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MADRAS RECORD OFFICE

Government of Madras

JUDICIAL DEPARTMENT

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GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

17th September 1877, No. 2219.

Presidency Magistrates' Courts.

Read the following paper:—

No. 116. *From Major T. WELDON, Chief Magistrate for the Town of Madras, to the Chief Secretary to Government, dated Egmore, 7th September 1877, No. 192.*

I have deferred action, under Section 9 of the Presidency Magistrates Act (1877), till a sufficient time had elapsed to enable the Magistrates to judge from experience what, if any, alteration was required with regard to the existing rules of practice in the Magistrates' Courts of this town. Seeing that the Presidency Magistrates Act follows almost completely the procedure which has been in force in the town of Madras for many years, it is found that no alteration is at present necessary, and, therefore, it will be sufficient to re-affirm the rules with which the public and professional gentlemen are already acquainted and all of which have been tested in practice and found to be necessary and proper.

2. I forwarded copies of the Court rules to the leading Attorneys in practice here, and they appear to be satisfied therewith.

3. I have the honor, therefore, to submit draft rules for the approval of the local Government in accordance with Section 9 of Act X of 1877.

4. I have divided the rules into two parts, the first (a) being "Court" rules affecting the public in general, the second (b) "Office" rules referring chiefly to the internal economy of the department.

A.

RULES OF PRACTICE IN THE PRESIDENCY MAGISTRATES' COURTS AT MADRAS.

Hours of Business.—The Magistrates will sit ordinarily from 11 A.M. to 5 P.M. The Summons Office opens at 10 A.M. The holidays are the same as those entered in the Government List, subject to special arrangements to be made by the Magistrate, in communication with the Chief Magistrate, for the despatch of emergent business or the clearing off of arrears.

2. *Applications for Process.*—Ordinary applications for process are to be made to the Magistrates before 12 o'clock.

3. Professional gentlemen applying on behalf of their clients for the issue of any process are requested to have their cases entered by the clerk in the register of applications, and also to furnish the Summons Clerk with a draft of the charge they wish to be entered in the process. In important cases much time will be saved if the complainant be provided with a written information setting forth the grounds on which the application may be based.

4. *Order of hearing Charges.*—Cases will be taken, so far as practicable, in the following order:—

1st.—Night charges and prisoners in custody.

2nd.—Summons cases subject to any cases being specially appointed for a particular hour.

5. *Advocates.*—No person will be permitted to act as an advocate in any case, except Advocates, Vakils, and Attorneys on the Rolls of the High Court, subject to special exception

in favor of hereinafter-mentioned Pleaders, who, being now admitted and being in actual practice in the Small Cause and Magistrates' Courts, will, as a special case, have that privilege continued to them.

6. Articled Clerks of Attorneys retained in a case may make any application prior to trial when so authorized by their Principals.

7. *Court Business to be transacted in Person.*—All business with the Magistrates should be transacted in person, or by Counsel, Attorney, or Pleader.

The Magistrates cannot undertake to reply to written communications.

8. The Chief Clerks of the Courts will be at all times ready to furnish information as to the course of business.

9. When the personal attendance of an accused person is dispensed with, such accused must furnish his representative with a vakalutnamah bearing a proper stamp.

No vakalutnamah is required from professional gentlemen acting only as Advocates in any case.

10. *Copies of Records.*—Copies of records in the Presidency Magistrates' Courts will be granted to persons authorized to receive them upon payment of the copying and examining fee calculated at the rate of four annas per ninety words or fraction of ninety words. Provided that the minimum charge for any copy or extract will be eight annas.

11. Applications for copies of records may be presented on any Court day to the Chief Clerk between the hours of 11 A.M. and 3 P.M.

12. Such applications are to be in writing, signed by the applicant, must bear a Court Fee Stamp valued one anna, and must contain the following particulars:—

- (a). Name of applicant.
- (b). His position in the case or proceeding entitling him to the copy.
- (c). Particulars of the document copy of which is required.

Forms of applications may be obtained from the chief clerks.

13. All applications for copies will be registered and attended to strictly according to the order of their presentation.

14. The application must be accompanied by Court Fee Stamps to the proper value in cases in which stamps are by law required and by the paper on which the copy is to be made, which must be of the quality generally used in the Court, also by the estimated cost of making the copy.

15. If the Chief Clerk sees no objection to granting the copy, he will initial and date the application and cause the copy to be made. If he sees reason to object to the application, he will take the orders of a Magistrate.

16. No suitor or pleader will be allowed to make copies of records, either personally or by his gumastah or agent.

17. No copy will be delivered to the party applying for it until the regulated charge has been paid.

18. Sums due for copies will be paid to the Chief Clerks who will enter the same in a register showing—

- (a). The applicant's name.
- (b). Nature of record.
- (c). Date of application.
- (d). Date of delivery.
- (e). Number of words charged for.
- (f). The fee charged.

19. The fees received will be paid to the copyist and examiner in the proportion of three-fourths to the copyist and one-fourth to the examiner, their receipts being taken in the register.

20. The correctness of copies shall be certified by the Chief Clerks. All corrections made in a copy should be verified.

21. The following particulars are to be recorded on the last sheet of the copy:—

- (a). Date on which copy was applied for and stamps and copying fees furnished.
- (b). Date on which any additional stamps or fees were applied for.
- (c). Date on which such additional stamps or fees were furnished.
- (d). Date on which the copy was ready for delivery.
- (e). Number of pages.

EGMORZ,
7th September 1877.

(Signed) T. WELDON,
Chief Magistrate.

Pleaders permitted to practise in the Magistrates' Courts of Madras.

Mr. Gilbert Jeremiah.
" Henry Browne.
" P. Venkatroyalu Naidu.
" Robert Gordon Ward.
" S. Parthasarthy.

B

OFFICE RULES OF PRACTICE.

Summons Clerk.—The Summons Clerk will attend at 10 A.M. to enter all applications and complaints in readiness for hearing by 11 A.M. The names of parties applying to the Summons Clerk for entry of their complaints after the book has been sent into the Court and while the Magistrate is engaged hearing applications will be noted on a slip which will be sent to the Court where such applications will be heard, and full particulars will be entered in the application book by the Magistrate's Clerk.

2. *Magistrates.*—At 11 A.M. one of the Magistrates (usually the Junior Magistrate) will take his seat on the Bench and hear all complaints and applications for processes.

The Senior Magistrate will sit in Chambers to receive the reports of the Chief Clerk on matters connected with the office work, attend to the correspondence of the office, attest powers of attorney, declarations, &c., and generally transact all business which may properly be done in Chambers.

3. At 11-30 A.M., or as soon after as the work in Chambers may permit, the Senior Magistrate will take his seat on the Bench in the First Court. The summons list will then be called over and such cases as may have been compromised, and in which, for cause shown, adjournments may be granted; being examined, the balance, together with the police charges, will disclose the judicial work for the day. This work will then be fairly divided between the two Courts, the parties being at once informed what Court will try the several cases.

It will be found advisable to vary the mode of distributing the cases, sometimes sending the first half of the summons list to the Second Court and sometimes the second half.

In the event of one Court getting through all the cases on its list at an early hour, reference should be made to the other Court for the transfer of some of the cases there waiting trial.

4. *Office and Court Diaries.*—The Summons Clerk will be provided with an "Office Diary" and the Minute Clerk in each Court with a smaller Diary. The Summons Clerk, under the direction of the Chief Clerk, will post cases for hearing on certain dates, entering the register numbers of such cases in the Office Diary under the proper dates.

When adjournments are granted in Court, the Minute Clerk will enter the calendar number of the case in his Diary under the date to which the case has been adjourned, and either at the close of the day, or the first thing on the following day, the "Court" Diaries will be compared with the "Office" Diary and the adjournments noted in the latter also.

5. *Collection of Fees and Preparation of Summonses and Subpoenas.*—When the Magistrate has heard all the applications entered in the register for the day, the book will be sent to the Summons Clerk who will call each complainant to whom process may have been granted and levy the proper fee or fees, entering the same at once in the proper column of the register. *Gratis* process is only to be granted to those against whose names in the register there is an entry by the Magistrate authorizing the remission of fees.

6. Persons desiring subpoenas in cases already entered will apply to the Summons Clerk, who will enter a note of the case in which the applicant is concerned and the names of the persons for whom he requires subpoenas. When subpoenas are requested to be issued to public servants and professional men (as such) cause must be especially shown before a Magistrate to avoid, if possible, calling such persons away from their duties unnecessarily.

7. All fees must appear in the register of the day on which they were levied, and entries of such levy must be made then and there. No relaxation of this rule will be permitted.

8. When the fee may be paid on a day subsequent to that on which the process was ordered by the Magistrate, the number and title of the case and amount of fee will be entered in the register of the day on which payment may be made; a note will also be made opposite the original entry in the register of the day on which the Process was granted thus:—

"Fee levied 2-8-77," or as the case may be.

9. The Summons Clerk will not receive any applications for subpoenas after 1 o'clock P.M. Any emergent application made subsequent to that hour must be explained to the satisfaction of the Magistrate, and special orders requested. Ordinarily the Summons Office will be closed at

1 P.M. to enable the Summons Clerk to prepare the processes sanctioned and close his fee account within the day.

10. Processes on which a fee has been levied will be made out on forms printed in *black ink*. Processes on which the fee has been remitted will be made out on forms printed in *red ink*.

11. At the close of the day when all the processes are ready for signature, they will be taken or sent by the Summons Clerk to the Cashier together with the application register and the amount of fees collected. The Cashier will count the number of processes, making a note of the several descriptions at foot of the register thus:—

	Rs.	A.	P.
00 Warrants	..	..	..
00 Summonses	..	..	..
00 Do. under Act XIII of 1859	..	..	..
00 Subpoenas	..	..	..
Total	..	..	..

00 Gratis summonses.

00 Do. subpoenas.

12. The cash total received should agree with the total at foot of the money column of fees in the register.

13. The Cashier is only responsible for the correctness of the amount paid in, which can be checked at a glance, so many black ink processes representing so much.

14. The Cashier, having received the correct amount of fees as represented by the processes made out, will enter the same in his cash book and send all the processes direct to the Chief Clerk with the application register. The processes are not to be returned to the Summons Clerk. The Chief Clerk will check the entries already made, especially noting that the Magistrate's sanction is recorded in the case of gratis or red ink processes, and that the amount received by the Cashier corresponds with the number of black ink processes to be submitted for the Magistrate's signature. If all be correct, the whole of the processes will be sent by the Chief Clerk direct to the Magistrate for signature; they are not to be allowed back into the office till signed by the Magistrate. After the Magistrate has signed the processes, they will be handed over to the Court Inspector on duty for distribution to, and service by, his subordinates.

15. Thus the Cashier is responsible that the proper amount of fees is levied according to the number of processes about to be submitted for the Magistrate's signature, and the Chief Clerk is responsible that the number and description of processes correspond with the orders passed by the Magistrate.

16. The Interpreters, who are also to be considered the Magistrates' Clerks, will check the correctness of committal warrants and the record in all sessions cases, placing their initials at foot of such documents in token of having examined and found the same to be correct and in accordance with the order passed by the Court.

17. Under no circumstances is any process to be prepared until the fee has been paid or a remission granted under the signature of the Magistrate.

18. *Preparation of Calendars.*—When the Cashier has made the necessary entries in his books and has sent the Application Register to the Chief Clerk, the application will be transferred to the Calendar Writer, who will prepare the calendar of each day from the application register and diaries, being careful to enter all adjourned cases in the calendar of the day to which they stand posted for further hearing.

19. From the Court Calendar so prepared will be made out the separate "slips" or memorandum of each case for use of the Court Clerks and Cashier as hereinafter explained.

20. Police charges to be heard on the day they are received will be entered in the calendar of the day by the Minute Clerk of the First Court during the time the First Magistrate may be engaged in Chambers. All police charge sheets will be received in the First Court, where they will be dated and calendar numbers assigned to them. The Second Magistrate's Minute Clerk will also assist in entering the night cases in the calendar while the Second Magistrate is engaged hearing applications.

21. *Procedure in Summons Cases.*—The slips or memoranda referred to above will be retained by the First Magistrate's Interpreter or Minute Clerk. The calendar being placed before the Magistrate, the names of the parties will then be called out from these slips. In cases "compromised," or in which an adjournment is ordered, the necessary entry will be at once made in the calendar by the Magistrate, and, in the case of an adjournment, a corresponding note will be made by the Interpreter or Minute Clerk on the back of the slip. The slips in cases compromised will be at once laid aside and may be destroyed. There will then remain the slips of cases "to be heard" and cases "adjourned." The latter will be sent to the Calendar Writer to be filed with the slips of the day to which the case or cases may have been so adjourned.

This obviates the necessity for rewriting a fresh slip. Every adjournment or other step should be endorsed on the back of these slips so that the whole history of the case from the commencement to the end will be apparent at a glance. In some instances summonses are not served owing to the inability of the Police or complainant to discover the person named. No date can in such cases be fixed with certainty for an adjournment, and the party will be directed to apply for fresh summons, when more definite information may be obtained. In such cases the slip (duly endorsed) will be given to the applicant who will be directed to produce it when such fresh application is made. This course saves much time as the case can be referred to at once. If left without some memorandum, applicants rarely give correct dates, and much time and labor is expended in searching the records.

After the summons list for the day is divided, the slips of those cases to be heard in the Second Court will be sent to the Magistrate there, and form a rough calendar for his use.

22. *Realization of Fines.*—When the hearing of each case is concluded, if the accused be convicted, the sentence will be shortly noted on the slip, which, in the case of a fine, will be sent to the Cashier as his authority to receive the amount if tendered; this obviates the liability to error arising from the verbal report of a Constable. In police cases the adjudication will be noted on the Charge Sheet or Divisional Night Case Book. When a fine is paid the Cashier will stamp or endorse the slip as "*paid*."

23. All fines should be paid into the Cashier's office by 4 P.M., at which hour the cash accounts will be made up for the day. Fines tendered after Court hours on behalf of persons in custody should be paid to the officer in charge of the lock-up, who will render an account of the same when the office opens next day.

24. When fines are levied on a day subsequent to that on which sentence was passed, the amount will be noted in the money column of the calendar of the day on which the amount is realized and also a note be made opposite the entry of the case in the calendar of the day of conviction thus:—

"Levied 2-8-77," or as the case may be.

25. When any sum of money is awarded by the Court to be paid through the Court, a judgment note specifying the calendar number of the case, the name of payee, and the amount awarded will be at once made out by the Court Interpreter and handed to the person entitled to receive the money. This judgment note must be presented to the Cashier when payment is demanded. In these matters the Court deals only with principals, not with their attorneys or pleaders except when the personal attendance of parties is dispensed with and they are permitted to appear by counsel, attorney, or pleader.

26. The Minute Clerk in each Court, if not required to take down evidence, will prepare any committal warrants or other processes required in the progress of the cases, so that, when the judicial work of the Court is finished, the warrants, &c., may be ready for the Magistrate's signature before he leaves the Bench.

27. It will be advisable when the judicial work of the day is over to call on all persons who may desire to make any representation to the Magistrate to come forward and do so before the Court rises.

28. *Maintenance Orders.*—A register of maintenance orders will be kept by the Cashier, having an alphabetical index at the end to facilitate reference. A copy of the maintenance order is handed to the person in whose favor the order is made and provision is made in the form of order for the entry overleaf of all payments made under it. Where payment is made through the Court, the payer is also furnished with a form for entry by the Cashier of any payments made by him on account of the order, thus obviating disputes as to the amounts paid or received under the order.

29. *Process Register.*—A register of processes (other than summons or subpoena which are entered in the application register), orders, affidavits, attestations, &c., will be kept in the prescribed form; the labor expended on this register is very slight, involving merely an entry of a number and the name of the person concerned. It is very slight, involving merely an entry of a number and the name of the person concerned. It sides being a book of ready reference, it shows at a glance the whole work of the office up to date as regards legal forms. This register will be kept by the Chief Clerk.

30. *Accounts.*—The Cashier's books are—

- I. Cash Book.
- II. Cash Abstract or Ledger.
- III. Deposit and Receipt Book.
- IV. Contingent Account.

Supplementary to above are—

- (a). "Calendar" or Journal of Fines levied.
- (b). "Application Register" or Journal of Fees levied.
- (c). Postage Account.

31. *Fines and Forfeitures.*—Each day's calendar will be sent to the Cashier, who will enter in the proper column the amount of penalties levied in each case during the day the calendar represents.

32. The total collection for the day will be entered at end of calendar. From this total will be deducted the "refunds" or sums payable to parties, each item being specified; the balance represents the nett credit to account of Government. This, together with the sums payable under (m) Act IX of 1867, to the Municipal Fund, will be transferred under the headings "Fines," "Forfeitures," &c., to the "Cash Abstract" or Ledger. Refunds payable to private individuals being entered in the deposit account on payment to the individuals concerned of the latter items, their receipts will be taken in the proper column opposite the item concerned. On the first of each month any items remaining unclaimed will be brought forward and re-entered in red ink at the head of the deposit account of the month; if claimed during the month, the receipt of the payee will be taken in proper column. Any sums remaining unclaimed for three months will be remitted to the treasury with the other moneys, a note being made of the fact in the deposit account and the sum being also entered in the "Cash Abstract."

33. "*Fees.*"—The entries in the cash abstract or ledger under the proper headings on account of "fees" will be made by the Cashier from the memorandum at foot of each day's register or from his Cash-book.

34. *Remittances to Government Treasury.*—Moneys in deposit on account of Government will be remitted to the treasury fortnightly according to the totals exhibited for that term in the Cash Abstract, an entry of the grand total so remitted being made in the column for remarks; this total must agree with the receipts granted by the Bank of Madras. The Cash Book will be balanced fortnightly when these remittances are made.

35. *Contingent Account.*—The contingent account will be kept separately on the forms supplied by the Accountant-General. All payments on this account will be checked by the Senior Magistrate in charge of the Court. It will be found convenient to enter all petty charges in a book of small size in preference to passing such on separate little bills which are liable to be lost or mislaid. A few pages of foolscap stitched together are quite sufficient.

36. *Postage Account.*—The details of the postage account will also be kept to enable the Magistrate to exercise supervision over the expenditure of stamps which are purchased from the Collector.

The following form will be found convenient:—

Date.	Details.	Dr.			Cr.			Remarks.
		RS.	A.	P.	RS.	A.	P.	
August 1st..	To stamps purchased ..	5	0	0				
" 3rd..	By postage—District Magistrate, Chingleput..				0	1	0	
" 31st..	—Superintendent of Police, Mount..				0	2	0	
" 31st..	By balance in hand ..				4	13	0	
	Total ..	5	0	0	5	0	0	

37. *Stationery.*—A register of issues and receipts of stationery will be kept, each description of article being entered in a separate column. Receipts being added to the totals, and Issues deducted, the stock in hand will thus be known at once and will at any time be apparent without further calculation.

38. *Records.*—The records are under the care of the Chief Clerk, who will certify copies taken out by parties entitled thereto.

39. A separate register of committal warrants will be kept to facilitate proof of previous convictions against old offenders. This register will show the prisoner's name, caste, and the offence of which convicted, and also the number in which the warrant has been filed. If preferred, a rough register may be kept in which the warrants for each date will be entered. Old offenders frequently give different names, but the police can generally furnish the date of the previous conviction. The principal register should be an alphabetical one. The column for the register number of the warrant will be filled in on return of the warrant by the Superintendent of Prisons if this column be blank opposite any name that denotes that the warrant has not yet been returned and filed in Court. When an individual is once registered under a certain number, all subsequent committals of the same individual will be filed away under the same number. By this course, if any one date of conviction be given, all committals of the same individual will be found together and his history kept complete. Strict attention must be paid to the foregoing mode of record. There can thus be no confusion regarding two individuals bearing the same name, and no time is lost in searching the records of different periods.

40. When the police require to prove any previous committals against an individual, the form of application with which they are provided will be placed in the packet in lieu of the document withdrawn, thus accounting for the absence of the particular document and enabling the Record-keeper to trace it if necessary. The application contains the name of the person to whom the record has been given; the date of issue. It will also be noted on it by the Assistant Record-keeper. When the record is returned, the application will be restored as a receipt for the record by the Court.

41. The system of filing away under one number all papers relating to a particular subject may, with advantage, be adopted in the case of miscellaneous documents. For instance, all correspondence with the District Engineer regarding building and repair of the Courts may be filed under a certain number, so that at any moment all the information forthcoming on the subject will at once be found collected in one place. By this plan great economy of space is also attained in the record-room. The system of separate pigeon-holes for different subjects necessitates the provision of a really unnecessary amount of accommodation. Some pigeon-holes will be almost empty, while others will overflow and necessitate a disarrangement of all the neighbouring records to provide for the excess.

42. The records should be so kept that, the particulars being given, five minutes will suffice for the production of any document.

43. *Clerks and Interpreters to notify Change of Residence.*—The sworn Interpreters and Clerks will notify to the Chief Clerk, from time to time, any change in their places of residence, to admit of their being readily found in the event of their services being emergently required out of office-hours.

44. *Statistics.*—When the Cashier has made all the necessary entries in his books from the calendars, he will send them to the Statistical Clerk, who will extract and record in a rough journal the particulars required for the compilation of the monthly returns. If these extracts be made daily and not allowed to fall into arrears, the returns should always be ready for despatch within the first week of each month. The Chief Clerk must pay special attention to this subject; otherwise what is really simple and easy becomes complicated and tedious. If once allowed to fall into arrears, each successive day brings an increase to the task.

45. *Weekly Report of Office-work.*—A weekly report of the state of work in the office will be submitted to the Magistrate in charge of each Court on every Saturday afternoon.

46. *Detention of Military Men to be notified to Officers Commanding.*—When persons in active military service may be convicted of any offence involving a sentence of imprisonment whether absolute or in default of payment of a fine—or may be detained in civil custody—a certified extract from the calendar will at once be sent to the Officer Commanding the accused's corps or department.

EGMORE,
7th September 1877.

(Signed) T. WELDON,
Chief Magistrate.

No. 117. From Major T. WELDON, Chief Magistrate for the Town of Madras, to the Chief Secretary to Government, dated Egmore, 11th September 1877, No. 195.

* Regarding holidays, embodied in Rule I of Rules of Practice in the Presidency Magistrates Court at Madras, *supra*.

In continuation of my letter, No. 192, dated 7th September 1877, I have the honor to request that the accompanying rule* may be added as paragraph 47 of the office rules.

No. 118. ORDER THEREON, 17th September 1877, No. 2219.

These rules are sanctioned. The Chief Magistrate will state how many copies he requires to be printed for his use.

(True Extract)

D. F. CARMICHAEL,
Chief Secretary.

To the Chief Magistrate for the Town of Madras.

Exd. J. W. Fischer.

2-12-96 19-3-20

JUDICIAL

THE JUDICIAL BRANCH
OF THE GOVERNMENT OF CANADA

Division of Judicial Services

Panel

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Office of the Registrar of the Court

REGISTRATION
Nos. 118-119

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