

(1) Number of pages

(2) Date of repair

(3) Initials of the Referencer

MADRAS RECORD OFFICE

Government of Madras

Judicial

DEPARTMENT

G.O. No.
B.P. No.

3

Press
Mis.

Dated

5

1

195-1886

Not to be folded or roughly handled

Bank of Madrid,

789 Madrid, 4th Nov 1885

The Inspector General
of Registration
Madrid

Sir,
With reference to the
enclosed copies of corre-
spondence between the
Bank's Agent at Cochise
and the Notary Public
at that station, together
with copy of the Memo.
therein referred to, I leave
the honor to inquire
whether you consider
that the bill in question
has been noted in ac-
cance with the provisions
of the Negotiable Instru-
ments Act.

You will observe that
the bill has not been
presented to the Director
by

Handwritten note:
The Agent is enquiring
between a 'Note' & a
'Bill' -
16-11-85

Bank of Madras,
Madras.

2. P. 56
1885

by the Notary; and as regards the Stamp, the exemption contained in Clause 18 of Schedule II does not appear to apply inasmuch as the debt is payable by the party on whose Account the bill is noted.

I leave the honorable
Sir

Your obedient servant

W. A. Brown
Secretary & Treasurer

17

6P

N. 4834 6 November 1885.
Madras.

Submitted for the orders of the Government.

W. A. Hammett
Imp. Secy of Reg.

To the Chief Secretary
to the Government.

Recd 10/11/85

Cochin 48/1
28th October 1885.

To
The Agent
Bank of Madras
Cochin.

Sir,

In reply to your letter dated 28th Oct. '83
I beg to state that from what I understand from
Section 99 it does not seem to me that I
should present the bill to the drawee and get
his reason for non-payment. The act requires
me to state only the reason for dishonor and
in the present case it is quite plain that the
reason for dishonor is non-payment. As
for not affixing a court fee stamp of the value of
one rupee to the note, I beg to draw your attention
to clause 18 Schedule II of Act I of 1879. By 4-
dated 6th August 1883 No 2061 we are to remit
all the fees collected by us in the capacity of note
Public to the credit of Government. It is
to affix court fee stamp, as Government would be
liable to defray the charges, for which clause 18
Act II of Act I of 1879, provides. The bill is
herewith returned.

Yours truly
[Sd] H. C. Thomas
Notary Public

6326
11/10/85

58/2
all 2

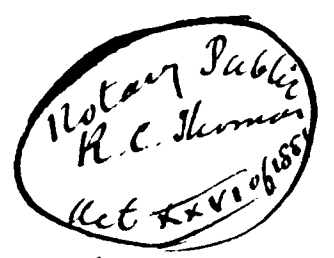
1.
Form of Noting
(See Section 99)

(To be made upon the instrument, or upon a Paper attached thereto, or partly upon each.)

Date of dishonor 27th October 1885

Reason, if any, assigned for dishonor or if the instrument has not been expressly dishonored, reason why holder treats it as dishonored
Nonpayment of the bill

Signed R.C. Skoman
Notary Public



Notary Charges \$2
Collier
27th October 1885 }

Handwritten signature or initials at the bottom left corner.

Registration Department. 7
G. No. 4835.

From

The Inspector General
of Registration, Madras.

To

The Secretary & Treasurer,
Bank of Madras.

Sir,

I have the honor to acknowledge
the receipt of your letter No. 789, dated the
4 November instant, and its enclosures, and to
inform you that as I am not authorized to
dispose of references similar to yours, I have
submitted the papers for the orders of the Govern-
ment, which will, on receipt, be communi-
cated to you.

I have the honor to be,
(D) Geo. Hammett.

Madras
6 November 1883

(True Copy)

W. Hammett
Imp. Genl. of Reg.
for

Recd. 4/132/83
2

1
100-61132/100

CURRENT NO. 1
Judicial (1885) Department.
"Registration"

From

The Inspector General
of Registrations

To

The Chief Secretary
to the Government

Dated 6 November } 1885.
Received

G. No. 4834.

Enclosures (five)

No.

Submitting for the orders
of the Government a letter
from the Secretary & Treasurer
of the Bank of Madras, together
with its enclosures, referring
for disposal certain correspond-
ence between the Bank's Agent
at Cochin & the Notary Public
of the place.

Opinion

The first question raised by Mr. Thomas with regard to the duties of a Notary Public is one which cannot well be answered without ascertaining whether or not that official in this country is bound to conform to the rules by which Notaries Public in England are guided. It is quite evident I think that in passing the Act XXVI of 1881, the Legislature had no intention of defining the duties of Notaries Public; but, on the contrary, assumed that such persons existed, and that they had certain recognized functions. As those functions have not been declared by any legislation in this country, and nevertheless Notaries Public have long been in existence, at least in the Presidency Town, I think the only inference to be drawn is that Notaries Public mentioned in the Act were expected to follow the rules which Notaries Public had theretofore followed, namely, the rules of their office as declared in English books of authority, and unless and until rules are framed under Act II of 1885, I am disposed to think that the same must hold good of Notaries appointed under that Act.

K. K. K.

In

In reference to the particular question whether it is part of their duty to present a bill before noting it, I think it must be answered in the affirmative, for if the practice were otherwise, the whole object of noting and protesting would be defeated.

The noting and protesting of a dishonored Bill are not, as may perhaps have been supposed, two independent processes. But noting takes place with a view to the protest, and is unknown to the law as distinguished from it. It has been called an incipient protest. (Brooke's Notary p 72) It is no proof of the protest, not on proof of noting, that the fact of dishonor is presumed (Section 119 Act XXV of 1881). The result of the noting is embodied in the certificate which constitutes the protest, and a statement that payment or acceptance has been demanded of the person charged by the Notary Public is part of that certificate. If therefore for the purpose of making a protest the Notary must have presented the bill himself, and if in making a protest he only records what he has already done in the process of noting the bill, it is clear that he must have presented the bill before noting it, and in no other way can the object of the process be

10. 10 2/2
be attained, namely, that of securing an official assurance of the fact that the bill has been presented and dishonored. For these reasons, I think that Mr. Thomas is mistaken if he supposes that he was not bound to present the bill. In the particular case referred, it does not appear that any reason for dishonoring the Bill was given. If any reason is given, it should be stated.

The contention that clause 18 Schedule II of the Stamp Act (I of 1879) applies to the case of a Notary noting a Bill, is not in my opinion maintainable, for there is clearly no execution of an instrument on behalf of or in favour of Government.

Signed H. H. Shephard
Acting Advocate General

30th November 1885.

(A True Copy)

James Randell

Government Solicitor

Judicial (1885) Department

From

Ernest Barclay
Government Solicitor
Madras

To
The Chief Secretary
to Government
Madras.

N^o 494.

Dated 30th November 1885
Recd

Enclosures 5.

Forwarded with enclosures with
reference to the Order of Govern-
ment dated 18 November 1885
N^o 1950, Judicial Department.

Ernest Barclay
Government Solicitor

Forwarded to
J. G. of Registration
for communication to
the Notary Public [the
Hon.] of Madras
who will act in accordance
with the Government
of India
W
11-12-85

Draft Rules for the guidance
and control of the Notaries pub-
lic have been received but they
contain no specific instructions
on this point. There is however a
separate form for noting a bill
and protesting which makes it clear
that noting can, in the opinion
of the G. of I., be separated from
protesting. Please see G.O. 2nd Sept.
1885, No 2219 Just. and G.O. 6th Aug/83, No.
2061 Just. HSB
3/22

What the use of merely
noting a bill would be
is not known, but it is
apparently contemplated by
the law (Act XXVI of 1881,
sec. 99). If a holder of
a bill requires it protested
he applies under the next
section (100) to have it
both noted and certified,
and then section 101 provides for
the contents of the protest.
It is submitted, therefore,
that if application was
made to the Notary Public
to have the bill noted, he
gave the particulars re-
quired by the law. If the
holder desired to have it pro-
tested he should have ap-
plied under section 100.
As the Advocate Genl.
makes no allusion to the
forms prescribed for noting
and protesting bills (vide

C.O. 6th Aug. 1883, no.
2061 (Jest.) his attention
should it is submitted
be invited thereto, for
his opinion appears to
be contrary to that of
the Govt. of India, as
evidenced by those for

H.R.
3/12- by cord to
Jest

110

Despatch 10/12
with the 2 circulars
order. O.M. No 2437/10
Dec 7/85

The attention of the
Advocate. Genl. will ~~be~~
is invited to the forms for
noting and protesting bills etc.
prescribed by the Govt. of
India and printed with
G.O. 6th Aug. 1883, no. 2061,
Just, and a copy of the
draft rules for the control
and guidance of Notaries
Public will printed with
G.O. 2nd Sept. /85. no 2319
Just. will ^{is} be forwarded
for his information, as
the Govt. are doubtful
whether he had those papers
before him when he gave
that ^{is} opinion dated 30/11/85

HAS
7/12

Chief Collector Despatch

2103
of 10-Dec-85

To the Govt. Collector

Further Opinion

When forming my opinion in this matter, I did not overlook the Rules and Forms to which my attention is now particularly directed. I find, however, in them, any more than in the any indication of an intention to make change in the process of the duties of the Notary public in this country. The present bill by the Notary, I think, is an essential part of the process, and appears to me to be more dispensed with in this country than it has been in England under the legislation of 1882.

Signed/ H. H. Shepherd
Acting Advocate General

17th December 1885.

True Copy/

Ernest Barclay

15
CURRENT NO. 47/2.
icial. / 1885 / Department
12 00000

" Ernest Barclay
Government Solicitor
Madras

2/0
The Chief Secretary
to Government
1123
1-26 Madras

N^o 532.

17 December 1883 }
18--

Enclosure 5 of 10
(1 File of papers)

Forwarded with enclosures with
reference to Official Memorandum
dated 10 December 1883
N^o 2103. Judicial Department

Ernest Barclay
Government Solicitor

U. 21037, 10/12/88

10.6.88 11

21.9.55 11

be must accept and
action to the order
financial opinion - drop
and account

U. 24/12 11/12

Order. 8/5/86, No 3

Forwarded to the D. G. of

12/11