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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

G.O. No.	1560	Press.
B.P. No.		Mis.
Dated	26.6.1878	197 .

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GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

29th May 1878, No. 1124.

Process Service by Police or Special Establishment.

Read the following papers :—

From the District Magistrate,	North Arcot,	2nd May 1877,	No. 60.
"	"	South Arcot, 20th December 1876,	No. 69.
"	"	Bellary, 6th March 1877,	No. 110.
"	"	South Canara, 12th May 1877,	No. 801.
"	"	Chingleput, 11th August "	" 174.
"	"	Coimbatore, 23rd November 1876,	No. 83.
"	"	Cuddapah, 31st May 1877,	No. 1274, (Extra).
"	"	Ganjam, 21st July 1877,	No. 2486.
"	"	" 14th March 1877,	No. 224.
"	"	Godavery, 26th March 1877,	No. 118.
"	"	Kurnool, 23rd November 1876,	No. 579.
"	"	Madura, 12th May 1877,	No. 344.
"	"	Malabar, 5th May 1877,	No. 46.
"	"	Nilgiris, 11th January 1877,	No. 2.
"	"	Nellore, 21st November "	" 750.
"	"	Salem, 22nd January 1877,	No. 40.
"	"	Tanjore, 25th November 1876,	No. 4295.
"	"	Tinnevely, 24th November 1876,	No. 425.
"	"	Trichinopoly, 23rd May 1877,	No. 61.
"	"	Vizagapatam, 15th April 1877,	No. 211.
"	"	North Arcot, 17th January 1877,	No. 163.
"	District Judge,	South Arcot, 2nd February "	" 381.
"	"	South Canara, 3rd April "	" 7.
"	"	Chingleput, 30th November 1876,	" 502.
"	"	Coimbatore, 27th "	" 8.
"	"	Cuddapah, 29th "	" 67.
"	"	Ganjam, 19th January 1877,	No. 140.
"	"	Godavery, 7th December 1876,	No. 356.
"	"	Kistna, 11th December 1876,	No. 93.
"	"	Kurnool, 28th November 1876,	No. 8.
"	"	Nellore, 1st December 1876,	No. 190.
"	"	Madura, 2nd December 1876,	No. 443.
"	"	North Malabar, 28th November 1876,	No. 302.
"	"	South Malabar, 24th November 1876,	No. 296.
"	"	Salem, 15th December 1876,	No. 6.
"	"	Tanjore, 20th December 1876,	No. 1269.
"	"	Tinnevely, 19th December 1876,	No. 678.
"	"	Trichinopoly May 1877,	No. 191.
"	"	Vizagapatam, 2nd March 1878,	No. 162.
"	"	From the Inspector-General of Police, 21st November 1876,	No. 5228.
"	"	Board of Revenue, 26th December 1876,	No. 3291.
"	"	" 8th April 1878,	No. 966.
"	"	Government of India, 21st February 1878,	No. 214.

No. 146.

ORDER THEREON, 29th May 1878, No. 1124.

In their Resolution, dated Simla, 28th October 1876, No. 713, the Government of India stated several objections to the system obtaining in the Madras Presidency of serving Criminal Process by the agency of the Police; and they proposed, in view to determining a question of administrative detail, to invite opinions from other Governments before coming to a final decision on the subject. In their letter, dated 21st January last, No. 214, they inquire whether this Government desire to make any observation on the subject of their Resolution.

2. On a general consensus of opinion among the several District Magistrates and Officers of Police who were consulted at the time, and whose letters are recorded in the Proceedings of this Government, dated 1st February 1875, No. 217, this Government strongly advocated the continuance of the present system of service of criminal process by the Police, and earnestly deprecated the substitution of a system which would revive all the evils of the old batta system, and would raise a rival force alongside the Police to do what is avowedly Police work, without that protection against oppression and extortion, and those guarantees for discipline, order, and punctuality which the regularly organized constabulary is calculated to ensure. And this view, so taken by this Government, was pressed upon the Government of India in the letter from this department, dated 1st August 1877, No. 157.

3. In deference to the contrary views entertained by the Government of India, G.O., 7th November 1876, No. 2305, and preparatory to re-considering the question, this Government again called for the opinion of experienced officers in Magisterial and Judicial charge of Districts, as well as of the Board of Revenue as regards the process system of the Revenue Courts, and of the Inspector-General of Police; and the papers now before Government are the replies received from these authorities.

4. Of twenty District Magistrates consulted, fourteen are in favor of the present system of service by the Police, which they report works satisfactorily, is not open to objection, and is in consonance with the law. Six District Magistrates are disposed to try the system of a separate establishment of process-servers suggested by the Government of India, partly because they think it more consistent with the Court Fees Act, partly because they think that service by the Police is open to delay, and partly because the Native Sub-Magistracy are in favor of having a separate establishment under their own immediate control. Of nineteen District Judges, twelve have declared in favor of the present system; and seven are in favor of trying the experiment of serving criminal processes by Court Fee Peons, partly because service of civil process by such agency has worked well, partly because fees levied under a special law should not be devoted to the general Police of the country, and partly because the Native Sub-Magistracy are not in favor of the Police; but nearly all these seven Judges declare that they have themselves no personal experience of the working of the present system. The Inspector-General of Police gives cogent reasons why a disciplined body like the

DISTRICT MAGISTRATES

In favor.	Against.
North Arcot.	South Arcot.
South Canara.	Coimbatore.
Bellary.	Godavery.
Chingleput.	Kurnool.
Cuddapah.	Madura.
Ganjam.	Salem.
Kistna.	
Malabar.	
Nilgiris.	
Nellore.	
Tanjore.	
Tinnevely.	
Trichinopoly.	
Vizagapatam.	

DISTRICT JUDGES

In favor.	Against.
North Arcot.	Trichinopoly.
South Canara.	Kurnool.
Chingleput.	North Malabar.
Coimbatore.	South Arcot.
Cuddapah.	Ganjam.
Kistna.	Godavery.
Madura.	Tanjore.
South Malabar.	
Salem.	
Tinnevely.	
Nellore.	
Vizagapatam.	

Police should be employed in serving Criminal process, and points out that there is no evidence of the visits of the Police being distasteful to the villagers. The Board of Revenue report that establishments for service of process in Revenue Courts are entertained only in eleven districts; that the system in these districts has worked satisfactorily; that the number of peons employed is so small* that there is no difficulty as to supervision; that no complaints have been made against the peons of inefficiency or misconduct; that in the other districts no establishments are maintained, as the work is light and the income so small as not to admit of their entertainment; and that in these districts the Judicial processes of Revenue Courts are served by the taluq peons employed under the Arrears of Revenue Recovery Act, or by special peons employed temporarily for the purpose.

	Number of Peons.
*Ganjam	5
Godavery	8
Kistna	4
Bellary Sub-Division	3
Chingleput, North	3
North Arcot	4
Tanjore	6
Salem	4
Tinnevely	5
Madura	8
South Canara	4

are served by the taluq peons employed under the Arrears of Revenue Recovery Act, or by special peons employed temporarily for the purpose.

5. The objections taken by the Government of India to the employment of Police Constables in process serving may be thus stated;—

- I. If fees are levied according to the table fixed by the High Court and sanctioned by the Government of India under the authority of the Court Fees Act, the Government are bound to employ the establishment constituted in accordance with those rules; and the employment of the Police in process serving is not in consonance with the intention of the law.
- II. The object of the Court Fees Act was partly to relieve the Police of their strength was said to be inadequate and their lapsed, and partly to check facilities for fictitious or criminal complaints; while service by the Police was considered objectionable, not only because it took the constables away from their more important duties, but also because it was thought to have a demoralizing effect by keeping them away from supervision.
- III. It is believed that in most parts of India, the visits of Policemen to villages are strongly disliked by the people.
- IV. The introduction of a number of low paid appointments at the bottom of the list is sure to damage the rate of promotion and prospects of the service, already not too bright.

6. On the first point, the Government of India put forward the proposition that to adopt the system advocated by this Government would necessitate a modification of the existing law. The true position, however, is exactly the reverse. The Court Fees Act is a mere fiscal enactment to provide ways and means for covering the cost of certain services. The High Court is called upon, by Section 20, to frame rules for fees chargeable for serving and executing the processes of the Criminal Courts, and for the remuneration of the persons employed in such service. These rules are subject to alteration from time to time, and they cannot have any force or effect unless they are first confirmed by the Local Government and sanctioned by the Governor-General of India in Council. It is competent therefore to the Government, whether Local or Supreme, to suggest alterations as to establishment before they approve and confirm the rules so drawn. The fees are not paid to the policeman or to the peon employed in serving process, but are credited to the revenues of the State; and it is for the State to remunerate the agency it elects to employ or is required by the law to employ, in the service prescribed by such law. Two years later than the Court Fees Act, the Code of Criminal Procedure in force was enacted; and while the former is merely a piece of fiscal legislation to find ways and means, the Code is the deliberate embodiment of law to guide and govern the procedure of the Magisterial and Judicial Courts of the country; and where the two do not appear to be in harmony, the Code must be

taken to prevail, both because it is the later enactment, and because it is intended to lay down the procedure of the Courts.

7. Section 153 of the Code of Criminal Procedure enacts that "a summons shall ordinarily be served through a Police Officer; but the Magistrate issuing the summons may, if he see fit, direct it to be served by any other person." Section 161 of the said Code enacts that "a warrant shall ordinarily be directed to a Police Officer; but the Magistrate issuing a warrant may, if immediate execution be necessary and no Police Officer be immediately available, direct it to any other person." Thus it is laid down by the existing law that a summons and a warrant shall, as a rule, be served or executed by a Police Officer. In the case of a summons, the option to employ any other person is with the Magistrate, and not with the Government; and then only, if the Magistrate has some good reason to depart from the rule as to the officer whom the law directs shall be ordinarily employed. In the case of a warrant, the law is still more peremptory: the warrant is to be ordinarily directed to a Police Officer for execution; and only when a Police Officer is not immediately available, is the Magistrate issuing the warrant at liberty to employ any other person. In the face of this express law, the normal serving of criminal process by a special body of batta peons, or process-servers other than the Police, would be absolutely illegal. The Police Officer is ordinarily the only proper person to serve a summons or execute a warrant; and no other person can be ordinarily employed in such service, unless the stringent provisions of Sections 153 and 161 of the Code of Criminal Procedure are first modified, or the sections themselves altogether removed from the Statute Book.

8. On the second point, a variety of reasons may be adduced why, in the Madras Presidency at all events, the observations of the Government of India do not hold good. It is because the organization of the Madras Police is such as to peculiarly fit it for process service, that this Government so strongly advocates the employment of the Police, in consonance with the requirements of the law, in the serving of criminal process. Police stations are situated all over the Presidency at small distances apart from each other, and every village within a few miles of a station is regularly and constantly visited by beat constables, who may almost serve these processes in the execution of their ordinary regular daily duty of patrol and inspection. It may sometimes happen that a constable has to be sent specially on this process duty to a distance; but the Government are assured by the Inspector-General that the constable so deputed is seldom away for any length of time: and they are further assured by the same high authority that, in the course of a practical experience extending over sixteen years, he has never observed any trace of a demoralizing effect. And this is the testimony borne by several experienced District Magistrates. The Collector and District Magistrate of Tanjore, now acting as Member of the Board of Revenue, writes that it is no part of the Madras system to keep constabulary at their station-houses like soldiers in their barracks; that the very life of their usefulness consists in their being frequently on beat or otherwise among the people; that it is the manner in which they discharge their duties among the people that constitutes the chief object of the care and supervision of their superior officers; and that it can only be by constant contact with the people—the more casually the better—that they can exercise their useful office of being preventers of crime.

9. It is not proposed to burden the normal strength of the Police with the additional duties of process service. It was because the strength of the Police was barely sufficient to cope with the watch and ward of the country, that this Government resolved to add a sufficient staff of constables to the existing force for process service, the cost of whose maintenance would be covered by the fees levied under the law for the service of such process. And this additional staff may be taken to be extremely reasonable, as it gives only about twenty additional constables, on the average, to each district to enable the Police to undertake the service of processes.* This additional staff is part of the General Police, under the same complete control and supervision as the general force; and as stated by the Superintendent of Police, Nellore, an officer of

* Vide Statement enclosed in Inspector-General's letter.

thirteen years' standing, no policeman employed in serving a process is ever more than twenty-four hours away from the supervision of his superior officer.

10. As to the third point, it is affirmed that it is not a fact in this Presidency that the visits of policemen are unwelcome to the villagers: on the contrary, it is asserted that the policeman's visit is actually welcome to the people; and the truth of this assertion is evidenced by the fact that not unfrequently the Village Police lines have been provided by the villagers voluntarily at their own cost. It is maintained that a process served by a policeman is more likely to be treated with respect than if it were served by a batta peon. The people know that a policeman is not entitled to any fees; and the testimony borne by the officers of Government is that there are no complaints of oppression or extortion on the part of the Police, in connection with the process service. If the visits of the Police are distasteful to any, they are only so to the criminal classes.

11. On the fourth point, the Inspector-General of Police reports that the number of constables for process service added to the force maintained in each district, is not sufficient to affect the rate of promotion in any appreciable degree, especially as there must always be a number of men who are not qualified to rise to the rank of station-house officers, and who consequently do not expect the promotion; that the additional constables being graded in classes, there is no retarding of promotion in the grade of constable; that there is no actual necessity to add to the higher ranks of the force, with a view to accelerate promotion; and that the sort of separate supervision that could be provided over Court Fee Peons would necessarily fall very far short of the exact discipline of the Madras Police, in which the system of check and control is as complete as possible. As put by the Session Judge of Cuddapah, the Police are under discipline, know how to obey orders, and are regular and methodical in their habits; while batta peons are but poor creatures, with but little consciousness of responsibility and duty. As observed by the Session Judge of Salem, the service of summons in civil cases cannot be quoted as altogether analogous: the comfort and attendance of witnesses are looked after by the parties themselves; and there has not been such success in serving civil process as to warrant its extension to criminal service, as cases are by no means infrequent in which there is cause to suspect that batta peons connive at the evasion of process by the persons to whom they are addressed. There can be no promotion among batta peons, for they can all be but of one class; and that amount of efficiency cannot therefore be expected from them which can be looked for from the Police who have the prospect of advancement. Unless an amount of extra expenditure is incurred, which the receipts from the Court fees cannot possibly cover, no responsible or efficient supervision can be provided for Court Fee Peons. The Magistracy have enough to do with their own legitimate work, and cannot spare time for organizing, supervising and controlling a body of batta peons. These men would necessarily be left to their own devices. As forcibly observed by the District Judge of Madura, it is far better to have criminal processes served by a disciplined force like the Police, than to surround every Magistrate with a separate band of disorderly and rapacious peons.

12. For the foregoing reasons, this Government abide by their repeatedly and strongly expressed opinion that the maintenance of the present system of service by Police is eminently desirable; the Process Service Fees being applied to provide the necessary addition to the force for the purpose.

13. Ordered that copy of these Proceedings be forwarded for the information of the Government of India.

(True Extract.)

Chief Secretary.

To all District and Session Judges.
 „ all District Magistrates.
 „ the Board of Revenue.
 „ the Revenue Department.
 „ the Inspector-General of Police.

Abstracts of Replies on the question of serving Criminal Process.

The Government, by their Order, dated 7th November 1876, No. 2305, referred

G.O., 7th November 1876, No. 2305.

From Government of India, 28th October 1876,
No. 713.

Objecting, for various reasons, to the Madras plan of serving criminal process by the Police; but before coming to final decision, wishing to have the opinion of other Governments formed from their experience, and what they think of the Madras proposal.

to all District Judges and District Magistrates a Resolution of the Government of India regarding the system in vogue in the Madras Presidency for the service of processes in criminal cases, and called on them for an expression of opinion on the working of the present system of employing the Police in the service of criminal processes, and on the alternative suggestion of the Government of India that

such should be served by the special agency permitted by the Court Fees Act.

2. The Inspector-General of Police was also called upon for any remarks he might desire to offer on this subject, as also the Board of Revenue for any remarks on the Government of India reference to the system of serving Revenue process.

3. The Magistrate, North Arcot, says that the majority of the divisional officers are of opinion that a separate establishment is necessary to secure the satisfactory service of criminal process, and

From the District Magistrate, North Arcot, 25th May 1877, No. 60.
that the duty should no longer be entrusted to the Police, whose time can be more advantageously otherwise employed; and attributes the frequent great delay in the service of processes, and also in their return to the office of the Magistrate by whom they are issued, to the time taken up in passing the process on from one Beat Constable to another, instead of being sent straight back after service. He considers that a separate establishment to perform the duty of executing processes is much called for; but he would strongly deprecate its separation from the Police Force and from Police superintendence. He recommends a suitable addition to be made to the Police Force to enable a certain number of men being detailed from time to time for execution of criminal processes, but who at other times should be employed on ordinary Police duty. These men should be dressed as Police Constables, but should, when engaged in the service of processes, be distinguished by a special badge, and should receive more pay than ordinary Constables.

4. The Magistrate of South Arcot remarks that there is a consensus of opinion among almost all the Native Magistrates that the employment of Police Constables to serve processes is productive of unnecessary delay in the disposal of cases owing to the length of time necessary to be allowed for their service by Beat Constables, and that this delay is often so great that the cases come on for hearing before the returns are made to the processes; and that if process-servers were employed who could be sent direct to the place where the process was to be served, it is considered that much time would be saved and the processes be equally well served. The European Divisional Officers, however, think differently. He himself considers that if the fees levied for the service of criminal processes were devoted to the entertainment of an establishment of process-servers on monthly pay, placed entirely under the orders of the Magistrates of the Courts to which they were attached, for the service of *sommonses only*, their service would be much expedited, but he does not think it would be safe to entrust such men with warrants for execution. If the *sommonses*, on the other hand, were not returned on or before the day appointed, the process-servers could be punished departmentally by the Magistrate with a fine or suspension or dismissal. At present, however, the Police are indifferent about serving *sommonses* with alacrity, as they know they cannot be touched by the Magistrates. The Magistrate sees no reason why all warrants should not be served by the regular Police Force and *sommonses* by stipendiary process-servers.

5. The District Magistrate, South Canara, recommends the continuance of the present system of the service of criminal processes by the Police, as he thinks that it would ensure greater expedition in the

From the District Magistrate, South Canara, 12th May 1877, No. 801.

service of processes than could be obtained if they were served through the agency of peons entertained under the Court Fees Act; and the prompt disposal of criminal cases is a thing very much to be desired. If, on the other hand, a special process service establishment be entertained, a number of process-servers would have to be attached to the office of each Magistrate, whose local jurisdiction is more extensive than that of several Police stations put together, and whose head-quarters are not always centrally situated. The process-servers would in many cases have to travel long distances, and considerable delay in the service and return would be the result. The Magistrate thinks that parties served with *sommonses* by the Police would show a greater alacrity in obeying them than they would be disposed to do were the process served by an ordinary peon; and states that the present system has worked well, and that he would be sorry to see it abandoned in favor of one which, he believes, will be found, if tried, to be attended with much practical inconvenience.

6. The District Magistrate, Chingleput, states that, apart from the question of the legality or otherwise of employing the Police on serving processes, he is strongly of opinion that no good will result from the change, and that it is better to allow the Police to continue serving processes in non-cognizable cases. The Joint and Deputy Magistrates are of opinion that the present system is all that can be desired, and strongly recommend its retention.

7. The District Magistrate, Coimbatore, states that the suggestion of the Government of India might well be given a trial, and thinks that with a body of men enrolled in numbers sufficient and adequately paid for the ordinary average service in each Magistrate's Court, and furnished with distinctive belts or badges of office, the special agency for the service of process suggested by the Government of India would work successfully.

8. The District Magistrate, Cuddapah, states that the general opinion of the officers of the district is that the system of serving processes through the Police works very fairly, and that it would not

From the District Magistrate, Cuddapah, 31st May 1877, No. 1274.
be desirable to supersede existing arrangements by the employment of special peons, and remarks that criminal processes have been for years served by the Police without any visible demoralizing effect upon that body, and that, apart from the consideration that by employing a special agency there would be thereby created a reserve of trained men ready for emergencies, it is preferable to employ the Police in serving processes. He further states that the Police are to a certain extent trained and disciplined men; are under constant supervision; are well known to the people, who are aware that they are not entitled to any fees; that their spare time can be utilized for the protection of the public, instead of being, as in the case of peons, spent lounging about in a cutch-erry; that they are further, owing to their patrol work, acquainted with every one living within the circle within which they would have to serve processes. The Magistrate says he can see nothing whatever in favor of the employment of a staff of special peons as process-servers, and believes that the system would be costly and unsatisfactory.

9. The Acting Head Assistant Magistrate remarks that the Court Fees Act is mainly a fiscal Act, and its chief object is to provide ways and means. The Code of Criminal Procedure is the Act which regulates magisterial and judicial procedure, and where the two are not in harmony a preference should apparently be given to the intention of the latter, where the question is one of procedure. The ordinary procedure directed by the Code is that now followed. No doubt the present system could be brought into harmony with the Court Fees Act by an alteration in the rules framed by the High Court under the Act and sanctioned by the Government of India, and on the whole, he thinks, it is preferable to the alternative proposed.

10. The District Magistrate, Ganjam, states that in his opinion the Police, an organized body under complete control and supervision, and posted as they are throughout every taluq and division

From the Officiating District Magistrate, Ganjam, 21st July 1877, No. 2486.

thereof, are much more competent to carry out the service of processes than any separate body of process-servers employed at the head-quarters of the Magistrate could ever be; that the service would be carried on with much greater check and less liability to abuse than if a separate establishment were maintained, and the same work would be done at much less cost as part of the routine work of the Police than if a separate establishment were kept up for the purpose.

11. The Principal Assistant Magistrate remarks that he has heard no complaints in the district of injustice or oppression in the serving of processes issued from Magistrates' Courts, and, so far as he can judge, a Policeman is better suited to work of the kind than an ordinary peon; and states that it has been urged as one objection to employing the Police as process-servers that the work constantly takes them to a distance from their stations to the detriment of their legitimate duties; but that it may however *per contra* be urged that even if the serving of criminal processes be entrusted to another body of men, the Police will not thereby be relieved from the necessity of going into out-of-the-way villages, and in most cases two men may have to go to a village, one on beat and one to serve processes, when one man might easily have done the two duties with scarcely any extra trouble.

12. The District Magistrate, Godavery, states that the Joint Magistrate thinks that the system of serving magisterial processes by means of the Police has worked admirably, but that the other Division Magistrates wish for a separate service of process-servers, and thinks that the service of summonses would not be considered so important as other Police duties, and that they would not be properly attended to, and that a separate process service establishment is necessary.

13. The District Magistrate, Kistna, states that his district officers are generally of opinion that the system now in force works well, and that processes served by the Police are more punctually served and with more expedition than those given to process-servers, and thinks that the fees collected will not be sufficient for an effective process-serving establishment; that processes served by the Police are served for the most part by Beat Constables; and that at all events are carried as far as the nearest station to the place of service in that way.

14. The District Magistrate, Kurnool, says that in paragraph 4 of the Government of India Resolution it is implied that the entertainment of additional Constables instead of a special establishment for the service of process is illegal, but he does not see how it is illegal. The rules framed by the High Court are subject to the confirmation of the Government, and if the Government before approving them suggest certain alterations as to the kind of establishment to be entertained for the service of processes, and the High Court acquiesce therein, the amended rules become quite legal. But apart from the question of legality, he adheres to the opinion that the service of processes should be conducted by an establishment distinct from the Police and under the direct orders of the Magistrate, and answerable to him for all delays in the service and speedy return of processes. The Magistrate states further that if the process-service fees collected were made over to the Police Department, it is not certain that a number of Constables proportionate to the fees surrendered will be entertained, unless a distinct department of the Police has the work of serving processes; whereas if the management of the fees were in the Magistrate's own hands, he could always suit the establishment to the assets.

15. The District Magistrate, Madura, says that the Magistrates of the district are in favor of having a separate establishment for serving processes, for which fees may be levied; that the objections made to the present system are that it causes delay in the disposal of petty cases over which

the Magistrate has no direct control, and that it takes away the Police from their proper work and enables them to interfere in those petty disputes, where there is most room for corruption and oppression; and that the number of process-servers which each Magistrate could afford to pay out of his fees would scarcely be sufficient to constitute an uncontrolled and undisciplined rabble hanging about his Court.

16. The District Magistrate of Malabar is decidedly of opinion that it is better to increase the Police Force than to employ a separate establishment for serving criminal processes, and states that it has not been found necessary hitherto to entertain a separate establishment in the district. The serving of criminal processes through the agency of the Police necessitates their coming in contact with the people more than they otherwise would do. Their knowledge both of the people and the localities they live in is thus extended, and if the force is under proper control, this is an undoubted advantage.

17. The District Magistrate, Nilgiris, states that the Joint Magistrate of Wellington has found the present system to work well, and that the Joint Magistrate of Ootacamund expresses a very strong opinion that batta peons are not as trustworthy as Constables. He has formed a very strong opinion that to entrust the service of criminal processes, as is now proposed, to a special body of process-servers would not promote the ends of justice if the scheme be carried out in the manner which he supposes to be intended; and that if the scheme provide for adequate payment and supervision, it will be ruinously expensive. That if in the former case a body of men, such as is commonly known as the "batta peon," be entertained, they will be underpaid, and the Divisional Magistrates will be responsible for their proper control and supervision by the Tahsildar and Deputy Tahsildar Sub-Magistrates. The District Magistrate states that it is most important that the process-serving force be not inferior to the Madras Police; that whether this end be secured by using that force for the service of processes, or by establishing as good a body of men alongside of it, is immaterial to him as a Magistrate; but as a Magistrate he most earnestly deprecates the transfer of these duties to any inferior establishment. The Police perform these duties in his opinion with regularity and despatch which is not likely to be improved upon.

18. The District Magistrate, Nellore, states that the majority of the Taluk Magistrates wish for an additional staff; that the Acting Sub-Collector is for it, but the other divisional officers are against it; that his experience of district work does not justify him in coming to a positive decision, but the advantages of the present system are so obvious that he hopes it will continue.

19. The District Magistrate, Salem, reports that he is not prepared to say that the system now in vogue of employing the members of the regular Police in the duty of serving these processes does not work satisfactorily; but he does not advocate its continuance, as such a course is not only inconsistent with the provisions of the existing law, but is also objectionable for the reasons so fully discussed in the Government of India Resolution. He agrees in thinking that the introduction of a distinct establishment under the Court Fees Act is preferable to the existing arrangement; and he has no doubt that, with proper supervision, a well-organized staff of peons under the Court Fees Act would work well.

20. The District Magistrate, Tanjore, believes that the present system of serving summonses to be working well, and he would be sorry to see it abandoned for the alternative scheme proposed by the Government of India. States that, in addition to the advantages set forth by the Madras and recounted by the Indian Government, it may be mentioned that it is no part of the Madras system to keep constabulary at their station-houses like soldiers at

their barracks—the very life of their usefulness consists in their being frequently on beat and otherwise *among the people*; that it is only by constant contact with the people—and the more casually the better—that they can exercise their useful office of being *preventers* of crime, and thus also do they get into the best position for picking up the threads of detection. Contact with the people leads to the accumulation of notes of information which are all brought back to the superior officers. Every visit to a village for the service of a summons is therefore only an additional casual opportunity for gathering the criminal information of the village, and so far it is an administrative advantage over and above that of the summons being best served by them. It is not his impression that process-service peons would be more welcome in a village than Police Constables. He does not think they would ever be welcome, whereas the Police are often really welcome. He does not understand what system the Government of India proposes for the superintendence of a separate body, for it is not elaborated. If it is thought that Madras District Magistrates can give any real supervision to such details, it is best we should at once admit the position that it must perforce be done most perfunctorily. The Police, however, have a system which has by long painstaking been brought into working order which embraces the whole Presidency, and has a thorough European backbone, and it is better we should use it. The Revenue branch have no such system for the superintendence of the service of their processes. They can only do as well as they can without it. Their poverty of system is no argument for the magistracy throwing away its wealth thereof.

21. The District Magistrate, Tinnevely, states that, in his opinion, the present arrangement, by which all processes in criminal cases are served by the Police, is decidedly better than that proposed by the Government of India, and considers that the Police of this Presidency, from the strict supervision and discipline under which they are kept, are much less likely to make themselves obnoxious to villagers in the discharge of this duty than a regular process-server is. He says it can never pay to have European officers of the standing, attainments, and position of a Superintendent or Assistant Superintendent of Police to watch over the action of process-servers, and thinks that the Police Constable is not looked upon with as much dislike and distrust as a process-server is. He further states that it is a contingent advantage that the service of criminal process through the Police enables an addition to the force to be made which is available on an emergency for other purposes.

22. The District Magistrate, Trichinopoly, reports that the system of serving criminal processes by Police Constables has been working well in his district, complaints of any irregularities or delay in service of processes being very rare, and he does not apprehend any shortcoming in the present system. As regards exercise of proper control, he submits that, under the system at present obtaining, processes issued to persons in distant villages being despatched by post to the officer of the nearest Police stations and served through him, an immediate and proper supervision is being exercised, while as little delay as possible is incurred in the service of the processes. On the other hand, he states that the introduction of a separate agency by the employment of batta peons, who have to travel through the whole length and breadth of the taluq, will not only entail a comparatively long delay owing to want of due and immediate control over them, but also abuses are likely to occur without ever being brought to the notice of the Magistrate. Under these circumstances he strongly recommends the continuance of the present system.

23. The District Magistrate, Vizagapatam, reports that the present system of serving process by Police agency in his district is successful, no complaints having ever been received against the Police for abuses committed by them in the discharge of this duty, and states that the Government of India in their Resolution observe that it will have a demoralizing effect on the Police Force by keeping the Constables continually employed at a distance from a

Police station. In regard to this he observes that the process service is generally done by Constables on beat, and a man is rarely detailed for it as a special duty. He is of opinion that no special dislike to the visits of the Police is entertained by the villagers in general, and if the circumstance of villagers harbouring a dislike against the Police is to be regarded as an argument against the visits of Constables, it seems to be an equally strong one against sending them on beat at all; and further observes that the Constables are comparatively more familiar with the people than the batta peons, as they frequent the villages attached to their own stations throughout the whole year; and adds that it may be presumed that they can serve the processes in much less time than ordinary peons could; and that, though it is to be acknowledged that any addition to the lowest grades only of the establishment of the Police will be prejudicial to their promotion and prospects, the strengthening of these grades gives the officers of the department a larger field for selection of candidates for promotion, and enables sudden calls for men at out-stations to be met with greater promptitude than would otherwise be the case.

24. The Inspector-General of Police remarks that the organization of the Madras Police is well adapted for the service of processes, because Police stations are situated at convenient distances apart, and every village within the limits of a station is visited constantly by Beat Constables, who ordinarily can serve processes in the course of public duty; that there is no evidence whatever in Madras that the visits of Policemen to villages are disliked, and there is every reason to believe the contrary, and that under the Madras system the visits of the Police would still be continued even if no processes were served by them; that the numbers of Police for process serving recently added to each district force are not sufficient to affect the rate of promotion in any appreciable degree, especially as there must always be a number of men who are not qualified to rise to the rank of Station-house Officer, and who consequently do not expect it; that there is no actual necessity to add to the higher ranks of the force with a view to accelerate promotion, while the sort of separate supervision that could be provided over Court Fee Peons would necessarily fall very far short of the exact discipline of the Madras Police, in which the system of check and control is as complete as possible.

25. Adheres to opinion formerly expressed that Police should be used for serving criminal process. It is work to which they are accustomed. The system works well. In this Presidency the villagers have not that dislike to the appearance of a Policeman which the inhabitants of Northern India appear to have.

26. Present system of serving criminal processes by Police works very well and decidedly preferable to the alternative suggestion of the Government of India that such processes should be served by a separate establishment of peons.

Very few complaints against batta peons serving civil processes, but no analogy between serving civil and criminal processes. As promptitude, regularity, and certainty are much more requisite in serving criminal than civil processes, those requirements more likely to be obtained by present system of employing Police.

Would particularly draw attention to paragraphs 7 and 8 of Mr. H. J. Stokes' letter printed in G.O., dated 1st February 1875, as forcibly pointing out the advantages of the present and defects of proposed systems, the objections taken by him having frequently occurred to Mr. Plumer himself.

No doubt the visits of Policemen in villages are distasteful to the criminal classes, but whether the Police serve processes or not, the beat system renders it necessary that the Police should constantly visit every village in the Presidency. It is so long in force that people are quite accustomed to it; and if it is looked upon as an evil, they would rather bear the evils they know than fly to others that they know not of.

Decidedly in favor of the present system being continued.

From the Acting District and Session Judge of South Canara, 3rd April 1877, No. 7.

27. Present system by Police works satisfactorily, and should be continued in preference to the alternative system suggested by the Government of India.

It is not a fact, in this Presidency, that visits of Police in villages are strongly disliked; there is no reason where a Policeman with a process should make himself more unpopular than the same Policeman on his beat.

One of the advantages is that a Policeman with a process may be taken into a village which, from its distance, is seldom visited in the ordinary beat.

Service of civil processes under Court Fees Act by Court Peons is not satisfactory.

28. The experience of his Court is that the Police have worked well in process serving; there are no complaints against them, and he deprecates any change of present system.

29. Strongly averse to the introduction of a separate establishment, and even to the levying of fees for serving criminal processes in all cases other than those in which the Police may arrest without a warrant.

Under the law processes are to be served by a Police Officer, and any other person to be only employed for some special reason, and thus execution by a separate establishment would, in most cases, be illegal.

If a warrant be directed to a Police Officer, he may, under Section 165, endorse to another Police Officer; but if directed to any other, it must be executed by that person alone.

He cannot agree with the Government of India that fees cannot be legally levied unless a separate establishment is constituted. The fee is paid to Government, not to the process-server, and it is for the Government to utilize what establishment they already possess.

30. Judging from his general experience of the ways and habits of Police Officers and batta peons, he has no hesitation in saying that the former are to be greatly preferred as process-servers.

Police, under discipline, know how to obey orders, and are regular and methodical in their habits. Batta peons are but poor creatures, with but little consciousness of responsibility and duty.

31. Is of opinion that process is more likely to be treated with respect when served by the Police, and that the duty of supervising a staff of process-servers, who would have to go into out-of-the-way villages, would present peculiar difficulties.

32. As far as it has come under his observation, the present system of serving criminal processes by the Police is satisfactory. Far better to have such processes served by a disciplined force than to surround every Magistrate with a separate band of disorderly and rapacious peons.

From the Officiating District Judge of South Malabar, 24th November 1876, No. 296.

33. The present system of serving all criminal processes through the Police works well, and it is not advisable to make any change.

Session Magistrates have enough to do without having to supervise a process-serving establishment, whereas the Police Force is already controlled and disciplined.

He fails to see the force of the legal objection raised by the Government of India.

It is just one of those cases in which it is better to leave well alone.

34. The present system of serving criminal processes through the Police works well. It is preferable to that proposed by the Government of India, in that it secures an efficient control over the servers, it utilizes their whole time, and ensures punctual service.

The service of summons in civil cases cannot be quoted as altogether analogous. The comfort and attendance of witnesses are looked after by the parties themselves; and there has not been such success in serving civil process as to warrant its extension, as cases are by no means infrequent in which there is cause to suspect that batta peons connive at the evasion of processes by the persons to whom they are addressed.

The Government of India expect from a class to whom no promotion would be open an efficiency equal to that obtained from the Police, who have the prospect of advancement.

35. There can be no doubt whatever as to which is the better plan. The only possible objection of the Government of India appears to be that service by Police is not strictly in accordance with the spirit of the law, as enacted in the Court Fees Act in 1870, and with the spirit of the rules passed by the High Court, under Section 20 of that Act. But Section 20 permits the High Court to make rules from time to time, and the Criminal Procedure Code was enacted two years after the Court Fees Act; and under the Code it is stringent that a Police Officer is ordinarily the only proper person to serve a summons and execute a warrant. In the face of the law the normal serving of criminal processes by a special body of process-servers would be altogether illegal.

It is quite impossible for any process-server establishment to be under the same control and discipline as a fully officered Police Force, and he would strongly deprecate reverting to the old system. Nor could it be done until Sections 153 and 161 of the Criminal Procedure Code were modified by legislative enactment since they are stringent, whereas the provision of Section 20 of the Court Fees Act are elastic, and contemplate the rules being altered from time to time.

36. There is no reason why criminal processes should not be served through Court Fee Peons. He never received complaints of the unfitness of these persons, and there is no reason why they should not be as much under proper control as Police Constables.

He cannot think it right that fees levied on the service of processes in criminal cases under Court Fees Act should be devoted to the general Police of the country.

37. From his former experience he should say that the present system works well.

But he does not see why criminal processes should not, like civil ones, be sent through a special agency.

(a.) 38. He agrees with the District Magistrate of South Arcot that the present system of having batta peons to serve civil processes works well, and cannot think of a better plan.

(b.) Since writing his letter of 28th November he has placed himself in communication with the Superintendent of Police in Nellore, an officer of thirteen years' standing, and is assured by him that the presence of Police Constables is far from being unwelcome to the villagers; that a Constable taken to serve processes is rarely away from the supervision of a superior officer for more than twenty-four hours, and that there is nothing in process serving of a demoralizing character. These observations are well founded.

39. The service of civil process works satisfactorily. Service of criminal process may well be entrusted to a body of servers separate from the Police.

From the District Judge of North Malabar,
28th November 1876, No. 302.

40. He is decidedly of opinion that service by regular process establishment is infinitely preferable to service by the Police.

He cannot speak from his own experience, but thinks the general opinion of those best competent to form an opinion (Sub-Magistracy) is in favor of the process establishment as against the Police. The European Magistracy is in favor of the Police, but the experience of the Native Magistracy, who take an opposite view, is infinitely greater.

He cannot conceive how cumbrous procedure of service through half a dozen Police Officers can be satisfactory to a Court, or ensure punctual service. Sub-Magistracy are of opinion, unanimously, that there is great delay in service by Police. On the other hand, service by a regular process establishment would be simple, uniform, and direct as in civil suits. The process-server would also be under direct control of the Magistrate, which is not so in the case of the Police. A complaint by himself may be attended to by the Superintendent of Police, but he would have no time to attend to the many cases of complaint which it would be in the power of the Sub-Magistrate to submit.

41. He has not experience to offer an opinion on the question of serving criminal processes by the Police, but is in favor of extending the present system of serving civil process to the serving of criminal process. The necessity for Police service is practically very slight. It is not desirable, in the interests of the people at large, that the simple duty of serving process should be confided to officials possessing extensive collateral power. It is more economical, as not calling for the expenditure of superfluous money.

42. He has no experience of serving criminal process by Police, but considers that serving of civil process by Court establishment works well; the establishment is not an undisciplined rabble, but is under the control of the Nazir.

43. He has very little experience. Magistrate experience was before 1868; but would suggest that service of processes through peons appointed for the purpose under the Court Fees Act is preferable to service by Constables, because it is consonant with the Court Fees Act. The observations of the Government of India in paragraph 6 show beyond doubt that Constables are less popular than Court Fee Peons. Another reason is that no complaints have arisen in respect of service of civil processes by Court Fee Peons.

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Revenue Dept

No 2416

Obdt. of 118781 *Myadras.*

JUDICIAL.

To

ALL DISTRICT AND
SESSION JUDGES,

Esq.,

Esq.,

Esq.

Dated May, 23rd.

Issued

22/6

Recd.

Ampt 24

Recd.

G.O., 28th May 1878, No. 1124.

MAY.

Nos. 146-147.

For Recd.

Process Service Establishment.—Advocating the continuance of the present system of service of Criminal Process by the Police, and copy of these Proceedings forwarded to the Government of India.

Pl 1550

Recorded

28 June 1878

WHL