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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

DEPARTMENT

Judicial.

G.O. No.	303.	Press.
B.P. No.		Mis.
20-21		
Dated	17.3.1857	198 .

Not to be folded or roughly handled

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Fort St. George, Judicial Consultation, 17th March 1857.

No. 20. Read the following Minute by D. ELIOTT, Esq., Member of the Legislative Council for the Madras Presidency, dated 16th February 1857.

In Mr. Pycroft's letter under date the 14th Ultimo, the question is submitted, whether fees should be levied at the discretion of the Magistrates on Summonses and Subpœnas issued by them, and on Affidavits and Declarations made before them, as proposed by Colonel Colbeck. It is stated that the Right Honorable the Governor in Council considers it desirable that the levy of such fees should be legalized, but leaves it to me to take such action in the matter as I may deem fit.

2. This question was considered by the Select Committee on the Police Bill, and it was advisedly determined not to make any provision in the Bill to authorize the Magistrates to levy fees on process, or on their attestation of Affidavits, &c. There was no such provision in the last Police Act for Calcutta, (XIII of 1852), and there was no reason to apprehend that any inconvenience had arisen from the absence of it during the period the Act was in operation, *in regard to process*. It is true that Act XIII of 1856 extends the jurisdiction of the Town Magistrates, but in the cases brought under their jurisdiction which before were triable by the Supreme Court, fees were not leviable on the issue of Subpœnas and Summonses under the former regime.

3. In the Mofussil the levy of fees on such processes is not warranted by the existing law of the Madras Code. It seems to me inexpedient to make a difference in this respect between the practice of the Town Magistrates and that of the Magistrates in the Mofussil, particularly when trates shall be served and executed by an Officer of the Police Force, and none other. So that no extra expence is incurred to justify the demand of a fee.

4. It is said that the charge of fees on Subpœnas will serve to check the unnecessary summoning of witnesses, but it seems to me that an abuse of this sort will be best checked by the Magistrates exercising a sound discretion in granting Subpœnas; and *perhaps* under Section, CII of the Act, which gives a discretion to the Magistrates to award *costs* to be paid to, or by, either of the parties, a party who had unduly used the services of Police Officers in the summoning of witnesses who proved to be unnecessary, might be ordered to pay some compensation for such unnecessary employment of public servants, and also some compensation to the witnesses unnecessarily called from their own business.

5. With respect to the attestation of Affidavits and Declarations, this is not a function imposed on the Magistrates by the Act, and I am not certain that there is any legal authority for their performing it as Justices of Peace. In England, I believe, it is only in cases in which a Magistrate has express legal power to swear a person to an Affidavit that a fee is charged.

6. I am informed by the Commissioner of Police that at Calcutta the Magistrates generally refuse to swear persons to Affidavits, referring those who wish to make them to a public Notary. When an Affidavit is sworn to before a Magistrate, no fee is charged.

7. Under these circumstances I deem it unadvisable to take any action in this matter in the Legislative Council.

8. As it would seem to be the practice of the Magistrates at Madras to charge a fee upon the issue of a Summons on the application of a party laying an "information" or "complaint" of an assault, &c. and which practice it is stated rests upon usage, and the authority of an order of Government, it may be thought proper for Government to put a stop to it, seeing that there is no legal sanction for it.

(Signed) D. ELIOTT,
Member of the Legislative Council.

No. 21. ORDER THEREON, No. 303; dated 12th March 1857.

Ordered to be communicated to Lieutenant Colonel H. Colbeck, Magistrate of Police, with reference to his letter of 20th December 1856, and to the other Magistrates of Police. The practice referred to in para: 8 of Mr. Elliott's Minute if it be still followed, will be discontinued.

Fort St. George, Judicial Consultation, 17th March 1857.

2. Ordered also that the Minute and the correspondence connected with it be communicated to the Honorable Company's Solicitor in view to the opinion of Counsel being taken on the points mooted in the latter part of para: 4 and in paras: 5 and 6.

(Signed) T. PYCROFT,

Chief Secretary.

Minute

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In Mr. Pycroft's letter under date the 14th ultimo, the question is submitted, whether fees should be levied at the discretion of the Magistrates on Summons & Subpoenas issued by them, and on Affidavits and declarations made before them, as proposed by Colonel Colbeck. It is stated that the Right Hon^{ble} the Governor in Council considers it desirable that the levy of such fees should be legalized, but leaves it to me to take such action in the matter as I may deem fit.

2 This question was considered by the Select Committee on the Police Bill, and it was accordingly determined not to make any provision in the Bill to authorize the Magistrates to levy fees on process, or on their attestation of Affidavits &c. There was no such provision in the last Police Act for Calcutta (XIII of 1852) and there was no reason to as-

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prehend ^{that} any inconvenience had arisen from the absence of it during the period the Act was in operation, in regard to process. It is true that Act XIII of 1856 extends the jurisdiction of the Town Magistrates, but in the cases brought under their jurisdiction which before were triable by the Supreme Court, fees were not leviable on the issue of Subpoenas and summonses under the former regime.

3 In the Mofussil the levy of fees on such process is not warranted by the existing law of the Madras Code. It seems to me inexpedient to make a difference in this respect between the practice of the Town Magistrates and that of the Magistrates in the Mofussil, particularly when a general assimilation of jurisdiction is in contemplation. It is to be observed that Act XIII of 1856 Section XXV requires that all Summonses, Subpoenas, and Warrants issued by Magistrates shall be served and executed by an officer of the Police Force, and none other. So that no extra expense is incurred to justify the demand of a fee.

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4 It is said that the charge of fees on Subpoenas will serve to check the unnecessary summoning of witnesses, but it seems to me that an abuse of this sort will be best checked by the Magistrates exercising a sound discretion in granting Subpoenas; and perhaps under Section CII of the Act, which gives a discretion to the Magistrates to award Costs to be paid to, or by, either of the parties, a party who had unduly used the services of Police officers in the summoning of witnesses who proved to be unnecessary, might be ordered to pay some compensation for such unnecessary employment of public servants, and also some compensation to the witnesses unnecessarily called from their own business.

5 With respect to the attestation of affidavits and declarations, this is not a function imposed on the Magistrates by the Act, and I am not certain that there is any legal authority for their performing it as Justices of Peace. In England, I believe, it is only in cases in which a Magistrate has

has express legal power to swear a person to an affidavit that a fee is charged.

6 I am informed by the Commissioners of Police that at Calcutta the Magistrates generally refuse to swear persons to affidavits, referring those who wish to make them to a public notary. When an affidavit is sworn to before a Magistrate no fee is charged.

7 Under these circumstances, I deem it inadvisable to take any action on this matter in the Legislative Council.

8 As it would seem to be the practice of the Magistrates at Madras to charge a fee upon the issue of a summons on the application of a party laying an "information" or "complaint" of an assault &c., ^{practice} and which it is stated rests upon usage, and the authority of an order of Government, it may be thought proper for Government to put a stop to it, seeing that there is no legal sanction for it.

The 16th February 1857

R. Elliott

Member of the Leg. Council

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Ordered also communicated to
Lt. Col. H. Colbeck Magistrate of
Police with reference to his letter
of 20th Dec 1856 and to the
other Magistrates of Police.
The practice referred to in
para 8 of Mr Elliott's Minute
if it is still followed, will be
discontinued.

Ordered also that the
Minute & the corres.
Copy to Lt. Col. Colbeck
Magistrate of Police. - for due consid-
eration with it be communicated
to the Hon. Comr. Police in view
to the opinion of Council being

enclosed in the paper 5 mounted
in the latter part of paper 4 &

in papers 5 & 6 -

For 6 St George, 1/2
12th March 1857

Mr A. Colburn

J.P.

Major Hill

W. D. Dalgryple Esq

with copy of the Dip.
Minute -

The Editor (with printed copy of the letter
to D. Chatt Esq. 14 Jan/57. & of his 3 Encls. & N. 1 @ 3)

2/17/57

has express legal power to swear a person to an affidavit that a fee is charged.

6 I am informed by the Commissioner of Police that I.C. 20th Aug 57. 23123.

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In to Aug 31 March

14th of 1857

Para 24 -

Report in No. 15 of 1857 p. 12

Approved

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In D4 to Cons = 17th March 57

Judicial 1857 Depart.

Minute

by D. Elliott Esq^r

Member of the Legislative

Council for the Madras

Presidency.

Dated 16th

Recd 27 Feb 1857.

No. 345.

Does not, for reasons assigned,

deem it advisable that any action

should be taken in the Legislative

Council respecting the levy of fees for

the issue of Summons & Subpoenas by

Police Magistrates and for Affidavits

and Declarations made before them.

thinks it proper that Govt. should put

a stop to the present practice of charging

a fee for Summons issued by them.

to put a stop

File No. 217 of 1857.

The 16th February 1857.

D. Elliott

Member of the Leg. Council