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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

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1598

*Proceedings of the Madras Government, Judicial Department,
12th March 1875.*

Court Fee Stamps.

No. 72. Read the following letter from W. LOGAN, Esq., Acting District Judge of South Malabar, to the Hon. D. F. CARMICHAEL, Acting Chief Secretary to Government, Fort St. George, dated Calicut, 26th February 1875, No. 53:—

I have the honor to enclose copy of a report from the Subordinate Judge of Calicut regarding certain Court Fees Stamp defalcations lately discovered in his Court.

2. The Subordinate Judge reports that the formal stamped applications of parties for processes or, speaking technically, the Batta Memoranda in 147 execution cases in the Small Cause Department of the Court are missing. These Memoranda were received—

1 in June	1873.
12 „ December	„
46 „ January	1874.
65 „ February	„
8 „ March	„
9 „ June	„
3 „ July	„
3 „ August	„
Total	147

With the applications the Court fees stamps affixed to them have of course also disappeared, and the value of these stamps aggregate, as per particulars in the enclosed account, Rupees 340.

3. All papers coming into the Subordinate Court on which Court fees stamp duty is chargeable have hitherto been received by two individuals—I., Plaints, Miscellaneous petitions, &c., are received by the Court Sheristadar in person; II., Batta Memoranda for all departments of the Court (*viz.*, 1, Original suits; 2, Small Cause Suits; 3, Appeals; and 4, Miscellaneous petitions) are received by one of the clerks specially detailed for the duty.

4. The Batta Memoranda, after being received by the latter individual, are disposed of in the following manner. The receiving clerk keeps an account in which he enters the number and other particulars of each memorandum, at the same time correspondingly numbering and dating it. Until the 4th March 1874 he had nothing more to do with the memoranda than to distribute them to the clerks in charge of the particular departments. After receipt by the departmental clerks the memoranda stamps had to be destroyed, the memoranda themselves taken to the Subordinate Judge for initials, and, finally, processes had to be prepared, the signature of the Judge obtained, and the processes made over to the Nazir's Department for service. The Judge insisted that all stamps should be obliterated before the memoranda were brought to him for his initials. On the 4th March 1874, for no particular reasons it seems, but as an additional check, the Subordinate Judge altered this procedure and entrusted the duty of obliterating the stamps to the receiving clerk instead of to the departmental clerk.

5. A very little consideration will serve to show that the procedure followed up to 4th March 1874 left open a wide door for dishonesty, because the issue of processes after the receipt of the Batta Memoranda, on which, except in rare cases, no order of the Judge is required is a mere matter of routine, and the departmental clerk, if he wished to be dishonest, (as in this case) had only to omit showing the memoranda to the Judge, and at the same time to omit obliterating the stamps, to prepare the processes in due course, and issue them, and then the unobliterated stamps were in his hands to do any thing he chose with them without any one being a bit the wiser.

6. The change in the procedure made on the 4th March though still defective in certain respects was beneficial in this way that, except with the collusion of the receiving clerk, the same thing could not happen; and the Subordinate Judge points to the facts disclosed by the above figures, that whereas in February sixty-five memoranda in the Small Cause Department seem to have been abstracted, the number in March was only eight, in June nine, and in July and in August only three, and the defalcations ceased as soon as the departmental clerk concerned was, for reasons mentioned, made to do other duty. The Subordinate Judge thinks that the memoranda missing, subsequently to 4th March 1874, were abstracted merely to give color to the previous frauds, but it is obvious that unless the receiving clerk (against whom there is no suspicion) was very strict in the performance of the duty of punching out the heads of the stamps, the dishonest departmental clerk might safely be trusted to take advantage of any lapse he made in this duty.

7. Having explained how the door for defalcations was left open, a few remarks only are required to fix the guilt in this case. The 8th Gumastah (P. Govinda Menon) it seems had charge of the Batta Memoranda in the Small Cause Department from December 1873 when the defalcations fairly began, till September 1874 when they ceased on his being transferred to other duty. He is also shown to have had to do with the one missing memorandum received prior to December

* It is the practice of the Court to endorse such a certificate on each process before it is made over to the Nazir's Department.

1873, for the endorsement on the process itself, certifying* the receipt of the batta, is in his handwriting. There is also direct and evidently reliable evidence of his having disposed of two Court fees stamps worth Rupees 5 and Rupee 1, respectively; and, finally, on the 10th instant, just after these frauds had come to light, this individual produced Currency Notes of the aggregate value of Rupees 320 to the Subordinate Court Sheristadar, with a request that fresh memoranda might be substituted for the missing ones. The Subordinate Judge has sent up the Notes to me, and it appears that P. Govinda Menon now denies having produced them at all. Of the fact, however, there can be no doubt, and it is moreover capable of being satisfactorily proved. Under the circumstances, I have requested the Subordinate Judge to place the whole matter in the Collector's hands, and doubtless that Officer will in due course seek the orders of Government as to what is to be done with the Currency Notes.

8. This report would, I think, be incomplete were I not to express an opinion as to how such frauds should in future be checked. A great deal is already before Government on this subject, and I shall therefore try to be as brief as possible.

9. In the Civil Courts, Process Service stamp duty is leviable on such an immense number of different kinds of documents that, in most cases, it is impracticable to leave the entire check, (i. e. the receipt, the examination, and destruction) in the hands of the presiding Judge. In most Courts a man's whole time is employed in receiving such documents alone and noting the value of the stamps on them. In some Courts, as for instance in a Subordinate Court with a large Small Cause Jurisdiction, the work is so heavy as to necessitate the employment of two men. It is out of the question therefore to expect the Judge, as a general rule, to receive such documents in person, and yet I think he can exercise an effectual check, (1) by seeing that each stamp is first brought up to him whole and intact at which time he should initial the document to which it is affixed; and (2) by either having the heads of the stamps punched out then and there in his presence and destroyed in cases where that can be done, or by entrusting the first portion of that duty to the highest ministerial officer of the Court and to no other, and by insisting on the production of the heads afterwards to be burnt or destroyed in his presence. The Court fees stamps on some documents (Plaints, Appeals and a few others) cannot be destroyed at once, because the papers have to be examined by the departments before being filed to discover whether mistakes have been made, &c. In the case of such documents I have made it the practice of my Court to have noted on them, at the time of their receipt, the date of receipt and the total value of the stamps whether impressed or affixed; after this they are brought to me to be initialled. In future I propose to make each individual deputed to receive Court fees stamped documents, keep an account with a general consecutively running number for all sorts of papers, whether they be Plaints or Appeals, or Miscellaneous petitions, or Batta memoranda or Vakalatnamahs, or copies of Decrees or Judgments, or applications for copies, or any other papers which are required to be presented in Court with unobliterated Court fees stamps affixed to them. By means of this general number and date a ready means will always be at hand to detect whether any papers received have been kept back, and evasion, such as was successfully practised in this case, will, with ordinary care, become impossible. As additional precautions, I have always had the stamps themselves initialled by the receiving clerk before the papers are brought to me each day for my initials, and I have continued in this Court the practice of my predecessor, who directed that the receiving clerk should sit in his immediate presence. In future I propose, as a further precaution, still to have the general number and date of each document written across each adhesive stamp thereon, and I would suggest that in future the stamps should be made a little larger in size with a small space on each left blank for the entry thereon of the general number and date.

10. The Subordinate Judge has recently assimilated the practice of his Court to that of mine, and I am preparing orders on the subject to all the District Munsifs in my district.

From J. K. RAMEN NAIR, Subordinate Judge of South Malabar, to W. LOGAN, Esq., Acting District Judge of South Malabar, dated Calicut, 19th February 1875, No. 28.

In continuation of my letter of the 11th instant, No. 21, I have the honor to report that on my arrival from Tellicherry after five days' leave of which I had availed myself, my Sheristadar,

*Proceedings of the Madras Government, Judicial Department,
12th March 1875.*

Peter John, reported to me that Court fee labels, of the aggregate value of Rupees 318, with the applications for the issue of processes to which they had been affixed, were missing, and that the missing applications were those which were put in on the miscellaneous side of the Small Cause Department and entrusted to the 8th Gumastah, P. Govinda Menon, who was doing duty in that department for the purpose of punching out the figure-head of the labels. He, Peter John, also informed me that on the morning of the 10th instant P. Govinda Menon produced before him four Currency Notes worth Rupees 320, with a request that he should protect him from harm by supplying fresh applications in the place of the missing ones. Thereupon I put Govinda Menon in the box, examined him touching the above matter, and his examination fully satisfying me that he was implicated in the matter, I suspended him with your permission, and instituted regular inquiry into the matter. It appears from the inquiry instituted as above that P. Govinda Menon was, in December 1873, placed in charge of the Miscellaneous Department on the Small Cause side and directed to receive all applications for the issue of processes in the execution cases from the receiving clerk, Kunjunn Nambiyar, to punch out the figure-heads of Court fee labels, to file those applications, obtain my signature thereto, and to prepare and issue processes in accordance with the orders passed on the applications for execution of the decrees in Small Cause suits. These duties he was supposed to perform correctly till September, on which date my Sheristadar having some reason to believe that he did not discharge his duties satisfactorily, recommended his transfer from that department. This I at once did and ordered him to write the Court diary in future, which duty he performed until his suspension.

2. In the early part of December 1874, the Record-keeper informed the Sheristadar, through the Head Gumastah Subrama Iyen, who has the general superintendence of Small Cause Department, that the application for the issue of processes was not placed in the record of an execution case; the Sheristadar then inquired into the matter, and being then informed by Govinda Menon that the application in question was with others kept by him in the almirah in which the Small Cause records were secured, he was directed by the Sheristadar to place all the applications in their proper places. The matter was not, however, then brought to my notice, but Govinda Menon failing to do the work as he was directed by the Sheristadar, this officer reported to me, on the 15th of the same month, that a great number of applications received during the time Govinda Menon was doing duty in the Miscellaneous Department was tied up in a bundle and placed by him in the almirah instead of their being kept in the records to which they belonged, and that an order might be passed directing Govinda Menon to place them in their proper places. I at once recorded a diary requiring Govinda Menon to do the above work within four days, and on the fifth day the Court was adjourned for the Christmas holidays. After the reopening of the Court, the matter was not again brought to my notice, although Govinda Menon failed to do the work completely. My suspicion was not in any way roused by the representations made to me by the Sheristadar, because the words expressed by him clearly showed that all the applications were then in existence.

3. It also appears from the inquiry now made that Govinda Menon, after finishing a part of the work, expressed his inability to do the whole work single-handed, as he had daily to write the Court diary. The Sheristadar then thought of sending a few Gumastahs to assist Govinda Menon, but finding it impossible to do so on Court days, he waited for the first opportunity. On my availing myself of five days' leave from the 6th instant, the Sheristadar sent a large number of Gumastahs to assist Govinda Menon. They searched for the applications, but to the astonishment of every one in the Court it was discovered that great many of those applications were missing. The matter, as I have already said, was brought to my notice on my arrival from Tellicherry, and I lost no time in sending the Sheristadar and his subordinates to the record-room to search every paper that was received in this Court from the time the Court fee labels came into use. The search was very carefully conducted, and a fresh list, prepared by the Sheristadar, shows that applications with Court fee labels affixed to them worth Rupees 340 were missing. Then the question is what has become of these applications. I have not the slightest doubt in my mind that they have been destroyed by Govinda Menon with the sole object of appropriating the Court fee labels affixed to them, and the following are the reasons which have led me to this conclusion.

*Proceedings of the Madras Government, Judicial Department,
12th March 1875.*

4. The Sheristadar reports that there is not a single case in which a Court fee label was removed from any of the other documents in the record, and that all the applications that are missing are those that are proved by the records to have gone into Govinda Menon's hands while he was doing duty in the Miscellaneous Department. In his examination, Govinda Menon himself admits having received these applications from the receiving clerk, Kunjunn Nambiyar. He also admits that it was his duty to have placed them in the records to which they belonged. This duty he did not, however, perform, and the reasons given by him in justification of his default are most puerile and untrustworthy. He says that somehow or other he failed to obtain my signature to a few applications on the day they were received, and he was afraid to bring them to me afterwards, because he heard me rebuking other Gumastahs for not bringing papers to me for signature on the very day they were received, and that the applications received subsequently were not brought by him for my signature, because he thought of first clearing up the arrears and then bringing them up for my signature. That these explanations are false is proved by the fact of his having obtained my signature to a great many of the applications received subsequent to the presentation of the missing applications. The fact of the discovery of eighty-six applications in the record without my signature, and the fact of Govinda Menon's not having even prepared those applications for my signature also tend to show the falsity of his explanations. The applications are missing in 147 execution cases, and they were received in Court as stated below:—

1 in June	1873.
12 „ December	„
46 „ January	1874.
65 „ February	„
8 „ March	„
9 „ June	„
3 „ July	„
3 „ August	„

Thus the greater part of the missing applications belongs to December 1873 and January and February 1874, during which time the duty of punching out the figure-heads of the labels was entrusted to Govinda Menon himself. I never signed any papers unless the Court fee labels were cancelled by punching out the figure-heads, and this, I am strongly of opinion, induced Govinda Menon to keep back from bringing those applications for my signature, as he had resolved to appropriate the Court fee labels affixed to them. From 4th March 1874, the receiving clerk himself was directed to punch out the figure-heads and then distribute the applications to the several departments. This was done not because any fraud was discovered in any department, but because it was thought to afford security against any fraud being committed. One application of June 1873 is missing, but the endorsement on the order certifying the receipt of the batta appears to have been made by this very Govinda Menon. That subsequent to 4th March 1874 he had less opportunities of stealing the labels is plain from the fact of the loss of a small number of labels subsequent to that date and until he was removed from the Miscellaneous Department. Govinda Menon's admission that all the applications received by those who did duty in the Miscellaneous Department, both before and after him, are kept in their proper places, tells strongly against his conduct.

5. We are not also wanting in direct evidence to prove that Govinda Menon has unlawfully abstracted Court fee labels. The statements of Arakel Seyed Ali, Decree holder in Small Cause Suit No. 245 of 1874, prove to my entire satisfaction that Govinda Menon sold him a Court fee label worth Rupees 5, and made a present of another label worth 1 Rupee. Govinda Menon admits he prepared a warrant of attachment in the case of the execution of the above Decree before the formal application was put in by the Decree-holder's Vakil, Gopala Menon. The Decree holder swears that he paid batta (Rupees 5) in money into Govinda Menon's hands. The Court's copyist, Vadakepatta Govinda Menon, proves that he wrote the application, marked B, at the request of the 8th Gumastah, P. Govinda Menon. The Vakil and his Gumastah Shanguren Nair, swear that when the Vakil affixed his signature in the application, no label was affixed to it; and the Decree holder

*Proceedings of the Madras Government, Judicial Department,
12th March 1875.*

again swears that the label was affixed to it by Govinda Menon himself. The preparation of the warrant by Govinda Menon before the deposit of the batta into Court, and his subsequent interference in the preparation of the application, fully establish his guilt. Again, the above Decree holder swears that Govinda Menon instigated him to put in a petition in the Magistrate's Court against a Collector's clerk, and supplied him with a stamp of one Rupee, requesting him to procure eight annas stamps in exchange from the Huzur office. This liberality of Govinda Menon has, I have no doubt, proceeded from his having dishonestly become possessed of the Court fee labels. I believe every word spoken by the above Decree holder, as his statements are fully corroborated by public documents, and by the evidence of men of respectability. At the close of Seyed Ali's examination, Govinda Menon requested me to examine the Collector's clerk above alluded to, in order to ascertain whether there was any ill-feeling between them, and I fully complied with his request. V. Ramen Menon, the Collector's clerk, was examined, and he stated that he and Govinda Menon have been all along on good terms. This statement, I regret to observe, is a palpable falsehood. It can be seen from the answers given to the questions put by the Court that, until lately, these two persons were at deadly enmity.

6. The evidence of a Komutti witness, who was produced before me, goes to show that Govinda Menon tendered certain Court fee labels to him on account of the price of certain pieces of cloth which Govinda Menon purposed to purchase. The moment this witness began to speak about Court fee labels, Govinda Menon explained that he was a tutored witness; but I may justly observe that his demeanor in the witness-box gave me no reason to believe that he was deposing to facts which were untrue.

7. Above all, Govinda Menon is proved by the evidence of the Sheristadar and the second Gumastah, Ayyathura Putter, to have deposited with the Sheristadar Rupees 320 in Currency Notes, with a request that fresh applications may be supplied in the place of the missing ones, and that he may be thus extricated from the trouble into which he has fallen. Govinda Menon denies the fact, and this denial fully establishes that his guilty conscience prompted him to tender the Notes.

8. I submit, herewith, all the papers connected with the inquiry I held into the case, and await your orders in respect to the further steps I am to take in the matter.

9. The delay in submitting this report was owing to the absence of witness Shangaren Nair, whose attendance was procured only yesterday.

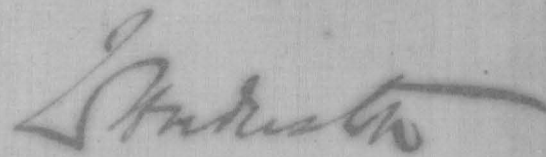
No. 73. ORDER THEREON, 12th March 1875, No. 583-A.

Ordered to be communicated to the High Court in view to the issue of such instructions to the Courts in general as may be deemed suitable to impede similar frauds in future.

2. The Government assume that the intention of the District Judge in sending the case to the Collector was to ensure the criminal prosecution of the suspected Gumastah of whose punishment no mention is made. The Government await the Collector's report on the subject. They do not think it necessary to apply to the Government of India for a change in the size of the stamps.

3. The papers will be communicated to all District Judges and Collectors of Districts for information.

(True Extract.)



Chief Secretary.

To the Honorable the Judges of the High Court.
„ all District Judges.
„ all Collectors.
„ the Revenue Department.

Exd. T. O'Connor.

112

To the Board of Revenue De. 5 April

281091
Revenue Dept
Dist. of 1875 Madras.

JUDICIAL.

7.
THE HON. THE JUDGES
OF THE HIGH COURT,
&c., &c., &c.

Dated March 12th
1875
Recd. — 24
25

G.O., 12th March 1875, No. 583 A.

MARCH.
Nos. 72-73.

Calicut Zillah.—Orders passed on a report by the District Judge of Calicut of certain Court Fees Stamp defalcations discovered in the Court of the Subordinate Judge at Calicut, and the papers communicated to all Collectors and District Judges for information.

281098
Comm. to the
Board of Revenue
31 March 75