

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	//	Press
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19-20		
Dated	7/1/1863	TP

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
7th January 1863.*

No. 19. Read the following letter from J. W. B. DYKES, Esq., Magistrate of Nellore; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Judicial Department, Fort Saint George, dated Nellore, 29th November 1862, No. 43.

In continuation of my letter* of the 18th instant, I have the honor to submit for the orders of Government, copies of correspondence between the Acting District Engineer and myself as to the liability of subordinates in the Public Works Department to serve as Assessors.

2. In making out the list prescribed by Section 329 of the Code of Criminal Procedure, I included all the superior servants of Government in the Revenue and Public Works Department. And in accordance to Section 329, on the Draftsman and Head Accountant of the District Engineer's Office being drawn, I sent the summons to secure their attendance through the Acting District Engineer.

3. The Acting District Engineer protested† against being deprived of the services of either, and returned the summonses.

4. No specific reasons were given in the letter of the 27th instant; but, recognizing that the place of Draftsman could not readily be supplied, and presuming Major Greenaway had special reasons for objecting, I wrote to the Court recommending that the attendance of the Draftsman might be excused and another selection made.

5. I at the same time wrote to Major Greenaway, No. 338, and pointing out that we could scarce except others to serve as Assessors, if public Officers did not set the example, I again enclosed the summons for the Head Accountant and requested it might be served.

6. Major Greenaway however still objects to allow either of the men to attend, and, returning the summons for the Head Accountant unserved.

7. I beg to be favored with the orders of Government.

1stly. As to the proper course to be pursued by the head of an office, when a summons is sent to him under Section 329, and

2ndly. Is general duty a sufficient excuse.

8. By Section 329 it is for the Court to decide whether sufficient cause has been shown to excuse attendance as Assessor. And, under ordinary circumstances, it would neither be regular or necessary that I should trouble the Government on this point. But, at the outset of the new system, the point having been raised, it seems desirable that an authoritative ruling should be obtained, not only as to what justifies the head of a Department as a general rule in exercising the power vested in him by Section 329, but also what is the proper course for that Officer to pursue in respect to summons sent to him under the said Section. And in requesting that this ruling may be given, I beg to bring to the notice of Government. 1st, that with a limited area of selection, the question has a general bearing. And 2ndly, that there is some disinclination among the higher classes of Natives to serve as Assessors, and, very much against their will, I have for this reason required the leading men in my own Kacberi to undertake the duty with a view to breaking through the feeling.

From J. W. B. DYKES, Esq., Magistrate of Nellore; to Major T. GREENAWAY, Acting District Engineer, Nellore, dated Nellore, 26th November 1862, No. 335.

With reference to Section 329 of the Criminal Procedure Code, I have the honor to forward two summonses to the Draftsman and Head Accountant of your office, their attendance being required as Assessors by the Sessions Court of Nellore for the Sessions of the 1st proximo; and I request you will be good enough to return the summonses to me with the signatures of the parties endorsed thereon in token of service.

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2. By Section 336 of the Procedure Code no person is liable to be summoned as an Assessor oftener than once in every six months, and no inconvenience will, I trust, be experienced by this once in six months at the most withdrawal of the upper hands of your office. Mr. Franklin was also one of those on whom the lot fell, I have requested the Judge to excuse him, believing his absence would be inconvenient. Kindly inform me if this surmise is correct.

From Major T. GREENAWAY, Acting District Engineer; to J. W. B. DYKES, Esq.,
Magistrate of Nellore, dated Nellore, 27th November 1862, No. 2,387.

I have the honor to request that the parties mentioned in your letter No. 336, dated 26th June, may be excused attendance as Assessors, as their services are emergently required for their departmental duties and cannot be spared.

I return the summons herewith.

From J. W. B. DYKES, Esq., Magistrate of Nellore; to Major T. GREENAWAY, Acting
District Engineer, Nellore, dated Nellore, 28th November 1862, No. 338.

I have the honor to acknowledge the receipt of your letter of the 27th, and as regards your Draftsman will recommend his being excused.

2. As regards your Head Accountant, the case is different. He is not, I presume, a more important Officer than my Sheristadar. If he were sick, or wanted leave for his own affair, you would make arrangements for the due transaction of business in his absence, in the same way as I am making arrangements for my Sheristadar, who likewise has been summoned. What right have we to expect private individuals to give up their time and avocations, if ourselves, public Officers, we make difficulties as to public Officers under our control absenting themselves from public duties to render to the State, services we expect from others bound by no tie save citizenship. Surely it is our duty to set the example. And trusting you will view the question in this light, I return the summons for your Head Accountant with the request that it may be duly served.

From Major T. GREENAWAY, Acting District Engineer; to J. W. B. DYKES, Esq.,
Magistrate of Nellore, dated Nellore, 29th November 1862, No. 2,403.

I have the honor to acknowledge your letter without signature or number dated 28th instant, and regret to be under the necessity of again returning the summons unserved.

3. I am of course unable to make any comparison between the relative emergency of the duties of my office people and those of other offices, but can fully estimate the requirements of my own work, and if I rightly remember the provisions in the Procedure Code, Government servants are entitled to exemption from serving as Assessors on the representation of the head of their office that they cannot be spared.

3. I do not know whether I am called upon to state my reasons, but as they are short, and as I never allow such considerations to interfere with the good of the service I will point them out.

4. My office people work every day till dark considerably in excess of the so called regular office hours, have less leave than any other office establishment and with all this the work is so heavy that I cannot keep it from getting in arrear.

5. My people never get private leave except on providing substitutes, or some times for a day when it so happens I can spare them, very seldom the case and never on the beginning of a month, the rules respecting submission of the accounts and returns being very stringent.

(True Copies.)

(Signed) J. W. B. DYKES,
Magistrate.

No. 20.

ORDER THEREON, 7th January 1863, No. 11.

Subordinates in the Public Works Department are clearly liable to serve as Assessors, and can only be exempted by the Court on application made by the Head of the office under Section 339 of the Code of Criminal Procedure.

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7th January 1863.*

2. The course taken by Major Greenaway in returning the summons to the Magistrate was altogether irregular. On receiving the summons if he could not spare the services of his subordinates, he should have applied to the Session Judge to excuse their attendance.

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

Exd. T. McMootry.

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Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
letter from the Magistrate
of Bellare.

(See letter 29th Nov 1862 No 123)

Order thereon 7th January 1863 No 11

Subordinates in the
Public Works Department
are clearly liable to serve
as Assessors, and can only
be exempted by the Court on
application made by the
Head of the Office under
Section 339 of the Code of
Criminal Procedure.

2. The course taken
by Major Greenaway in
returning the summons
to

to the Magistrate was also
 together irregulars on re-
 ceiving the summons if he
 could not spare the services
 of his subordinates, he should
 have applied to the Session
 Judge to secure their atten-
 -ance

[Signature]

[Faint handwritten notes]

To the Magistrate of Nellore
 Public Works Deptt
 Honble the Judges of the
 Sess Court.

[Faint handwritten notes]

The Library
Judicial 186.3. Department.

No. 11.

PROCEEDINGS OF GOVERNMENT,

Dated 7th January 1883

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