

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 2109	Press
241-242	~~Mis.~~
Dated 23-12-1882	

6/7

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
23rd December 1862.*

No. 241. Read the following letter from W. ROBINSON, Esq., Inspector General of M. Police, to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Fort Saint George, dated Madras, 6th December 1862, No. 2,934.

I have the honor to submit, for the information of Government, the accompanying correspondence* on the subject of the service of Summons by the Police.

* From the Magistrate of South Arcot, No. 395, dated 17th October 1862.
From the Inspector General of Madras Police, No. 2,626, dated 4th November 1862.
From the Registrar to the High Court, dated 3rd December 1862.

2. The Magistrate of South Arcot wishes the Police to obtain the signature of the individual summoned on the process, in

acknowledgment of its due service; and that the process so signed, be returned by the Police to the Court which issued it, to become part of the record.

3. This had been the practice in many Districts—sustained by the Police on its first introduction—till the Code of Criminal Procedure laid down precise Procedure on the point in Sections 71 and 72.

4. I regret my inability to take the same view of the Law as the Magistrate of South Arcot. I am satisfied that, to constitute legal service of a Summons, the process must be left with the party on whom it is served, and that signature of the party in acknowledgment of service cannot be asked for, much less enforced. It will assuredly be invariably refused when the neglect to obey becomes penal.

5. I wrote to the Registrar of the High Court, a copy of his letter is appended. I wished of course for a ruling for the guidance of the Magistracy.

6. I do not urge a reference to the Government Law Officers, unless the Government deem it advisable. The law seems quite plain.

7. At the same time I deem it well worthy of consideration whether a Legislative alteration of the Procedure would not be highly desirable, as a protection to the person summoned and an assistance and check to the Police.

8. Neglect to obey a Summons will shortly be again penal; and it is desirable that the best evidence should always be procured to substantiate the offence. This of course would be the signature of the party in acknowledgment of the service.

9. It would rarely then be necessary to produce other evidence, besides the Policeman who executed the process, to establish the offence. The public would be spared harassing attendance at Courts to give evidence of the service.

10. I would therefore strongly urge that a provision be added to the Act under preparation for making neglect of Summons penal, which shall enact that the party on whom service is made shall sign the process and return it to the server. He will duly return the Summons so signed to the Court issuing it. A duplicate might be left with the party, a reminder if deemed advisable.

From C. W. READE, Esq., Magistrate of South Arcot, to Captain W. O. SWANSTON, Superintendent of Police, South Arcot, dated Cuddalore, 17th October 1862, No. 395.

Mr. Grose has addressed me on the subject of the serious inconvenience arising from a new system adopted by the Police of serving Summonses; no actual case of the kind has come before myself, and indeed till now I was not aware that any alteration had taken place in the usual mode of service by the Police of the processes referred to. The hitherto practice has been to take the signature of a party to the Summons, the Police Officer returning the same in token of execution and thus the consequences of non-obedience to such process legitimately fell on the party so defaulting; but Mr. Grose informs me that in the instances he quotes, no return of the Summons has been made, but that under your orders the Summons has been given to, and left with the parties

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to whom addressed, and consequently that he has no means of ascertaining that the process has been duly served; while if denied, by the party, there would simply be his word against the Police Constables, and supposing truth was on his side, great injustice might have been done to the supposed defaulting party. I am not aware what orders you may have given or under what instructions you have acted, but it seems to me that there is nothing in the Code of Procedure authorizing any deviation from the hitherto practice of serving processes, the only novelty prescribed under the new law being the authority given to leave a Summons in the house of the party to whom issued, when that party may not himself be present. But when the signature is obtainable, I think it ought to be taken and the Summons be returned by the Police Constable to the Magisterial Officer by whom issued. I shall be obliged by your favoring me with the orders you may have received on the subject, and if you are unable to depart from them it will devolve on me to refer the question to higher authority, as I am of opinion that neither law nor usage lend their sanction to this new arrangement, the inconvenience and evils of which are very apparent.

Forwarded through Deputy Inspector General, with request that the undersigned may be instructed how to act, whether the wishes of the Magistrate are to be carried out or orders of Inspector General of Police.

(Signed) W. O. SWANSTON,
Superintendent of Police.

To the Inspector General of M. Police.

From W. ROBINSON, Esq., Inspector General of M. Police, to the Registrar of the High Court of Judicature, dated Bellary, 4th November 1862, No. 2,626.

Dated 17th October 1862, No. 395.

I have the honor to solicit the instruction of the High Court on the accompanying letter from the Magistrate of South Arcot.

2. It refers to the practice to be observed in serving Summons.
3. Before the passing of Act XXIV of 1859, the practice was ill-defined. It varied according to the customs of different Districts. But in most Districts it was usual for the Police merely to show the Summons to the party required to attend, taking his signature as vouching the service and returning the original process to the Magistrate who issued it.
4. Section 34 of Act XXIV of 1859, embodied the terms of the (then draft) Criminal Procedure Code, which I think enacts the English practice of leaving the Summons with the person summoned.
5. However, with reference to the penal provision of the section in question, the practice of obtaining the signature of the party and returning the Summons was temporarily, but very generally continued pending the passing of the Criminal Procedure Code.
6. Since the passing into law of the Criminal Procedure Code, the Police has been directed to leave the Summons with the party required to attend. It is obvious that they have now no power to require a party to sign the Summons. Indeed a very serious assault on a Police Officer has been justified on the plea that he exceeded his powers by refusing resolutely to leave a house till the party signed and returned to him the Summons which he sought to serve according to the old practice.
7. The Magistrate of South Arcot wishes the old practice above alluded to reverted to. The inconvenience of such a course as a check both in the party defaulting and Police is obvious, and I would strongly advocate its being made law. But I have not met with any Magistrate who takes the same view of the law as it now stands as Mr. Reade appears to do. And I hesitate to give instructions, which may invalidate the service of the Summons and lead to a collision with parties refusing as above instanced, to sign the Summons.

(True Copy.)

(Signed) W. ROBINSON,
Inspector General of M. Police.

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From C. F. CHAMIER, Esq., Registrar of the High Court of Judicature at Madras; to W. ROBINSON, Esq., Inspector General of M. Police, dated Madras, 3rd December 1862.

I am directed to acknowledge the receipt of your letter dated the 4th instant, requesting the opinion of the High Court on the mode in which a Summons should be served under the Code of Criminal Procedure.

2. In reply I am directed to state that the Chief Justice and Judges do not consider it within their province to express any opinion upon questions submitted to them by the Inspector General of Police, relating to the duties of the Police functionaries who are not subject to the control of the High Court.

(True Copy.)

(Signed) W. ROBINSON,
Inspector General of M. Police.

No. 242. ORDER THEREON, 23rd December 1862, No. 2,109.

His Excellency the Governor in Council concurs in the opinion of the Inspector General of Police, that under Section 72 of the Code of Criminal Procedure a person on whom a Summons is served cannot legally be required to attach his signature to the Summons.

2. The Governor in Council doubts the expediency of making any alteration in the Law as it now stands in this respect.

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

Exd. T. O'Connor.

Yr,
Your most obed^t Servant.

W. Robertson ^{3a}

Inspector General
of the Police.

My Dear Sir,

I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the proposed amendment to the Police Act, and in reply to inform you that the same has been forwarded to the Committee on the subject, and will be considered by them at their next meeting.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
letter from the Inspector
General of Madras Police

Here enters 6th December 1862
N^o 2934

Order thereon 23^d December 1862 N. 2109

His Excellency the Governor
in Council concurs in the
opinion of the Inspector
General of Police that under
Section 72 of the Code of
Criminal Procedure a person
on whom a summons is
served cannot legally
be required to attach
his signature to the
summons.

his former in Council
2. doubts the expediency of ~~advising~~
any other action in the law for
~~change further~~ ~~as proposed~~
if you think in this respect,
to the Bill now before the
Council for ~~amendment~~

Long

Laws and Regulations will
be submitted for the con-
sideration of that body.

Y^{rs}

C. L. S. 1850
for office

To the Secy of Ohio Dec 23^d

Pro. deer

Subsist 1862. Department.

No. 2109.

PROCEEDINGS OF GOVERNMENT,

Dated 23rd Decr/62

*Henry
Smith*

Comd'r

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