

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 64	Press ~~Mis.~~
1-3	
Dated 20-1-1857.	

Not to be folded or roughly handled

64

Fort St. George, Judicial Consultation, 20th January 1857.

Read again the following Papers.

No. 1. From Lieutenant Colonel H. COLBECK, Magistrate of Police; to T. PYCROFT, Esq., Chief Secretary to Government, dated 5th December 1856, No. 19.

SIR,

I have the honor to state that hitherto it has been the practice to charge 4 annas upon each Summons to applicants laying an "Information" or "Complaint" against parties for the commission of Assaults, &c., but Subpœnas to Witnesses have invariably been given gratis.

Act XIII of 1856 has so materially changed the features of Cases before Magistrates of Police, that I am induced respectfully to suggest for the future it be left to the discretion of the Magistrates to issue Subpœnas gratis, or to charge upon each a fee of 4 annas, and I would advance in support of the justness of such charge that the recent Code has already introduced a higher class of applicants for the adjudication of Cases than under the old Regulations. Within the short period in which the Act has been in operation, several parties have appeared before me, both as Prosecutors and Defendants in the receipt of good incomes, to whom it would be no hardship to pay for their Subpœnas: Attorneys have been retained on both sides, and in one Case recently adjudicated before me, no less than 21 Subpœnas were applied for, and granted at the requisition of the Attorney for the Plaintiff, and had I possessed the power I should certainly have charged 4 annas upon each. The Subpœnas are each printed upon a half sheet of foolscap and the Seal of the Court attached at the expense of the Government. Moreover they are more frequently granted in Cases which yield no pecuniary return to the Court as in the one in which 21 were issued.

Each Subpœna has to be separately served either by Constable or Peon, and of course much time must necessarily be occupied in the process, for this no return is made, and Subpœnas being granted gratis a superfluity is often applied for, and witnesses in attendance frequently sent away without giving evidence; whereas the fee upon each Subpœna would, I conceive, act as a salutary check upon the system. A Medical man in the case I have alluded to was three times Subpœned though never examined and he complained of the hardship and absence of remuneration.

In the Court of Small Causes the fees upon Subpœnas are embodied in the Act, but so also are those upon Summonses. In Act XIII of 1856 there is no provision for any fee upon Summonses and the practice is only continued from long established usage and I believe by the orders of Government. Should such be the case it will be equally competent for them to order a fee upon Subpœnas, as I can see no more difficulty in the one case than in the other, and I would therefore submit that henceforth Summonses and Subpœnas shall be granted at the discretion of the Magistrates each upon a fee of 4 annas.

From CLEMENT DALE, Esq., Honorable Company's Solicitor; to T. PYCROFT, Esq., Chief Secretary to Government, dated 10th December 1856, No. 549.

SIR,

Para 1. With reference to the Order of Government noted in the margin, I have the honor to state as my opinion, that it would be very desirable that a fee should be leviable on all Summonses, Subpœnas and other process issued at the Police Offices in Madras, but that a discretion should be left to the Magistrates to remit the fee in such cases as they may deem it desirable to do so.

2. Whether the sum of 4 annas would be a fair and sufficient amount I have not the means of judging.

3. Colonel Colbeck does not shew that "the practice to charge 4 annas upon each Summons" is founded on Legislative Enactment, but he infers the contrary. In England the amount of such fees is regulated by Statute. The new Police Act does not provide for such a charge,

Order of Govt. 6th Decr.
1856, No. 1305, on Letter
from Lt. Col. H. Colbeck,
5th Decr. 1856, No. 19.

Fort St. George, Judicial Consultation, 20th January 1857.

nor do I recollect any Regulation or Act of the Legislative Council which authorises the charge to be made, and I am of opinion that to enable Magistrates to carry out this proposition, a Legislative Enactment is required, if there be not one already in existence.

4. I take this opportunity of stating that my Office has not been furnished with the detailed Index to all the Acts of the Legislative Council published (I believe) by the Government of India some few years since, I need not enter into any discussion to shew the importance of such a Work being furnished to the Law Officers of Government.

No. 2. Read also letter from Lieutenant Colonel H. COLBECK, Magistrate of Police; to T. PYCROFT, Esq., Chief Secretary to Government, dated 20th December 1856, No. 21.

SIR,

I have the honor in continuation of the subject referred to in my letter of the 5th Current, No. 19, and in obedience to the orders of Government, to state that I believe there is no Legislative Enactment authorizing the fee of 4 annas upon each Summons issued by Magistrates of Police, but that the practice has obtained for a series of years, indeed, as far back as I can trace any clue to it.

In my former letter, I stated that the fees upon Summonses, Subpoenas and other processes are embodied in the Act for the Court of Small Causes, but that Act XIII of 1856 contains no similar provision. This omission I have no doubt was intentional, the Police Code being considered Penal, but it contains many Sections and Clauses empowering the adjudication of Cases where fees upon processes would be but just and reasonable. For instance cases of Assault upon persons in easy circumstances (which previous to the passing of the present Code would have been entered upon in the Supreme or Small Cause Courts) are now brought before the Magistrates and for these reasons: the matter is speedily adjusted, and both compensation for injury and costs may be obtained.

My experience has shewn that the spirit of litigation is strong in the minds of the public of Madras generally and cases frequently occur where a multiplicity of witnesses are causelessly and recklessly Subpoened with loss and inconvenience to themselves by the mere giving in their names without any attendant expense, and I think a small fee in such cases upon each Subpoena would act somewhat as a safe-guard to the public.

In addition to the foregoing I would respectfully submit to the Government that it is the practice in England to charge a fee upon each Affidavit and Declaration made before a Magistrate and for the attestation of legal instruments. Such however has not hitherto been the practice here and I would suggest that although the Government would feel it incumbent upon them to render every protection to the people for the security of property and the furtherance of justice, it is not necessary that the private convenience of parties should be met at the Government expense. Gentlemen appear almost daily at the Police Courts for the purpose of making Affidavits either for receiving, or borrowing money, and I think it would be but fair that they should pay a small sum for the accommodation. Subjoined therefore is a table of fees I have the honor to submit for consideration and to suggest that they be leviable by Legislative Enactment.

Table of Fees leviable at the Madras Police Courts.

	Rs.	A	P
For each Summons.	0	4	0
For each Subpoena.	0	4	0
For each Affidavit or Attestation before a Magistrate.	1	0	0

(Signed) H. COLBECK,
Magistrate of Police,
In charge of the Establishments, &c.

Fort St. George, Judicial Consultation, 20th January 1857.

No. 3. Ordered that the following letter be despatched
From T. PYCROFT, Esq., Chief Secretary to the Government of Fort St. George; to DANIEL ELIOTT, Esq., Member of the Legislative Council of India for Madras, dated 14th January 1857, No. 64.

SIR,

Letter from Lieut. Col. H. Colbeck, Magistrate of Police, dated 5th December 1856, No. 19.

" " Honorable Company's Solicitor, dated 10th December 1856, No. 549

Letter from Magistrate of Police, dated 20th, 1856, No. 21.

1. I am directed by the Right Honorable the Governor in Council to forward, for your consideration, the correspondence noted in the margin, respecting the charge of Fees for Summonses and Subpoenas issued by the Magistrates of Police at Madras, as well as for Affidavits made before them.

2. In his letter of 5th December last, Colonel Colbeck brought to the notice of Government, that it had hitherto been the practice to charge 4 annas upon each Summons granted to applicants laying an "Information" or "Complaint" against parties for the commission of Assaults, &c., but that Subpoenas to Witnesses had invariably been given gratis; and suggested that, for the future, it might be left to the discretion of the Magistrates to issue the Subpoenas gratis or charge upon each of them a fee of 4 annas. The Subpoenas are printed, and the Seal of the Court is attached to them at the expense of Government. Each has to be separately served by either a Constable or Peon, and frequently a multiplicity of Witnesses are, it is stated, causelessly and recklessly Subpoenaed with loss and inconvenience to themselves, by parties merely giving in their names, and afterwards sent away without giving evidence. Colonel Colbeck considers that, under such circumstances, the imposition of a fee would operate as a safe-guard to the Public convenience.

3. The New Police Act XIII of 1856 has materially changed the description of Cases, at present, adjudicated by the Magistrates; empowering them to try those, as Assaults for instance, which formerly were brought in either the Supreme or Small Cause Courts, and where a fee upon processes would seem just and reasonable. The Act does not however provide for such a charge, nor does it appear to be authorized by any other Act or Regulation.

4. Colonel Colbeck has also suggested that a fee should be levied upon each Affidavit and Declaration made before a Police Magistrate, as also for the attestation of legal instruments.

5. The Right Honorable the Governor in Council considers it desirable that fees, on some such scale as that proposed by Colonel Colbeck, should at the discretion of the Magistrate, be leviable on Summonses, Subpoenas, Affidavits, and Declarations. He has directed me to submit the matter for your consideration, and to leave it to you to take such action in the matter as you deem fit, either at present or on a suitable occasion presenting itself.

Table of Fees leviable at the Madras Police Courts.

	<i>Rs</i>	<i>As</i>	<i>P.</i>
For each Summons. - - - - -	"	4	"
For each Subpoena. - - - - -	"	4	"
For each affidavit or attestation } before a Magistrate. - }	1	"	"

J. H. Leeke.

*Magistrate of Police
In Charge of the Establishment*

True Copy

Chief Clerk

№ 13

Read again the following

From Lt. Col. Colbeck Magistrate } 5th Decr 1860 No 19.
of Police } recorded 9 Decr
1860

From the Hon. Compt's Solicitor - 10th - Dec. No 549.
 rec'd 20 Dec. 1894

Read also letter from

St. Col. Colbeck Magistrate } Here enter 20 Decr/58 No 21.
of Police.

Ordered that the following
letter be despatched.

A

MEK

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Daniel Elliot Esq

Member of the Legislative Council
for Madras

(here enter No.)



209: D: 628

to Hays. 31 March
1857.

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Deposited in No. 15 of 1887 Ch. 13.

affirmed

Aug. 20 - James St
Indiana 1856 Reynolds

From

[illegible]

Magistrate of Boston

J. J. P.

Harriet's Cousin
Frank Beauchamp Esq

For Miss Genger —

S.E. V.L. No 63464

1821

Paid 20th } Decr 1856.
 Received 20 }

901884.

papers

[illegible]

Copy to Dr. Elcott
14 Jan'y 1859 A.D. 1857

22 days
Packing 157
25 "
28 "

Wm. A. R. R.

It does not appear to fort that the Legislature Council would be disposed to pass an act for the sole purpose of legalizing the kind of fees on such orders, sub-penas or affidavits - but the matter may be again brought forward when any law may be under consideration in the House - no doubt the above effect could be appropriately introduced

Judicial Department

No. 14

Daniel Elliot Esq.

Member of the Legislative Council of India
for Madras.

Sir,

1. I am directed by the
Right Honble the Governor in
Council to forward, for your
consideration, the correspondence
noted in the margin, respecting
the charge of Fees for Summons
and Subpoenas issued by the
Magistrates of Police at Madras
as well as for Affidavits made
before them.

2. In his letter of 5th Decr.
last, Col: Colbeck brought to the
notice of Government that it
had hitherto been the practice
to charge 4 Annas upon each
Summons granted to applicants

laying

Dec 1857

[Signature]

[Signature]

Letter from Mr. Col: Colbeck
Magistrate of Police dated
15th Decr 1857 No 19.

- do - do - dated 20th do. do 21

- do - Hon: Comm: Solicitor
dated 10 Decr/56 No 529.

Can 23rd Decr/56. 1-2-

Outgoing 31 March

10-2 of 1853

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Report on Dec 15 of 1857 p. 13.

Approved

Recd. 20 January
Judicial 1857 Dep. Secy

No. 13

Secy to Min: of Home:

2/14 Jan 1857

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laying an "Information" or "Com-
plaint" against parties for the
commission of Assaults &c, but
that subpoenas to witnesses has
invariably been given gratis; and
suggested that, for the future, it
might be left to the discretion
of the Magistrates to issue the
subpoenas gratis or charge ^{each} upon
them a fee of 4 Annas. The
subpoenas are printed, and the
seal of the Court is attached to
them at the expense of Govern-
ment. Each has to be separately
served ^{by} either a Constable or
Peon, and frequently a multi-
plicity of witnesses are ^{it is} ~~caused~~
to be ~~summoned~~ ^{summoned} and ~~recklessly~~ ^{recklessly} subpoenaed,
with loss and inconvenience to
themselves, by parties merely
giving in their names, and
afterwards sent away without
giving evidence. Col. Colbeck

conscious

considers that, under such
circumstances, the imposition
of a fee would operate as a
safeguard to the Public
convenience.

3. The new Police Act, XIII
of 1856, has materially changed
the ~~features~~ ^{description} of ~~the~~ cases, at
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for such a charge, nor does
it appear ^{to be authorized by} ~~that~~ any other Act
or Regulation ~~authorizes its~~
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Declaration made before a Police
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tation of legal instruments.

5. The Right Honourable the
Governor in Council considers
it desirable that fees, on some
such scale as that proposed by
at the discretion of Mr Mag
Col: Colbeck, should be levied
-able
on summonses, subpoenas and
declarations
Affidavits, but he fears that
the Legislative Council will
not be disposed to pass an Act
for the sole purpose of legal-
izing them. I am however

He has directed me to submit the matter
for your consideration, and
to leave it to you to bring it
before the Council or not
just as you may deem fit
either at present or
on a suitable

Copy to Col Colbeck. 17
occasion presenting
itself - I have the honor to be

For St George's
11 January 1854

Your most obedt Servt
Wm. Macdonald

at Long 31 March
1859 of 1859.
Paw 24

at Long 20 January
Judicial 1859 of 1859
Paw 24

at Long 20 January
Judicial 1859 of 1859
Paw 24

at Long 20 January
Judicial 1859 of 1859
Paw 24