

Marine (1898) Department.

G.O., No. 646 Marine

DATED 25th July 1898.

[Despatch Abstract.]

Identification by Finger impressions — Pro: Judicial
Dept. counting letter from the Govt. of India forwarding
certain correspondence on the subject of the work in Bengal
during 1897 of the anthropometric system of identifying
old offenders, and on the progress made in replacing that
system by the system of —, comd to the P. P. Officer.

Dr. 15.7.98

PAPERS.							
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

G.O., No. 1014, 1st July 1898.

JULY.

Communicating to the Honourable the Judges of the High Court, to all departments of the Secretariat, and to the Inspectors-General of Police, Prisons, and Registration, letter from the Government of India forwarding certain correspondence on the subject of the working in Bengal during 1897 of the anthropometric system of identifying old offenders, and on the progress made in replacing that system by the system of —.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper:—

From H. LUSON, Esq., Deputy Secretary to the Government of India, Home Department (Police), to the Chief Secretary to the Government of Madras, dated Simla, 15th June 1898, No. 279.

In continuation of the letter from this department, No. 328, dated the 12th June 1897, I am directed to forward, for the information of the Governor in Council, a copy of a letter * from the Government of Bengal giving cover to a report from the Inspector-General of Police, Lower Provinces, on the subject of the working in Bengal during 1897 of anthropometry and on the progress made in substituting identification by finger impressions only, not supplemented by measurements, for the anthropometric system.

2. I am to say that the proposal for the amendment of section 45 of the Indian Evidence Act, 1872, in order to make expert evidence as to the identity of finger impressions admissible, is under the consideration of the Government of India.

ENCLOSURES.

From M. FINUCANE, Esq., c.s.i., Officiating Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department, dated Calcutta, 6th May 1898, No. 2515-J.

With reference to your letter, No. 338, dated the 12th June 1897, I am directed to forward, for the information of the Government of India, the accompanying copy of a letter, No. 1571, dated the 19th February 1898, from the Inspector-General of Police, regarding the working during 1897 of the anthropometric system of identifying old offenders, and the progress made in replacing that system by the system of identification by finger impressions.

2. In paragraph 7 of his letter the Inspector-General of Police has drawn attention to a difficulty in the working of the system of finger impressions arising from a ruling (copy enclosed) of the High Court to the effect that finger impressions are not handwriting and that therefore the opinion of experts regarding them is inadmissible in evidence. The Lieutenant-Governor has consulted the Law Officers of Government on the subject, and, as will be seen from the annexed copy of the Superintendent and Remembrancer of Legal Affairs' letter, No. 36, dated the 4th April 1898, both that officer and the Honourable the Advocate-General consider that legislation is necessary in order to make such evidence admissible. With a view therefore to removing the difficulty brought to notice by the Inspector-General of Police, His Honour recommends that section 45 of the Evidence Act, 1872, may be amended in the manner

suggested by the Inspector-General of Police and the Legal Remembrancer, namely, by inserting in it the words "or finger impressions" after the words "as to identity of hand-writing."

From E. R. HENRY, Esq., I.C.S., Inspector-General of Police, Lower Provinces, to the Chief Secretary to the Government of Bengal, dated Calcutta, 19th February 1898, No. 1571.

In continuation of previous correspondence,* I have the honour to submit information regarding the working during 1897 of anthropometry and regarding the progress made in substituting identification by finger impressions only, not supplemented by measurements, for the anthropometric system.

2. In my letter, No. 2471 of 13th March 1897, the relative advantages of the two systems are discussed; and as I was able to report, as the outcome of some years' work at the subject, that a satisfactory system of classification had been devised, the Government of India was pleased to appoint towards the end of March a Committee consisting of Major-General Strahan, R.E., Surveyor-General, and Mr. Pedler, F.R.S., to inquire into and report on it. After careful examination of details, this Committee recorded their opinion (copy attached) that the system of classification elaborated in this Province is most effective, answers all possible tests, and must on its merits in time supersede anthropometry everywhere, and the Governor-General in Council has now directed its introduction throughout British India.

3. Bombay, the North-Western Provinces, Burma, Assam, the Central Provinces, and, I believe, Madras are accumulating finger impression cards, and the orders of the Government of India are awaited as to the arrangements under which officers of these provinces are to have explained to them the principles of the classification. It would possibly be convenient and conducive to ensuring that at the outset a correct system is adopted if the explanation could be given at the head-quarters of the several provinces, the opportunity being taken to classify all the finger impression cards collected there.

4. It may now be claimed that the great value of finger impressions as a means of fixing identity has been fully established, for there is no department of public business in this province in which this agency is not being used. In the Opium Department it has solved the difficulty experienced of ensuring that money entrusted to middlemen shall actually reach the cultivators entitled to it. The Opium Agent, Bihar, has now few or no cases in which the opium cultivators repudiate receipts authenticated by their thumb impression. In the Emigration Department it is being used in agreements and in receipts for money. It is being regularly used in our competitive examinations as a check on personation. It has been introduced into the Postal Department and in the Military Pensions Department. It is being fully utilized in all Registration offices, where it has been instrumental in causing numerous cases of false personation to be successfully worked out and the guilty punished, and it is being gradually brought into requisition by zamindars and other private persons in substitution for signatures. Its introduction must have the effect of reducing litigation and easing the burden on the courts, for wherever it is used in place of, or as supplementary to, signatures, incontestable evidence is provided of identity which it is useless to challenge. A man may disown his signature and may at different times give signatures varying from each other in essentials, but he cannot disown his finger impression, for if he is required to give it a second time, it must correspond in the thousand and one details which together make up the pattern, and this correspondence can be exactly pointed out and its probative value can, if necessary, be represented in mathematical calculation.

5. During the year 2,538 persons were on arrest treated by the District Police as unidentified. By sustained inquiry the local police were successful ultimately in getting 1,498 of these recognized, leaving a balance of 1,040 persons unidentified (of

whom 124 were juveniles, 32 were women, and 104 residents of Native States, where the system has not been introduced), with whom the Central Police office had to deal. The following table gives statistics for four years:—

Year.	Number identified by anthropometry only.	Number identified by finger impressions only.	Total number identified.	Number in column 4 referred by Bengal districts.	Total number of persons in Bengal districts whose identity local police was unable to ascertain.	Percentage of success from Bengal districts (column 6 to column 5).	Percentage of success with females, juveniles and non-British subjects excluded from total of column 6.
1	2	3	4	5	6	7	8
1894	143	..	143	112	536	21	27
1895	207	..	207	162	641	25	31.6
1896	334	..	334	236	831	28	42.3
1897	318	174	492	325	1,040	31	41.6

The figures in column 4 for 1897 include 123 persons recognized for the Calcutta Police, 31 for Assam, 1 for Madras, 2 for Cooch Behar, and 10 for the North-Western Provinces. It will be seen that the figures for total identifications represent a maintained improvement for each year of over 40 per cent. on the preceding year's figures, and that in 1897 about 4 in every 10 possible cases were identified. The 492 successful recognitions of 1897 include 174 cases in which the identification was effected by the finger impressions only, not supplemented by measurements.

6. On receipt of the orders of the Government of India recognizing the new system, we commenced, in June, to institute search under it and the 174 cases shown in column 3 represent results. Considering the relative smallness of the finger impression record, the measure of success obtained has been considerable, and bears out the opinion expressed by the Committee as to the efficiency of this system, which has yielded better results in the first seven months of its working than were obtained by anthropometry with a criminal record of approximately corresponding volume in twelve months. It may be noted that we come across numerous instances in which the measurements submitted for search vary by considerably more than the allowable difference from those originally recorded, and that the error attributable to the personal equation, even with automatic and self-registering measuring instruments, is a frequently recurring cause of failure. Such error practically disappears in a system of identifying by finger impressions, which possesses the additional advantage that juveniles whose physical structure has not been fully developed come within its scope. It has been deemed undesirable to extend the system to females; so in future women alone will be excluded from the class to whom it will be made applicable. The great advantages which the new system possesses as regards economy, saving of time, certainty in results, and its capability of being worked by unskilled agency have been described in previous letters and in the report of the Committee. Since January 1897 the finger impressions only, and not the measurements, of new convicts have been taken, and attention has been concentrated on reducing the anthropometric and building up the finger impression record. We have now over 20,000 classified finger impression cards, and by obtaining finger impression duplicates, have reduced the anthropometric record to less than 25,000, and within the next few months will eliminate some 5,000 more. By the end of this year, the anthropometric record will contain less than 20,000 cards, and the finger impression record considerably more than 25,000. During 1897 two out of every three recognitions were effected by anthropometry; this proportion will be reversed in 1898. The complete reduction of the anthropometric record may occupy about three years. The cards that are being eliminated contain measurements recorded with exactness, which should be of value to anthropological research in Europe. Pending orders of Government as to their disposal, they will not be destroyed.

7. In conclusion, I may call attention to a disability imposed by a recent interpretation of the law. The law which regulates the admission of the testimony of experts is contained in section 45, Indian Evidence Act, and is to the following effect:—

“When a court has to form an opinion upon a point of foreign law, or of science or art, or as to the identity of hand-writing, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of hand-writing are relevant facts. Such persons are called experts.”

The High Court in a contested case has decided that finger impressions are not hand-writing, and that consequently expert testimony as to their decipherment is inadmissible. With suitable appliances it is easy so to enlarge the impressions brought under comparison as to make plain to Magistrate or Judge or Jury the points of coincidence or divergence relied upon, and they can then form their own opinion as to the value of this evidence. But with no such appliances available, the Judge or Jurors, whose eyesight from age or other cause may be defective, are required to compare impressions, always on a relatively small scale, and sometimes partially blurred, and this is work outside their competency for which the help of experts is more needed than in questions of hand-writing. The addition of the words “or finger impressions” after the words “as to identity of hand-writing” in section 45, Indian Evidence Act, would meet this difficulty.

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

The 16th July 1896.

CRIMINAL JURISDICTION.

PRESENT:

The Hon'ble Mr. Justice O'KINEALY, and
The Hon'ble Mr. Justice BANERJEE, } Two of the Judges of the Court.

The Queen Empress *versus* Fakir Mahomed Shek, Ershad Ali Shek and Sita Nath Dass—*Accused*.

O'KINEALY, J.—

In this case the appellants were tried by a jury in the district of Nadia. Three of the jurors were for acquitting and two for convicting them, and the Judge, concurring in the view taken by the minority, has referred the case to us under section 307 of the Code of Criminal Procedure.

The complainant in this case is apparently a professional beggar, and the appellant Fakir Mahomed is a wealthy man, the Mahajan of his village, which is about two miles from the town of Meherpore. On the 25th February Fakir Mahomed presented a document for registration in Meherpore and received it back on the 29th February following. It is in regard to this document that he and the other two appellants are charged with forgery and false personation. The complainant says that he heard of this on the 6th March when he returned from a begging tour, and on that day he attempted to present an application for a copy. He did not succeed in having his application received on that day, but it was received on the 7th, a copy was given to him on the 9th, and on the 10th he laid his complaint before the Criminal authorities. Thus it appears quite clear that the complainant had laid all his plans and apparently required no further advice after the 6th. Every step subsequently taken up to the 10th was taken in regular order and without delay. From the evidence of Sub-Registrar it appears clear that the complainant when he says he returned about the 6th was not telling the truth, for two or three days before that he appeared before the Sub-Registrar with a Mukhtar, and made inquiries from the Sub-Registrar. They said that they did not want to see the document, but that they would take a copy of it. Apparently, then, three or four days before the 6th, the complainant knew the contents of the document and only waited to get a copy of it to start a

prosecution. Immediately after the complaint was laid an application was presented for a warrant to search the house of the accused Fakir Mahomed, and his house was searched. The document said to have been forged was not found. The accused Fakir Mahomed states that owing to the death of his mother things fell into confusion and the document has been lost.

Now the evidence in support of the conviction greatly depends on the evidence of the Head Clerk in the Registration office and some thumb marks taken for the purpose of identifying the persons connected with the execution of this document. The Judge in the Court below allowed what is called expert evidence to show that the complainant Nayan Sha is not the person who made those thumb marks. No doubt in any matter connected with marks, so far as it is a science, such evidence would be admissible, but we think that the Judge should in the matter of making a comparison have done it himself. If we were sure that the procedure adopted in the Registration office in taking these thumb impressions was strictly in accordance with the rules laid down by Government in that behalf there could be no doubt of the guilt of the accused, but on this point we are not satisfied. The Head Clerk himself failed to appear at the beginning of the case, and it appears on the evidence that he was watched and distrusted by both sides. We therefore feel great difficulty in finding the accused guilty on his evidence, and his is really the material evidence in the case.

The result is that we agree with the majority of the jury that the evidence is not sufficient, and we accordingly acquit the accused and direct that they be discharged.

BANERJEE J.—

(Reference under section 307, Criminal Procedure Code, No. 13 of 1896.)

I am of the same opinion. I only wish to add a few words with reference to that part of the evidence which relates to the thumb marks.

It was contended for the Crown that a comparison of the thumb impression taken by the Registrar under orders of Government, of the person who presented the document in question with the thumb impression taken in Court of Nayan Sha, the alleged executant of the deed, went clearly to show that the person who presented the document before the Registrar could not have been Nayan Sha and that one of the accused must therefore have falsely personated, and the other abetted the false personation of Nayan Sha, and they have thereby committed offences punishable under clauses (c) and (d) of section 82 of the Registration Act. On the other hand, it was argued by the learned Counsel for the accused that neither the comparison of the thumb impressions which we were asked to make, nor the evidence of the expert on the point, was admissible in law: and that even if they were admissible, their weight was so slight that it could not affect the decision of the case.

One of the main questions for determination in this case being whether the document now impugned was or was not presented before the Registrar by the complainant Nayan Sha, a comparison of the thumb impression of the person who presented the document with that of Nayan Chand, is, I think, admissible under section 9 of the Evidence Act, if the similarity of those impressions can establish the identity of that person with Nayan Sha, or under clause (2) of section 11 of the Act, if their dissimilarity makes such identity highly improbable. Now those who have made finger prints their special study have come to the conclusion that their similarity is, as a rule, evidence of personal identity and their dissimilarity will therefore, as a rule, be evidence of the converse—see Galton on Finger-prints, Chapters VI and VII. That being so, the comparison we were asked to make would be allowable in law, if it was shown that the impression taken by the Registrar was that of the left thumb of the persons who made it, the impression taken in court being that of Nayan Sha's left thumb. Upon this point, however, we do not think there is any sufficient and reliable evidence. The comparison of the thumb impressions, impressions is allowable, such comparison must be made by the Court itself; and the opinion of an expert as to the similarity of such impression, is not admissible under section 45 of the Evidence Act.

The other evidence on the record is not sufficient to warrant the conviction of the accused. I therefore agree with my learned colleague in holding that the verdict of the majority of the Jury in this case is right, and that the accused should be acquitted.

From the Hon'ble Mr. J. PRATT, Officiating Superintendent and Remembrancer of Legal Affairs, to the Chief Secretary to the Government of Bengal, dated Calcutta, 4th April 1898, No. 36.

In acknowledging receipt of your letter No. 1746-J., dated 24th ultimo, in which you ask for an expression of my opinion and that of the Honourable the Advocate-General as to whether any modification of the Evidence Act is required for making the opinion of an expert as to the identify of finger impressions admissible in a court, I have the honour to intimate that both the Advocate-General and myself are of opinion that legislation on the subject is necessary, and that I think with Mr. Henry that the insertion of the words "or finger impressions" after the words "as to identity of hand-writing" in section 45 of the Evidence Act, 1872, would meet the requirements of the case.

ORDER—No. 1014, Judicial, dated 1st July 1898.

Communicated to the Honourable the Judges of the High Court, to all departments of the Secretariat and to the Inspectors-General of Police, Prisons, and Registration.

(True Extract.)

A. K. M. S.
Chief Secretary.

To all departments of the Secretariat. (In *margin*.)
" the Honourable the Chief Justice (with C.L.).
" the Inspector-General of Police.
" the " of Prisons.
" the " of Registration.

Exd. T. Lutemish Naidu.