

Government of Madras

HOME (MISCELLANEOUS) DEPARTMENT

G.O. No. 429, 2nd May 1917

Conferment of statutory powers to summon witnesses and produce documents in departmental enquiries.

Recording papers relating to the advisability of conferring statutory powers on heads of departments to summon witnesses and produce documents in connection with departmental enquiries into the conduct of public servants.

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G.O. No. 429, 2nd May 1917

Conferment of statutory powers to summon witnesses and produce documents in departmental enquiries.

Recording papers relating to the advisability of conferring statutory powers on heads of departments to summon witnesses and produce documents in connection with departmental enquiries into the conduct of public servants.

READ—the following papers :—

Letter—from the Hon'ble Mr. C. M. SCHMIDT, Inspector-General of Registration.
To—the Secretary to Government, Judicial Department.
Dated—Madras, the 26th June 1916.
No.—110-1/Genl.

I have the honour to address you regarding the investment of the Inspector-General of Registration, the Inspector of Registration Offices, and District Registrars, with statutory powers to summon witnesses and the production of documents in connection with departmental enquiries held by them into complaints against officers of this department.

2. In the case of the Revenue Department the requisite provision is contained in the Madras Revenue Summonses Act (III of 1869), the preamble of which runs as under :—

“Whereas it is found that the revenue administration of the country is retarded, because Revenue officers, namely, Collectors, Sub-Collectors, Assistant Collectors, Deputy Collectors, Tahsildars and Deputy Tahsildars, are not made competent, by express provision of law, to issue summonses for the attendance of persons, or the production of documents, in certain cases in which it is their duty to hold investigations; it is hereby enacted”

The necessity for vesting enquiring officers more generally with this power was recognized by the passing of the Madras Revenue Enquiries Act, V of 1893, which extended the provisions of the earlier Act of 1869 to enquiries into the conduct of a public servant held by an officer *deputed by Government* for the purpose. The Select Committee thus summarized the object of this Act in their report on the Bill upon which it was based :—

“As the Bill stood, it provided for enquiries into matters connected with the revenue administration, but not, in so many words, for enquiries into the conduct of officers engaged therein. We have made clear the scope of the proposed measure and extended it in such a way as to bring within it all public servants and not only those connected with the administration of the revenue. The necessity for such an extension of the provisions of the Bill might arise at any time. (*Port St. George Gazette Supplement*, dated 14th February 1893).”

Under this Act,

"The Government may, by order, invest any officer deputed by it to make an enquiry into the conduct of any public servant as such with power to summon any person to appear before such officer or to produce any document"

These provisions do not meet the requirements of the Registration Department where enquiries into complaints, whether against a Sub-Registrar or a clerk, are conducted by the District Registrar or by the Inspector of Registration Offices under my orders or in some cases by myself.

3. The object of every enquiry being to ascertain whether there is any truth in the allegations made against an officer, it is necessary in fairness both to him and to the public and in the interests of the department that all evidence which may serve

either to substantiate or to refute the allegations should be procured. The first step in the process is to call upon the complainant to adduce evidence in proof of his accusation. When there is foundation for a complaint the complainant undertakes this task and produces such witnesses as he conveniently can. Not infrequently, however, he finds his witnesses or some of them unwilling to come forward for some reason or another. The need then arises for the department to take steps to secure their attendance. Ordinarily, notices are issued by the enquiring officer. Sometimes, but rarely, application is made to the Revenue officer for the issue of summonses. There is no legal warrant for the latter alternative and its adoption is a matter merely of expediency and departmental courtesy.

The procedure in respect of witnesses cited by an accused officer for examination is the same.

Apart from the witnesses examined on behalf of the complainant and of the accused, the enquiring officer frequently finds the testimony of other witnesses to be material for a thorough enquiry and proper judgment. In respect of these again the only course open is to issue a notice to each witness for appearance to depose to facts within his knowledge, but it is open to the witness to comply with the notice or not as he pleases.

In several enquiries held in this department material witnesses have not responded to the notices issued to them and their failure to do so has rendered the result of an enquiry abortive by leaving some important point at a stage at which a definite conclusion was not deducible as to either the guilt or the innocence of the accused officer. With the increase in the number of complaints following on the expansion of the department and the growing tendency of the public to exaggerate grievances, a large number of which prove on scrutiny to be unfounded, the need for some legal power to enforce the appearance of witnesses whose evidence is likely to help in the ascertainment of truth is becoming more keenly felt. It is a matter of importance to all concerned, including the officer accused, that an enquiry once undertaken should be thorough and decisive, and this result can only be attained if the enquiring officer possesses the power to compel the attendance of those whose evidence is necessary in the cause of justice as well as the production of documents which help to elucidate the truth.

4. I have ascertained the procedure followed by the Registration Department in other parts of India—

(i) *Bihar and Orissa*.—The cases of enquiries have been too rare to present any difficulties.

(ii) *Bengal*.—The organization of the department is different from that in Madras, the Magistrate-Collectors being ex-officio District Registrars. Enquiries are also sometimes entrusted to Sub-Divisional Magistrates who, as such, summon witnesses and enforce their attendance. In the matter of enquiries conducted by the Inspector of Registration Offices or by the District Sub-Registrars the same difficulties exist as here, and the enquiring officer has to be content with such witnesses as are produced by the complainant and the accused officer or to conduct a peripatetic enquiry in the course of which he examines such witnesses as he comes across. The latter procedure must partake more of the nature of an investigation than of a regular enquiry, as the accused officer cannot always be present during the examination of witnesses. It is clear, however, that the indecisive nature of the enquiries is not so much felt in Bengal for the reasons that they are in the main conducted by Magistrate-Collectors or Sub-Divisional Magistrates and that even enquiries originally entrusted to the Inspector or the District Sub-Registrar can presumably be taken up and concluded, if need be, by the Magistrate-Collector or a Sub-Divisional Magistrate.

(iii) *Bombay*.—Except in the case of the Inspectors of Registration Offices the enquiring officers are ex-officio Magistrates. In the case of the Inspectors summonses are issued by the local magistracy at the request of the enquiring officer. It is not clear on what provision of law the last-mentioned procedure is based as there is no legal authority for such a course.

5. The solution of the difficulty seems to lie in the Inspector-General of Registration, the Inspector of Registration Offices and all District Registrars being vested with power to issue in connection with departmental enquiries concerning the conduct of an officer of the Registration Department—be he a Sub-Registrar or a clerk—summonses

for the attendance of witnesses and the production of documents. In addition to the fact that this course would be in the interests of justice both in respect of the public and of the accused officer, it would also have a moral effect. In not a few cases petitions are engineered by petition-writers or mischief-mongers who have a grudge against an officer and give vent to it not only by launching vexatious or reckless accusations themselves but also by making tools of ignorant persons. They have little to fear in inditing a complaint in order to prejudice a superior officer against a subordinate as they are aware that when a call is made for substantiation the signatories can elude appearance or disregard the call as there is no legal obligation upon them to obey the enquiring officer's requisition. On the other hand, there are genuine cases of complaint in which the accused officer knows that the witnesses are not legally bound to respond to an enquiring officer's notice and that when the time comes he can exercise influence, directly or indirectly, to keep back those whose testimony might be prejudicial to himself, the would-be deponents being gained over without any fear of consequences. From both points of view, therefore, the possession by officers of the department of the legal powers to summon witnesses would be an undeniable advantage. A mere knowledge by the public that an enquiring officer would have such powers would make signatories pause before blindly attesting complaints and being misled or influenced by intriguers. The effect of such a legal provision would be similarly deterrent on an erring officer of the department who might try to gain over witnesses.

The service of summons could be effected through the process-serving staff maintained in each registration district in connection with appeals, the members of which are paid a monthly salary; so no extra expense would be involved. In the cases of witnesses summoned from remote parts of a district the process could, as is now the case with appeals, be served through the Sub-Registrar of the nearest sub-district who would employ his peon for the purpose. The provisions of Madras Act No. III of 1869 might otherwise be adopted *mutatis mutandis*.

II

Official Memorandum No. 167-1, Local and Municipal (Medical), dated 29th August 1916.

With reference to the enclosed copy of a letter from the Inspector-General of Registration, No. 110-1/Genl., dated 26th June 1916, the Surgeon-General is requested to be so good as to state whether any difficulty such as that referred to by the Inspector-General in the matter of summoning witnesses and ordering the production of documents in connection with departmental inquiries into the conduct of public servants has been experienced in the Medical department and, if so, how such difficulty has been dealt with.

(By order.)

V. T. KRISHNAMA ACHARIYAR,
Under Secretary to Government.

To the Surgeon-General.

III

Endorsement No. 2417 A-1, Home (Judicial), dated 31st August 1916.

Referred to the Inspector-General of Police who is requested to report whether difficulties similar to those mentioned by the Inspector-General of Registration are experienced in his department and, if so, how they are met in practice.

(By order.)

E. A. HARVEY,
Under Secretary to Government.

To the Inspector-General of Police.

IV

Letter—from the Hon'ble Diwan Bahadur P. RAJAGOPALA ACHARIYAR Avargal, C.I.E., Secretary to Government, Home Department (Judicial).
To—the Hon'ble the Chief Justice of the High Court.
Dated—Ootacamund, the 4th September 1916.
No.—2306 B-1.

I am directed to forward the accompanying copy of a letter from the Inspector-General of Registration, No. 110-1/Genl., dated the 26th June 1916, on the subject of the desirability of legislating for the purpose of securing the attendance of witnesses and the production of documents in departmental enquiries in regard to the conduct of public servants and to enquire whether difficulties similar to those referred to by the Inspector-General have been experienced in enquiries against employees of civil and criminal courts and, if so, how they have been met in practice.

V

Memorandum No. 3087-1 Home (Education), dated 5th September 1916.

A copy of a letter from the Inspector-General of Registration No. 110-1, dated 26th June 1916, is forwarded to the Director of Public Instruction who is requested to be so good as to report whether difficulties of the kind described in the letter in the conduct of enquiries into charges against public servants have been experienced in the Department of Public Instruction and, if so, how they have been hitherto met.

P. RAJAGOPALA ACHARIYAR,
Secretary to Government.

To the Director of Public Instruction.

VI

Memorandum No. 1199-1, Public (Marine), dated 8th September 1916.

The Presidency Port Officer is requested to report whether any difficulty has at any time arisen in the Port department in the matter of summoning witnesses and ordering the production of documents in connection with departmental inquiries in regard to the conduct of public servants and, if so, how the difficulty has been met.

(By order.)

R. H. COURTENAY,
Under Secretary to Government.

To the Presidency Port Officer.

VII

Letter—from the Hon'ble Surgeon-General W. B. BANNERMAN, C.S.I., R.H.F., M.D., D.Sc., I.M.S., Surgeon-General with the Government of Madras.
To—the Secretary to Government, Local and Municipal (Medical) Department.
Dated—Ootacamund, the 25th September 1916.
No.—100-T/415.

With reference to Government Memorandum No. 167-1, Medical, dated the 29th August 1916, requesting me to report whether any difficulty has been experienced in the department in the matter of summoning witnesses and ordering the production of documents in connection with departmental enquiries into the conduct of public servants, I have the honour to state that I often have to enquire into the conduct of sub-assistant surgeons. In such cases, I generally call up the District Medical and Sanitary Officer or the immediate superior officer of the sub-assistant surgeon concerned to report on the case and, if necessary, frame charges, after carefully hearing both sides. In the conduct of such enquiries no difficulty has so far been experienced by me in getting at the facts of the case and in having the required documents, etc., produced.

VIII

Letter—from the Hon'ble Mr. J. H. STONE, M.A., F.R.H.S., C.I.E., Director of Public Instruction.
To—the Secretary to Government, Home Department (Education).
Dated—Madras, the 11th October 1916.
No.—Dis. 6858.

With reference to Memorandum No. 3087-1, Home Department (Education), dated 5th September 1916, I have the honour to state that difficulties of the kind referred to have not been experienced in the conduct of enquiries into charges against public servants in this department. If the Director were given the statutory powers suggested, it appears to me that it would be difficult to resist a demand of the accused officer to be represented by counsel and that a comparatively informal enquiry would become a judicial procedure which for its effective conduct would demand judicial training. The more serious cases of official turpitude should, and often do, come before the courts by way of prosecution; in minor cases documents are usually sufficient and the need for compelling the attendance of witnesses has not hitherto been experienced. There are occasionally cases in which prosecution is out of the question and large outside interests are involved, and these can be effectively met by a deputation under the Madras Revenue Enquiries Act of 1869 as in the case of Mr. B. O. Reynolds—vide G.O. Mis. No. 709, dated 10th October 1911.

IX

Letter—from Commander C. W. SHEARME, R.I.M., Presidency Port Officer.
To—the Chief Secretary to Government, Public Department (Marine).
Dated—Madras, the 13th October 1916.
No.—1232/238-G.

In reply to Government Memorandum No. 1199-1, Marine, dated the 8th September 1916, I have the honour to report that, so far as this department is concerned, no occasion has hitherto arisen when the summoning of witnesses or production of documents in connection with departmental inquiries into the conduct of public servants was necessary.

X

Letter—from P. L. MOORE, Esq., C.I.E., I.C.S., Inspector-General of Police.
To—the Secretary to Government, Home Department (Judicial).
Dated—Madras, the 10th November 1916.
No.—D. 1025.

With reference to Home Department (Judicial) endorsement No. 2417 A-1, dated 31st August 1916, calling for a report on the question whether any difficulties are experienced in securing the attendance of witnesses at departmental enquiries, I have the honour to report that the general practice in this department is that the enquiring officer either sends for the witnesses or himself goes to their village and examines them. No difficulty is experienced in securing the attendance of witnesses.

XI

Letter—from C. G. MACKAY, Esq., I.C.S., Registrar, High Court.
To—the Secretary to Government, Home Department (Judicial).
Dated—Madras, the 3rd February 1917.
No.—Dis. 275.

With reference to your letter No. 2306 B-1, Home Department (Judicial), dated the 4th September 1916, enquiring whether difficulties in securing the attendance of witnesses and the production of documents have been experienced in departmental enquiries regarding employees of civil and criminal courts, and, if so, how they have been met in practice, I am directed to state that the reports of the District Judges and Magistrates, who have been consulted, indicate that no difficulties have been experienced in practice, because courts, civil and criminal, issue summonses or notices under the Code of Civil Procedure or the Madras Act III of 1869, respectively, which are obeyed by those summoned, even though issued without any legal authority. The Honourable the Judges consider that it is very undesirable that officers should have recourse to a procedure which is unauthorized by law.

Order—No. 429, Home (Miscellaneous), dated 2nd May 1917.

The Government do not consider that in practice any serious difficulty is experienced in obtaining evidence required in departmental enquiries. They are therefore unable to accept the proposals of the Inspector-General of Registration.

(True Extract)

R. RAMAOKHANDRA RAO,
Secretary to Government.

To the Inspector-General of Registration.
,, the Chief Justice of the High Court of Judicature at Madras (with C.L.).
,, the Director of Public Instruction.
,, the Inspector-General of Police.
,, of Prisons.
,, the Departments of the Secretariat.

NOTES CONNECTED WITH G.O. No. 429, HOME (MISCELLANEOUS),
DATED 2ND MAY 1917.

[SUBJECT.—Conferment of statutory powers to certain officers of the Registration Department to summon witnesses and the production of documents in departmental enquiries.]

Previous papers :

Extracts from the Minutes of Consultation, 421, Public Department, 5th May 1854.	G.O. 560, Public, 31st July 1894.
G.O. 1401, Public, 15th September 1879.	" 561 " 31st " "
" 2290 " 3rd December 1883.	" 653-54 " 6th September "
" 1373 " 23rd September 1887.	" 3135. Judicial, 19th December "
" 18 " 7th January 1888.	" 552, Public, 5th July 1895.
" 3972, Mily. Dept., 14th June "	" 454, Revenue, 14th " 1899.
" 720, Public, 18th August "	" 724, Public, 27th " 1900.
" 768, Revenue, 2nd September 1893.	" 550 " 11th " 1909.
" 49 " 22nd January 1894.	" 792 " 21st " 1911.
	" 709, Educational, 10th October "

I

From the Inspector-General of Registration, No. 110-1/Genl., dated 26th June 1916.

JUDICIAL DEPARTMENT.

For the procedure now followed in the matter of inquiries into complaints against subordinates in the Registration Department, please see Orders Nos. 1043 to 1053 in Part II of the Registration Manual.

2. The difficulties pointed out by the Inspector-General of Registration in his letter do not appear to be peculiar to the Registration Department alone but are common to departments like the Police and Medical or Jail, where complaints against subordinates will be of equally, if not more, frequent occurrence. It does not appear

No information on the point.

P.R.—25-7-16.

It is essential that the officer inquiring (Act V of 1893) should have been deputed by Government.

P.R.—25-7-16.

Act XXXVII of 1850 applies only to the cases of officers not removable without the sanction of Government.

P.R.—25-7-16.

a regular inquiry against the conduct of a public servant is necessary.

4. If the proposal of the Inspector-General of Registration in this case is accepted and legislation is decided upon, it will have to be done not merely for the Registration Department but also for other departments, similarly situated such as the Police, etc., as the difficulties to be overcome by the legislation will be the same.

The Inspector-General explains the cases of other provinces.

P.R.—25-7-16.

It is likely that the same difficulties would have happened there also.

In the circumstances, it is for consideration if the Inspector-General's proposal should be accepted.

that those departments have felt any difficulty for want of the statutory powers which the Inspector-General of Registration wants for the Registration Department.

3. In Madras Acts III of 1869 and V of 1893, provision is made for conducting inquiries against any public servant; the officer deputed by the Government for the purpose is invested with powers to summon witnesses and the production of documents. There is also India Act XXXVII of 1850 which provides for regulating inquiries into the behaviour of public servants not removable without the sanction of Government. These two Acts can now be availed of, in cases when

Moreover, it will be seen from paragraph 4 of the Inspector-General's letter that other provinces have not availed of any statutory help as suggested in paragraph 5 of the Inspector-General's letter, though

If it is considered desirable that the power to summon witnesses in departmental enquiries should be conferred on the Inspector-General of Registration, the Inspector

I would rather avoid this.

P.R.—25-7-16.

of Registration Offices and District Registrars, the practice obtaining in other departments and the extent to which the difficulties pointed out by the Inspector-General of Registration are felt by them may first be ascertained. The question whether any legislation on the subject should be restricted to the Registration Department, or extended to other departments as well, will then have to be decided. This general question is, it is submitted, one which should be dealt with in the Public Department. The case may, it is submitted, be transferred to that department with the remarks of the Judicial Department.

P.G.S.S.—1-7-16.

M.V.V.—18-7-16.

B.T.—20-7-16.

W.B.S.—20-7-16.

Before transferring to Public and making the question a general one it would be better to obtain the Honourable Member's orders on the proposal.

E. A. HARVEY—21-7-16.

I think that the difficulty mentioned by the Inspector-General is a real one and it would be an advantage to empower the Inspector-General, the Inspector of Registration Offices, and the District Registrars to summon witnesses, etc. I would rather not take up the question of other departments just now. Each department has generally its own difficulties and may be allowed to solve those difficulties in its own way. While I agree with the Inspector-General that legislation is necessary such as he indicates, I feel that this legislation will have to be done by the Government of India by way of amending the Indian Registration Act. At any rate we must, I think, place the matter before India and ask for India's approval before undertaking Provincial legislation.

P. RAJAGOPALA ACHARIYAR—25-7-16.

I do not think the Government of India is likely to sanction legislation with reference to one department alone on a matter which does not raise a difficulty peculiar to that one department. The question must have arisen with regard to other departments also. I would therefore consult Public as to whether any similar difficulty has been experienced in other departments and, if so, how it has been dealt with.

P. S. S[IVASWAMI AYYAR]—26-7-16.

Submitted that the case may now be sent to Public u.o. with reference to the Honourable Member's note above.

P.G.S.S.—27-7-16.

M.V.V.—27-7-16.

E.A.H.—28-7-16.

HOME DEPARTMENT (MISCELLANEOUS).

With reference to the Honourable Member's note above, submitted that no information is available in this department. The following departments of the Secretariat may accordingly be requested to be so good as to state whether difficulty such as that referred to by the Inspector-General of Registration in the matter of summoning witnesses and ordering the production of documents in connection with departmental inquiries in regard to the conduct of public servants has arisen in the departments under their control, and, if so, how the difficulty has been dealt with:—

Home, Judicial (A)—With special reference to Police department.

„ Judicial (B)—Employees of Civil and Criminal Courts.

„ Judicial (C)—Jail department.

„ Educational—Inspecting agency and establishments subordinate to it.

Financial (Separate Revenue)—Salt, Abkari and Customs departments.

Public (Marine)—Port department.

Local and Municipal—Medical.

Public Works Department—General and Irrigation.

C.P.K.—8-8-16.

C. RAMANUJA ACHARIYAR—8-8-16.

P. RAJAGOPALA ACHARIYAR—9-8-16.

PUBLIC WORKS DEPARTMENT (IRRIGATION).

The case may be returned to Home Department (Miscellaneous) with the remark that no departmental enquiries into the conduct of public servants are being conducted by Irrigation. P.W.D. (General) deal with such matters.

G.V.—25-8-16.

F. E. MORGAN—25-8-16.

HOME DEPARTMENT (JUDICIAL).

Submitted that the Inspector-General of Prisons may be consulted u.o. with reference to the Miscellaneous Section note at page 2 ante.

P.G.S.S.—25-8-16.

M.V.V.—25-8-16.

E. A. HARVEY—28-8-16.

OFFICE OF THE INSPECTOR-GENERAL OF PRISONS.

So far as I am aware no difficulty has arisen in this department. Cases, in which the authority asked for by the Inspector-General of Registration would be of any advantage, are extremely rare, and so far as the Jail Department is concerned, would not be worth legislating for. When a grave charge has been made against an officer, it has always been handed over to the Police for investigation.

E. H. GADSDEN—29-8-16.

HOME DEPARTMENT (JUDICIAL).

Submitted that the Inspector-General's remarks may be concurred in and the case returned to Home (Miscellaneous).

P.G.S.S.—30-8-16.

M.V.V.—30-8-16.

E.A.H.—31-8-16.

PUBLIC WORKS DEPARTMENT.

The indexes for the last ten years have been examined and no papers on the point referred to are to be found. But it may be mentioned in this connection that in 1911, when it was necessary to conduct inquiries against a sub-engineer of this department, Act V of 1893 was availed of—vide G.O. No. 143 W., dated 4th February 1911.

2. With the above information the file may be returned to Home (Miscellaneous). As enquiries into complaints against subordinates are dealt with in the General branch, it seems unnecessary to consult "Irrigation" in the matter.

C.R.—2-9-16.

A.M.—3-9-16.

G. D. PLUMMER—6-9-16.

W. G. MOLESWORTH—6-9-16.

S. B. MURRAY—6-9-16.

LOCAL AND MUNICIPAL DEPARTMENT (MEDICAL).

A draft official memorandum to the Surgeon-General is submitted for approval.
K.N.—28-8-16.

V. T. KRISHNAMA ACHARIYAR—99-8-16.

[Official Memorandum No. 167-1 (Medical), dated 29th August 1916—II.]

VII

From the Surgeon-General No. 100/T. 415, dated 25th September 1916.

The Surgeon-General's reply may be forwarded to the Home (Miscellaneous) Department u.o. with reference to their note on page 2 ante.

K.N.—28-9-16.

V.S.—28-9-16.

V.T.K.—29-9-16.

FINANCIAL DEPARTMENT (SEPARATE REVENUE).

Please see pages 1 and 2 supra and the reference from the Inspector-General of Registration. The Home (Miscellaneous) Department enquire whether difficulty such as that referred to by the Inspector-General of Registration in the matter of summoning witnesses, etc., in departmental enquiries into the conduct of public servants has arisen in the Salt, Abkari and Separate Revenue Department and, if so, how the difficulty has been dealt with. The rules for the conduct of enquiries into charges against officers of the Salt department are given in paragraphs 768 et seq. at pages 184-185 of the Salt Manual, Volume II. The officers, who can conduct the enquiries, are the Commissioner, Assistant Commissioners, Inspectors and Assistant Inspectors in the case of executive officers and the heads of offices in the case of the clerical establishment—vide note under 768 (2) at page 185 of the Salt Manual, Volume II.

Under note 1 to section 59 of the Madras Salt Act IV of 1889 "all officers of the Salt department not below the rank of sub-inspector have been empowered to summon persons to appear and give evidence or produce documents" in any investigation relating to the salt revenue or to an offence under the Salt Act—vide pages 40-41 of the Salt Manual, Volume I. Though the Madras Salt Act does not explicitly provide for the issue of summonses in departmental enquiries into the conduct of salt officers as does the Madras Revenue Enquiries Act V of 1893 the salt officers presumably utilise the powers vested in them under section 59 of the Salt Act to summon witnesses in enquiries into the conduct of subordinate officers of the Salt department. The difficulty experienced by the Registration department may not therefore have been felt in the Salt department. As this is not, however, certain, it is submitted that the Board of Revenue may be asked u.o. to report whether any such difficulty has been experienced in the Salt department and, if so, how it has been met.

D.T.—31-8-16.

K.C.V.—6-9-16.

R. H. COURTENAY—7-9-16.

BOARD OF REVENUE (SEPARATE REVENUE).

No difficulty has been reported so far, but legislation would be useful to enable officers of this department to summon witnesses or to order production of documents in departmental enquiries in view of the fact that the powers conferred on officers under Salt and Abkari Acts are limited to investigation of cases affecting the revenue or to offences under the Acts.

E. F. THOMAS—19-9-16.

FINANCIAL DEPARTMENT (SEPARATE REVENUE).

Submitted that the remarks of the Board of Revenue may be concurred in and the file returned to the Home (Miscellaneous) Department.

C.V.R.—21-9-16.

K.C.V.—21-9-16.

R. H. COURTENAY—22-9-16.

HOME (JUDICIAL) DEPARTMENT.

Submitted that the paper may be referred to the Inspector-General of Police who may be asked to report whether similar difficulties are experienced in his department.

P.S.R.—28-8-16.

W.B.S.—30-8-16.

Yes.

E. A. HARVEY—31-8-16.

[Endorsement to the Inspector-General of Police, dated 31st August 1916—III.]

X

From the Inspector-General of Police, D. No. 1025, dated 10th November 1916.

Please see the Inspector-General's letter. It is reported that no difficulty is experienced in the Police Department in the matter of securing the attendance of witnesses. Submitted that the file may be returned to Home (Miscellaneous) with this information.

B.T.—15-11-16.

C.R.—15-11-16.

E.A.H.—16-11-16.

A draft letter of reference to the High Court is submitted.

A.K.K.—31-8-16.

P.R.R.—31-8-16.

Issue.

E.A.H.—2-9-16.

[Letter to the High Court, No. 2306 B-1, dated 4th September 1916—IV.]

XII

From the High Court, Dis. No. 275, dated 3rd February 1917.

The High Court reports that no difficulty is at present experienced in securing the attendance of witnesses and the production of documents in departmental enquiries relating to employees of civil and criminal courts. They consider it undesirable, however that officers should have to resort to a procedure unauthorised by law. The file may now be returned to Home (Miscellaneous) u.o.

A.K.K.—7-2-17.

P.R.R.—7-2-17.

Yes.

E.A.H.—8-2-17.

HOME (EDUCATION) DEPARTMENT.

With reference to the Home (Miscellaneous) department's note a draft memorandum to the Director of Public Instruction is submitted for approval.

P.R.—30-8-16.

N.K.—3-9-16.

C. RAMANUJA ACHARIYAR—4-9-16.

[Memorandum No. 3087-1, Home (Education), dated the 5th September 1916—V.]

VIII

From the Director of Public Instruction, Dis. No. 6858/16, dated the 11th October 1916.

The Director's letter read above may be forwarded to the Home (Miscellaneous) department with reference to its note on page 2 ante and with an expression of concurrence in the views expressed by the Director of Public Instruction.

P.R.—20-10-16.

N.K.—23-10-16.

C. RAMANUJA ACHARIYAR—24-10-16.

PUBLIC (MARINE) DEPARTMENT.

The Madras Record office has also been consulted. There are no papers traceable to indicate that in the Port department difficulties have arisen in the matter of summoning witnesses and ordering the production of documents in connection with departmental enquiries in regard to the conduct of public servants.

If it is considered necessary to consult the Presidency Port Officer on the matter, a draft memorandum is submitted for approval.

A.S.M.—2-9-16.

S.D.S.—4-9-16.

R. H. COURTENAY—6-9-16.

[Memorandum to the Presidency Port Officer, No. 1199-1, dated 8th September 1916—VI.]

IX

From the Presidency Port Officer, No. 1232/238 G., dated 13th October 1916.

The Presidency Port Officer replies that no occasion has hitherto arisen in his department when the summoning of witnesses or production of documents in connection with departmental enquiries into the conduct of public servants was necessary.

The file with the Presidency Port Officer's reply may be returned u.o. to Home (Miscellaneous) finally.

A.S.M.—14-10-16.

S.D.S.—14-10-16.

R.H.C.—16-10-16.

HOME (MISCELLANEOUS) DEPARTMENT.

The replies from all the departments of Secretariat who were consulted are now complete. The further currents and notes have been consolidated in chronological order. It would facilitate easy reference if the currents and notes are printed up to date, before the file is taken up for consideration. There appears to be no great urgency about the matter.

For orders whether this may be done.

M.C.—18-2-17.

P.D.R.—24-2-17.

Yes, please.

C.R.—26-2-17.

Please see notes above and in particular Sir P. S. Sivaswami Ayyar's note, dated 26th July 1916, on page 2 ante. The replies received from the Inspector-General of Police, Inspector-General of Prisons, High Court, the Surgeon-General, Board of Revenue (Separate Revenue), Director of Public Instruction, Presidency Port Officer and Public Works Department, who were consulted, show that the difficulties represented by the Inspector-General of Registration in his letter have *not* been experienced in their respective departments. The Board of Revenue (Separate Revenue) is, however, of opinion that legislation would be useful and the High Court's letter states that, though no difficulties have

been experienced in practice, the Honourable the Judges consider that it is very undesirable that officers should have recourse to a procedure which is unauthorized by law. In this connection attention is invited to the letter from the Director of Public Instruction who points out that the introduction of legislation in this matter would create some inconveniences such as the formality of allowing a counsel to the accused and the making of a comparatively informal inquiry into a regular judicial proceeding, demanding judicial training for its effective conduct. The reports received from the other departments consulted show that no difficulty has been experienced by them in the past and that legislation as proposed by the Inspector-General of Registration is not imperatively required for those departments.

In the circumstances the proposal of the Inspector-General of Registration is for final orders by the Judicial Department to whom the file may now be transferred.

M.C.—29-3-17.

P.D.R.—5-4-17.

Submitted to Secretary (in Judicial) for orders with reference to notes on page 2 supra. The result of the enquiry made does not support the Inspector-General's request.

C. RAMANUJA ACHARIYAR—16-4-17.

I do not think that in practice the difficulty exists. In most cases the *notices* issued are readily obeyed. It will be only rarely that they will be not heeded, while at the same time evidence of such persons is likely to be of consequence. It appears to me in such cases a reference may be made to Government and orders obtained under Act V of 1893. I submit no case is made out for special legislation either for the Registration Department or for all departments.

R. RAMACHANDRA RAO—22-4-17.

Judging from the replies received from other departments I do not think that, in practice, any serious difficulty is experienced in obtaining the evidence required in departmental enquiries. I feel pretty sure that if statutory powers were given to summon witnesses, etc., they would be used generally without due discrimination, to the needless annoyance of the public in many cases. I would leave things as they are and veto the proposal of the Inspector-General of Registration.

Please circulate to the Hon'ble Mr. Rajagopala Achariyar.

H. F. W. GILLMAN—24-4-17.

The Hon'ble Diwan Bahadur P. Rajagopala Achariyar, c.i.e.

R. RAMACHANDRA RAO—24-4-17.

I agree that we may leave things as they are.

P. R. RAJAGOPALA ACHARIYAR—25-4-17.

HOME (MISCELLANEOUS) DEPARTMENT.

Draft order is submitted.

M.D.R.—26-4-17.

P.D.R.—27-4-17.

C. RAMANUJA ACHARIYAR—30-4-17.

R.R.—1-5-17.

[G.O. No. 429, Home (Miscellaneous), dated 2nd May 1917.]

Sept. 11.10 (b)-1-17. Conferment of Statutory powers
to summon witnesses and produce
documents in departmental enquiries. Recording
papers relating to the advisability of conferring
statutory powers on ~~the~~ heads of depts. to
summon witnesses and produce documents
in connection with departmental enquiries into
the conduct of public servants.

READ AGAIN G.O. No., dated 191

” ” ” ” ” 191

READ ALSO:—

C. No., From the S. G. of Registrar, Madras, No. 110-58, dated the 26th June 1916.

Orig. No. 167-1 de M. (Medical) 3 27-8-16.

Encl no. 2417 A-1 Home (Ind) 3 31-8-14

” ” ” ” ” ” ” ” 191

Mem. 1199-1 Pub (Marie)" 8-9-16

" " S. G. , 100 100 T. / 415 3 25-9-46

” ” ” ” D. P-1. 17, 56 68 58 2 11 - 6 - 1916

" " P. P. O. No. 1232/238 G 8 / 13 - 10 - 16

Region High Comb, R.O.C. 3313 & 4-11-16.

ORDER: *Police* No. *6025*, dated *3-6-11-66* 19

ORDER. 20 Police No. 1025, dated 3-10-11, 191.

P.S.

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~~Do not~~

Impacher

~~the~~ The Govt. do not consider that
any serious difficulty is
experienced in obtaining ~~the~~
evidence required in depart-
~~mental enquiries~~ - mental enquiries. They
are therefore unable to
accept the proposals of the
J. G. of Registration.

The J. G. of Registration ✓
 .. Chief Justice of the High Court of ✓
 Judicature at Madras. with C.E.
 .. A. P. I. ✓
 .. J. G. of Police ✓
 .. J. G. of Prisons. ✓

The Sept. of the Secretariat.

(Nor to E.T.)

HO R

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For approval
10 20/5/17

Government of Madras

HOME (MISCELLANEOUS) DEPARTMENT

G.O. No. 429, 2nd May 1917

Conferment of Statutory powers to summon witnesses and produce documents in departmental enquiries.

Recording papers relating to the advisability of conferring statutory powers on heads of departments to summon witnesses and produce documents in connection with departmental enquiries into the conduct of public servants.

READ—the following papers:—

I

Letter—from the Hon'ble Mr. C. M. SCHMIDT, Inspector-General of Registration.
To—the Secretary to Government, Judicial Department.
Dated—Madras, the 26th June 1916.
No.—110-1/Genl.

I have the honour to address you regarding the investment of the Inspector-General of Registration, the Inspector of Registration Offices, and District Registrars, with statutory powers to summon witnesses and the production of documents in connection with departmental enquiries held by them into complaints against officers of this department.

2. In the case of the Revenue Department the requisite provision is contained in the Madras Revenue Summonses Act (III of 1869), the preamble of which runs as under:—

"Whereas it is found that the revenue administration of the country is retarded, because Revenue officers, namely, Collectors, Sub-Collectors, Assistant Collectors, Deputy Collectors, Tahsildars and Deputy Tahsildars, are not made competent, by express provision of law, to issue summonses for the attendance of persons, or the production of documents, in certain cases in which it is their duty to hold investigations; it is hereby enacted

The necessity for vesting enquiring officers more generally with this power was recognized, by the passing of the Madras Revenue Enquiries Act, V of 1893, which extended the provisions of the earlier Act of 1869 to enquiries into the conduct of a public servant held by an officer deputed by Government for the purpose. The Select Committee thus summarized the object of this Act in their report on the Bill upon which it was based:—

"As the Bill stood, it provided for enquiries into matters connected with the revenue administration, but not, in so many words, for enquiries into the conduct of officers engaged therein. We have made clear the scope of the proposed measure and extended it in such a way as to bring within it all public servants and not only those connected with the administration of the revenue. The necessity for such an extension of the provisions of the Bill might arise at any time. (Fort St. George Gazette Supplement, dated 14th February 1893)."

Under this Act,

"The Government may, by order, invest any officer deputed by it to make an enquiry into the conduct of any public servant as such with power to summon any person to appear before such officer or to produce any document

These provisions do not meet the requirements of the Registration Department where enquiries into complaints, whether against a Sub-Registrar or a clerk, are conducted by the District Registrar or by the Inspector of Registration Offices under my orders or in some cases by myself.

3. The object of every enquiry being to ascertain whether there is any truth in the allegations made against an officer, it is necessary in fairness both to him and to the public and in the interests of the department that all evidence which may serve

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either to substantiate or to refute the allegations should be procured. The first step in the process is to call upon the complainant to adduce evidence in proof of his accusation. When there is foundation for a complaint the complainant undertakes this task and produces such witnesses as he conveniently can. Not infrequently, however, he finds his witnesses or some of them unwilling to come forward for some reason or another. The need then arises for the department to take steps to secure their attendance. Ordinarily, notices are issued by the enquiring officer. Sometimes, but rarely, application is made to the Revenue officer for the issue of summonses. There is no legal warrant for the latter alternative and its adoption is a matter merely of expediency and departmental courtesy.

The procedure in respect of witnesses cited by an accused officer for examination is the same.

Apart from the witnesses examined on behalf of the complainant and of the accused, the enquiring officer frequently finds the testimony of other witnesses to be material for a thorough enquiry and proper judgment. In respect of these again the only course open is to issue a notice to each witness for appearance to depose to facts within his knowledge, but it is open to the witness to comply with the notice or not as he pleases.

In several enquiries held in this department material witnesses have not responded to the notices issued to them and their failure to do so has rendered the result of an enquiry abortive by leaving some important point at a stage at which a definite conclusion was not deducible as to either the guilt or the innocence of the accused officer. With the increase in the number of complaints following on the expansion of the department and the growing tendency of the public to exaggerate grievances, a large number of which prove on scrutiny to be unfounded, the need for some legal power to enforce the appearance of witnesses whose evidence is likely to help in the ascertainment of truth is becoming more keenly felt. It is a matter of importance to all concerned, including the officer accused, that an enquiry once undertaken should be thorough and decisive, and this result can only be attained if the enquiring officer possesses the power to compel the attendance of those whose evidence is necessary in the cause of justice as well as the production of documents which help to elucidate the truth.

4. I have ascertained the procedure followed by the Registration Department in other parts of India—

(i) *Bihar and Orissa*.—The cases of enquiries have been too rare to present any difficulties.

(ii) *Bengal*.—The organization of the department is different from that in Madras, the Magistrate-Collectors being *ex-officio* District Registrars. Enquiries are also sometimes entrusted to Sub-Divisional Magistrates who, as such, summon witnesses and enforce their attendance. In the matter of enquiries conducted by the Inspector of Registration Offices or by the District Sub-Registrars the same difficulties exist as here, and the enquiring officer has to be content with such witnesses as are produced by the complainant and the accused officer or to conduct a peripatetic enquiry in the course of which he examines such witnesses as he comes across. The latter procedure must partake more of the nature of an investigation than of a regular enquiry, as the accused officer cannot always be present during the examination of witnesses. It is clear, however, that the indecisive nature of the enquiries is not so much felt in Bengal for the reasons that they are in the main conducted by Magistrate-Collectors or Sub-Divisional Magistrates and that even enquiries originally entrusted to the Inspector or the District Sub-Registrar can presumably be taken up and concluded, if need be, by the Magistrate-Collector or a Sub-Divisional Magistrate.

(iii) *Bombay*.—Except in the case of the Inspectors of Registration Offices the enquiring officers are ex-officio Magistrates. In the case of the Inspectors summonses are issued by the local magistracy at the request of the enquiring officer. It is not clear on what provision of law the last-mentioned procedure is based as there is no legal authority for such a course.

5. The solution of the difficulty seems to lie in the Inspector-General of Registration, the Inspector of Registration Offices and all District Registrars being vested with power to issue in connection with departmental enquiries concerning the conduct of an officer of the Registration Department—be he a Sub-Registrar or a clerk—summonses

for the attendance of witnesses and the production of documents. In addition to the fact that this course would be in the interests of justice both in respect of the public and of the accused officer, it would also have a moral effect. In not a few cases petitions are engineered by petition-writers or mischief-mongers who have a grudge against an officer and give vent to it not only by launching vexatious or reckless accusations themselves but also by making tools of ignorant persons. They have little to fear in inditing a complaint in order to prejudice a superior officer against a subordinate as they are aware that when a call is made for substantiation the signatories can elude appearance or disregard the call as there is no legal obligation upon them to obey the enquiring officer's requisition. On the other hand, there are genuine cases of complaint in which the accused officer knows that the witnesses are not legally bound to respond to an enquiring officer's notice and that when the time comes he can exercise influence, directly or indirectly, to keep back those whose testimony might be prejudicial to himself, the would-be deponents being gained over without any fear of consequences. From both points of view, therefore, the possession by officers of the department of the legal powers to summon witnesses would be an undeniable advantage. A mere knowledge by the public that an enquiring officer would have such powers would make signatories pause before blindly attesting complaints and being misled or influenced by intriguers. The effect of such a legal provision would be similarly deterrent on an erring officer of the department who might try to gain over witnesses.

The service of summons could be effected through the process-serving staff maintained in each registration district in connection with appeals, the members of which are paid a monthly salary; so no extra expense would be involved. In the cases of witnesses summoned from remote parts of a district the process could, as is now the case with appeals, be served through the Sub-Registrar of the nearest sub-district who would employ his peon for the purpose. The provisions of Madras Act No. III of 1869 might otherwise be adopted *mutatis mutandis*.

II

Official Memorandum No. 167-1, Local and Municipal (Medical), dated 29th August 1916.

With reference to the enclosed copy of a letter from the Inspector-General of Registration, No. 110-1/Genl., dated 26th June 1916, the Surgeon-General is requested to be so good as to state whether any difficulty such as that referred to by the Inspector-General in the matter of summoning witnesses and ordering the production of documents in connection with departmental inquiries into the conduct of public servants has been experienced in the Medical department and, if so, how such difficulty has been dealt with.

(By order.)

V. T. KRISHNAMA ACHARIYAR,
Under Secretary to Government.

To the Surgeon-General.

III

Endorsement No. 2417 A-1, Home (Judicial), dated 31st August 1916.

Referred to the Inspector-General of Police who is requested to report whether difficulties similar to those mentioned by the Inspector-General of Registration are experienced in his department and, if so, how they are met in practice.

(By order.)

E. A. HARVEY,
Under Secretary to Government.

To the Inspector-General of Police.

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for the attendance of witnesses and the production of documents. In addition to this, it is pointed out that the course would be in the interests of justice both in respect of the public and of the accused. It would also have a salutary effect. In not a few cases persons are encouraged by the possibility of a reward or a remission of sentence to give evidence and give up their own interests. They have little to fear in themselves but also by making tools of ignorant persons. They have little to fear in making a complaint in order to produce a superior officer against a subordinate as they are aware that when a call is made for substantiation the signatures can be made up or altered and the call is not a legal obligation upon them to obey the enjoining officer's requisition. On the other hand, there are genuine cases of complaint in which the accused officer knows that the witnesses are not legally bound to respond to an enjoining officer's notice and that when the time comes he can exercise influence, directly or indirectly, to keep back those whose testimony might be prejudicial to himself. The would-be deponents being gained over without any fear of consequences. From both points of view, therefore, the possession by officers of the department of the legal powers to summon witnesses would be an undeniable advantage. A more knowledge by the public that an enjoining officer would have such powers would make signs more before blindly attesting complaints and being misled or influenced by intrigues. The effect of such a legal provision would be similarly dependent on an enjoining officer of the department who might try to gain over witnesses. The service of summons could be effected through the process-serving staff maintained in each registration district in connection with appeals, the members of which are paid a monthly salary; so no extra expense would be involved. In the case of witnesses summoned from remote parts of a district the process could, as is now the case with appeals, be served through the Sub-Registrar of the nearest and district who would employ his own men for the purpose. The provisions of Madras Act No. 111 of 1889 might otherwise be adopted mutatis mutandis.

II

Official Memorandum No. 167-1, Local and Municipal (Medical), dated 28th August 1916.

With reference to the enclosed copy of a letter from the Inspector-General of Registration, No. 110-1/Genl., dated 26th June 1916, the Surgeon-General is requested to be so good as to state whether any difficulty such as that referred to by the Inspector-General in the matter of summoning witnesses and ordering the production of documents in connection with departmental inquiries into the conduct of public servants has been experienced in the Medical department and, if so, how such difficulty has been dealt with.

(By order.)

V. T. KRISHNA ACHARIYAR,
Under Secretary to Government.

III

Enforcement No. 2417 A-1 Home (Judicial), dated 28th August 1916.

Referring to the Inspector-General of Police who is requested to report whether difficulties similar to those mentioned by the Inspector-General of Registration are experienced in his department and, if so, how they are met in practice.

(By order.)

W. A. HANLEY,
Under Secretary to Government.

To the Inspector-General of Police

IV

Letter—from the Hon'ble Diwan Bahadur P. RAJAGOPALA ACHARIYAR Avargal,
C.I.E., Secretary to Government, Home Department (Judicial).
To—the Hon'ble the Chief Justice of the High Court.
Dated—Ootacamund, the 4th September 1916.
No.—2306 B-1.

I am directed to forward the accompanying copy of a letter from the Inspector-General of Registration, No. 110-1/Genl., dated the 26th June 1916, on the subject of the desirability of legislating for the purpose of securing the attendance of witnesses and the production of documents in departmental enquiries in regard to the conduct of public servants and to enquire whether difficulties similar to those referred to by the Inspector-General have been experienced in enquiries against employees of civil and criminal courts and, if so, how they have been met in practice.

V

Memorandum No. 3087-1 Home (Education), dated 5th September 1916.

A copy of a letter from the Inspector-General of Registration No. 110-1, dated 26th June 1916, is forwarded to the Director of Public Instruction who is requested to be so good as to report whether difficulties of the kind described in the letter in the conduct of enquiries into charges against public servants have been experienced in the Department of Public Instruction and, if so, how they have been hitherto met.

P. RAJAGOPALA ACHARIYAR,
Secretary to Government.

To the Director of Public Instruction,

VI

Memorandum No. 1199-1, Public (Marine), dated 8th September 1916.

The Presidency Port Officer is requested to report whether any difficulty has at any time arisen in the Port department in the matter of summoning witnesses and ordering the production of documents in connection with departmental inquiries in regard to the conduct of public servants and, if so, how the difficulty has been met.

(By order.)

R. H. COURTENAY,
Under Secretary to Government.

To the Presidency Port Officer,

VII

Letter—from the Hon'ble Surgeon-General W. B. BANNERMAN, C.S.I., K.H.F.,
M.D., D.Sc., I.M.S., Surgeon-General with the Government of Madras.
To—the Secretary to Government, Local and Municipal Department (Medical).
Dated—Ootacamund, the 25th September 1916.
No.—100-T/415.

With reference to Government Memorandum No. 167-1, Medical, dated the 29th August 1916, requesting me to report whether any difficulty has been experienced in the department in the matter of summoning witnesses and ordering the production of documents in connection with departmental enquiries into the conduct of public servants, I have the honour to state that I often have to enquire into the conduct of sub-assistant surgeons. In such cases, I generally call up the District Medical and Sanitary Officer or the immediate superior officer of the sub-assistant surgeon concerned to report on the case and, if necessary, frame charges, after carefully hearing both sides. In the conduct of such enquiries no difficulty has so far been experienced by me in getting at the facts of the case and in having the required documents, etc., produced.

VIII

Letter—from Hon'ble Mr. J. H. STONE, M.A., F.R.H.S., C.I.E., Director of Public Instruction.

To—the Secretary to Government, Home Department (Education).

Dated—Madras, the 11th October 1916.

No.—Dis 6858.

With reference to Memorandum No. 3087-1, Home Department (Education), dated 5th September 1916, I have the honour to state that difficulties of the kind referred to have not been experienced in the conduct of enquiries into charges against public servants in this department. If the Director were given the statutory powers suggested, it appears to me that it would be difficult to resist a demand of the accused officer to be represented by counsel and that a comparatively informal enquiry would become a judicial procedure which for its effective conduct would demand judicial training. The more serious cases of official turpitude should, and often do, come before the courts by way of prosecution; in minor cases documents are usually sufficient and the need for compelling the attendance of witnesses has not hitherto been experienced. There are occasionally cases in which prosecution is out of the question and large outside interests are involved, and these can be effectively met by a deputation under the Madras Revenue Enquiries Act of 1869 as in the case of Mr. B. O. Reynolds—vide G.O. Mis. No. 709, dated 10th October 1911.

IX

Letter—from Commander C. W. SHEARME, R.I.M., Presidency Port Officer.

To—the Chief Secretary to Government, Public Department (Marine).

Dated—Madras, the 13th October 1916.

No.—1232/238-G.

In reply to Government Memorandum No. 1199-1, Marine, dated the 8th September 1916, I have the honour to report that, so far as this department is concerned, no occasion has hitherto arisen when the summoning of witnesses or production of documents in connection with departmental inquiries into the conduct of public servants was necessary.

Letter—from C. G. MACKAY, Esq., I.C.S., Registrar, High Court.

To—the Secretary to Government, Home Department (Judicial).

Dated—Madras, the 4th November 1916.

No.—R.O.C. 3313.

With reference to your letter No. 2302 B-1, dated the 13th October 1916, enquiring when a reply may be expected to the Government's reference on the subject of the desirability of legislating for the purpose of securing the attendance of witnesses and the production of documents in departmental enquiries into the conduct of public servants, I am directed to state that the subordinate courts have been consulted in the matter and their replies are awaited.

XI

Letter—from P. L. MOORE, Esq., C.I.E., I.C.S., Inspector-General of Police.

To—the Secretary to Government, Home Department (Judicial).

Dated—Madras, the 10th November 1916.

No.—D. 1025.

With reference to Home Department (Judicial) endorsement No. 2417 A-1, dated 31st August 1916, calling for a report on the question whether any difficulties are experienced in securing the attendance of witnesses at departmental enquiries, I have the honour to report that the general practice in this department is that the enquiring officer either sends for the witnesses or himself goes to their village and examines them. No difficulty is experienced in securing the attendance of witnesses.

Letter—from the Hon'ble Mr. J. H. STONE, M.A., F.R.H.S., C.I.E., Director of Public Instruction.
To—the Secretary to Government, Home Department (Education).
Dated—Madras, the 11th October 1916.
No.—2302 B-1.

I am directed to forward the accompanying copy of a letter from the Inspector-General of Registration, No. 110-1, dated the 20th June 1916, on the subject of the desirability of legislating for the purpose of securing the attendance of witnesses and the production of documents in departmental enquiries into the conduct of public servants and to enquire whether difficulties similar to those referred to by the Inspector-General have been experienced in enquiries against employees of civil and criminal courts and, if so, how they have been met in practice.

Memorandum No. 3087-1 Home (Education), dated 5th September 1916.
A copy of a letter from the Inspector-General of Registration No. 110-1, dated 20th June 1916, is forwarded to the Director of Public Instruction who is requested to be so good as to report whether difficulties of the kind described in the letter in the conduct of enquiries into charges against public servants have been experienced in the Department of Public Instruction and, if so, how they have been met in practice.

P. RAJAGOPALA ACHARYA,
Secretary to Government.

To the Director of Public Instruction.

Memorandum No. 1199-1, Public (Marine), dated 8th September 1916.
The Presidency Port Officer is requested to report whether any difficulties have arisen in the Port department in the matter of summoning witnesses and ordering the production of documents in connection with departmental inquiries into the conduct of public servants and, if so, how the difficulties have been met.

(By Order.)

R. H. COUNTRYMAN,
Under Secretary to Government.

To the Presidency Port Officer.

Letter—from the Hon'ble Mr. J. H. STONE, M.A., F.R.H.S., C.I.E., Director of Public Instruction.
To—the Secretary to Government, Home Department (Judicial).
Dated—Madras, the 4th November 1916.
No.—R.O.C. 3313.

With reference to Government Memorandum No. 187-1, Medical, dated the 20th August 1916, requesting me to report whether any difficulties have been experienced in the department in the matter of summoning witnesses and ordering the production of documents in connection with departmental enquiries into the conduct of public servants, I have the honour to state that I often have to enquire into the conduct of assistant surgeons. In such cases, I generally call up the District Medical and Sanitary Officer or the immediate superior officer of the assistant surgeon concerned to report on the case and, if necessary, frame charges, after carefully hearing both sides. In the conduct of such enquiries no difficulty has so far been experienced by me in getting at the facts of the case and in having the required documents produced.

Letter—from C. G. MACKAY, Esq., I.C.S., Registrar, High Court.
To—the Secretary to Government, Home Department (Judicial).
Dated—Madras, the 3rd February 1917.
No.—Dis. 275.

With reference to your letter No. 2306 B-1, Home Department (Judicial), dated the 4th September 1916, enquiring whether difficulties in securing the attendance of witnesses and the production of documents have been experienced in departmental enquiries regarding employees of civil and criminal courts, and, if so, how they have been met in practice, I am directed to state that the reports of the District Judges and Magistrates, who have been consulted, indicate that no difficulties have been experienced in practice, because courts, civil and criminal, issue summonses or notices under the Code of Civil Procedure or the Madras Act III of 1869, respectively, which are obeyed by those summoned, even though issued without any legal authority. The Honourable the Judges consider that it is very undesirable that officers should have recourse to a procedure which is unauthorized by law.

Order—No. 429, Home (Miscellaneous), dated 2nd May 1917.

The Government do not consider that in practice any serious difficulty is experienced in obtaining evidence required in departmental enquiries. They are therefore unable to accept the proposals of the Inspector-General of Registration.

(True Extract)

R. RAMACHANDRA RAO,
Secretary to Government.

To the Inspector-General of Registration.
" the Chief Justice of the High Court of Judicature at Madras (with C.L.).
" the Director of Public Instruction.
" the Inspector-General of Police.
" the Departments of Prisons.
" the Departments of the Secretariat.

the Inspectors-General of Registration,
the Inspectors-General of the High Court of Judicature at Madras (with C.I.),
the Inspectors-General of Police,
the Inspectors-General of Prisons,
the Inspectors-General of the B. and C. Districts.

If it is considered desirable that the power to summon witnesses in departmental enquiries should be conferred on the Inspector-General of Registration, the Inspector of Registration Offices and District Registrars, the practice obtaining in other departments and the extent to which the difficulties pointed out by the Inspector-General of Registration are felt by them may first be ascertained. The question whether any legislation on the subject

I would rather avoid this.

P.R.—25-7-16.

should be restricted to the Registration Department, or extended to other departments as well, will then have to be decided. This general question is, it is submitted, one which should be dealt with in the Public Department. The case may, it is submitted, be transferred to that department with the remarks of the Judicial Department.

P.G.S.S.—1-7-16.

M.V.V.—18-7-16.

B.T.—20-7-16.

W.B.S.—20-7-16.

Before transferring to Public and making the question a general one it would be better to obtain the Honourable Member's orders on the proposal.

E. A. HARVEY—21-7-16.

I think that the difficulty mentioned by the Inspector-General is a real one and it would be an advantage to empower the Inspector-General, the Inspector of Registration Offices, and the District Registrars to summon witnesses, etc. I would rather not take up the question of other departments just now. Each department has generally its own difficulties and may be allowed to solve those difficulties in its own way. While I agree with the Inspector-General that legislation is necessary such as he indicates, I feel that this legislation will have to be done by the Government of India by way of amending the Indian Registration Act. At any rate we must, I think, place the matter before India and ask for India's approval before undertaking Provincial legislation.

P. RAJAGOPALA ACHARIYAR—25-7-16.

I do not think the Government of India is likely to sanction legislation with reference to one department alone on a matter which does not raise a difficulty peculiar to that one department. The question must have arisen with regard to other departments also. I would therefore consult Public as to whether any similar difficulty has been experienced in other departments and, if so, how it has been dealt with.

P. S. SIVASWAMI AYYAR—26-7-16.

Submitted that the case may now be sent to Public u.o. with reference to the Honourable Member's note above.

P.G.S.S.—27-7-16.

M.V.V.—27-7-16.

E.A.H.—28-7-16.

HOME DEPARTMENT (MISCELLANEOUS).

With reference to the Honourable Member's note above, submitted that no information is available in this department. The following departments of the Secretariat may accordingly be requested to be so good as to state whether difficulty such as that referred to by the Inspector-General of Registration in the matter of summoning witnesses and ordering the production of documents in connection with departmental inquiries in regard to the conduct of public servants has arisen in the departments under their control, and, if so, how the difficulty has been dealt with:—

Home, Judicial (A)—With special reference to Police department.

„ Judicial (B)—Employees of Civil and Criminal Courts.

„ Judicial (C)—Jail department.

„ Educational—Inspecting agency and establishments subordinate to it.

Financial (Separate Revenue)—Salt, Abkari and Customs departments.
 Public (Marine)—Port department.
 Local and Municipal—Medical.
 Public Works Department—General and Irrigation.

C.P.K.—8-8-16.

C. RAMANUJA ACHARIYAR—8-8-16.

P.R.—9-8-16.

PUBLIC WORKS DEPARTMENT (IRRIGATION).

The case may be returned to Home Department (Miscellaneous) with the remark that no departmental enquiries into the conduct of public servants are being conducted by Irrigation. P.W.D. (General) deal with such matters.

G.V.—25-8-16.

F. E. MORGAN—25-8-16.

HOME DEPARTMENT (JUDICIAL).

Submitted that the Inspector-General of Prisons may be consulted u.o. with reference to the Miscellaneous Section note at page 2 ante.

P.G.S.S.—25-8-16.

M.V.V.—25-8-16.

E. A. HARVEY—28-8-16.

To the Inspector-General of Prisons u.o.

OFFICE OF THE INSPECTOR-GENERAL OF PRISONS.

So far as I am aware no difficulty has arisen in this department. Cases, in which the authority asked for by the Inspector-General of Registration would be of any advantage, are extremely rare, and so far as the Jail Department is concerned, would not be worth legislating for. When a grave charge has been made against an officer, it has always been handed over to the Police for investigation.

E. H. GADSDEN—29-8-16.

To the Home Department (Judicial) u.o.

HOME DEPARTMENT (JUDICIAL).

Submitted that the Inspector-General's remarks may be concurred in and the case returned to Home (Miscellaneous).

P.G.S.S.—30-8-16.

M.V.V.—30-8-16.

E.A.H.—31-8-16.

PUBLIC WORKS DEPARTMENT.

The indexes for the last ten years have been examined and no papers on the point referred to are to be found. But it may be mentioned in this connection that in 1911, when it was necessary to conduct inquiries against a sub-engineer of this department, Act V of 1893 was availed of—vide G.O. No. 143 W., dated 4th February 1911.

2. With the above information the file may be returned to Home (Miscellaneous). As enquiries into complaints against subordinates are dealt with in the General branch, it seems unnecessary to consult "Irrigation" in the matter.

C.R.—2-9-16.

A.M.—3-9-16.

G. D. PLUMMER—6-9-16.

W. G. MOLESWORTH—6-9-16.

S. B. MURRAY—6-9-16.

4
LOCAL AND MUNICIPAL DEPARTMENT (MEDICAL).

A draft official memorandum to the Surgeon-General is submitted for approval.
K.N.—28-8-16.

V. T. KRISHNAMA ACHARIYAR—99-8-16.

[Official Memorandum No. 167-1 (Medical), dated 29th August 1916.]

From the Surgeon-General No. 100/T. 415, dated 25th September 1916.

The Surgeon-General's reply may be forwarded to the Home (Miscellaneous) Department u.o. with reference to their note on page 2 ante.

K.N.—28-9-16.

V.S.—28-9-16.

V.T.K.—29-9-16.

FINANCIAL DEPARTMENT (SEPARATE REVENUE).

Please see pages 1 and 2 supra and the reference from the Inspector-General of Registration at pages 1 to 3, current file. The Home (Miscellaneous) Department enquire whether difficulty such as that referred to by the Inspector-General of Registration in the matter of summoning witnesses, etc., in departmental enquiries into the conduct of public servants has arisen in the Salt, Abkari and Separate Revenue Department and, if so, how the difficulty has been dealt with. The rules for the conduct of enquiries into charges against officers of the Salt department are given in paragraphs 768 et seq. at pages 184-185 of the Salt Manual, Volume II. The officers, who can conduct the enquiries, are the Commissioner, Assistant Commissioners, Inspectors and Assistant Inspectors in the case of executive officers and the heads of offices in the case of the clerical establishment—vide note under 768 (2) at page 185 of the Salt Manual, Volume II.

Under note 1 to section 59 of the Madras Salt Act IV of 1889 "all officers of the Salt department not below the rank of sub-inspector have been empowered to summon persons to appear and give evidence or produce documents" in any investigation relating to the salt revenue or to an offence under the Salt Act—vide pages 40-41 of the Salt Manual, Volume I. Though the Madras Salt Act does not explicitly provide for the issue of summonses in departmental enquiries into the conduct of salt officers as does the Madras Revenue Enquiries Act V of 1893 referred to at page 1, current file, the salt officers presumably utilise the powers vested in them under section 59 of the Salt Act to summon witnesses in enquiries into the conduct of subordinate officers of the Salt department. The difficulty experienced by the Registration department may not therefore have been felt in the Salt department. As this is not, however, certain, it is submitted that the Board of Revenue may be asked u.o. to report whether any such difficulty has been experienced in the Salt department and, if so, how it has been met.

D.T.—31-8-16.

K.C.V.—6-9-16.

R. H. COURTENAY—7-9-16.

To the Board of Revenue (Separate Revenue) u.o.

BOARD OF REVENUE (SEPARATE REVENUE).

No difficulty has been reported so far, but legislation would be useful to enable officers of this department to summon witnesses or to order production of documents in departmental enquiries in view of the fact that the powers conferred on officers under Salt and Abkari Acts are limited to investigation of cases affecting the revenue or to offences under the Acts.

E. F. THOMAS—19-9-16.

FINANCIAL DEPARTMENT (SEPARATE REVENUE).

Submitted that the remarks of the Board of Revenue may be concurred in and the file returned to the Home (Miscellaneous) department.

C.V.R.—21-9-16.

K.C.V.—21-9-16.

R.H.C.—22-9-16.

PUBLIC DEPARTMENT (MARINE).

The Madras Record office has also been consulted. There are no papers traceable to indicate that in the Port department difficulties have arisen in the matter of summoning witnesses and ordering the production of documents in connection with departmental enquiries in regard to the conduct of public servants.

If it is considered necessary to consult the Presidency Port Officer on the matter, a draft memorandum is submitted for approval.

A.S.M.—2-9-16.

D.S.—4-9-16.

R.H.C.—6-9-16.

[Memorandum to the Presidency Port Officer, No. 1199-1, dated 8th September 1916]

From the Presidency Port Officer, No. 1232/238-G., dated 13th October 1916.

The Presidency Port Officer replies that no occasion has hitherto arisen in his department when the summoning of witnesses or production of documents in connection with departmental enquiries into the conduct of public servants was necessary.

The file with the Presidency Port Officer's reply may be returned u.o. to Home (Miscellaneous) finally.

A.S.M.—14-10-16.

S.D.S.—14-10-16.

R. H. COURTENAY—16-10-16.

HOME DEPARTMENT (EDUCATION).

With reference to the Home (Miscellaneous) department's note a draft memorandum to the Director of Public Instruction is submitted for approval.

P.R.—30-8-16.

N.K.—3-9-16.

C. RAMANUJA ACHARIYAR—4-9-16.

[Memorandum No. 3087-1, Home (Education), dated the 5th September 1916]

From the Director of Public Instruction, Dis. No. 6858/16, dated the 11th October 1916.

The Director's letter read above may be forwarded to the Home (Miscellaneous) department with reference to its note on page (2) ante and with an expression of concurrence in the views expressed by the Director of Public Instruction.

P.R.—20-10-16.

N.K.—23-10-16.

C.R.—24-10-16.

HOME DEPARTMENT (JUDICIAL).

Submitted that the paper may be referred to the Inspector-General of Police who may be asked to report whether similar difficulties are experienced in his department.

P.S.R.—28-8-16.

W.B.S.—30-8-16.

Press
Please print
the Marine portion
after the
Education note.
The whole note
of Education
and Marine
being
transferred
to the place
indicated on
the next page.
Note

Yes.

E. A. HARVEY—31-8-16.

[Endorsement to the Inspector-General of Police, dated 31st August 1916.]

From the Inspector-General of Police, D. No. 1025, dated 10th November 1916.

Please see the Inspector-General's letter. It is reported that no difficulty is experienced in the Police Department in the matter of securing the attendance of witnesses. Submitted that the file may be returned to Home (Miscellaneous) with this information.

B.T.—15-11-16.

C.R.—15-11-16.

E.A.H.—16-11-16.

A draft letter of reference to the High Court is submitted.

A.K.K.—31-8-16.

P.R.R.—31-8-16.

Issue.

E.A.H.—2-9-16.

[Letter to the High Court, No. 2306 B-1, dated 4th September 1916.]

From the High Court, Dis. No. 275, dated 3rd February 1917.

The High Court reports that no difficulty is at present experienced in securing the attendance of witnesses and the production of documents in departmental enquiries relating to employees of civil and criminal courts. They consider it undesirable, however that officers should have to resort to a procedure unauthorised by law. The file may now be returned to Home (Miscellaneous) u.o.

A.K.K.—7-2-17.

P.R.R.—7-2-17.

Yes.

E.A.H.—8-2-17.

HOME DEPARTMENT (MISCELLANEOUS).

The replies from all the departments of Secretariat who were consulted are now complete. The further currents and notes have been consolidated in chronological order. It would facilitate easy reference if the currents and notes are printed up to date, before the file is taken up for consideration. There appears to be no great urgency about the matter.

For orders whether this may be done.

M.C.—18-2-17.

P.D.R.—24-2-17.

Yes, please.

C.R.—26-2-17.

HOME (MISCELLANEOUS) DEPARTMENT.

Please see notes above and in particular Sir P. S. Sivaswami Ayyar's note, dated 26th July 1916, on page 2 ante. The replies received from the Inspector-General of Police, Inspector-General of Prisons, High Court, the Surgeon-General, Board of Revenue (Separate Revenue), Director of Public Instruction, Presidency Port Officer and Public Works Department, who were consulted, show that the difficulties represented by the Inspector-General of Registration in his letter on pages 1-2 ~~current file~~, have not been experienced in their respective departments. The Board of Revenue, (Separate Revenue) is, however, of opinion that legislation would be useful and the High Court's letter states that, though no difficulties have

Press
Print here
the Education
Marine notes
from page 5.

2
been experienced in practice, the Hon'ble the Judges consider that it is very undesirable that officers should have recourse to a procedure which is unauthorized by law. In this connection attention is invited to the letter from the Director of Public Instruction on page 5, current file, who points out that the introduction of legislation in this matter would create some inconveniences such as the formality of allowing a counsel to the accused and the making of a comparatively informal inquiry into a regular judicial proceeding, demanding judicial training for its effective conduct. The reports received from the other departments consulted show that no difficulty has been experienced by them in the past and that legislation as proposed by the Inspector-General of Registration is not imperatively required for those departments.

In the circumstances the proposal of the Inspector-General of Registration is for final orders by the Judicial Department to whom the file may now be transferred.

c/ M.J.—29-3-17.

P.D.R.—5-4-17.

Submitted to Secretary (in Judicial) for orders with reference to notes on page 2 supra. The result of the enquiry made does not support the Inspector-General's request.

C. RAMANUJA ACHARIYAR—16-4-17.

i/ I do not think that in practice the difficulty exists. In most cases the notices issued are readily obeyed. It will be only rarely that they will be not heeded, while at the same time evidence of such persons is likely to be of consequence. It appears to me in such cases a reference may be made to Government and orders obtained under Act V of 1893. I submit no case is made out for special legislation either for the Registration Department or for all departments.

R. RAMACHANDRA RAO—22-4-17.

Judging from the replies received from other departments I do not think that, in practice, any serious difficulty is experienced in obtaining the evidence required in departmental enquiries. I feel pretty sure that if statutory powers were given to summon witnesses, etc., they would be used generally without due discrimination, to the needless annoyance of the public in many cases. I would leave things as they are and veto the proposal of the Inspector-General of Registration.

Please circulate to the Hon'ble Mr. Rajagopala Achariyar.

H. F. W. GILLMAN—24-4-17.

The Hon'ble Diwan Bahadur P. Rajagopala Achariyar, C.I.E.

R. RAMACHANDRA RAO—24-4-17.

I agree that we may leave things as they are.

P. R. RAJAGOPALA ACHARIYAR—25-4-17.

HOME (MISCELLANEOUS) DEPARTMENT.

Please see the notes on pages 7-8 ante. Draft order is submitted.

M.D.R.—26-4-17.

P.D.R.—27-4-17.

C. RAMANUJA ACHARIYAR—30-4-17.

R.R.—1-5-17.

[G.O. No. 429, Home (Miscellaneous), dated 2nd May 1917.]

ORDINARY.

PRESS SLIP.

PREFERENCE.

URGENT (a).

Home (25) DEPARTMENT.

23

Current No. dated 191 ..

G.O. No. 429, dated 2-5-1917.

Number of MS. pages sent { Correspondence 5 + 1000
(b) Notes 9

Brief subject. *Conferring Station power*

(c) Number of copies required when struck off (not including copies for volumes and editors' table which are retained in the Press).	(b) B. T. copies to supply requisitions for purchase by the public.	Complete correspondence and orders.	Notes.
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Ooty Records ...			
For filing with original ...			
Total ..			

FOR ISSUE.†

Letter only.	Complete G.O.	(b) Special issue copies of G.O.		Notes
		No.	Papers.	
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Govt. of India.....Dept.				
Revenue Department.....				
Public Works Department.....				
Local and Municipal Department.....				
Educational Department.....				
.....Dept.				
Public Dept.....				
Judicial Dept.....				
Political.....				
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[P.T.O.]

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Referencer.
Clerk.

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