

THE JUDICIAL DEPARTMENT, FEDERATION OF MALAYA.

REGISTRAR'S CIRCULAR NO. 4 OF 1954

To: All Presidents, Sessions Courts.  
All Circuit Magistrates.

Payments to Witnesses.

You will note that the recently passed Criminal Procedure Codes (Amendment) Ordinance 1954 (No. 8 of 1954) by its Section 24, amends Section 427 of the Criminal Procedure Code in force in the Malay States and now allows orders to be made for payment of witnesses in cases in Sessions Courts and in Magistrates' Courts. This brings the legislation in the Malay States into line with that in the Settlements, where Section 453 of the Code in force always allowed such orders to be made by Sessions Courts and where Section 26 of the 1954 Ordinance now also extends the power to Magistrates' Courts in the Settlements.

2. But until the rules made under Section 428 of the States Code and Section 454 of the Settlements Code, (published in the Federation Government Gazette of 19th August, 1948 as Notifications 2340 and 2339 respectively,) are amended, no scales exist for payment of witnesses on orders by Magistrates throughout the Federation save in preliminary enquiries. Steps are being taken to amend these rules. It should be noted that the scales under the present rules apply to Sessions Courts, these being the successors to District Courts.

3. The Sections are permissive and not mandatory, it being in the discretion of the Court whether to order payment or not. It follows from this that it is not intended to be a general rule that such orders be made in all cases, but that they should be made only in exceptional cases. The Sections do not in themselves indicate when an order should be made and the Chief Justice feels that some guidance should be given thereon to Presidents and Magistrates :-

- (a) Although they allow payment of prosecution witnesses, it is not intended to supersede the ordinary practice whereby the Police pay prosecution witnesses under the Police Regulations. But at times, though rarely, it may be proper to make the order in respect of prosecution witnesses and the Prosecutor himself in private prosecutions.
- (b) Generally the accused is responsible for reimbursing his own witnesses. But on occasion when asked if he wishes to call witnesses, the accused may indicate that he wishes to call some one not present, and on further questioning, that such witness comes from a distance. In such a case the making of an order may be contemplated.
- (c) The Court should satisfy itself that the accused is in such a state of poverty that he cannot bear the expenses himself.
- (d) It should be established to the satisfaction of the Court that the calling of the witness is necessary for the conduct of the defence. Frequently it will be found that he is unnecessary.

- (e) In some cases the Court may not have been able to prevent the attendance of a witness who in fact is found to be an unnecessary one. It may then be desirable to regard him as 'necessary', but this should not be done if the Court considers his loss is trifling, or that he can reasonably look to the accused for reimbursement, or if, for instance, he is a relative or close friend of the accused.
- (f) Transport expenses should be reduced to the minimum and usually no more than the cheapest form of public transport should be allowed. Where the Police are bringing in other witnesses, arrangements should be made for defence witnesses to travel with them, as under present practice.
- (g) Before awarding anything by way of compensation for loss of time and earnings the Court should be satisfied that there has been actual loss. The whole allowance under the scale should not be allowed automatically. It should be noted that a person on a monthly salary may lose nothing, a person like a shop-keeper absent for an hour or two may lose little, whereas a daily wage-earner may lose a day's pay.
- (h) It would be reasonable to refuse an order in respect of a witness who has committed obvious perjury.
- (i) It has been ascertained from a President who has exercised the power under the Settlements Code that the occasions when an order is desirable are rare.
- (j) Any order made must be in conformity with the Rules.

4. In consequence of what is said above about the rareness of occasion for exercise of this power, it is not proposed to allocate moneys to Subordinate Courts. If an order is made involving a small amount, say under \$20/-, it can be paid from petty cash and recouped by application to this office. If a larger amount is involved the witness must be told to submit a bill setting out the full facts. This should be certified as correct by the President or Magistrate and sent to this office where it will be checked. The voucher will then be sent either to the Court, or to the witness direct by post, if he lives at a distance from the Court.

REGISTRAR.  
(D.H.SHACKLES)

The Federal Registry, Supreme Court,  
Federation of Malaya.  
Kuala Lumpur, 22nd April, 1954.  
(RSC.409/46: RSC.39/54: DHS/tkc)

c.c. All Senior Assistant Registrars, Supreme Court.  
All Assistant Registrars, Supreme Court.  
The Director of Audit, Malaya, Kuala Lumpur.