M.R.O. 1—10,000—16-10-19.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 554	Press ~~Mis.~~
51-53	
Dated 4.4.1862	~~19~~ .

4/7

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 4th April 1862.

Read the following papers :—

No. 51. Proceedings of the Board of Revenue, dated 17th February 1862, No. 1,124.

From B. CUNLIFFE, Esq., Collector of Madras; to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Madras, dated Palavakum, 3rd February 1862, No. 34.

1. I have not unfrequent subpœnas from the Supreme Court to produce documents before it, having reference both to the precincts of Madras and the old Chingleput District.

2. An Officer of my Establishment is obliged to attend with them, and on the last occasion, he was detained in Court several days, the hearing of the case having been postponed from day to day, and not only did his own work fall into arrear, but batta was granted to him for the expense of going to and fro the Court.

3. If the documents are required from the Madras Office, they must be produced, but if from the Huzur or District Offices, attendance is optional, as the subpœna is in force only within the Supreme Court jurisdiction, though it is desirable that every facility be given to suitors if it can be conveniently granted, and without interruption to public business.

4. The Trivallur Tahsildar was summoned some months ago, but I declined to let him go, as the Government business would be at a stand still during his absence, and it was not at all improbable that he would have been detained many days; indeed when once the lawyers have secured the attendance of a public Officer, my experience tells me that it is a matter of indifference to them how long they detain him.

5. I beg, therefore, that the Board will in communication with the Government Attorney, say what is to be done on the receipt of these applications, whether copies of the required documents should be taken on stamp paper, as is the process in the Mofussil Courts, or whether the Officers should attend, and documents be produced as specified in the subpœnas: in the latter case batta should be granted, for expenses are incurred by the parties. Their evidence also should be taken on their appearance, and they be discharged. They will themselves make no objection to continue in attendance, for doing nothing about the Court would be more agreeable to many of them than working in Office.

Ordered that the above letter be submitted for the consideration and Orders of Government.

(A true Copy and Extract.)

(Signed) W. HUDLESTON,
Secretary.

Transferred to the Judicial Department.

(Signed) J. D. SIM,
Secretary to Government.

FORT SAINT GEORGE,
24th February 1862.

Referred for the remarks of the Government Solicitor.

(Signed) T. PYCROFT,
Chief Secretary.

FORT SAINT GEORGE,
25th February 1862.

No. 52. From JOHN MILLER, Esq., Acting Government Solicitor, Madras; to the Honorable T. PYCROFT, Chief Secretary to Government, dated 6th March 1862, No. 127.

1. I have the honor to acknowledge receipt of the Order of Government, dated 25th February 1862, referring for my remarks the Proceedings of the Board of Revenue of the 17th idem, No. 1,124.

2. Every private individual who is summoned to give evidence or to produce papers has to suffer the same inconvenience as the Collector of Madras does, and I cannot see why he should be

exempted any more than other officials or private individuals from the process of Courts of Justice.

3. A feeling that public Officers must not be subpœnaed has lately grown up to such an extent that I think it proper to bring the matter to the notice of Government.

4. In the Small Cause Court, if a party whether Plaintiff or Defendant wants a subpœna ad testificandum or ad duces tecum addressed to a public Officer, such as the Collector of Madras, the Clerk of the Court refuses to issue the writ without the Order of the Court. To obtain this Order a party has to dance attendance in Court till he can get an opportunity to make the application to one of the Judges, the application is then heard, the necessity for issue of the writ enquired into and sometimes granted, sometimes refused, and sometimes referred for the decision of the full Court. In this way much public time is consumed, and when parties are represented by professional advisers they are put to considerable expense by an arbitrary rule which some day may prove to be attended with very serious consequences to Government. Section 48 of Act IX of 1850 is in the following words. "Either of the parties to the suit or any other proceeding under this Act may obtain, at the Office of Clerk of the Court, Summonses to witnesses, with or without a Clause requiring the production of books, deeds, papers and writings in their possession or control, and in any such Summons any number of names may be inserted."

5. The word *may* in this Section, would I feel confident be held to entitle a party absolutely to the writ upon his application to the Clerk of the Court. The Act never contemplated any application to the Court.

6. There have been several instances in which public Officers subpœnaed to produce documents have neglected to attend or to send any one to the Court with the documents required. The Collector gives one instance in the 4th paragraph of his letter to the Board of Revenue. This default on the part of public Officers is not only productive of serious injury to the parties on whose behalf they are subpœnaed, but will be attended with serious consequences, if the party suffering, is able, and chooses to incur the expense of suing for damages, or of taking proceedings to enforce obedience to the writ of subpœna. If a suit were instituted for recovery of damages I am inclined to think that the Government would be the parties who would be sued and who would be held liable notwithstanding that the act complained of was the act of their servant.

7. I am not aware of the distinction which the Collector of Madras draws between the necessity of producing documents required from the Madras Office and the non-necessity of producing those from the Hoozoor or District Offices. I am clearly of opinion that the Collector is bound by the subpœna to produce all papers in his custody or under his control, wherever they may be kept, so long as due time is afforded him for their production.

8. The inconvenience resulting from subpœnaing public Officers is sometimes and I have no doubt is generally avoided by parties requiring papers, taking attested copies of them on stamped paper, when such a course is practicable, but attested copies will not do in all cases. In cases where it is necessary to prove an original document, an attested copy thereof on stamped paper would be of no use, for though the party requiring to prove the document had the attesting witnesses or others present in Court to prove it, yet the want of the original document would be a fatal bar to its proof.

9. It frequently happens in a case that documents are called for which are not subsequently found necessary to be put in evidence, and consequently it may often happen that public Officers consider that they are unnecessarily and sometimes vexatiously subpœnaed.

10. As a check on parties subpœnaing witnesses, to subpœna only those witnesses who are essential to their case, I think that it would be extremely desirable to introduce the system now prevailing in England, viz., that of making parties pay a certain sum to each witness he summonses according to his position in life, in addition to his expenses.

11. This can only be done by legislation.

12. I would also suggest in order to obviate the necessity and inconvenience of public Officers and others being called away from business by subpœnas to produce papers, that in any

Proceedings of the Madras Government, Judicial Department,
4th April 1862.

such Act that may be passed a Clause might be introduced providing that in all cases where a public Officer or private individual shall be subpœnaed to produce papers it shall be deemed a compliance with the requirements of such subpœna if such public Officer or other individual shall without delay forward by Post and under seal in a registered packet the documents required to the principal Ministerial Officer of the Court or Judge issuing the subpœna, that such Ministerial Officer shall produce them to the Court when called for, and that he shall return them when no longer required to the public Officer or individual from whom they came under a cover sealed with the Seal of the Court, and duly registered—the parties on whose behalf the papers are produced paying all charges attending such production.

No. 53. ORDER THEREON, 4th April 1862, No. 554.

Resolved that a copy of the Acting Government Solicitor's letter be furnished to the Board of Revenue, in reference to their Proceedings of the 17th February, No. 1,124.

2. The Government must observe that their Acting Solicitor does not seem fully to appreciate the disadvantages resulting from the practice complained of by Mr. Cunliffe. It is not the inconvenience sustained by the party individually who has to attend with the documents, that need be considered. This doubtless is no greater than would be experienced by any private person that might be subpœnaed, and indeed as remarked by the Collector, some public servants would prefer hanging about a Court to working in their own Offices. The evil lies in the stoppage thereby occasioned to public business generally. When a public Officer holding any important employment, as a Tahsildar of a Talook, is called away from his post, the business of the Office must be more or less interrupted, and all who have to resort to it subjected to delay and annoyance.

3. The Government are not at present prepared to have recourse to legislation for the purposes indicated in paragraphs 10 and 12 of Mr. Miller's letter, although the suggestions are deserving of consideration. They request that the Solicitor will however, as far as it may be in his power, urge the various Judicial authorities and Officers with whom he may be in communication to refrain as far as possible from summoning public servants without necessity, and to provide as far as possible for their prompt examination when they do attend. It might be well also if the Collector of Madras were on each occasion of one of his servants being summoned, to send a Memorandum of the circumstance to the Government Solicitor, who would as far as he had an opportunity see that no needless delay was interposed.

4. The Government consider the check in the Small Cause Court on the needless subpœnaing of public servants as witnesses, or to produce papers, referred to in paragraph 4 of Mr. Miller's letter, to be a very salutary one, and that it should be continued until at least the practice of the Court in this respect has been overruled by competent superior authority.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

From the Board of Revenue — Read the following Letter
Rec'd 17th Feb'y 1862 No 1126

From the Acting Govt Solicitor Madras. — Rec'd 6th March 1862 No 727

Order thereon — 4th April 1862 No 554

Resolved that a copy of the Govt Solicitor's letter be furnished to the Board of Revenue, in reference to their proceedings of the 14th February No 1124 –

2. The Government must observe that the Solicitor does not seem fully to appreciate the disadvantages resulting from the practice complained of by Mr Cunliffe. It is not the inconvenience sustained by the party individually who has to attend with the documents, that need be considered. This double fee is

is no greater than would be experienced by any private person that might be subpœnaed, and indeed as remarked by the Collector, these public servants would prefer hanging about a Court to working in their own Offices. The evil lies in the stoppage thereby occasioned to public business generally. When a public officer holding any confidential employment, as a Shareholder of a Estate, is called away from his post, the business of the Office must be more or less interrupted, and all who have to resort to it subjected to delay and annoyance.

3. The Govt are not at present prepared to recommend legislation for the purposes indicated in para 10 & 12 of Mr Stokes letter, altho the suggestions are

are deserving of consideration. They request that the Solicitor will however, as far as it may be in his power, urge the various Judicial authorities and Officers with whom he may be in communication to refrain as far as possible from summoning public servants without necessity, and to provide as far as possible for their prompt examination when they do attend. It might be well also if the Collector of Madras were on each occasion of one of his servants being summoned, to send a Memo. of the circumstance to the Govt Solicitor who would do what he could on the spot, or if opportunity occurred that no needless delay was interposed.

4. The Govt. consider the check in the S. C. Court on the needless subpœnaing of public servants as witnesses

witnesses, or to produce papers referred to in para 4 of Mr. Miller's letter, to be a very salutary one, and that it should be continued until at least the practice of the Court in this respect has been overruled by competent superior authority.-

JJ

No.

The Acting Govt. Solicitor
" Board of Revenue.

Dept 5 th

Proceedings
Judicial 186 . Department

No. 557.

PROCEEDINGS of the MADRAS GOVERNMENT.

Dated 4th April 1862

Requesting that the Govt Solicitor may urge the Judicial Authorities to refrain as far as possible from summoning public servants without necessity and to provide for their prompt examination when they do attend.

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