amendments in section 307 of
the Criminal Procedure Code and also
to introduce such alterations in the pro-
visions of the Criminal Procedure Code
as may be necessary in order to carry
out certain recommendations made
by them as regards special juries and
the area from which jurors should be
chosen. The amendments proposed in
section 307 should in my opinion most
decidedly be adopted. As far as the
Courts in the Mofussil are concerned

I

I cannot see that any advantage could be expected from the employment of special juries. It also does not appear to me to be necessary to make any alteration in section 319 of the Criminal Procedure Code. That section renders all males between the ages of 21 and 60 resident in any District liable to serve as jurors in that District. Section 320 however gives the Local Governments the power of exempting any persons from the liability to serve and the Government of Madras have accordingly by G. O. No 2962 Judicial of the 17 November 1884 exempted all persons residing outside certain areas. It would therefore appear that under the existing Law the Local Governments have the power which the commission in para 37 of their report consider should be conferred on them.

3. I am strongly of opinion that section 303 should be modified so as to give a Sessions Judge power either to require a special verdict on particular issues of fact or to demand from the foreman after the delivery of the verdict

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a statement of the grounds on which it is based. During the recent controversy as to trial by jury in India one fact has been brought prominently to notice, namely that while judges and others engaged in the administration of justice express themselves dissatisfied with a considerable number of the verdicts returned by juries Sessions Judges make references to the High Court and the High Court interfere in a very small percentage of the cases tried. The reason in my opinion why so few references are made and so few verdicts set aside is that in the absence of any information as to the grounds on which a verdict is based the judges feel bound to assume that the jurors have considered the case in a rational and reasonable manner. Reference may be made to the case reported at I.L.R. 9 Calcutta 53 where the Sessions Judge put certain questions to the jury after they had returned their verdict. The answers given to these questions showed that the jury had arrived at certain some-
- what foolish conclusions upon the evidence but the learned judges of the High Court refused

refused to consider these answers on the ground that the Sessions Judge had no power to put the questions to the jury and Mr. Justice Norris having pointed out that there were rational grounds on which the jury might have disbelieved certain evidence, observed that he had a right to assume that the estimate of the evidence arrived at by the jury corresponded with the one formed by himself. The opinions given by the assessors in a large number of cases show that they have not taken a rational view of the evidence put before them and, if we had the power to ascertain the reasons which have led jurors to return their verdicts, we should, often, I fear, find that they are not entitled to very great respect. In the only case in which I felt it possible to make a reference to the High Court under section 307 last year the foreman of the jury having delivered the verdict volunteered a statement as to the grounds on which it was based. That statement was duly recorded by me and as it showed that the jury had rejected evidence on most unreasonable

the verdict was set aside and what would have been a palpable failure of justice was prevented. As observed by Mr. Justice Brandy in the case reported at I.L.R. 15 Bombay 452 (at page 482) "a clear and concise idea as to the grounds of the verdict is of the greatest aid in the furtherance of justice. On the one hand, it may show the Sessions Judge that the verdict is not unreasonable; on the other, it may indicate on the part of the jury such an inability to appreciate the evidence that the Sessions Judge will have less hesitation in disagreeing with the verdict."

4. I regret the delay in submitting this letter. It is due to my absence in England during the recess.

I have the honor to be,

Sir,

Your most obedt. servant,

Print name here *L. J. L. L.*
Sessions Judge.

6. Sec: 33. I am of opinion that it would be of advantage to every-body that the jury should be called upon to return a special verdict on issues framed by the Judge. It would, in case of a disagreement between the Judge and jury, narrow the difference to clear and defined questions and greatly diminish the Judge's labour in referring the verdict and that of the High Court in considering it.

7. As far as my experience goes, juries are apt to be prejudiced by facts brought out in the evidence of which they disapprove, and to give such facts a weight not at all warranted by their bearing on the question of the prisoner's guilt or innocence. Thus if one or two witnesses are manifestly speaking falsely, a jury is very apt to disbelieve true evidence of other witnesses for or against

the same accused person. A verdict on special issues would indicate more distinctly the part of the evidence about which this had been done.

The greater difficulties spoken of in the report do not occur here.

8. In this Presidency there is no distinction between special and common juries: there are only jurors and assessors. I think it might be a change well worth trying to have a separate list for jurors as distinguished from assessors. The duties of jurors are of much more importance than assessors since the Judge is at liberty to, and very frequently does, disregard the opinion of the assessors. If, therefore, the most intelligent and experienced of the men on the joint list were set apart

for the jury list, their verdicts would, in all probability, seldom call for any revision.

9. It would be a great improvement if jurors and assessors too were paid their travelling expenses and better and the expense to Government would not be great. Probably Rs 20,000 a year would cover the cost and yet the relief would be much felt by the men who have to serve.

10. In this Presidency, almost the only cases which are in fact tried by a jury are robberies and dacoities and thefts by old offenders. Unwillingness to convict on clear evidence is not common in such cases so that the matter has not the importance here which it has been given in Bengal.

11. I suppose there is no one who would recommend the extension of the system

in this Presidency. 123
I have the honor to be,
Sir,

Your most obed^t servant,
Print name here
E. P. S. W. L.
Sessions Judge.

CPB.

Just (1873) etc.

1658: 17.8.93 (ab)
1672: 6.7.93 mis
1622: 16.5.93 conf to
581: 17.3.93 mis

267/8: 6.2.93 conf
1827: 28.9.92 conf

Turner file.

92 Rs. m. m. III; Cal IX; Bombay XV.

Col Tushie Reports for 87, 88, 89 + 91.

- 33 - 5/93.

From,

C. J. Small Esq.,

Sessions Judge,

North Arcot.

To,

The Honble J. F. Price

Chief Secy. to Govt.,

Ind. Dept.,

Potacamund.

UNDER SECRETARY
28 JUL 93

PUBLICITY DEPT.

No. 10.

Dated 25th

Sept 26th

Recd 28th

July 1893.

Ind. Dept.

Subject

Submitting the Report

called for in G.O. 16 May

1893, No 1022, Ind. C.

for the year

There are the returns

for the year 1892

for the year 1893

for the year 1894

for the year 1895

for the year 1896

for the year 1897

for the year 1898

for the year 1899

for the year 1900

for the year 1901

for the year 1902

Print please &
send to Prof.
10/8

Home Department,

(Judicial)

Simla, the 2nd Aug 1893

No. 934.

To

CHIEF SECRETARY
THE
28 AUG 93
GOVERNMENT OF
MADRAS

Chief Secretary
to the Government of
Madras

Subject:

Amendments proposed
by the Commission
in the Criminal Procedure
Code, and the question of
modifying the jury system
as now established in the
Madras Presidency.

SIR,

I AM directed to invite attention to the
communication marginally noted,* and to
request an early reply thereto.

* No. 545 dated 6th May 1893
and subsequent reminder
No. dated , 189 .

I have the honour to be,

SIR,

Your most obedient Servant,

A. Luson.

Under-Secretary to the Govt. of India.

Current No.

DEPARTMENT.

From

The Government of India,
Home Dep^t (LudC)

No. 934

Dated 2nd August 1893

Received 8th — Do —

Enclosures

SUBJECT.

Requesting an early reply
re Amendment proposed by
the Jury Commission in the
Criminal Procedure Code &c.

Ld^r DEPARTMENT.

Current No.

File of replies.

From

Dated

FOR ORDERS.

The delay with these papers is due to the fact that several of the replies have only recently been received; even now Mr. Ross has not reported but as the G. of I. is pressing for a reply the papers cannot be kept back any longer.

2. In G.O. of 29 Dec. 1890, Nos 2095-6, Ld^r, (in bound file), this Govt. expressed the opinion that the Jury system is unsuited to India & that the only improvement possible, short of its abolition, would be to amend sec. 307 C.C.P. in such a way as to render a reference to the High Court obligatory in every instance where the Judge takes a different view of the case to that adopted by the Jury.

3. In a more recent expression of opinion, however, the Govt. modified its views & states (G.O. of 6 Feb. 1893, Nos 267-8, Ld^r)

(1) that it is not desirable to extend the system of trial by jury to any classes of cases not at present so tried;

(2) that it is not desirable that

Within H.L. sec 2, was a party to this order. (Ld^r)

* * * * * The following classes of offences are triable by jury in this Presidency —

Theft: sec 379, 380, 382.

Robbery: sec 392-395, 397-402.

Dishonestly receiving stolen property: sec 411, 412.

Assisting in disposal of stolen property: sec 414.

House Trespass: sec 451-459.

Breaking open closed receptacles: sec 461.

the system of trial by jury should be withdrawn from any locality where it is at present in force;

(3) that offences under sec. 392-395 & 397-402 I.P.C. should be withdrawn from the list of jury cases;

(4) that sec. 303 C.C.P. should be amended so as to admit of the taking of special verdicts on particular issues of fact & as to the general credibility of particular evidence.

4. The Commission which sat recently to consider the whole question has made several proposals. These have been referred to this Govt. for remarks. They are set out below in detail with the opinions of the officers consulted.

A. It is proposed to amend sec. 307 C.C.P. so as to make the relative duties of Sessions Judges & the High Court clearer.

The grounds for this proposal are (1) that Sessions Judges sometimes neglect to refer to the High Court cases which ought to be referred & (2) that High Courts sometimes improperly refuse to consider cases which are referred to them under sec. 307 on their merits & reject them to interfere with the verdict unless it can be proved to be perverse or unreasonable.

The opinion of the Commission is that, while Sessions Judges ought not to be required to refer every case in which they disagree with the

FOR OI.

I was not a party to this.

U.S.

"Decidedly of opinion" is what the Jury Commission mean. I think that the amendment should be adopted.

J.H.

U.S.

think so.
H.H.

** para. 24 is sup. of report.

verdict, they certainly ought to do so when they are decidedly of opinion that a failure of justice would otherwise occur, and further that, in all cases referred under sec. 307, the High Court should form an independent opinion upon the evidence in the same way as it does when regular appeals are presented to it. Every one of the officers consulted, ~~and every one of the officers consulted~~ agrees with the views of the Commission & accepts the amendment of sec. 307 proposed by it. Mr. Swell indeed rightly remarks that the phrase "decidedly of opinion" should be substituted for "clearly of opinion" but, otherwise, the amendment ~~he~~ ^(for that proposed by the Commission) suggests in substitution ^{(as open} to the objection that it may be read as throwing upon the Judge the duty of referring in every case where he disagrees & this is exactly the construction which should not be put upon the section.

B. The Commission considers the question whether offences against marriage should be triable by Jury & comes to the conclusion in para. 27 that such extension is inexpedient.

As observed above, this Govt. has already expressed the opinion that it is not advisable to add in any way to the list of offences triable by Jury & the Commission shows good reason for not adding offences relating to marriage. If the authorities now consulted,

4.
(Mr. Small, Mr. Mackenzie & Mr. Muttusami Lingar)
Mr. Benson alone refers to the
question of adding 'the list of
known L.P. cases'
(does not seem to advocate any
extension but remarks that, if
the Jury system is to be extended
at all, it should embrace the
offences of Kidnapping, abduction,
rape, criminal misappropriation
& mischief; ~~and also~~ ^(known Small & Mackenzie are) ~~not in forms of extension~~

C. In para. 32 the Commission
pronounces against the proposal
to amend sec. 303 C.C. 12. as to
to enable the Judge to question the
Jury in view to ascertaining
the grounds upon which their
verdict is based.

The proposal referred to above origi-
nates with the Bengal Govt. & in
para. 8 of its letter read in G.O.
Dy 28 Sept. 1892, No. 1527, Indl.,
the G. of I. expressed its aversion
to anything approaching a cross-
examination of the Jury. The point
was not considered when G.O. Dy
6 Feb 1893, No. 267-8, Indl., was
passed as it was understood that
the G. of I. had definitely pronounced
against the proposal. It will be
seen that the Commission opposes
the suggestion on the same ground
as the G. of I.

The Commission, however, divides the
question into two heads, viz,
(1) shall the Sessions Judge be
empowered to obtain the
opinion of the Jury upon
parts of the evidence so as
to enable him to learn the
grounds for the verdict?
(2) shall the Sessions Judge be
empowered to question the
Jury as to the reasons for

Mr. J. Muttusami Lingar also thinks
that, for the present, no extension
should be made.
I agree with Mr. J. Muttusami. As he
says it will be time enough to think of
extension when the system is fully established
and, if proved, is found to give satisfaction
Yes. I think so too. complete
let's not mix the two
'complete' used by Mr. Lingar.
W

The latter is my opinion. The Jury should
only be required to give, without reasons,
findings on particular questions of fact.
W
yes. Special verdicts in fact.
W

the verdict in view to deter-
mining whether the case
shall be referred to the
High Court?

But the two questions are so closely
connected that they must be con-
sidered as one; as most of the
authorities consulted have considered
them.

The only officers who express dissent
from the views of the Commission on
this subject are the Advocate-General
Mr. Justice Brist, Mr. Tate & Mr.
Moore. The first two gentlemen do
not adduce any arguments in
favour of their ^{opinion} Mr. Tate's remarks
really apply to ^{something resembling} the proposed system
of special verdicts which will be
referred to later on. Mr. Moore
favours the proposal now under
consideration as an alternative
to the system of special verdicts
but he also urges that a knowledge
of the reasons upon which a
verdict is based is often very
advantageous. There can be no
doubt that the proposal does
carry advantages, nor can there be
any doubt that it also has
disadvantages; the only question
is whether the former preponderate
over the latter.

D. In para. 33 the Commission
discusses the question whether
the Judge should be empowered
to direct the Jury to return
special verdicts upon issues
framed by him, and pronounces
against it.

Against this proposal the Commission
brings only the vague assertion
that it would be likely to create

greater evils than it would remedy. As observed above this Govt. proposed in favour of the proposal now under consideration in letter of 6 Feb. 1893, N^o 268, subd., and in para. 3 of its letter reading G.O. of 16 May 1893, N^o 1022, subd., the G. of I. declares that it still remains in favour of the proposal in spite of what the Commission says.

Every one of the officers consulted, except Mr. Tate, is in favour of special verdicts. Mr. Tate's remarks seem to be founded in part upon a misapprehension. He understands, apparently, that the Sessions Judge will be compelled to frame formal issues & he therefore proposes that the Judge should have power to put certain questions before the verdict is delivered. But it does not seem to be the intention of the G. of I. that formal issues shall be framed? All that is intended is that, either before or after the verdict is given, the Judge shall have power to ask the Jury such questions as these - "Do you believe that such & such took place?" "Do you think the evidence of So & So is credible?" Mr. Justice Shepherd obviously understands that these questions shall be asked only (1) after the general verdict has been given & (2) if the Judge disagrees with the general verdict; but it is plainly the intention of the G. of I. that the power of putting questions shall be exercised either before or after delivery of the general verdict.

I would advise to recommend
Laf W

Same I
Laf W

The value of the questions which he proposes to put before the verdict is it will help the jury to give a more rational one
Laf W

B. The Commission agrees with the G. of I. in objecting to the proposal to have ^{entirely} separate Special Jury lists but suggests (para. 34) that jurymen should be classed as Special & Common on the understanding that the Special jurymen are liable to serve on Common juries.

The object of the Commission in making this proposal is to provide for cases where the employment of a Special Jury is desirable; in such cases the Special jurymen will alone be selected for ⁱⁿ composing the jury; in ordinary cases the jury may be composed of Special & Common jurymen mixed or of Common jurymen alone as the lot may decide (see 276 C.C.P.). The Advocate-General, Mr. Justice Beat, Mr. Tate & Mr. Moore consider that the appointment of Special jurymen is uncalled for. Mr. MacKenzie, Mr. Benson & Sir J. Knott & Mr. Aiyar seem to have no objection to the appointment of Special jurymen provided they are retained on the general list & are liable to serve on Common as well as Special juries; but Mr. Benson on the whole thinks that the appointment of Special jurymen is unnecessary. Mr. Lowell apparently would compile an entirely distinct list of Special jurymen but, with the exception of him, the officers consulted seem to agree that (1) there is not a sufficient supply of jurymen to render the formation of two separate lists possible, (2) the appointment of special jurymen will lower the character

2 3. the whole the necessity for
1 appointing Special juries
6 ~~responsible to the public~~
1 ~~to be decided by the public~~
1 ~~and the public does not~~
2 appear to have been made out.

G. The Commission does not consider it advisable to make any recommendations regarding the accommodation for and remuneration & resolution of Jurors.

H. The Commission inclines to the opinion that it is not advisable to allow appeals on matters of fact from the verdicts of juries.

I am not in favour of Special Jury lists, even
if the Special jurors are obtained on the General
list. I don't see how the cases for Special jurors
could be discriminated on any principle, the list
differs too much by jury being so small
I think special juries are required in
Madras - but I don't think there
there should be special jury lists
in the Mofussil.

I think provisions. Ok? I need a few
the exclusion of jurors, particularly in
trials before the High Court

It deals with the High Court 296 - C.P.C.
to make rules for the exclusion of jurors

No doubt - while there are
occasions when an appeal
would be greatly in the
interests of justice -
however - a general rule in
the vote of an appeal.

and also that it is important that the
change should be delivered while the attention
of the jurors is fresh. W

I. The Commission is not in
favour (vide para. 73) of
requiring the Sessions Judge
to record a verbatim record
of his charge to the jury.
The Commission does not however
oppose the principle of this pro-
posal; it merely remarks that
none of the suggestions made on
the subject seems to it to be
practicable (the Commission was
not unanimous on this point).
Mr Mackenzie is opposed to the
proposal; he says it will necessitate
adjournments which will not only
cause delay but expose the
jury to improper influences.
On the other hand Mr T. Multani
Agar, Mr Justice Shephard &

Mr. Justice Davies are strongly in favour of it. It seems however to be admitted that arrangements will have to be made for taking down the charge as the Judge gives it in short-hand. Here is the difficulty: Good short-hand-writers are not abundant; if they had been no doubt every Judge would have willingly adopted the plan which Mr. Davies says he worked so successfully in Tanjore.

5. There are a few other points which may be briefly noticed:

(1) In para. 12 of his letter Mr. Mackenzie suggests that Mr. Collector ~~Dr. B. B. B.~~ might take more trouble in the preparation of the Jury lists; perhaps the attention of all Collectors may be drawn to Mr. M.'s remarks.

(2) With regard to para. 7 of Mr. Benson's letter it should be mentioned that he has brought separately to the notice of Govt. the fact that, by some mistake, the Notif. approved of in G.O. of 16/9/56, N^o 2777, Ld., was never gazetted. The papers are not available just now but the dockets are put up. Mr. Benson's letter was referred to the High Court for remarks in G.O. of 6 July, 58, N^o 1372. Ld.; the High Court replied that, although there is no reason why abettors of jury offenders should not be liable by jury, it will be advisable to defer formally notifying the

Short-hand writers are the only solution. I think inquiry might be instituted whether they can be got. They even would be, if there was a certain demand.

The plan of the Judge's charge being already recorded & written by himself & giving part of the record of the trial is a most important matter in my opinion. It prevents good shorthand in the case of persons who do not do so for a long experience. If the record is not put in the way of the Judge's charge, the only other solution is to provide each Judge with a shorthand writer (or possibly for clerks in the long run, a shorthand writer) it is not likely to be found in the same way as the shorthand writer who is not a shorthand writer.

Most certainly. This is almost the root of the matter.

This is Mr. Benson's proposition the days that which abettors of jury offenders on the whole of jury, attempt to commit them are not, but ought to be so.

He further suggests that the H.C. should have power to suspend the case to the session judge & then sentence. I see no advantage in this.

I think it is, that Mr. Davies suggestion should be adopted.

fact until the G. of J. has decided the whole question of the Jury system; Govt. concurred with this view in G.O. of 17 Aug. 59, N^o 1658, Ld. It would perhaps be as well to refer to this point in the letter to India & to say that the Notif. of 1886 will be formally gazetted, if the G. of J. has no objection, after orders have been issued on the whole question.

(3) Mr. Justice Shepherd proposes a further amendment of sec. 307 CrP. When a case has been referred it is provided in this section that the High Court may acquit a convict. Mr. Shepherd points out that when the High Court upholds the verdict, the accused ought to be considered as having been acquitted or convicted by the Jury. The point is of no importance but may be brought to the notice of the G. of J.

(4) Mr. Justice Davies thinks that the Code should distinctly provide what the charge to the Jury shall contain & that it should further provide that the particular evidence against each accused shall be stated clearly in the charge. The matter is not of much importance.

(5) In para. 4 of the letter now under reply the G. of J. asks whether this Govt. has any objection to the amendment.

of sec. 269 of the Code in such a way as to require the assent of the G. of C. before a Local Govt. can extend the jury-system to any class of offenders.

The G. of I. has itself shown reasons against this restriction of the power of Local Governments in para. 20 of its despatch 2nd Sec. of State which will be found under cover of G.O. of 16 May 1893, No. 1022, Lndt.

(6) It would appear from para. 38 of the Report that the Commission regards the list of exemptions in sec. 320 of the C.C.P. as too long.

Lt. Tate concurs & considers that no one should be exempted who cannot produce a certificate of ill-health. This is going rather too far. Mr. Mackenzie takes quite the opposite view & holds that Collectors are too ready to admit place men on the jury-list. The other officers consulted do not refer to the matter & no real inconvenience seems to result from the law as it stands. It seems hardly necessary to notice the matter in replying to India.

19 Aug 1893

The Jury System

I think that the matter should be left to the local Govt. The alteration would lead to disruption in time being found apmms.

24 () U.S. X
Refer them to their own despatch - a day he quite agree with it.

M. Tate

The Order

~~Confidential~~

Lt. 22/10/90

H.C. 20 Aug 1893
24 Aug

9.1/1747-48-25/8/33

C.1118

Papers to be read in Proceedings:-

abstract only
Again G.O., dated 16 May

1893, No. 1022, Lndt.

abstract only
Again G.O., dated

18, No.

Current No. 3305 of 1893, dated 2 Aug from the G. of I.

File of replies (print in full).

Current No.

of 18, dated

from

Order 28th Aug 1893, No. 1747.

The following letter will be sent to the G. of I.

2. Several of the Hon. the Judges of the High Court have expressed an opinion in favour of the proposal that a verbatim record of the Sessions Judge's charge to the Jury should be required in every case. The Govt. recognizes the value of such a ~~document~~ ^{document} but the ~~number~~ ^{number} there are numerous objections to any legislation which would require the Sessions Judge to record the whole of the charge in his own hand. The only practicable way of giving effect to the proposal would be to attach a ^{confidential} shorthand writer to each Court & the Govt. doubts if there is a sufficient supply of ^{such} shorthand writers available. The Govt. would therefore suggest that the High Court should make enquiries on the point & would be glad to be informed at an early date of the result of these enquiries. 3. Mr. Mackenzie's remarks upon the compilation of lists of jury men ~~will be~~ ^{will be} ~~sent~~ ^{sent} to the

The attention of all will be called to

notice of all Collectors; it is hardly necessary to dwell upon the importance of exercising discrimination in the selection of men to perform the important duties of jurymen.
(From orders)

Letter from the C.J. with C.L.B. 26 Aug.
- Govt. Secy. 3 1/2 26/8
- all Sessions Judges. 149 } dated
- Collectors. 173 } 12/9/93

Letter of 22 Aug 1893, No. 1748.

Letter from the Secy. to the Govt. of India, Home Dept. Sir.

(replied with order in the 6/9/93.)
80 SC. of letter & prog.
sent by packet 10/6
11-9-93.

In response to your letter of 6 May 1893, No. 545, dated, I am directed to communicate to you the views of H.E. the C., of the Hon. the Judges of the High Court, & of certain selected officers upon the various matters discussed in the Report of the Commission appointed to consider & report on certain questions connected with trial by Jury in Bengal. H.E. in C. regrets the delay which has occurred in the transmission of this reply but as the Courts were in vacation when your letter was received it could not be avoided.

2. The first point to be considered is whether sec. 307 of the Code of Crim. Proc. should be amended so as to make it clear:

- (1) when Sessions Judges should refer cases to the High Court,
- (2) what the High Court should take into consideration when disposing of references made

sec. 307 C.C.P. 1738
It is the opinion of the Commission that Sessions Judges should not be required to refer every case in which they disagree with the verdict to the High Court but that they certainly should do so whenever they are decidedly of opinion that a failure of justice would otherwise occur. Further the Commission considers that, when dealing with cases referred under sec. 307, the High Court should be required to form an independent opinion of the case upon the evidence.

The High Court & all the officers consulted agree with the views expressed by the Commission on this subject & they have the concurrence of H.E. in C.

Therefore this Govt. supports the proposal that in para. 27 of the Report that sec. 307 of the Code should be amended in the following way:—

- (1) by substituting for the words "so completely that he considers it" the words "and is decidedly" [not "clearly" as suggested by the Commission] "of opinion that it is";
- (2) by inserting after the words "High Court" in the third clause the words "shall consider the entire evidence, giving due weight to the verdict of the jury & to the opinion of the Sessions Judge & of the dissenting jurors, if any, and."

3. The next question for consideration is whether offences against marriage should be triable by jury.

In this connection I am to invite attention to Mr. Gallon's letter of 6 Feb 1893, No 268, Ind^l, in which it is stated that this Govt does not consider it advisable to add to the list of offences which are triable by jury in this Pres^l. As regards the particular class of offences now in question the Commission shows excellent reasons in para. 29 of its Report why they should not be tried by jury & the Govt concurs with the Hon. Mr. J. Muttuswami Aiyar ^{that} it will be time enough to think of extending the list of offences triable by jury when the system of trial by jury, safeguarded as now proposed, is found to give complete satisfaction.

4. In para. 32 of the Report the Commission deals with the question of amending sec. 303 of the Code of Crim. Proc. in such a way as to

Empower the Sessions Judge to

(1) obtain from the jury its opinion on parts of the evidence in order to enable him to learn the grounds for the verdict;

(2) question the jury as to the reasons for the verdict in view to deciding whether a reference to the High Court is called for.

The majority of the ^{off} authorities consulted is opposed to amending sec. 303 in the manner indicated on the ground that anything approaching to a cross-examⁿ of the jury is to be deprecated. The G. of I. expressed a similar opinion in para. 8 of some Sept. letter of 25 Aug. 1892, No 1105, Ind^l; the Commission also is opposed to the amendment of sec. 303 in the manner suggested.

I am to say that H.E. in C. concurs in thinking ^{that} the arguments which have been brought against the proposed amendment outweigh those which have been urged in its favour.

5. In the same paragraph (32) the Commission pronounces against a further proposal that sec. 303 ^{now} should be so amended as to empower the Sessions Judge to direct the jury to return special verdicts upon issues framed by him.

This ^{suggestion} ~~proposal~~ has already been considered ~~for~~ on a previous occasion & in Mr. Gallon's letter of 6 Feb. 1893, No 268, Ind^l, ^{an} opinion was expressed ^{in favour of} that the amendment of sec. 303 so as to enable the Judge to take special verdicts

regarding particular questions of fact & the general credibility of particular evidence.

Among the authorities now consulted by this Govt. there is a ^{marked} consensus of opinion in favour of the amendment. H.E. in

C. fully concurs with the
Q. of J. that the vague assertion
by the Commission that the
amendment would be likely
to create greater evils than
it would remedy ought not
to be accepted ^{as sufficient} in face of
the obvious advantages which
will result from the introduction
of a system of special verdicts.
It is understood that the Judge
is to have the power of calling
for verdicts upon special
issues either before or after
the general verdict is delivered;
but Justice Shepherd, it will
be observed, takes ~~the~~ it to be
the intention that special
verdicts shall be called for
only (1) after the general
verdict has been given, (2) if
the Judge disagrees with the
general verdict.

6. In para. 34 of the Report the
Commission suggests that jurors
should be classified as "special"
& "common", subject to the
proviso that special jurors
shall be liable to serve on
common juries.

The object of this proposal is
to provide for the selection
of specially competent jurors
in cases of peculiar difficulty
or importance.

There is a consensus of opinion
that the preparation of two
entirely distinct lists of
jurors is inadvisable because
(1) in many cases the ^{competent} supply of
jurors is so small that the
^{above} course would be impossible

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(2) the separation of the special
jurors from the common jurors
would appreciably lower the
quality of common juries.
The various A few of the
officers consulted have, however,
no objection to the classification
of jurors as "special" &
"common" on the understanding,
suggested by the Commission,
namely, that special jurors
will be liable to serve on
common juries.

In the whole & all in C. considered
it is inexpedient to adopt the
proposal of the Commission.
The necessity for ^{the change} has not
been made out & the list of
offences triable by jury is
so small that it would be
extremely difficult to find
any principle upon which
the cases for special juries
could be discriminated from
those for common juries.

7. The question whether an
appeal upon the facts should
be allowed against the verdict
of a jury ^{should be allowed} is considered in
para. 42 of the Report & the
Commission expresses an opinion
adverse to allowing such an
appeal.

The Q. of J. has adopted a similar
view in para. 9 as stated in para.
9 of Mr Lyall's letter of 25. Aug.
1872, No 1105, Sub C.

Of the officers now consulted
by this Govt. one only (Mr Tate)
has declared himself to be
in favour of allowing an
appeal upon the facts &

even he would allow it)
 Now, only when the verdict is
^{is not unanimous} ~~is not unanimous~~ ^{in thinking}
 that the G. of J. ~~has~~ ^{is} ~~proposed~~ ^{in thinking}
 that the adoption of this
 proposal would greatly weaken
 the arguments for the continuance
 of the jury-system. ~~It is~~ ^{It is} ~~not~~ ^{not} ~~the~~ ^{the} ~~case~~ ^{case}
~~It is not the case~~ ^{It is not the case} ~~that~~ ^{that} ~~the~~ ^{the} ~~proposal~~ ^{proposal} ~~is~~ ^{is} ~~not~~ ^{not} ~~the~~ ^{the} ~~case~~ ^{case}
 and would therefore recommend that
 appeal upon the facts ~~in~~ ⁱⁿ ~~such~~ ^{such} ~~as~~ ^{as} ~~circumstances~~ ^{circumstances} ~~should~~ ^{should} ~~an~~ ^{an} ~~appeal~~ ^{appeal}
 upon the facts be permitted.
 8. In para. 43 of the Report
 the Commission observes that
 it cannot see its way to
 recommending that provision
 should be made for requiring
 Sessions Judges to record
verbatim their charge to the
 Jury.

The question here touched upon
 is important & it will be
 observed that three of the
 Hon. Judges of the Madras High
 Court are strongly of opinion
 that some such provision
 should be made.

On the other hand Mr. Mackenzie
^{considers} ~~is of opinion~~ ^{that} ~~such~~ ^{such} ~~a~~ <sup>a ~~provision~~ ^{provision} ~~would~~ ^{would} ~~necessitate~~ ^{necessitate}
 adjournments which would not
 only result in delay but ~~also~~ ^{also} ~~expose~~ ^{expose} ~~the~~ ^{the} ~~jury~~ ^{jury} ~~to~~ ^{to} ~~the~~ ^{the} ~~danger~~ ^{danger} ~~of~~ ^{of} ~~having~~ ^{having} ~~improper~~ ^{improper} ~~influences~~ ^{influences} ~~brought~~ ^{brought} ~~to~~ ^{to} ~~bear~~ ^{bear}
 upon ~~them~~ ^{it}; he further dwells
 upon the importance of
 delivering the charge while
 the evidence is still fresh in
 the mind of the jury.
 It seems to be generally conceded
 that the difficulties in the
 way of requiring the Judges</sup>

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 to record the charge verbatim
 with his own hand are insuperable.
 At the same time the importance
 of having a complete record
 of the charge cannot be gainsaid.
 It appears to H.E. in C. that
 the only way out of the difficulty
 is to have the charge taken
 down by a clerk in short-
 hand as it is delivered;
 at the same time it is doubtful
 if the supply of ^{handwritten} shorthand-
 writers in this Presidency
 is at present sufficient
 to render this plan feasible.
 It will be seen from the
 accompanying Proceedings
 of this date that the High
 Court has been asked to
 make inquiries as to the
 possibility of procuring
 shorthand writers. Even if
 the supply is insufficient at
 present it would soon increase
 under the influence of a
 certain demand.
 9. The Hon. Mr. Justice Davies,
 it will be seen, is of opinion
 that the Code should distinctly
 state what the charge to
 the jury shall contain & that
 it should further provide
 that the particular evidence
 against each accused
 shall be separately stated
~~therein~~ ^{therein} set forth to the jury.
 I am directed to commend these
 suggestions to the G. of J.
 10. In para. 7 of Mr. ~~John~~ ^{John}
 your letter now under reply
 this G. of J. is asked whether
 it has any objection to the

of the particular offence
 it would constitute
 against him

amendment of sec. 269 of the Code of Crim. Proc. in such a way as to render the assent of the G. of S. necessary to any extension of the system of trial by jury.

On this subject I am to invite attention to para. 20 of the despatch of 21 Dec. 1892, No. 32, from the G. of S. to the Sec. of State & to say that the reasons against the proposal which are therein set out appear to H. P. in C. to be conclusive.

10. In conclusion & with reference to para. 5 of your letter under reply, I am to ask whether the G. of S. would have any objection to the issue of a Notifⁿ declaring that attempts to commit & abettments of offences which are now triable by jury shall also be triable by jury.

The following offences are at present triable by jury in this Presidency:—

- Theft; sec. 379, 380, 382.
- Robbery; sec. 392-395, 397-402.
- Unlawful dealing with property; sec. 411, 412 & 414.

- House-trespass; sec. 451-459.
 - Breaking open closed receptacle; sec. 461.
- In 1886 it was decided to make abettments of these offences also triable by jury & a Govt. Order to this effect was issued but it has been pointed out that, as no Notifⁿ was published in the Gazette as required by sec. 269 of the Code of Crim. Proc., the

Proceedings of 1886 in Institute of Legal force. In deference to the wishes of the G. of S. this Govt. has remedied the formal defect by notifying the Proceedings of 1886 in the Gazette. But it is desired that this should now be done & it has also been represented that attempts to commit offences triable by jury should also be declared to be triable by jury.

J 47 47 7 28/8/93
Dec 12/9-93.

District and Session Judge of

North Arcot, Chittoor.	6
South Arcot, Cuddalore.	6
Bellary.	8
South Canara, Mangalore.	10
Chingleput.	6
Coimbatore.	2
Cuddapah.	6
Ganjam, Berhampore.	6
Godavari, Rajahmundry.	10
Kistna, Masulipatam.	6
Kurnool.	6
Madura.	11
North Malabar, Tellicherry.	8
South Malabar, Calicut.	6
Nellore.	6
Nilgiris, Ootacamund.	6
Salem.	6
Tanjore.	6
Tinnevely, Palamcottah.	8
Trichinopoly.	6
Vizagapatam.	7

Ind 1747
27/8/87/93

Q. No 12/9/91

The Collectors of
The District Magistrates of

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Anantapur.	8
North Arcot, Chittoor.	8
South Arcot, Cuddalore.	8
Bellary.	8
South Canara, Mangalore.	8
Chingleput, Saidapet.	8
Coimbatore.	8
Cuddapah.	8
Ganjam, Chatrapur.	8
Godavari, Cocanada.	8
Kistna, Masulipatam.	8
Kurnool.	8
Madras (when necessary).	
Madura.	8
Malabar, Calicut.	12
Nilgiris, Ootacamund.	8
Nellore.	8
Salem.	8
Tanjore.	9
Tinnevelly.	8
Trichinopoly.	8
Vizagapatam.	8