

# MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

|                  |                          |
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| G.O. No. /380    | Press<br><del>Mis.</del> |
| 1-6              |                          |
| Dated 27-10-1918 |                          |

Not to be folded or roughly handled

*Fort St. George, Judicial Consultation, 29th October 1857.*

Read the following papers.

- No. 1. From Lieutenant Colonel H. COLBECK, Senior Magistrate of Police ; to E. MALTBY, Esq., Acting Chief Secretary to Government, dated 16th September 1857, ✓  
No. 17.

SIR,

I have the honor to state that, in accordance with the instructions conveyed to me by Extract Minutes of Consultation of yesterday's date, I wrote to Major Wilson to assist me in the performance of Mr. Dalrymple's duties, during his absence. Major Wilson replied that he was quite unable to take any part of the work, being fully occupied with his own duties. I have therefore directed all the cases of the Vepery District to be entered for trial by me, and so long as is necessary, shall make every exertion to provide for the temporary difficulty.

The present would appear a fitting opportunity respectfully to call the attention of the Right Honorable the Governor in Council, to the urgent necessity existing for the appointment of another Magistrate, who might ordinarily assist at the Town Court, but be directed by the Government, to aid the Magistrates generally, in case of necessity, and to conduct the duties of any Court where sickness or other authorized cause should prevent the attendance of the presiding officer.

Extract Minutes of Consultation, dated 19th January, No. 80, of the present year, provides that in case of indisposition, a Magistrate should procure a substitute, but as none but a legally constituted Magistrate could adjudicate in Police cases, it will be evident that the person so acting as a substitute must be one of the three at present existing. For myself, I have never yet been obliged to test this arrangement, but I much doubt were the case to occur if the other Magistrates would be able to render me sufficient assistance, and for myself, I may add, had Mr. Dalrymple's illness occurred either last week or the week before, it would have been quite out of my power to have performed his duties in addition to my own.

Previous to the passing of Acts XIII and XIV of 1856, there were, as the Government is aware, only two Police Courts presided at by Major Wilson and myself, but Messrs. Elliot, Clark and Ramanoojah Charloo, were all Magistrates, and invariably gave their assistance in cases of sickness, press of business or emergency of any kind.

Under the former system, and previous to the passing of Acts XIII and XIV of 1856, the work was comparatively light. The Sitting Magistrates seldom or never committed cases for the Sessions, but at present the work is constant and increasing, with no provision for even one day's non-attendance at our Courts. And unless some alteration is made in the present arrangement in cases of sickness especially, I foresee much difficulty.

(Signed) H. COLBECK,  
Senior Magistrate of Police.

- No. 2. From Lieutenant Colonel H. COLBECK, Senior Magistrate of Police ; to E. MALTBY, Esq., Acting Chief Secretary to Government, dated 17th September 1857, ✓  
No. 18.

SIR,

Almost immediately after the despatch of my letter to you (No. 17 of yesterday's date) I had the honor to receive your Official Memorandum (Judicial Department,) dated 16th Instant, and I beg in reply to offer a few lines in continuation of my last letter.

I yesterday endeavoured to show how (from various causes) the general work of the Magistrates has been (since the separation of the Police and Magisterial Departments) very greatly increased, in fact, my own has been nearly (if not quite) doubled, and it is only because I

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have at present no committable cases before me (though there is an immediate prospect of one of a serious nature) that I can in any way attempt the performance of Mr. Dalrymple's duties in addition to my own, and should a committable case occur before Mr. Dalrymple's recovery, I shall be compelled to relinquish the extra duties, as I could not possibly perform them with justice to the Government and the public.

It has occurred to me (and I venture to submit the idea) that from the heavy and lately increased expence of the Police establishment, the Supreme Government might hesitate to grant another Magistrate immediately, upon a salary of any magnitude. Now as a fourth Magistrate would ordinarily have lighter work than the others, and no direct charge of a Court, it might be taken into consideration by the Right Honorable the Governor in Council whether an "Assistant" or "Junior" Magistrate might not be appointed upon a salary of 5 or 600 Rupees a month, whose duties generally should be to assist at the Town Police Court but elsewhere when required, and I doubt not many persons quite competent to the office would gladly undertake the duties with the hope of rising in perspective.

Should a fourth Magistrate be appointed (in addition to the facility it will afford of providing for the fulfilment of the duties of other Magistrates in cases of emergency) it would, I respectfully submit, be a great boon to the public in several ways. Thus in the first place the Vepery Police Court could then be opened every day similarly to the others, thereby obviating much inconvenience, and in many cases great hardship. For instance, in the Vepery District, a poor countryman may be returning to his village about 10 o'clock on Saturday morning, he may be taken up for some very trivial offence involving perhaps a fine of 4 Annas, but, if he is unable to give bail, he is placed in Jail, and there he remains until the following Tuesday, with loss of time and liberty, for an offence quite inadequate to the punishment.

I know there is much complaint of the present system of tri-weekly sitting at the Vepery Court, and I only yesterday received a note from a Mr. John Wilson, stating that he had been kept at the Vepery office until late on Tuesday, but that no Magistrate had arrived, and pleading the hardship of being obliged to attend this Court in the same case which had detained him so long at Vepery.

In conclusion, I would hope the Government is not impressed with the idea that the duties of a Magistrate are wholly performed in the 6 or 7 hours he presides at his Court. He has others and I myself am often employed in my own house and elsewhere in work pertaining to my department.

(Signed) H. COLBECK,  
*Senior Magistrate of Police.*

No. 3. From Major W. J. WILSON, Magistrate of Police; to E. MALTBY, Esq., Acting Chief Secretary to Government, Fort St. George, dated 28th September 1857, No. 71.

SIR,

With reference to Extract Minutes of Consultation, under date the 15th Instant, I have the honor to forward a Memorandum containing certain suggestions, which, if adopted, would enable any two of the Magistrates to carry on the work during the temporary absence of the third.

(Signed) W. J. WILSON,  
*Police Magistrate.*

MEMORANDUM.

The business of most of the public offices in Madras, may be carried on, notwithstanding the temporary absence of the head, and in those few instances where it is necessary that he should be always present, such as in that of the Sub Treasurer; the duties are of such a nature that they may be got through, unless in cases of serious illness; whereas those of a Magistrate require, not only his presence, but his constant and unremitting attention during many successive hours, and cannot be creditably performed except by a man in health.

Under the former system, when a Magistrate was prevented by illness from attending his Court, his place on the bench was taken by the Chief Magistrate, or by one of the Deputy Superintendents of Police, both of whom were Magistrates.

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I only mean these remarks to apply to cases of temporary absence for a few days, and to suggest that some arrangement be made by which the place of the Magistrate might be supplied without subjecting him to a deduction from his salary.

It is very desirable that there should be always two Magistrates present at the Town Police Court, as a single Magistrate is liable to constant interruption. Hardly a day passes without his being called from the bench to attend to masters of ships and others, whose business does not admit of delay without inconvenience, while on the other hand it is not advisable, that the Magistrate should leave the bench in the middle of a trial.

In cases for the Sessions, it is very desirable that the examinations of the witnesses should be got through as soon as possible, in order to avoid any tampering or collusion, and as the generality of these cases occupy the best part of a day, it follows that the summary business is at a stand still during that time.

With reference to these observations, I beg to submit the following suggestions for consideration.

That all cases for committal to the Sessions be taken by the Commissioner of Police as heretofore, leaving the Magistrates to dispose of the summary cases alone. I may here mention that as the summary jurisdiction of the Magistrates in cases of theft has been considerably increased by the late Act, the number of cases for committal ought not to be so numerous as formerly.

The new Police Court at Vepery has, owing to its situation, been a convenience to a section of the population, but under existing circumstances, I venture to propose that it be closed for the present, and the Divisions attached thereto (or such portions of them as may be deemed fair) replaced under the jurisdiction of the Royapettah Court, to which they formerly belonged, while the Vepery Magistrate is posted to the Town.

The night cases at Royapettah, were formerly brought before Mr. Elliot, at 10 A. M., each day, and those at the Town before Mr. Clarke, and these gentlemen on hearing the verbal statements of the Police officers either ordered the case to be entered for disposal by the Magistrate, or dismissed the parties with a caution, which mode of proceeding prevented the time of the Magistrate being taken up with trivial cases, or those of a civil nature. The present practice is to enter every case of whatever nature, for disposal by the Magistrate, so that he is necessarily obliged to swear the prosecutor and go into the case in full, whether he convicts, or dismisses with a caution. A reference to the night reports, I allude to, would shew that a considerable number of defendants in petty cases, were discharged forthwith without coming before the Sitting Magistrate. This practice was good in other respects, as it gave the Superintendent and his Deputies the daily opportunity of seeing how the work was carried on, and whether parties were unnecessarily taken into custody, and a recurrence thereto would also be of advantage to the Magistrates.

In conclusion, I beg leave to mention that before the passing of the late Act, the decisions of the Magistrates were quashed or affirmed on production of the Warrant of commitment alone whereas the present appeal is on the merits, and the record of the case, or a copy thereof must be returned to the Supreme Court, which renders it imperative that proceedings should be full, plete and presentable.

Madras, Town Police Court, }  
28th September 1857.

(Signed) W. J. WILSON,  
*Magistrate of Police.*

No. 4. From H. D. E. DALRYMPLE, Esq., Magistrate of Police; to E. MALTBY, Esq., Acting Chief Secretary to Government, dated 19th September 1857.

SIR,

With reference to Extract of Minutes of Consultation, under date 15th September 1857, I have the honor respectfully to bring to the notice of the Right Honorable the Governor in Council that, under the rules for the guidance of the Magistrates therein referred to,\* the Magistrates of the 1st and 3rd Districts have power given them† to claim my assistance, but no such power is accorded to me as Magistrate of the 2nd District.

I regret that I committed the error of communicating with the Private Secretary to the Governor, instead of reporting my illness to the Chief Secretary to Government, as under para. 3

\* Dated 19th January 1857.  
† See para. 5 of rules for the guidance of Magistrates.

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of the rules above referred to; at the same time I beg most respectfully to point out that the latter part of that para. must, under the present system of arrangement of the Police Offices, remain as far as I am concerned, a dead letter. Formerly, with less actual work there were five Magistrates to carry on the duties of two offices. There are now three offices and only three Magistrates. There is no other qualified person that I have the power to call in to my assistance. Therefore in the event of sudden sickness or other necessary cause of absence, the Vepery Police Office must be closed.

(Signed) H. D. E. DALRYMPLE,  
*Magistrate of Police.*

No. 5. From H. D. E. DALRYMPLE, Esq., Magistrate of Police; to E. MALTBY, Esq., Acting Chief Secretary to Government, Fort St. George, dated 6th October 1857, No. 10.

SIR,

I have the honor to address Government on a subject which I have hitherto avoided, as much as possible, from the feeling that I have been placed in a peculiar position. As I understand, however, that the Magistrates of the 1st and 3rd Districts have lately addressed Government on the subject of the working of the Police Courts under the new system, I feel that as the oldest and most experienced Magistrate and Superintendent of Police in Madras, and as having formerly held the offices of Chief Magistrate and Superintendent of Police to the satisfaction of Government, I also may be permitted respectfully to record my opinions on the subject.

2. After an experience of seven months of the working of the Vepery Police Court, I beg most respectfully to state that its situation is a great convenience to the public, more especially to persons residing in the 5th and 6th Divisions and to the officers of Police belonging to these Divisions, but as the Court is open only every alternate day, (from the Magistrate being obliged to attend the Town Police Office) the advantages of its establishment are not fully realized.

3. I consider it but fair both to the public and to prisoners that the Court should be open every day; for at present it often occurs, that a poor man taken up by the Police for a trifling offence, (sometimes for no offence at all) being unable to find bail, is necessarily detained in custody three days and nights, and sometimes the greater part of the fourth day, before the case is disposed of by the Magistrate. It also sometimes happens that cases are sent up for trial incomplete, and consequently must be postponed for two or three days instead of one.

4. When there are cases for committal to the criminal Sessions, it is found extremely difficult by the Magistrate for want of time, to dispose of such cases, as he is obliged, in the first instance, to dispose of all miscellaneous work, petitions, affidavits, &c., &c., and to deal with the cases entered for summary adjudication, and consequently the cases for committal are postponed from day to day. The door is thus open to bribery and collusion, and justice is not always vindicated.

5. In regard to the Magistrates weekly returns, I beg most respectfully to observe that numerical statements cannot convey a just idea of the nature and importance of their weekly labours. For example, a charge of common nuisance, could be investigated in a few minutes, while another, a breach of the peace or a common assault, would occupy the time of a Magistrate for an hour, and a case of larceny or any other case of importance, might sometimes take up the greater portion of the day.

6. Under the old system, all cases for the Sessions were investigated and committed by the Superintendent of Police and his Deputies, these gentlemen being then Police Magistrates, their services were, at the same time, available for the disposal of summary cases when either of the two "Sitting Magistrates" were hard pressed with work or unavoidably absent from sickness, but under the new system, they are no longer competent to render their assistance.

7. There were then only two Police Courts and five Magistrates. At present there are but three Magistrates to perform the duties of three Police Courts, with greatly increased jurisdiction under the new Police and Municipal codes, in addition to the work heretofore performed by the Police; namely, the committal of cases to the Sessions, the executive duties of the offices, &c., &

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8. With increased duties, with an additional Court, and the reduction in the number of Magistrates from 5 to 3, it must be quite evident that without another or fourth Magistrate to supply temporary vacancies on the Bench, to afford assistance in the committal of cases to the Sessions, and to do the duties generally as an Executive Magistrate, it is impossible that the present Magistrates can continue to perform these duties with satisfaction to themselves, and with advantage to the public.

9. The duties of a Magistrate are trying and laborious; from the moment he enters his office, up to the time he leaves it, his attention must be on the stretch, he has to combat every phase of falsehood and villainy, and to do this successfully, he ought to be in perfect health. Under the present system, he must go to work well or ill, or else either his office or another must be closed.

10. With the aid of a fourth Magistrate, the new Vepery Police Court could be worked daily, and at the same time efficient assistance could be afforded to the Magistrate sitting at the Town Police Court. There would then be no necessity to revert to the former divisions of jurisdiction by the closing of the Vepery Court, and the convenience of the public would be more adequately provided for.

11. I beg most respectfully to observe that the present Police régime, as connected with the Magistrates' Courts, is most prejudicial to the honesty and efficiency of that body. Under the former system, either the Superintendent of Police, or one of his Deputies, was in attendance at each office, and consequently, was enabled to take notice of any irregularity on the part of the Police, and investigated the matter forthwith, now from 11 A. M., till the business of the day is closed, the Police on duty at the several offices in charge of cases, &c., &c., are emancipated from all control.

12. In conclusion, I beg most respectfully to state that, having felt it my duty to bring the circumstances set forth in this letter, to the notice of the Right Honorable the Governor in Council, I hope that his Lordship in Council will do me the justice to believe that I have only the interests of Government and the advantage of the public in view.

(Signed) H. D. E. DALRYMPLE,  
*Magistrate of Police.*

No. 6. ORDER THEREON, No. 1380; dated 21st October 1857.

The foregoing letters relate to the question of an increase to the existing number of Magistrates for the town of Madras. The Government observe that when the time is more favorable the subject will be again referred by them to the Government of India, with a recommendation that a fourth Magistrate may be appointed.

2. Major Wilson advocates a recurrence to the system in force prior to the passing of Act No. XIII of 1856, under which the Superintendent of Police (now Commissioner) and his Deputies were the officials who had the conduct of all committable cases, and further disposed every morning of all the night charges. But even if this course was otherwise free from objection, the present Law, the Government remark, will not permit of it. The Commissioner and his Deputies are not allowed to act as Magistrates either ministerially or judicially except so far as may be necessary for the preservation of the peace, the prevention of crime and the apprehension, &c., of offenders. The Commissioner indeed may be appointed a Magistrate if the Supreme Government think fit to order it, on the recommendation of the Governor in Council. Such a recommendation was lately made and acceded to, for special reasons in connection with matters of a political nature, but generally speaking it is the express design of the Legislature that the executive and ministerial duties under the Act shall be kept entirely separate.

3. In para. 11 of his letter of the 6th October, recorded above, Mr. Dalrymple, Magistrate of the 2nd District, complains that the Police Peons who attend at the several Courts in charge of cases, &c. &c., are "emancipated from all controul." Formerly it was the practice that the Superintendent of Police or one of his Deputies should attend daily at each Court, for the purpose of enquiring into and adjudicating on any irregularity that might be charged against any of their Subordinates.

The Commissioner of Police will furnish a report on the complaint here made.

(Signed) E. MALTBY,  
*Acting Chief Secretary.*

*cases, and further disband every*

Judicial Sept 14

No 1380.

G.M.C. 5/21<sup>st</sup> October, 1857.

Read the following letters  
from Lt Col Colbeck, Senior  
Magistrate of Police -

} Here enter Nos 17 & 18  
5/16<sup>th</sup> & 17<sup>th</sup> Sept<sup>r</sup>/57  
respectively.

Read letter from Major Wilson,  
the 2<sup>nd</sup> Magistrate

} Here enter No 71.  
5/28<sup>th</sup> Sept<sup>r</sup>/57.

Read letters also from  
Lt. G. E. Selwynpole. Esq<sup>r</sup>  
the 3<sup>rd</sup> Magistrate

} Here enter Nos 9 & 10.  
5/19<sup>th</sup> Sept<sup>r</sup> and 6<sup>th</sup>  
Oct/57. respectively.

At My

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country

morning of all the rights  
But even if this course was  
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Mr. Dalrymple, Secy to the  
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The Commissioners of Police will  
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here made.

D. J. 10-10/57.

JM

To Lieut Col. H. Culbeck Mag of Police  
" Major H. S. Wilson do  
" Mr. E. Dalrymple Esq do  
" Commr of Police do } Dispd 27<sup>th</sup>

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July 6<sup>th</sup> 1880 - 29<sup>th</sup> October  
Judicial 1857 & 1880

o. 1880.

Dehaet & Mouw & others

29<sup>th</sup> October 1880

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