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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue - DEPARTMENT

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GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

13th December 1878, No. 2518.

Process Service Establishment.

Read the following paper:—

No. 81. *Extract from the Proceedings of the Government of India in the Home Department (Establishments), under date Fort William, 3rd December 1878, No. 11—1195-1206.*

Read the undermentioned papers:—

Home Department Resolution, No. 713, dated the 28th October 1876.
Letter from the Government of Madras, No. 1125, dated the 29th May 1878.
Ditto ditto Bombay, No. 7193, dated 29th November 1876.
Ditto ditto Bengal, No. 1697, dated 4th April 1877.
Ditto ditto North-Western Provinces and Oudh, No. 648-A, dated 31st October 1877.
Ditto ditto Punjab, No. 116-S, dated 27th June 1877.
Ditto Chief Commissioner of the Central Provinces, No. 1746—59, dated 9th May 1877.
Ditto ditto British Burmah, No. 497—29, dated 7th April 1877.
Ditto ditto Assam, No. 1707, dated 30th June 1877.
Ditto ditto Resident at Hyderabad, No. 117, dated 30th January 1877.

RESOLUTION.—These papers relate to the levy of fees for the service of processes in non-cognizable criminal cases under the provisions of the Court Fees Act and to the agency by which such processes ought to be served. In some Provinces a special staff has been organised for the service of such processes, while in other Provinces the service is, as heretofore, effected by the police, notwithstanding that process fees are realised. To the latter system might be taken, it was suggested, the following objections:—

- (a.)—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, should not the Government employ a special establishment constituted in accordance with those rules? And would not the employment of the police in process-serving be contrary to the intention of the law?
- (b.)—The object of the Court Fees Act was partly to relieve the police of duties for which their strength was said to be inadequate, and partly to check facilities for fictitious or greatly exaggerated criminal complaints; and it was considered in some quarters that service by the police was objectionable, not only because it took the constables away from their more important duties, but also because it might have a demoralizing effect by keeping them away from supervision;
- (c.)—It was represented that in some parts of India the visits of policemen to villages were strongly disliked by the people; and
- (d.)—The introduction of a number of low-paid appointments at the bottom of the list might damage the rate of promotion and the prospects of the service which were already not too attractive.

On these objections to employing police constables in serving processes the opinions of all Local Governments and Administrations were invited. The purport of those opinions may be gathered from the following summary of the letters read in the preamble:—

MADRAS.

To the first objection suggested above, the Madras Government reply that the Court Fees Act is a mere fiscal enactment, and that the rules drawn up by the High Court under Section 20 of the Act are subject to alteration and can have no force until confirmed by the Local and sanctioned by the Supreme Government. It is competent, therefore, to the Government (whether Local or Supreme) to suggest alterations as to the establishment before they approve or confirm the rules. The fees are not paid to the policeman or peon employed in serving processes, but are credited to the revenues of the State, and it is for the State to elect and remunerate the agency it employs. Two years later than the Court Fees Act, the Code of Criminal Procedure, now in force, was enacted; and, while the former is merely a fiscal enactment 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; and when 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 was intended to lay down the procedure of the courts. The Madras Government quote the wording of Sections 153 and 161 of the Criminal Procedure Code in support of their view that it is the intention of the law that a summons and a warrant *shall*, as a rule, be served or executed by the police, and say that in the face of this express law the normal serving of criminal processes by a special body of batta peons would be absolutely illegal, unless the stringent provisions of the said sections are first modified, or the sections themselves removed.

As regards the need for relieving the police of extraneous work, and the danger of their becoming demoralized, the Madras Government consider that these objections urged do not apply to the Madras Presidency. Police stations are situated at convenient distances apart from each other, and every village within the police limits of a station is regularly and constantly visited by constables who may almost serve these processes in the execution of their ordinary regular duties. Sometimes a constable may be sent specially on this work to a distance, but he is seldom away for any length of time. The Madras Government are assured by the Inspector-General of Police that in the course of a practical experience of over sixteen years he has never observed any trace of a demoralizing effect by the employment of the police on these duties. It is by no means intended to burden the normal strength of the force with any additional duty; but a special staff has been added to the existing body of constables, and this additional staff is extremely reasonable, as it gives only about 20 extra constables on the average to each district.

As to the third objection, the Madras Government say that the visits of the policemen are not unwelcome to the people, but that, on the contrary, they are welcome; and it is held that the truth of this assertion is evidenced by the fact that not unfrequently 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 special messenger (muzkooree), and there have been no complaints of oppression or extortion by the police in connection with process service.

On the last objection the Madras Government observe that the number of constables added to the force for this duty 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 promotion.

BOMBAY.

The Judges of the Bombay High Court are of opinion that the existing system of serving criminal processes through the police has worked well, and should be continued. The Local Government has offered no opinion, nor is it stated whether any fees are realized for this duty.

BENGAL.

In Bengal a special establishment is retained for this duty and is paid from the proceeds of the fees levied. With the exception of the Commissioner of the Orissa Division (who is in favor of the Madras system) all the other divisional officers have expressed satisfaction at the existing arrangement, and the Lieutenant-Governor does not consider any change of system desirable.

NORTH-WESTERN PROVINCES AND OUDH.

In the North-Western Provinces and Oudh all criminal processes are served through the police when going their rounds in the villages. This work does not interfere with the legitimate duty of the constables, but, on the contrary, it compels them to do patrolling which would otherwise be neglected; nor does it require the force to be maintained at a greater strength than is absolutely necessary for police duties proper. No fees are realized for service of processes. The Lieutenant-Governor questions whether it would be legal to levy process fees unless a special establishment of process-servers were entertained. If this view of the law is accepted, the Honorable the Lieutenant-Governor advises that the law should be so amended as to allow fees to be charged in non-cognizable cases, whether the processes are served through the police or other agency. But His Honor would maintain in their entirety the other arrangements now in force in the Province for the service of criminal processes; he considers it advisable that a wide discretion should be given to Local Governments to prescribe, with the sanction of the Governor-General in Council, the agency by which processes, whether of the revenue, civil, or criminal courts, or of all of them, should be served.

PUNJAB.

In the Punjab, under the present system, all criminal processes, for which a fee is charged, are served by the ordinary peons on the nazir's establishment, and not by the police. The Judges of the Chief Court and the selected officers consulted are unanimous in considering the existing system preferable to that proposed by the Madras Government, and the Lieutenant-Governor concurs in this opinion.

CENTRAL PROVINCES.

In the Central Provinces all criminal processes are served by the police and no fees have as yet been levied. The duty in petty cases has been promptly and efficiently discharged, and no complaints have been made of the inadequacy of the ordinary police establishments for the purpose. The greater number of summonses are addressed to residents of places where police are located; while, as regards places outside, the summonses are served by the policemen in whose patrolling beats the villages lie, and who therefore perform this in conjunction with other police duty proper. The knowledge which the police possess of their circles facilitates the service of summonses, and their despatch by post to station-houses prevents delay in the duty of serving. The existing arrangement has been convenient to the courts, has worked well, and has not proved excessively burdensome to the police. The Chief Commissioner does not, therefore, propose any change. He, however, considers that, in the majority of non-cognizable cases, a fee for service interposes as a useful check on the institution of false and frivolous complaints, and is of opinion that on the whole it is advantageous to impose such a fee.

BRITISH BURMA.

The practice adopted in British Burma is that the number of criminal process-servers for each court having been fixed according to a regulated scale calculated on the number of processes issued from each court during the previous three years, the men required for this duty are appointed and paid out of the process fees realized. Every Magistrate annually revises his list, and the strength of the process-serving force is regulated according to his requirements. To secure the proper control and direction of this body, the numbers of it are enrolled as policemen under Act V of

1861; but its organisation is quite distinct from the ordinary police. The process-servers do not perform any police duties, and are paid through the Magistrate, though under the supervision of the District Superintendent of Police. The cost of the establishment is covered by the fees; and, as the men patrol the villages regularly, their visits are not regarded as oppressive. All officers are unanimous in deprecating any change in the existing system, and the Chief Commissioner supports their opinion.

ASSAM.

In Assam a separate establishment is maintained for the service of criminal processes, and, as the work has been carried on satisfactorily, the Chief Commissioner does not recommend any change in the existing practice.

2. After giving full consideration to the views summarised above, it seems to the President in Council clear that the Court Fees Act, 1870, permits the making of rules for levying process fees in non-cognizable offences and for remuneration of peons and all other persons employed by the court in service of processes. These provisions of the law do not compel the Government to establish a separate set of men for serving criminal processes, while the Criminal Procedure Code, as pointed out by the Madras Government, contemplates such processes being ordinarily served by the police. Therefore it seems to be quite lawful for the Madras Government to serve its criminal processes through the police, whether fees are or are not levied for such processes. As each Local Government and Administration is in favor of maintaining its own existing arrangement, the Government of India sees no reason for insisting upon any change—subject to any action that may hereafter be taken to legalize the levy of fees on criminal processes, where such fees are not at present levied.

ORDER.—Ordered that this Resolution be communicated to Local Governments and Administrations for information and guidance, and also to the Financial Department.

(True Extract.)

(Signed) C. BERNARD,
Offg. Secy. to Govt. of India.

No. 82. ORDER THEREON, 13TH DECEMBER 1878, No. 2518.

Ordered to be communicated to the Accountant-General and Inspector-General of Police with reference to G.O., 29TH May 1878, No. 1124, and previous Proceedings on the subject.

(True Extract.)

Chatterjee
Acting Chief Secretary.

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

Exd. J. W. Fischer.

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THE ADJUTANT GENERAL'S OFFICE

WASHINGTON

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GOVERNMENT

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