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MADRAS RECORD OFFICE.

Government of Madras.

Judicial

DEPARTMENT.

G.O. No.

671

Press
Mis.

Dated

29th March 1893

Original

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following papers:—

G.O., dated 7th October 1889, No. 1718, Judicial.

ABSTRACT.—Fixing the rates of process fees for the service of summons leviable under section 27 of the Madras Village Courts Act I of 1889 upon defendants beyond the local jurisdiction of village courts, and notifying the same in the *Fort St. George Gazette*.

G.O., dated 27th April 1892, No. 810, Judicial.

Read—the following letter from H. W. FOSTER, Esq., Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to Government, Fort St. George, dated Madras, 25th February 1892, No. 594:—

The District Judge of Madura has brought to the notice of the High Court that in the village courts of Madura town, where the number of suits filed in 1891 reached the high figure of 1,753, and of other large towns in the district, proceedings are greatly impeded and the disposal of suits delayed owing to the want of an efficient agency for the service of the Courts' processes.

2. These processes are ordinarily supposed to be served by the village servants, upon whom section 11 of the Madras Act (I of 1889) specially enjoins this duty, but in large villages these officers are almost continuously engaged in revenue duties, while in zemindari tracts they are very little under control, so that in a village court, with a heavy file, the munsif must constantly find it impossible to have summonses and notices properly and punctually served. Section 12 of the Act contemplates the necessity for providing special process servers in certain cases. It empowers the Collector, subject to the control of the Government, to appoint other persons than the village servants to perform the duties assigned to those officers by section 11, and section 29 of the Act confers authority for the levy of fees for summonses served by persons so appointed. The Government has already, under the provisions of this section, prescribed fees to be levied on summonses issued to defendants residing beyond the jurisdiction of the court issuing the summonses (Notification No. 386, dated 7th October 1889), and it appears to the High Court that, in special cases like Madura town and similar places where the village courts have heavy files, a fee might reasonably be levied for the service of summonses on witnesses and on parties residing within the jurisdiction. A very low fee would yield an income sufficient to cover the cost of the special establishment appointed, even if the charge is not considered one fairly debitable to the Village Service fund, and it is clear that, without some such establishment, the efficiency of the most popular village courts must be seriously impaired.

3. From the enclosed copy of a letter from the District Judge, the Government will observe that the necessity for giving some assistance in case of the Madura village court appeared to him so pressing that he considered himself justified in empowering the village munsif to levy fees for summonses to witnesses and in providing a special process service staff. This arrangement is, however, not sanctioned by the law, which gives no power to the District Judge to appoint any ministerial officers or to authorize the levy of fees, and the High Court has, therefore, felt

obliged to issue a Proceedings, of which a copy is enclosed, directing the cancellation of the orders. But it is abundantly clear that, in this particular case, some such action as that taken by the District Judge is essential to the efficiency of the court.

4. I am to suggest, therefore, for the consideration of His Excellency the Governor in Council, the desirability of framing rules under section 12 of the Act, empowering the Collector to appoint a special process establishment for village courts, whose annual files reach a certain minimum (that suggested by the District Judge commends itself to the High Court), and under section 29 of the Act to authorize the levy of fees in such cases on summonses to witnesses and to defendants within the jurisdiction of the court.

ENCLOSURE No. 1.

From T. WEIR, Esq., District Judge of Madura, to the Registrar of the High Court of Judicature, Appellate Side, Madras, dated Madura 18th January 1892, No. 35-1891.

I have the honour to address you on the subject of moving Government to frame rules under section 29 of Madras Act I of 1889 in the matter of fees leviable for the service of summonses under the Act otherwise than by village servants.

2. Section 12, clause 2 of the repealed Madras Regulation IV of 1816 contemplated, and sections 11 and 25 of the present Act (I of 1889) also contemplate that the summonses of the village munsifs' courts shall usually be served by village servants.

3. Section 32 of the repealed Regulation provided also that suits tried by village munsifs should be exempt from fees of every description except *batta* to the peon attending the sale in execution of the village courts' decree.

4. In the schedule of fees prescribed by Government under section 20 of the Court Fees Act (VII of 1870), the only fee leviable in respect of a process in the village munsif's court is that prescribed under article III, viz., 4 annas for every process in execution of a village munsif's decree—*vide* page 162 of the Civil Rules of Practice.

5. In framing Madras Act I of 1889, the policy of the legislature was, it may be presumed, to retain the general exemption from fees conceded by the repealed Regulation IV of 1816.

6. Section 29 of the present Act (I of 1889), however, contemplates and provides for the contingency of agency other than that of the ordinary village servant having to be employed and paid for. The contingency contemplated has, since the introduction of the present Act, become a question of practical importance in this district.

7. It has been ascertained that, in many cases, village munsifs in this district have for some time been in the habit of levying fees ranging from 2 to 8 annas per summons. The fees thus imposed are, of course, unauthorized. It seems clear, however, from the inquiries made and the reports received by the several district munsifs, that the system of serving summonses and processes of the village courts through the agency of village servants can, at least in this district, no longer be maintained without considerable modification. The reports received from the district munsifs state that the village servants are continually employed in their revenue duties and consequently are unable and unwilling to do work for the village munsifs' courts. This is more especially the case in the zemindari portions (Ramnad and Sivaganga) of this district, and in these tracts the village servant "usually employed in carrying messages" (section 11 of Act I of 1889) is not, as I understand the matter, a Government servant.

8. In these circumstances it seems clear that, if the village courts are to receive the development and extension contemplated and provided for in the recent enactment (Act I of 1889), provision must be made for the cost of serving the processes of such courts by some agency outside that of the ordinary village service system.

9. Fees, as has been stated above, are already being exacted by some village munsifs and an opening is thereby afforded for abuses. To prevent such abuses, the only course is to legalize and provide for the levy of fees in a systematic manner.

10. There are, however, considerable difficulties at the outset arising from the varying and uncertain extent to which the jurisdiction of the village courts is exercised.

11. Some village munsifs—a considerable proportion—exercise no civil jurisdiction at all. Others exercise such jurisdiction to so limited an extent that the service and execution of their processes may probably be left to the ordinary village service agency.

12. In the Dindigul division, for instance, in 1890, only 7 village courts had files exceeding 100 suits, the largest file in any court being 315 suits.

13. For ordinary rural villages, I am of opinion that a file of 200 suits per annum might be fixed as justifying the levy of fees in view to the employment of a special process server or peon.

14. The objection to fixing an arbitrary limit is, of course, the fact that the file might suddenly fall below the qualifying number of 200 suits, but some latitude might be allowed for a time to the District Munsifs and District Judges in fixing the scale.

15. If this suggestion should be approved, it has next to be considered what fee should be prescribed and how the process server should be paid.

16. A fee of 4 annas for every process in execution of a village munsif's decree, as already noticed, is provided for under the existing rules.

17. A fee of 2 annas per summons should, I think, be levied on every summons whether to a party or to a witness.

Section 29 of the Act under which fees are authorized to be levied occurs no doubt in chapter IV of the Act, which relates to the service of summonses *on parties*, but the words of the section 29 are "every summons served under this Act," and include also, I submit, the case of summonses to witnesses provided for in chapter V of the Act.

Assuming that there would be on an average two witnesses and one defendant per suit, this rate would yield on a file of 200 suits Rs. 75 per annum (Rs. 25 for service on parties and Rs. 50 for service on witnesses). This sum would allow of the service of a paid process server on a salary of Rs. 4 or 5 a month, and would leave some margin.

The fees would, I presume, have to be levied in stamps and accounted for in the usual way.

18. The above system would, I submit, meet the requirements of ordinary rural villages.

19. The case of the Madura town, and, possibly, it may be found hereafter, of some of the larger villages, is peculiar and requires special provision.

The village munsif of Madura town exercises a very extensive jurisdiction, his file for 1891 having been as high as 1,753. This state of affairs not only shows that the court is popular, but that the extension of its jurisdiction undoubtedly tends to relieve the regular courts of much petty litigation. The village munsif, it may be remarked in passing, is paid the very inadequate salary of Rs. 10 per mensem. The disposal of so large a number of suits obviously involves a large amount of process serving or executing work both before and after judgment, and cannot be adequately dealt with except by special agency. The village munsif of Madura has for some time been pressing for a special establishment, and he has also represented that in the town of Madura, witnesses being chiefly coolies, day-laborers, &c., are unwilling and even refuse to attend unless they are paid *batta*, and he asks for permission to levy the subsistence *batta* from the parties.

20. I am not, however, prepared to recommend the concession of power to levy *batta* to a village munsif's court as it would be departing further than is, in my opinion, shown to be necessary from the principle on which such courts are constituted, viz., that of administering justice in petty suits as cheaply as possible at the door as it were of the litigant and amid his neighbours and acquaintances. For the purpose of securing this desirable object, persons who are witnesses may be required as hitherto to attend without cost to litigant.

21. The work of the Madura village munsif would appear to me to require an establishment of at least 4 process servers who, on account of their heavy work and the *extra cost* of living at the head-quarter station, should be more highly paid than the process servers of the rural courts. One of the four peons might probably be allowed a salary of Rs. 7 and employed in the work of writing or assisting to write processes. The other peons might be allowed a salary of Rs. 6 per mensem.

22. The actual appointment of process servers to village courts is, however, it has been brought to my notice since the subject came under consideration, a duty devolving on the Collector (and not on the District Judge) subject to the control of the Governor in Council—*vide* section 12 of Madras Act I of 1889.

23. It is clear, however, that special agency cannot be employed by the Collector or otherwise until provision has been made for the levy of fees.

24. Meantime, owing to the great pressure of work which existed in the past year in the Madura village munsif's court, I allowed the following arrangement to be made provisionally:—

(1) The village munsif has been allowed provisionally to levy a fee of 2 annas per process.

(2) Four peons, one of whom is able to write processes, have been deputed from the strength of the central nazarat to serve the processes of the village munsif's court.

(3) The fees have been allowed to be levied in cash, but the village munsif has been required to send every morning the collections of the previous day to the central nazarat. In the central nazarat, court-fees labels have been purchased for the amount of each day's collections, and these have been daily affixed in a book specially kept for the purpose and cancelled.

25. This arrangement was sanctioned by me provisionally on the 14th October last and has worked satisfactorily.

Up to the close of the year, the value of the court-fees stamps representing the collections was Rs. 79-4-0 which was considerably more than sufficient to defray the salaries of the process servers.

26. In the special circumstances of the emergency existing in the town village munsif's court, I have to request that the arrangements provisionally made by me may be sanctioned and approved until other provision is made by general rules under the Act.

27. On the general and important question raised in this letter, I have the honour to request that their Lordships will, after consideration, take such steps as they may think fit.

ENCLOSURE No. 2.

PROCEEDINGS of the High Court of Judicature at Madras, dated 25th February 1892, No. 595.

Read—letter from the District Judge of Madura, dated the 18th ultimo, No. 35, requesting that the Government may be moved to frame rules in the matter of fees leviable for the service of summons under Madras Act I of 1889 otherwise than by village servants.

In the above letter, the District Judge brings to the notice of the High Court that in the town of Madura and other such places where a large number of suits are brought before the village courts, great difficulty is experienced by the village munsifs in conducting the proceedings owing to the want of a sufficient establishment to serve processes.

2. The High Court observes that by notification No. 386, dated 7th October 1889, the Governor in Council, under section 29 of the Village Court Act, has sanctioned the levy, by a village munsif, of fees for service of processes on defendants residing beyond the jurisdiction of his court, but from the facts now brought to notice by the District Judge, it seems clear that, in some cases at least, there is no reason why similar fees should not be levied for processes to witnesses and to parties within the jurisdiction, and it is certainly desirable to provide a more efficient process agency in large towns than the ordinary staff of village servants.

3. The High Court observes, however, that section 12 of the Act reserves to the Collector the power to appoint additional servants to perform the duties ordinarily assigned to the village messenger, and that the Act confers no authority to levy fees for service of summonses except with the sanction of the Governor in Council under section 29 of the Act. It is unable therefore to approve or sanction the temporary arrangement made by the District Judge for the service of summonses issued by the Madura village court.

4. The High Court will address the Government on the subject, but, for the present, the District Judge should rescind the orders under which the village munsif is now levying fees for the issue of summonses to witnesses and to parties within his jurisdiction, and should withdraw the process peons deputed from the central nazarat.

5. The Collector may find it possible to set free one of the village messengers (if there are more than one) from some of his revenue duties or to make some other arrangement to ensure a more efficient execution of processes in the village court, but if assistance cannot be given in this way, the orders of His Excellency the Governor in Council must be awaited.

(True Extract.)

(Signed) H. W. FOSTER,
Registrar, Appellate Side.

To the District Judge, Madura.

Order—dated 27th April 1892, No. 810, Judicial.

It is clear that in some cases, such as that of Madura town, special arrangements will have to be made for the service of processes. The Registrar's letter will now be referred to the Board of Revenue, with the request that it will submit an opinion on the following points at an early date:—

(1) as to the size of the file which shall be regarded as necessitating the entertainment of a special staff of process servers;

(2) as to whether charges on account of such special establishments and receipts in the form of fees shall be debited and credited, respectively, to the Village Service Fund or whether they shall form a separate account.

(True Extract.)

(Signed) A. BUTTERWORTH,
Acting Under Secretary.

To the Board of Revenue, through Revenue Department,
with current in original.

„ Honorable the Chief Justice.

Read—also the following paper:—

Proceedings of the Board of Revenue (Land Revenue), dated 20th October 1892, No. 600.

Read—again Proceedings of the Board of Revenue (Land Revenue), dated 2nd June 1892, No. 243-A.

ABSTRACT.—Referring to certain officers, for remarks, letter from the Registrar, High Court, suggesting the desirability of framing rules under the Madras Act I of 1889 empowering Collectors to appoint a special process establishment for village courts.

Read—also the following papers:—

From the Collector of Chingleput,	dated 21st July	1892, No.	418-L.R.
„ „ of Coimbatore	„ 5th Sept.	„ „	1253-Bd.
„ „ of Godavari	„ 24th Aug.	„ „	515.
„ „ of Kistna	„ 24th June	„ „	5216.
„ „ of Madura	„ 26th Aug.	„ „	302.
„ „ of Malabar	„ 31st „	„ „	945-Gl.
„ „ of Tanjore	„ 6th Sept.	„ „	593.
„ „ of Tinnevely	„ 31st Aug.	„ „	604.

Resolution—dated 20th October 1892, No. 600.

In its Order, No. 810, Judicial, dated 27th April 1892, Government has called for the Board's opinion on the following points:—

(1) As to the size of the file of a village court which shall be regarded as necessitating the entertainment of a special staff of process-servers.

(2) As to whether charges on account of such special establishment and receipts in the form of fees should be debited and credited, respectively, to the Village Service Fund, or whether they should form a separate account.

2. Of the eight Collectors* to whom the subject-matter was referred for remarks,

the Collector of Malabar says that no special arrangements are required for that district. In the majority of amsoms the number of suits disposed of in 1890 and 1891 did not exceed 60, and it is said that

the amsom peons are able to do the work of serving processes.

3. The Collector of Coimbatore says that there are only two village courts in the district that have a file of over 200 suits per annum—North and South Coimbatore; and as the resident population within the jurisdiction of these courts is concentrated within a very small area, he thinks that the ordinary village service establishment should suffice even for a file of 400 suits. He adds that he has heard of no complaint of the want of adequate means for the service of processes, nor of the illegal levy of process fees. On the general question, however, he considers that if a special establishment has to be entertained the cost should be met from the Village Service Fund. There is no reason that he can see why the admitted policy of exemption from fees should hold good for a file of a fixed minimum and not beyond it, and when the Judges and many hundreds of messengers are paid from Village Service Funds, it is a small matter to provide for an extra messenger or two in the obviously very limited number of villages in which such extra establishment would be required. He thinks

that levy of the unauthorized fees referred to by the District Judge of Madura in the letter which gave rise to the Government Order under reply should be completely prohibited and adequate agency otherwise provided.

4. The Collector of Tanjore reports that the village munsifs, being unable to work without the necessary appliances, have been meeting the difficulty by collecting unauthorized fees from the parties, and he believes that the practice of serving processes of the village suits by private agents paid by fees levied from the parties exists in nearly all villages and dates from the beginning of the century. In Negapatam and Nagore the village munsifs possess brass badges (handed down from their predecessors) bearing the inscription "Peon of the village munsif" which is given to the messenger entrusted with the process as an authority to collect the customary fee; and in Kumbakonam the village munsif, with a file of 900 suits to dispose of, gets his process written by two clerks and served by three process-servers employed by him on a monthly pay of Rs. 6 and 3 each, respectively. The Collector further adds that the fee levied is, as may be supposed, not uniform, but is generally about 2 annas for each process; that the village peons have at present sufficient work to do in connection with revenue duties; and that there can be little doubt that if this long-standing irregularity were suddenly stopped, the disposal of suits in village courts would stop also. In his opinion it would be useless and mischievous to restrict the benefit of an establishment only to those munsifs whose annual file reaches a certain minimum, and, advocating the legalization of the existing custom of levying fees, he makes the following proposals to be adopted as a tentative measure: (1) to legalise the levy of a fee of 2 annas on every process issued; (2) the decree to provide by what parties and in what proportions the amounts should be paid (*vide* section 46 of the Act); (3) a register of the fees collected to be maintained; (4) the village munsifs to appropriate the fees and make their own arrangements for getting the processes written and served as they do at present.

5. The proposals of the other Collectors on the first point on which Government calls for report, viz., the size of the file which shall be regarded as necessitating the entertainment of a special staff of process-servers, are as follows:—

	Number of suits.
Kistna	150
Chingleput	250
Madura	200
Godavari	100
Tinnevely	150 in cusba and trading towns and 200 in rural villages.

The Collector of Chingleput adds, however, that if fees are authorized for one court, they should be for all; for the number of cases on a file is not a very satisfactory reason for taxing justice in one court and not in others. In his district, it is only the town of Conjeeveram that has a file of over 150 (in 1891 it was 737), and if there is not to be a general legalization of fees, he would prefer supplying an additional village menial servant and paying him from the Village Service Fund.

6. As to the second question, all the Collectors referred to in paragraph 5, except Mr. Higgins (Godavari), agree in thinking that the accounts of the fees collected should be kept separate and should have nothing to do with the Village Service Fund. The Collector of Godavari, in view of the small amount of fees expected to be collected in the district, proposes that they should be treated as a part of the Village Service Fund. He further urges that, considering the enormous wealth of the Village Service Fund of his district, the levy of fees might be dispensed with and a process-server on Rs. 5 in Municipal towns and Rs. 4 in other villages per mensem allowed for every complete 100 suits, his pay being met out of the Village Service Fund.

7. The Board considers that the long standing practice of the levy of private fees by village munsifs which has been found to prevail in Tanjore probably exists in other districts also. In many places it is believed that the karnam practically does the munsif's work and gets petty fees for it. It seems idle to attempt to get rid of such a time-honoured custom and futile to ignore them, and the Board therefore considers it advisable to legalize the levy of fees for process service at any rate. The law

(*vide* section 12 of the Village Courts Act) appears to the Board to allow a perfectly free action in the matter. Instead, however, of fixing a high and necessarily arbitrary limit of suits to entitle a village munsif to have one or more process-servers as contemplated by Government, the Board would propose that Collectors be empowered under section 12 of the Act to appoint at their discretion process-servers (who would practically be the village munsif's nominees) whenever the munsif of any village desired to have them and satisfied the Collector (a) that he needed their services and (b) that the process fees would suffice to maintain them. A maximum scale of 2 annas for each summons and 4 annas for each execution of decree might be fixed.

8. These fees should, the Board thinks, be levied in cash. Their levy in court-fee labels would cause hardship to the people and hindrance to the working of the Village Courts Act, as none but stamp vendors keep such stamps for sale and a visit to one of these functionaries might entail much trouble and vexation.

9. As regards the disposal of the fees above proposed, it seems to the Board desirable to leave them entirely in the hands of the village munsif, requiring the latter to keep a register of fees levied and charges paid therefrom open to the inspection of his superior officers. The Board thinks that this system would work smoothly enough as the process-servers would be the munsifs' own nominees, whereas if fees had to be paid into the Taluk Treasury and again disbursed to pay the process-servers the extra unauthorized fees would probably continue to be levied and there would be constant complaints (generally frivolous) about the payments and work of the process servers. Where a scrutiny of the registers showed that a village munsif was making too much, after allowing a margin for help in scriptory work, the Collector should of course reduce the rate of fees.

(A true Extract.)

(Signed) W. S. MEYER,
Acting Secretary.

To the Secretary to Government, Revenue Department,
with the file of the Collectors' replies to be returned, and with copy
of Board's Proceedings, dated 2nd June 1892, No. 243-A.

Copy to all Collectors, with copy of Board's Proceedings,
dated 2nd June 1892, No. 243-A, to those Collectors
to whom the Proceedings did not go at first.

No. 5447.

Transferred to the Judicial Department.

FORT ST. GEORGE,
12th December 1892.

(Signed) C. A. GALTON,
Secy. to Govt., R. D.

To the Judicial Department, with 9 enclosures and
copy of notes of the Honorable Members.
Commissioners of Land Revenue.

ORDER—dated 29th March 1893, No. 671, Judicial.

The questions for disposal are difficult, but two points at least seem clear:—

(1) It is not possible to provide for process-servers as extra vetties under the Village Cess Act, because in such case they would be village servants and no fees would be chargeable for processes served by them;

(2) Fees cannot be levied in stamps, because the process-servers would then have to be paid by Government; because stamps cannot always be obtained and because it would not be possible to secure the proper defacement of the stamps used.

2. On the other hand, the Government is opposed to the Board's suggestion that it should be left entirely to the discretion of Collectors to authorize the entertainment of special process-servers. The results of giving such authority to Collectors in the case of revenue-process servers were not satisfactory.

3. The present levy of fees for processes served by village servants in the rural parts of Tanjore and elsewhere is illegal and must be stopped. Precautions must, however, be taken to restrict the employment of special establishments and to make sure that the gratuitous service of summons which has always been a part of the regular duty of the village servants shall continue to be performed by them wherever possible. It is only in large places such as Negapatam, Kumbakonam and Madura that the ordinary village agency will be found insufficient for the purpose, and in such places the only way of securing the object in view is, in the opinion of Government, to prescribe a minimum number of suits on the file as a limit to the employment of special process-servers. This minimum the Government considers should be 200 suits per annum and it is therefore to be clearly understood that no special process-server can be entertained in any village where the file of the Village Court falls below this figure; subject to this condition, the Collector will have power, under section 12 of the Village Courts Act, 1889, to appoint additional process-servers.

4. With regard to the amount of the fee to be levied, the Government considers that 1 anna for every summons served within the village and 2 annas for every summons served without the village, will be sufficient. The Act does not give power to fix a fee for execution of decrees as proposed by the Board; the law on this subject is contained in section 63 of the Act.

5. The levy of the fees and the payment of the salaries of the special process-serving establishment must be left to the village munsifs, who should keep an account of all sums received and disbursed.

6. The following notification will be published in the Fort St. George and all District Gazettes:—

NOTIFICATION.

In exercise of the powers conferred upon him by section 29 of the Madras Village Courts Act, 1889, the Governor in Council is pleased to declare that the following fees shall be leviable for summonses issued in writing under section 40 of the said Act which are served otherwise than by a village servant:—

- | | |
|--|---|
| (1) For every witness or defendant resident within the limits of the local jurisdiction of the Court | 1 |
| (2) For every witness resident beyond the limits of the local jurisdiction of the Court | 2 |

NOTE.—In cases where the witness resides outside the jurisdiction of the Court issuing the summons or forwarding the interrogatory a fee of 2 annas will be levied under Rule (2) above. If the Village Munsif to whom the summons is directed or the interrogatory is forwarded has a special establishment for the service of processes, the fee for serving the summons or issuing a summons to the witness to whom the interrogatory is addressed will, under Rule (1), be one anna; this sum the said Village Munsif can recover from the Village Court which issued the summons or forwarded the interrogatory. If the Village Munsif to whom the summons is directed or the interrogatory is forwarded has no special establishment, the service of summons will be performed gratuitously by the ordinary village establishment and no fee will be recoverable from the Court by which the summons was issued or the interrogatory forwarded.

(True Extract.)

Ag. Chief Secretary.

To the Revenue Department.
 „ all Collectors.
 „ the Honorable the Chief Justice, with C.L.
 Copy to the Accountant-General.
 Gazette.

Note.—To be substituted for Government Order of the same number and date previously sent.

Exd. A. Raitt.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper:—

From T. M. HORSFALL, Esq., Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to Government, dated Madras, 22nd August 1889, No. 2064.

I am directed by the High Court to request that Government will be pleased under section 29 of Madras Act I of 1889 (Village Courts' Act) to fix and notify the fees leviable for service of summonses under that Act.

2. The High Court is of opinion that the fees should be the same as those levied by District Munsifs in Small Cause suits tried by them.

ORDER—dated 7th October 1889, No. 1718, Judicial.

In exercise of the powers conferred upon him by section 29 of the Madras Village Courts Act, No. I of 1889, His Excellency the Governor in Council is pleased to direct that the following shall be the amount of fees, to be paid in the form of Court-fee labels, leviable for the service of summonses under section 27 of the Act upon defendants beyond the local jurisdiction of the village court, namely:—

For each summons—

- (a) to a single defendant, 8 annas;
- (b) to every additional defendant residing in the same village if the process be applied for at the same time, 4 annas.

(True Extract.)

J. F. PRICE,
 Chief Secretary.

To the Honorable the Chief Justice of the High Court, with C.L.
 Gazette.

Exd. W. H. French.

Gobt. of {1889} Madras.

JUDICIAL.

G.O., 7th October 1889, No. 1718.

OCTOBER.

Process Fees.

Fixing the rates of — for the service of summons leviable under section 27 of the Madras Village Courts Act I of 1889, upon defendants beyond the local jurisdiction of village courts; and notifying the same in the Fort St. George Gazette.

BOARD OF REVENUE (LAND REVENUE), 2ND JUNE 1892, No. 243-A.

PROCEEDINGS OF THE BOARD OF REVENUE (LAND REVENUE).

THE HON. MR. H. W. BLISS.

MR. E. GIBSON.

~~Read~~ the following Government Order, dated 27th April 1892, No. 810, Judicial:—

~~Read~~—the following letter from H. W. FOSTER, Esq., Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to Government, Fort St. George, dated Madras, 25th February 1892, No. 594:—

The District Judge of Madura has brought to the notice of the High Court that in the village courts of Madura town, where the number of suits filed in 1891 reached the high figure of 1,753, and of other large towns in the district, proceedings are greatly impeded and the disposal of suits delayed owing to the want of an efficient agency for the service of the Courts' processes.

2. These processes are ordinarily supposed to be served by the village servants, upon whom section 11 of the Madras Act (I of 1889) specially enjoins this duty, but in large villages these officers are almost continuously engaged in revenue duties, while in zemindari tracts they are very little under control, so that in a village court, with a heavy file, the munsif must constantly find it impossible to have summonses and notices properly and punctually served. Section 12 of the Act contemplates the necessity for providing special process servers in certain cases. It empowers the Collector, subject to the control of the Government, to appoint other persons than the village servants to perform the duties assigned to those officers by section 11, and section 29 of the Act confers authority for the levy of fees for summonses served by persons so appointed. The Government has already, under the provisions of this section, prescribed fees to be levied on summonses issued to defendants residing beyond the jurisdiction of the court issuing the summonses (Notification No. 386, dated 7th October 1889), and it appears to the High Court that, in special cases like Madura Town and similar places where the village courts have heavy files, a fee might reasonably be levied for the service of summonses on witnesses and on parties residing within the jurisdiction. A very low fee would yield an income sufficient to cover the cost of the special establishment appointed, even if the charge is not considered one fairly debitable to the Village Service fund, and it is clear that, without some such establishment, the efficiency of the most popular village courts must be seriously impaired.

3. From the evidence before me, I will observe that the necessity for giving some assistance in case of the Madura village court appeared to him so pressing that he considered himself justified in empowering the village munsif to levy fees for summonses to witnesses and in providing a special process service staff. This arrangement is, however, not sanctioned by the law, which gives no power to the District Judge to appoint any ministerial officers or to authorize the levy of fees, and the High Court has, therefore, felt obliged to issue a Proceedings, of which a copy is enclosed, directing the cancellation of the orders. But it is abundantly clear that, in this particular case, such action as that taken by the District Judge is essential to the efficiency of the court.

4. I am to suggest, therefore, for the consideration of His Excellency the Governor in Council, the desirability of framing rules under section 12 of the Act, empowering the Collector to appoint a special process establishment for village courts, commends itself to the High Court, and under section 29 of the Act to authorize the levy of fees in such cases on summonses to witnesses and to defendants within the jurisdiction of the court.

ENCLOSURE No. 1.

From T. WEIR, Esq., District Judge of Madura, to the Registrar of the High Court of Judicature, Appellate Side, Madras, dated Madura, 18th January 1892, No. 35-1891.

I have the honour to address you on the subject of moving Government to frame rules under section 29 of Madras Act I of 1889 in the matter of fees leviable for the service of summons under the Act otherwise than by village servants.

2. Section 12, clause 2 of the repealed Madras Regulation IV of 1816 contemplated, and sections 11 and 25 of the present Act (I of 1889) also contemplate that the summons of the village munsifs' courts shall usually be served by village servants.

3. Section 32 of the repealed Regulation provided also that suits tried by village munsifs should be exempt from fees of every description except batta to the peon attending the sale in execution of the village courts' decrees.

4. In the schedule of fees prescribed by Government under section 20 of the Court Fees Act (VII of 1870), the only fee leviable in respect of a process in the village munsif's court is that prescribed under article III, viz., 4 annas for every process in execution of a village munsif's decree—*vide* page 162 of the Civil Rules of Practice.

5. In framing Madras Act I of 1889, the policy of the legislature was, it may be presumed, to retain the general exemption from fees conceded by the repealed Regulation IV of 1816.

6. Section 29 of the present Act (I of 1889), however, contemplates and provides for the contingency of agency other than that of the ordinary village servant having to be employed and paid for. The contingency contemplated has, since the introduction of the present Act, become a question of practical importance in this district.

7. It has been ascertained that, in many cases, village munsifs in this district have for some time been in the habit of levying fees ranging from 2 to 8 annas per summons. The fees thus imposed are, of course, unauthorized. It seems clear, however, from the inquiries made and the reports received by the several District Munsifs, that the system of serving summonses and processes of the village courts through the agency of village servants can, at least in this district, no longer be maintained without considerable modification. The reports received from the District munsifs state that the village servants are continually employed in their revenue duties and consequently are unable and unwilling to do work for the village munsifs' courts. This is more especially the case in the zemindari portions (Ramnad and Sivaganga) of this district, and in these tracts the village servant "usually employed in carrying messages" (section 11 of Act I of 1889) is not, as I understand the matter, a Government servant.

8. In these circumstances it seems clear that, if the village courts are to receive the development and extension contemplated and provided for in the recent enactment (Act I of 1889), provision must be made for the cost of serving the processes of such courts by some agency outside that of the ordinary village service system.

9. Fees, as has been stated above, are exacted by some village munsifs and an opening is thereby afforded for abuses. To prevent such abuses, the only course is to legalize and provide for the levy of fees in a systematic manner.

10. There are, however, considerable difficulties at the outset arising from the varying and uncertain extent to which the jurisdiction of the village courts is exercised.

11. Some village munsifs—a considerable proportion—exercise no civil jurisdiction at all. Others exercise such jurisdiction to so limited an extent that the service and execution of their processes are practically impossible.

12. In the Dindigul division, for instance, in 1890, only 7 village courts had files exceeding 100 suits, the largest file in any court being 315 suits.

13. For ordinary rural villages, I am of opinion that a file of 200 suits per annum might be fixed as justifying the levy of fees in view to the employment of a special process server or peon.

14. The objection to fixing an arbitrary limit is, of course, the fact that the file might suddenly fall below the qualifying number of 200 suits, but some latitude might be allowed for a time to the District Munsifs and District Judges in fixing the scale.

15. If this suggestion should be approved, it has next to be considered what fee should be prescribed and how the process server should be paid.

16. A fee of 4 annas for every process in execution of a village munsif's decree, as already noticed, is provided for under the existing law.

17. A fee of 2 annas per summons should, I think, be levied on every summons whether to a party or to a witness.

Section 29 of the Act under which fees are authorized to be levied occurs no doubt in Chapter IV of the Act, which relates to the service of summons on parties, but the words of the

section 29 are 'every summons served under this Act,' and include also, I submit, the case of summons to witnesses provided for in Chapter V of the Act.

Assuming that there would be on an average two witnesses and one defendant per suit, this rate would yield on a file of 200 suits, Rs. 75 per annum (Rs. 25 for service on parties and Rs. 50 for service on witnesses). This sum would allow of the service of a paid process server on a salary of Rs. 4 or 5 a month, and would leave some margin.

The fees would, I presume, have to be levied in stamps and accounted for in the usual way.

18. The above system would, I submit, meet the requirements of ordinary rural villages.

19. The case of the Madura town, and possibly, it may be found hereafter, of some of the larger villages, is peculiar and requires special provision.

The village munsif of Madura town exercises a very extensive jurisdiction, his file for 1891 having been as high as 1,753. This state of affairs not only shows that the court is popular, but that the extension of its jurisdiction undoubtedly tends to relieve the regular courts of much petty litigation. The village munsif, it may be remarked in passing, is paid the very inadequate salary of Rs. 10 per mensem. The disposal of so large a number of suits obviously involves a large amount of process serving or executing work both before and after judgment, and cannot be adequately dealt with except by special agency. The village munsif of Madura has for some time been pressing for a special establishment, and he has also represented that in the town of Madura, witnesses being chiefly coolies, day-laborers, &c., are unwilling and even refuse to attend unless they are paid batta, and he asks for permission to levy the subsistence batta from the parties.

20. I am not, however, prepared to recommend the concession of power to levy batta to a village munsif's court as it would be departing further than is, in my opinion, shown to be necessary from the principle on which such courts are constituted, viz., that of administering justice in petty suits as cheaply as possible at the door as it were of the litigant and amid his neighbours and acquaintances. For the purpose of securing this desirable object, persons who are witnesses may be required as hitherto to attend without cost to litigant.

21. The work of the Madura village munsif would appear to me to require an establishment of at least 4 process servers who, on account of their heavy work and the extra cost of living at the head-quarter station, should be more highly paid than the process servers of the rural courts. One of the four peons might probably be allowed a salary of Rs. 7 and employed in the work of writing or assisting to write processes. The other peons might be allowed a salary of Rs. 6 per mensem.

22. The actual appointment of process servers to village courts is, however, it has been brought to my notice since the subject came under consideration, a duty devolving on the Collector (and not on the District Judge) subject to the control of the Governor in Council—*vide* section 12 of Madras Act I of 1889.

23. It is clear, however, that special agency cannot be employed by the Collector or otherwise until provision has been made for the levy of fees.

24. Mean time, owing to the great pressure of work which existed in the past year in the Madura village munsif's court, I allowed the following arrangement to be made provisionally:—

(1) The village munsif has been allowed provisionally to levy a fee of 2 annas per process.

(2) Four peons, one of whom is able to write processes, have been deputed from the strength of the central nazarat to serve the processes of the village munsif's court.

(3) The fees have been allowed to be levied in cash, but the village munsif has been required to send every morning the collections of the previous day to the central nazarat. In the central nazarat, court-fees labels have been purchased for the amount of each day's collections, and these have been daily affixed in a book specially kept for the purpose and cancelled.

25. This arrangement was sanctioned by me provisionally on the 14th October last and has worked satisfactorily.

Up to the close of the year, the value of the court-fees stamps representing the collections was Rs. 79-4-0 which was considerably more than sufficient to defray the salaries of the process servers.

26. In the special circumstances of the emergency existing in the town village munsif's court, I have to request that the arrangements provisionally made by me may be sanctioned and approved until other provision is made by general rules under the Act.

27. On the general and important question raised in this letter, I have the honour to request that their Lordships will, after consideration, take such steps as they may think fit.

ENCLOSURE No. 2.

PROCEEDINGS of the High Court of Judicature at Madras, dated 25th February 1892, No. 595.
Read—letter from the District Judge of Madura, dated the 18th ultimo, No. 35, requesting that the Government may be moved to frame rules in the matter of fees leviable for the service of summonses under Madras Act I of 1889 otherwise than by village servants.

In the above letter, the District Judge brings to the notice of the High Court that in the town of Madura and other such places where a large number of suits are brought before the village courts, great difficulty is experienced by the village munsifs in conducting the proceedings owing to the want of a sufficient establishment to serve processes.

2. The High Court observes that by notification No. 386, dated 7th October 1889, the Governor in Council, under section 29 of the Village Court Act, has sanctioned the levy, by a village munsif, of fees for service of processes on defendants residing beyond the jurisdiction of his court, but from the facts now brought to notice by the District Judge, it seems clear that, in some cases at least, there is no reason why similar fees should not be levied for processes to witnesses and to parties within the jurisdiction, and it is certainly desirable to provide a more efficient process agency in large towns than the ordinary staff of village servants.

3. The High Court observes, however, that section 12 of the Act reserves to the Collector the power to appoint additional servants to perform the duties ordinarily assigned to the village messenger, and that the Act confers no authority to levy fees for service of summonses except with the sanction of the Governor in Council under section 29 of the Act. It is unable therefore to approve or sanction the temporary arrangement made by the District Judge for the service of summonses issued by the Madura village court.

4. The High Court will address the Government on the subject, but, for the present, the District Judge should rescind the orders under which the village munsif is now levying fees for the issue of summonses to witnesses and to parties within his jurisdiction, and should withdraw the process peons deputed from the central nazarat.

5. The Collector may find it possible to set free one of the village messengers (if there are more than one) from some of his revenue duties or to make some other arrangement to ensure a more efficient execution of processes in the village court, but if assistance cannot be given in this way, the orders of His Excellency the Governor in Council must be awaited.

(True Extract.)

To the District Judge, Madura.

(Signed) H. W. FOSTER,
Registrar, Appellate Side.

Order—dated 27th April 1892, No. 810, Judicial.

It is clear that in some cases, such as that of Madura town, special arrangements will have to be made for the service of processes. The Registrar's letter will now be referred to the Board of Revenue, with the request that it will submit an opinion on the following points at an early date:—

(1) as to the size of the file which shall be regarded as necessitating the entertainment of a special staff of process servers;

(2) as to whether charges on account of such special establishments and receipts in the form of fees shall be debited and credited, respectively, to the Village Service fund or whether they shall form a separate account.

(True Extract.)

(Signed) A. BUTTERWORTH,
Acting Under Secretary.

To the Board of Revenue through Revenue Department,
with current in original.
„ Honorable the Chief Justice.

Endorsement No. 1104.

Forwarded to the Board of Revenue.

FORT ST. GAZETTE,
11th May 1892.

(Signed) C. A. GALTON,
Secretary to Government.

RESOLUTION—dated 2nd June 1892, No. 243-A.

Referred to Messrs. Higgins, Arundel, Sturrock, Winterbotham, Thomson, Dumergue, Forbes and Turner for very early remarks.

(A true Extract.)

(Signed) H. A. SIM,
Acting Secretary.

To A. W. B. Higgins, Esq., Collector of Godavari.
„ A. T. Arundel, Esq., Collector of Kistna.
„ J. Sturrock, Esq., Collector of Coimbatore.
„ H. M. Winterbotham, Esq., Collector of Tanjore.
„ J. Thomson, Esq., Collector of Chingleput.
„ J. W. F. Dumergue, Esq., Collector of Malabar.
„ G. S. Forbes, Esq., Collector of Tinnevely.
„ E. Turner, Esq., Collector of Madura.

Exd. W. J. Lewis.

1892.
Board of Revenue
(Land Revenue),
MADRAS.

Printed June 14th.

Proceedings, 2nd June 1892, No. 243-A.

Referring to certain officers, for remarks, letter from the Registrar, High Court, suggesting the desirability of framing rules under the Madras Act I of 1889 empowering Collectors to appoint a special process establishment for village courts.

BOARD OF REVENUE (LAND REVENUE), 20TH OCTOBER 1892, No. 600.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

READ—again Proceedings of the Board of Revenue (Land Revenue), dated 2nd June 1892, No. 243-A.

ABSTRACT.—Referring to certain officers, for remarks, letter from the Registrar, High Court, suggesting the desirability of framing rules under the Madras Act I of 1889 empowering Collectors to appoint a special process establishment for village courts.

READ—also the following papers :—

From the Collector of Chingleput,	dated 21st July	1892, No.	418-L.R.
" " of Coimbatore,	" 5th Sept.	" "	1253-Bd.
" " of Godavari,	" 24th Aug.	" "	515.
" " of Kistna,	" 24th June	" "	5216.
" " of Madura,	" 26th Aug.	" "	302.
" " of Malabar,	" 31st "	" "	945-Gl.
" " of Tanjore,	" 6th Sept.	" "	593.
" " of Tinnevely,	" 31st Aug.	" "	604.

RESOLUTION—dated 20th October 1892, No. 600.

In its Order No. 810, Judicial, dated 27th April 1892, Government has called for the Board's opinion on the following points :—

(1) As to the size of the file of a village court which shall be regarded as necessitating the entertainment of a special staff of process servers.

(2) As to whether charges on account of such special establishment and receipts in the form of fees should be debited and credited, respectively, to the Village Service Fund, or whether they should form a separate account.

2. Of the eight Collectors* to whom the subject-matter was referred for remarks, the Collector of Malabar says that no special arrangements are required for that district. In the majority of amsoms the number of suits disposed of in 1890 and 1891 did not exceed 50, and it is said that the amsom peons are able to do the work of serving processes.

3. The Collector of Coimbatore says that there are only two village courts in the district that have a file of over 200 suits per annum—North and South Coimbatore; and as the resident population within the jurisdiction of these courts is concentrated within a very small area, he thinks that the ordinary village service establishment should suffice even for a file of 400 suits. He adds that he has heard of no complaint of the want of adequate means for the service of processes, nor of the illegal levy of process fees. On the general question, however, he considers that if a special establishment has to be entertained the cost should be met from the Village Service Fund. There is no reason that he can see why the admitted policy of exemption from fees should hold good for a file of a fixed minimum and not beyond it, and when the Judges and many hundreds of messengers are paid from Village Service Funds, it is a small matter to provide for an extra messenger or two in the obviously very limited number of villages in which such extra establishment would be required. He thinks that levy of the unauthorized fees referred to by the District Judge of Madura in the letter which gave rise to the Government Order under reply should be completely prohibited and adequate agency otherwise provided.

4. The Collector of Tanjore reports that the village munsifs, being unable to work without the necessary appliances, have been meeting the difficulty by collecting unauthorized fees from the parties, and he believes that the practice of serving processes of the village suits by private agents paid by fees levied from the parties exists in nearly all villages and dates from the beginning of the century. In Negapatam and Nagore the village munsifs possess brass badges (handed down from their predecessors) bearing the inscription "Peon of the village munsif" which is given to the messenger entrusted with the process as an authority to collect the customary fee; and in Kumbakonam the village munsif, with a file of 900 suits to dispose of, gets his process written by two clerks and served by three process servers employed by him on a monthly pay of Rs. 6 and 3 each, respectively. The Collector further adds that the fee levied is, as may be supposed, not uniform, but is generally about 2 annas for each process; that the village peons have at present sufficient work to do in connection with revenue duties; and that there can be little doubt that if this long standing irregularity were suddenly stopped, the disposal of suits in village courts would stop also. In his opinion it would be useless and mischievous to restrict the benefit of an establishment only to those munsifs whose annual file reaches a certain minimum and, advocating the legalization of the existing custom of levying fees, he makes the following proposals to be adopted as a tentative measure: (1) to legalise the levy of a fee of 2 annas on every process issued; (2) the decree to provide by what parties and in what proportions the amounts should be paid (*vide* section 46 of the Act); (3) a register of the fees collected to be maintained; (4) the village munsifs to appropriate the fees and make their own arrangements for getting the processes written and served as they do at present.

5. The proposals of the other Collectors on the first point on which Government calls for report, viz., the size of the file, which shall be regarded as necessitating the entertainment of a special staff of process servers, are as follows:—

	Number of suits.
Kistna	150
Chingleput	250
Madura	200
Godavari	100
Tinnevely	150 in oulba and trading towns and 200 in rural villages.

The Collector of Chingleput adds, however, that if fees are authorized for one court, they should be for all; for the number of cases on a file is not a very satisfactory reason for taxing justice in one court and not in others. In his district, only the town of Conjeeveram that has a file of over 150 (in 1891 it was 737), and if there is not to be a general legalization of fees, he would prefer supplying an additional village menial servant and paying him from the Village Service Fund.

6. As to the second question, all the Collectors referred to in paragraph 5, except Mr. Higgins (Godavari), agree in thinking that the accounts of the fees collected should be kept separate and should have nothing to do with the Village Service Fund. The Collector of Godavari, in view of the small amount of fees expected to be collected in the district, proposes that they should be treated as a part of the Village Service Fund. He further urges that, considering the enormous wealth of the Village Service Fund of his district, the levy of fees might be dispensed with and a process server on Rs. 5 in Municipal towns and Rs. 4 in other villages per mensem allowed for every complete 100 suits, his pay being met out of the Village Service Fund.

7. The Board considers that the long standing practice of the levy of private fees by village munsifs which has been found to prevail in Tanjore probably exists in other districts also. In many places it is believed that the karnam practically does the munsifs work and gets petty fees for it. It seems idle to attempt to get rid of such a time-honoured custom and futile to ignore them, and the Board therefore considers it advisable to legalize the levy of fees for process service at any rate. The law (*vide* section 12 of the Village Courts Act) appears to the Board to allow a perfectly

free action in the matter. Instead, however, of fixing a high and necessarily arbitrary limit of suits to entitle a village munsif to have one or more of process servers as contemplated by Government, the Board would propose that Collectors be empowered under section 12 of the Act to appoint at their discretion process servers (who would practically be the village munsifs nominees) whenever the munsif of any village desired to have them and satisfied the Collector (a) that he needed their services and (b) that the process fees would suffice to maintain them. A maximum scale of 2 annas for each summons and 4 annas for each execution of decrees might be fixed.

8. These fees should, the Board thinks, be levied in cash. Their levy in court-fee labels would cause hardship to the people and hindrance to the working of the Village Courts Act, as none but stamp vendors keep such stamps for sale and a visit to one of these functionaries might entail much trouble and vexation.

9. As regards the disposal of the fees above proposed, it seems to the Board desirable to leave them entirely in the hands of the village munsif, requiring the latter to keep a register of fees levied and charges paid therefrom open to the inspection of his superior officers. The Board thinks that this system would work smoothly enough as the process servers would be the munsifs' own nominees, whereas if fees had to be paid into the Taluk Treasury and again disbursed to pay the process servers the extra unauthorized fees would probably continue to be levied and there would be constant complaints (generally frivolous) about the payments and work of the process servers. Where a scrutiny of the registers showed that a village munsif was making too much, after allowing a margin for help in scriptory work, the Collector should of course reduce the rate of fees.

(A true Extract.)

(Signed) W. S. MEYER,
Acting Secretary.

To the Secretary to Government, Revenue Department,
with the file of the Collectors' replies to be returned, and with copy
of Board's Proceedings, dated 2nd June 1892, No. 243-A.

Copy to all Collectors, with copy of Board's Proceedings,
dated 2nd June 1892, No. 243-A, to those Collectors
to whom the Proceedings did not go at first.

Exd. W. J. Lewis.

REVENUE DEPARTMENT.

1892.

Board of Revenue

(Land Revenue),

MADRAS.

Proceedings, 20th October 1892, No. 600.

Submitting to Government the report called for regarding the entertainment of a special process establishment for Village Courts.

REVENUE DEPARTMENT.
(1892.)

REVENUE DEPARTMENT.

1718: 7.10.89
Judd 810727 4-92 mis
Madras mail of 9.12.92

Current Number 9468

From

The Board of Rev.
(Land Revenue)

ABSTRACT.

Endorsement no. 5447

Transferred to the
Judicial Department.

Secretary to Govt.

To H. George
December
12th November 1892

Dated 20th October 1892
Received 7th November

Enclosures 10
Reg in sub 19th Dec 92
No. 600.

SUBJECT.

Submitting to Government
the report called for
regarding the entertainment
of a special process establish-
ment for Village Courts.

R-12/12
Endorsement

To
The Judicial Dept.
with 9 enclos.
+ copy of notes of the Govt.
in Comm. of Land Rev. Members

Notes by the 1401 Ambassador on the draft for
5447 of 12-12-1892.

I think the paper should be transferred
without an expression of concurrence which,
formally at any rate, binds the Government. I am
not at all sure I shall concur.

(Sd) H.E.S.
5 Decr.

I don't object, but the paper must be
sent to me in circulation in the Judicial
Department.

(Sd) J. H. G.
11-12-92

Note for the Chief Secretary.

In this connection I
wish to have a report called for from the Collector
of Godavari on a complaint made by a Mr. C
Benson-Benson (in the Madras Mail of yesterday)
complaining of the way he was treated by the
Village Munsiff of Cocanada in the execution of
a decree given in his court (Ex parte) against
Mr. B in a suit by a dismissed cook for his
wages. The question of whether Village Munsiffs
in large towns should not know enough

which to issue pro
in that language was
to Europeans
involved involved

(201) J. H. G.
11/12/1892

Sub DEPARTMENT.

No. 5306.

From

13th of November

Dated

20 Oct

1892

(res. in Ind. 12 Dec.

FOR ORDERS. & further papers 10 Jan).

The matter is really very difficult.

Two points at least are clear.

(1). It will not do to provide for process servers in extra villages under the V.S. Act, because in each case they would be village servants, and no fees would be chargeable for process served by them.

(2). Fees cannot be levied in stamps, because the process server would then have to be paid by Govt.; because stamps cannot always be got; and because it would not be fair to see below on this point.

It is possible to secure that used stamps should be so defaced that they could not be used again. Even in the regular civil Courts there is considerable risk of this, notwithstanding the application of well paid bhistis, panchas & so forth.

I am opposed to the Board's suggestion to leave it entirely to the discretion of Collectors to authorize the employment of special process servers. We have had experience of a similar discretion allowed to them in regard to revenue process servers. The result was that in several districts the ordinary village agency for the execution of these processes was almost completely superseded; a board of Catchery lawyers was created, and the country haunted by them; and many thousands (my estimate, even say lakhs) of rupees were unnecessarily levied off the ryots.

The present levy of fees for process served by village servants, in the most parts of Tanjore, or elsewhere is illegal and must be stopped. Precautions must be taken to restrict the employment of special village servants and to make sure that the process service of summons which has

A serious objection to the levy of fees on process issued by Village Munsifs' Courts is the difficulty of checking receipts.

It is not long since Mr. Ladd, an example of extensive fraud in connection with similar receipts in the District Small Cause Court & the chances of

fraud are almost infinite, where the Courts are numbered by thousands & are scattered all over the country unless an elaborate system of check

& audit is devised. It is difficult to see how malversation of public funds by dishonest Village Munsifs could be prevented in the simplest manner of settling the question would be to

change the cost of process-servers against the Village Service Fund. This could not be done under

Sec. 2 of the Village Cess Act, 1864, but it would be illegal under the Village Cess Bill as amended by the Select Committee.

If this arrangement were adopted Collectors might be authorized, under Sec. 12 of the Village Courts Act, 1889, to appoint

Resubm. to the Am. in St. L.
Stokes with reference to the
Am. Mr. Garstin's remarks.

by
C. H. 30 Jan.
31/Jan

Resubm. to the Am. Mr. Garstin's

with reference to the Am. in
St. L. Stokes' explanation & further
remarks may a G.O. be drafted
in the terms of his first note?

by
Very truly, Yrs
Circulate it before 7 Feb.
C. H. 8 Nov.
13/2/93

11/11/11

Recire? with reference to the
 from Mr. Garstin's remarks.
 To avoid the difficulty referred
 to it would perhaps be
 sufficient to say in the G.O.
 that in every case where a
 process issued in Village A
 is served through the Munsif
 of Village B the service shall
 be performed by a village-
 servant of Village B. The
 question of fees will in this
 way never arise.

Straight.

by

2 March.

Ch

to March

See in.

U.S.

Recire? to Mr. L. S. Stiles & Mr. L. S. Garstin

It is respectfully asked that
 (1) the Act cannot be made
 applicable to interrogatories because
 the Act contains no provision for
 of fees in respect of interrogatories.
 receipt of an interrogatory the G.O.
 will summon the person whose statement
 is required to examine him.

C 4/3.

13/3

The Act does not empower Govt. to fix fees for forwarding interrogatories. But, as Mr. says, provision should be made to meet the case where B forwards an interrogatory to A & A summons the witness to whom it is addressed. Consequently Mr.'s Direction that the words "but within 5 miles of" should be omitted has been given effect to. Also with reference to the Hon. R. G. Garnett's orders, & also with the view of making the scope of the rules clear, a Note has been added to the Notification.

the
16th Mar.

The alterations made in the
hospitality with the late
thrusts were sufficient to make

1/16/19
23/11/19

C. 18/3
A. 24/3

Papers to be read in Proceedings:—

1889, No. 1712 sub? abstract

1892, No. 810 Subl. *Handwritten*

Current No. _____ of 18____, dated _____ from _____

Current No. 5306 of 18/2, dated 20 Oct from the B. of Ker.

order 29. June 1948 K 671

The questions for disposal are difficult but two points at least seem clear:—

(1) It is not possible to provide for process-servers as extra vetries under the Village Service Cess Act because in such case they would be village servants & no fees would be chargeable for processes served by them;

(2) Fees cannot be levied in stamps because the process-servers would then have to be paid by Govt.; because stamps cannot always be obtained & because it would not be possible to secure the proper deacement of the stamps used.

2. On the other hand the Govt. is opposed to the Board's Suggestion that it should be left entirely to the Discretion of Collectors to authorize the entertainment of special process servers. The results of giving such authority to Collectors in the case of revenue-process servers were not happy. Satisfactory.

3. The present levy of fees for processes served by village servants in the parts of Tanjore & elsewhere is

As birth regard to the amount of the fee to be levied the Govt considers that 1 anna for every summons served within the village & 2 annas for every summons served without the village. But within the five-mile limit referred to in Sec. 40 of the Village Courts Act will be sufficient. The Act does not give power to fix a fee for execution of decrees as provided by the Board; the law on this subject is contained in Sec. 61 & the

6. The levy of the fees & the payment of the salaries of the special process-serving Establishment must be left to the Village himself.

Notiz zu

(1) For every witness or defendant ^{resident within limits of the local} jurisdiction of the Court 1 anna

(2) For every witness resident beyond the ~~border of the~~ ^(limits of the local) jurisdiction of the Court.... 2 annas.

Fuller's Orders

~~It is proposed to publish the rates of fees in the Gazetteer but para. 6 has left blank until Rules have decided one or two points.~~

~~Under sec. 27 of the Act of a summons in addressed to a deft. residing beyond the limits of the Court it has to be forwarded & served by the Dt.~~

[illegible]

Note
In cases where the witness resides outside the jurisdiction of the Court issuing the summons or forwarding the interrogatory a fee of 2 annas will be taxed under Rules above. ~~There is no~~ If the Village Headman to whom the summons is directed or the interrogatory is forwarded has a special establishment for the service of processes the fee for serving the summons or issuing a summons to the witness to whom the interrogatory is addressed will, under Rule 11, be 1 anna. This sum, the said Village Headman can recover from the Village Court which issued the summons or forwarded the interrogatory. If the Village Headman to whom the summons is directed or the interrogatory is forwarded has no special establishment the service of summons will be performed gratuitously by the ordinary Village establishment & no fee will be recoverable from the Court by which the summons was issued to the interrogatory (para. 4.)

summonses to witnesses residing within the jurisdiction, if not the words "in writing" should be added after "issued" in the draft Notifⁿ; it is not quite clear whether sec. 29 admits of the levy of a fee for delivery of a verbal summons.

Yes Process *in writing*
Villages

4/2
I think the fee should be charged only for summons in writing. The summons must be in writing when sent or the defendant or a witness residing less than 5 miles beyond the Court's jurisdiction. Sec 29 which contains the levy for a fee is, it is presumed, applicable to summonses in writing.

Yes
JHL

P.S.

The words "in writing" for words & I think certainly cover summonses & witnesses.

Uy
A defendant must be summoned by a summons in writing. A witness living within the jurisdiction may be summoned verbally or by a written summons. If he lives within 5 miles he may be summoned in writing, but otherwise he must be summoned orally. If he lives more than 5 miles away a summons in writing to the village where he lives. We have not decided what fee on the charge in such a case is to be charged. I think the fee should be charged on the summons in writing. I think the fee should be charged on the summons in writing. I think the fee should be charged on the summons in writing.

C. 4/3
R/13/3

17/3/92
I don't think we need anticipate the difficulty raised by any time to come. If the witness lives within 5 miles, the two sums for will be levied by the summons issuing that summons, & if the witness who has to be served has a special process, estate, he can require the issuing staff to levy the cost of service thereby which will be one sum for summons. If the issuing staff has no special estate he will have the service effected gratuitously by the ordinary village estate. The same might be done with interrogations for examⁿ of witnesses beyond the 5 miles. The 2 annas fee would suffice, but we must make the rule applicable to such cases by something in (2) of the draft notifⁿ. The words "but within five miles of the" will not this suffice? For defendant summons through the staff. The same fee is applied. H.S. 4/2

For 6/17/29-3/93

Dec 17/4/93

revised copy sent to all - 28/4/93

The Collectors of
The District Magistrates of

Judl Dept

P.O. 7/10/89:1718 - 1 (copy)

P.O. 27/10/92:810 (copy the whole current i.c. the portion marked in printed copy of B's Procp. Land R. 2 June 1892, No. 243 A. #)

C. No. 5306 — in full.

- Anantapur.
- North Arcot, Chittoor.
- South Arcot, Cuddalore.
- Bellary.
- South Canara, Mangalore.
- Chingleput, Saidapet.
- Coimbatore.
- Cuddapah.
- Ganjam, Chatrapur.
- Godavari, Cocanada.
- Kistna, Masulipatam.
- Kurnool.
- Madras (when necessary).
- Madura.
- Malabar, Calicut.
- Nilgiris, Ootacamund.
- Nellore.
- Salem.
- Tanjore.
- Tinnevely.
- Trichinopoly.
- Vizagapatam.

From suggestion of 22. 10. 1943

10

EX. No. _____

MAP PAPER, No. 1675 (Printed 22. 02. 18 93)

4523/93. (form for case) W. - B. ...

529/99 village municipality 267 571-12-93

1744 of 94

430196 (On Chingleput Page IV)

Please see the ...

... of ... } ...

10-98

... to ...

... 8 ...

ORDINARY, PRINTED.

Judicial DEPARTMENT.
G.O., DATED 29-3-93.
No. 671

First copy sent to Press. 30-2-93

Returned for signature. 15/4/93

Despatched in print. 17-4-93

[Despatch Abstract.]

Y. M. C. C. Coril. 201

10025 Paper on

- ders on the ques-

- tion of appointing

additional persons

under the 2nd of

under publication

of anticipation of

claim that certain

persons shall be

liable to answer

apud in writing

section 40 of the Act

9/3/95

1873 103

11-4-05

13-10-05

1-2-07

25-5-08

1-10-12

18-8-16

6-2-20

2-11-21

14/6/24 12.00

11-10-28 12.00

3.9.37