

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1901	Press
		~~Mis.~~
157-158		
Dated	22	11. 1862.

19/11

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
22nd November 1862.*

Read again letter from the Inspector General of M. Police, dated 24th April 1862, recorded in Proceedings of Government, Judicial Department, dated 5th May 1862, No. 732.

No. 157. Read also the following Endorsement:—

On the re-opening of the late Sudder Court the Judges called upon the Session Judges and Magistrates of Districts to state whether in their opinion it would be expedient to confer on Subordinate Magistrates of the 2nd class, the power of fining witnesses for non-attendance in obedience to summons duly served.

Their opinion being that the measure is expedient and necessary, the Chief Justice and Judges recommend that the Schedule annexed to the Code of Criminal Procedure be amended for the purpose of investing Subordinate Magistrates of the 2nd class with the power of trying offences falling under Section 174 of the Indian Penal Code when committed in contempt of their own lawful authority, and inflicting punishment not exceeding simple imprisonment for ten days, or fine of three Rupees, or both.

HIGH COURT OF JUDICATURE,
MADRAS,
13th October 1862.

By Order,
(Signed) C. F. CHAMIER,
Registrar.

No. 158. ORDER THEREON; 22nd November 1862, No. 1,901.

Steps will be taken to bring before Local Legislature a "Bill to amend the Schedule attached to the Code of Criminal Procedure" for the purpose of investing Subordinate Magistrates of the 2nd class with the power of trying offences falling under Section 174 of the Indian Penal Code when committed in contempt of their own lawful authority, and inflicting punishment not exceeding simple imprisonment for ten days, or fine of three Rupees or both, as recommended by the Honorable the Judges of the High Court.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McFootry.

Printed and
sent to the
Police during

Judicial Department

Proceedings of the Madras Government
Read the following letter.

Office of the Inspector General of Madras
Police.

Madras, 24th April 1862.

From W. Robinson, Esquire
Inspector General of Madras
Police.

To,
J. Pycroft Esquire,
Chief Secretary to Government
Fort Saint George.

Sir,

I have the honor to solicit
the attention of Government to the fact
that, in consequence of Section 34 of Act
XXIV of 1859 having been repealed and
the schedule appended to the Code of
Criminal Procedure confining to Ma-
jistrates of 1st Class the jurisdiction over
contempts of Court by non-attendance
to summons, the subordinate Magistrates of
this Presidency have practically no
longer any power to vindicate their
summonses.

Summons which require the attendance of witnesses and others. Summons are neglected; business is obstructed and the time of the Police is being wasted by having to execute Warrants against parties who commit default in regard to summons legally served upon them.

2. I need scarcely remind Government that under the old system, Summons were practically executed as warrants. The Clerk in charge of a summons brought up the witness or party and produced him before the Court, where he remained under surveillance till the case was disposed of. In short, arrested him and brought him up with him. They refer on this point to an order, No. 71, issued by me under date 14th November 1860. Great abuse was the consequence. But as few persons were found to obey a mere summons and the law provided no remedy, the abuse was tolerated for the sake of despatch of business.

3. On the reorganization of the Police, it became of the first importance

to restrain the acts of the Police within the letter of the law. And in order to secure obedience to the summons of the subordinate Magistrates' Courts, I was instructed by the Government to introduce a provision into the Police law enabling any Magistrate "within the limits of his ordinary jurisdiction (Section 50)" to fine any person "failing or neglecting to obey a summons or notices duly served (Section 34)".

4. When I proceeded to Calcutta in 1859 in charge of the Police Act, I brought this provision of the new law very earnestly before the Members of the Legislative Council. The principle was approved, the importance of the objects and reasons was admitted, and the provision obtained their sanction. Under this provision the subordinate Magistrates of this Presidency have, since the passing of Act XXIV of 1859, been enabled to fine parties neglecting their summons without sufficient cause, to the extent of 3 Rupees.

The

The provision has worked remarkably well. The number of fines imposed has been very small and their amount reasonable. Summonses have been used as intended by the law; parties have promptly obeyed them; public time has not been sacrificed by having to execute both summonses and warrants in order to secure the attendance of any party; and, lastly, the hands of the Police have been kept off persons whom the Law clearly intends are not to be arrested or brought under the personal influence of Police Subordinates.

5... As above stated this power has been withdrawn. Subordinate Magistrates are now Magistrates of the second class, and as such have no power to vindicate their processes except by a regular trial before a Superior Court. The inconvenience of this as regards this Presidency is very great. I am within the mark, as shown by the statistics of Summonses

and

and warrants, when I state that 80 per cent. of the Criminal and Magisterial processes issued in this Presidency emanate from the Subordinate Magistrates Courts. These, and not the Magistrates of the first class, are the working Magistracy on whom devolve, irrespective of cases within their own jurisdiction, the preliminary steps in 9-10ths of the Criminal cases in the Country. But as the Law now stands their summonses of witnesses and parties are now practically without protection. And Subordinate Magistrates are consequently constrained, in self defence, to substitute a warrant where summons is the proper legal procedure; or, where they fail to do so, great delay in the course of justice occurs, and the Police are required to execute a warrant of arrest in addition to the waste of time and labor already expended on the service of summons. The whole, unwarrantable, additional charge hereby

hereby thrown on the state by individuals in contempt of Court must be very great; besides which the Police are engaged, all over the country, in escorting as prisoners, witnesses and persons whom it is obviously the spirit of recent Legislation to keep away from their influence.

6. It may be alleged that subordinate Magistrates have only to prosecute for the contempt before the Superior Court. Now, in none of our great Districts are there more than 3 or 4 Magistrates of 1st Class. These Officers are already overwhelmed with business. Revenue and Judicial - In respect to, therefore, of the cost of conducting before them Public prosecutions for innumerable petty contempts of process issued by the many subordinate Magisterial Courts, it is practically impossible that these first class Magistrates should find time to try the defaulters and to vindicate the Processes of their subordinate Magistracy. The law, as it now stands, must practically be a dead letter. The Police will either continue

continue to be used ⁱⁿ a manner that the Legislature justly deprecates, or the Public time and service must be wasted in a manner that will constitute a heavy charge to the state; while persons who obstruct justice by neglect of summons will practically enjoy perfect impunity.

7. Several Magistrates have brought this subject very earnestly before me. The Court of Soujdaris Adawlat has been moved on the matter. But as the Law now stands, the limit imposed cannot be extended. I have therefore the honor to recommend most earnestly that the Legislature may be moved either to restore the provisions of Section 34 of Act XXIV of 1859, or otherwise provide for the difficulty. The severe penalties of the Penal Code are not required in these cases of Petty Contempt of subordinate Magistrates Process. The power to impose summarily a very moderate fine - such as was provided by Section 34 of XXIV. of 1859, limited by Section 50 - is all that

that is required. There is not the smallest danger of the power being abused.

I have the honor to be

Sir,

Your most Obedt. servant

(Signed) W. Robinson

Inspector General of Madras Police.

Police Order No. LXXI.

Dated 14th November 1860.

1. The Superintendent of
refers the following points. The Subordinate
"note Magistracy state, that the practice
"that has hitherto obtained in this District
"has been that the Peon charged with the
"service of a summons is required to
"bring up the persons summoned with
"him and produce them before the Court.
"In other words he arrests the witnesses
"and parties, and is made responsible
"for their production before the Magistrate.
"The Magistracy now urge that great
"delay in the disposal of cases occurs
"from the abandonment of the practice
"above adverted to, as witnesses and
parties

"parties fail to appear at the time and
"place required." The Superintendent
asks whether the practice can be re-
verted to.

2. The Superintendent is
informed that the practice adverted
to, which had been prevalent in
many Districts, was utterly illegal;
and gave rise to the gravest abuses.
It cannot therefore be reverted to
under any circumstances by the Con-
stabulary. The Police will adhere to the
strictest letter of the Law as regards the
execution of all legal Processes. Not only
because right on principle, but because
exceeding their powers, as they would
do were they to use a summons as a
warrant for arrest, is a highly penal
offence in a Police Officer and exposes
him to Civil action likewise.

3. It is not only quite compe-
tent to a Magistrate to issue a warrant
instead of a summons if he see fit;
but Section 34 of the Police Act is
expressly drawn to enable Officers

to vindicate their Courts in respect
of the very common, but likewise
very grave, contempt of failing or
neglecting to obey a summons. The
happiest results have, in several
Districts, followed a vigorous use
of the power therein given of fining--
Taluk and Subordinate Magistrates have
informed the Inspector General
that after they had imposed a fine
on two or three parties, they find the
summons most readily obeyed.

Order thereon 5th May 1862 No. 732.

Referred for the remarks of
the Sudder Court.

1 True Extract

Signed / A. S. Arbuthnot
Acting Chief Secretary.

1 True Copies

A. S. Chamber

Registrar.

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2/11/78

Read also endorsement of
the Registrar of the High Court
Madras on the above.

Order thereon 22nd November 1862 No 1901

2/11/78

145-505502. ~~new of~~
9/14/42 Can the Reopening of
the Lake Superior Canal be

Linnaeus called upon the
 Mexican Linnaeus and his
 friends of both sides to state

whether in their opinion it
would be expedient to em-
brace the same.

Person who originate business;
Director of the 2^d Class Hotel

persons of family & means
for non attendance in
attendance & numerous daily

served. 1875
 Their names being
 H. H. O.

ment and measure as to the
Chief Justice and Justice;

Command that the whole
 answer to the Code of
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Commonwealth therefore has
ascended for the purpose
directed by the 8th to

of the 2^d Class with the former
of trying Offences falling

under Section 174 of the
Indian Penal Code when
1871

committed say something of
their own lawful authority,
and will then be satisfied.

not exceeding double size
instruments for ten days or

Some of these horses, on both
H. & C. Court - & Big Cedar -
of Kentucky, } C. J. Adams.

Charles Webb
of New York

The 1st Infantry

to Government.

Oct 5⁴ }
Nov 4 } Nov 1862.

1905

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W. A. [unclear]
 [unclear] for the
 [unclear] of the [unclear] Court

Letter from the Librarian
to the Board of Trustees

Recommend not

many less, more, either &

actors the provisions of
Section 34 of Act XXIV of

859 or otherwise provide
for the difficulty at present.

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schärfer und tiefer

Magistrates of the Peace.

11

falling under Section 174 of
the Indian Penal Code when
committed in contempt of
their own lawful authority
and inflicting punishment
not exceeding simple im-
prisonment for ten days,
or fine of three Rupees or both,
as recommended by the Honble
the Judges of the High Court.

L/A

51. East
+ 100

10 more

To the Honble the Judges of the High Court
"Inspector General of Police" 28th

L/A

General Board
Judicial Department.

No. 1901

PROCEEDINGS OF GOVERNMENT,

Dated 22nd November 1872