

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	<i>880</i>	Press
	<i>37-38</i>	<i>2/3</i>
Dated	<i>5.6.1862</i>	

Not to be folded or roughly handled

MS

*Proceedings of the Madras Government, Judicial Department,
5th June 1862.*

No. 37. Read the following letter from E. C. BAYLEY, Esq., Secretary to the Government of India; to E. H. LUSHINGTON, Esq., Secretary to the Government of Bengal, dated Fort William, the 14th May 1862, No. 2,459.

Home Department.
Post Office.

* No. 26, dated 9th November 1861.

† Vide letter from this Department, No. 1,241, dated 28th September 1855.

A recent Circular* issued by the Sudder Court at Agra (a copy of which is enclosed) having led the Government of India to reconsider the correspondence† of 1855, in which it was determined that Judicial processes transmitted by Post should be sent as on the Public Service without actual payment of postage, I am directed to state for the information of the Lieutenant Governor that the Governor General in Council is of opinion that that decision of Government should, in respect of *Civil* processes, be rescinded.

2. His Excellency in Council cannot see any more reason for the Government transmitting by Post at the public expense the processes of the Civil Courts than there is for the conveyance of such processes when transmitted by Post by salaried Peons to the persons from whom the service is to be made, instead of requiring that the entire charge for the service should be borne by the parties at whose request they are issued, as was obviously the intention of Section 2, Act XXIII of 1861.

3. His Excellency in Council accordingly proposes, unless there be any strong objection to such a course applicable specially to Bengal, to direct that *Civil* process shall not any longer be treated as being on the Public Service.

4. Before, however, passing final orders on the subject, the Governor General in Council desires me to request that, with the permission of His Honor the Lieutenant Governor, the views of the Sudder Court at Calcutta on the subject may be obtained and submitted for the consideration of this Government.

No. 2,459.

Copy forwarded to the Government of Madras with a request that the views of the Sudder Court of that Presidency and the opinion of His Excellency the Governor in Council on the subject may be submitted for the information of His Excellency the Governor General in Council.

(Signed) E. C. BAYLEY,
Secy. to the Govt. of India.

CIRCULAR No. 26.

To the Civil Authorities North-Western Provinces, dated the 9th November 1861.

It has been brought to the notice of the Sudder Dewanny Adawlut, that needless delay frequently occurs in the disposal of Civil causes, in which it may be necessary to serve a notice upon a defendant residing in another District, and in which accordingly notice is transmitted by post to the Civil Court of such other District from a practice which obtains of requiring the presence of some person on the part of the plaintiff to point out the defendant.

2. The Court are informed that it not unfrequently occurs that notices or summonses are returned to the Court, from which they were received, upon a simple report of the Nazir of the receiving Court, setting forth that no one has appeared on the part of the plaintiff to point out the defendant, and that *tulubana* has not been paid.

3. The second objection to the issue of the notice or summons, here indicated, should, the Court observe, always be provided against by the transmitting Court, which should invariably remit the charge necessary to cover the service required, and the postage chargeable upon its return, together with the notice itself. The Court take the opportunity of pointing out that such processes cannot be sent upon the Public Service under frank, but that the postage for their transmission and return must be provided by the party requiring their issue. The amount required as *tulubana* will never be large, for the requisition should be addressed, or forwarded on, by post to the local Court which is nearest to the residence of the defendant, or that in whose jurisdiction he is to be found. Thus eight Annas would be a high charge for such service, which would

*Proceedings of the Madras Government, Judicial Department,
5th June 1862.*

after be executed for a less sum. If no preferable mode of remittance suggests itself, the remittance can always be made by postage stamps not exceeding one Anna each in value, which are readily saleable. The Court, therefore, hope that the return of unexecuted processes, on the ground of want of *talubana*, will cease after these orders have come into effect.

4. The first objection, *vis.*, that no person has appeared to indicate the defendant is, the Court observe, only a valid ground for the return of a notice or summons unserved, when the receiving Court has tried unavailingly to discover the defendant: and after making all necessary endeavour to serve the process, has been unable to do so. Such cases will be rare if the transmitting Courts are careful to insert full particulars of name, father's name, caste, profession of the defendant, together with every necessary particular indicating the precise place of abode of the person on whom service is required, and this the Court desire that transmitting Courts will always be careful to do.

No. 38.

ORDER THEREON, 5th June 1862, No. 880.

Referred to the Sudder Court.

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

No. 880 - 5 June 1862.

Referred to the Sudder
Court.

The Sudder Court: 7th June