

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1634	Press ~~Mis.~~
Dated	16-10-	19-1866

194-195

5/6

Not to be folded or roughly handled

Government {1866} of Madras.
JUDICIAL.

Recd.

Regd.

} 1866.

Enclosures

Spare copies

Letter No. 1634, 16th October 1866.

OCTOBER.

Nos. 194-195.

Summonses.

Government of India furnished with a ruling of the High Court, in accordance with the opinion of the Advocate-General at Calcutta, regarding the currency of — beyond the districts in which they are issued, and informed that their instructions on the subject will be duly observed.

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

READ—the following paper:—

No. 194. Letter from the Secretary to the Government of India, to the Chief Secretary to Government, Fort Saint George; dated Simla, 10th September 1866, No. 4331.

Home Department.

I am directed to acknowledge the receipt of your letters noted on the margin, on No. 466, dated 27th March 1866. the question of the provisions of the Code of Criminal Procedure as to the efficacy of a summons addressed to accused persons or witnesses, resident beyond the local jurisdiction of the Magistrate wherein such summons is issued.

No. 1230 " 8th August "

2. In reply, I am directed to forward, for information, the accompanying copy of the opinion * of the Advocate-General of Bengal, and I am to intimate that the Government of Madras will act upon it.

* Dated 20th August 1866.

3. With reference, however, to the order of the Madras Government of the 27th March, No. 465, of which a copy was forwarded with your letter No. 466 of the same date, I am directed to state that, upon the recurrence of any similar case, the Governor-General in Council would be glad if the Government of Madras would communicate with the Government of India before issuing, for the guidance of Magisterial authorities, instructions admitting the existence of (what would be) a serious defect in the Code of Criminal Procedure.

ENCLOSURE.

From the Advocate-General of Bengal, to the Under Secretary to the Government of India, Home Department, dated Calcutta, 20th August 1866.

I have now the honor to reply to your letter, No. 403 of 28th April, on the subject of the provisions of the Code of Criminal Procedure as to summonses addressed to accused persons or witnesses resident beyond the Magistrate's local jurisdiction. The learned Advocate-General of Madras having given a detailed opinion on the point, I have considered it a good deal, and am obliged to come to a conclusion opposed to that stated by Mr. Norton in his opinion.

2. I think that any Magistrate before whom a complaint is made of an offence committed within his jurisdiction may issue a summons to the accused person to any apparently necessary witness, whether the party to be summoned is within or without the limits of the local jurisdiction of such Magistrate, such summons ought to be served by a Police Officer, but it is not necessary that it should be served by an officer of the district in which the summons issues. Mr. Norton rests his opinion on the absence of any provisions as to summonses similar to those which the Code contains as to the execution of warrants out of the Magistrate's jurisdiction. I am of opinion that there was no necessity whatever to make any such provisions as to summonses.

3. A Magistrate has cognizance of any offence committed within the local limits of his jurisdiction, and all Her Majesty's subjects in India are bound to take notice of the jurisdiction of the Courts by Law established. The summons is no more than an intimation to the party addressed that a case has arisen which the Magistrate has jurisdiction to investigate, and with regard to which the party's presence is required. Such a notice may be served anywhere within Her Majesty's Indian territories without endorsement, which being a mode of delegating authority has no application in case of an instrument like a summons which does not purport to convey any authority at all.

4. This, I take it, is the real reason why we find the Legislature silent as to the service of the summons, while making express and particular provisions as to the warrant. The summons is not so much a process as a notice, on disregard of which process may issue; the warrant is process addressed to, and which has to be executed by, an Executive officer. The Legislature has provided (and most properly) that the execution of such process shall be subject to the superintendence of the Magistrate, within whose local jurisdiction it is to be enforced, thus providing the best safeguard against abuse. But no such precautions can be necessary as regards the service of a mere notice; all that is necessary is, that there should be service capable of proof; for which purpose the Code provides that service of summonses shall be effected through the Police.

5. I have only to add, that I entirely concur in the remarks contained in paragraphs 14 to 18 of Mr. Norton's opinion.

6. The papers received with your letter are returned herewith.

No. 195. To the Secretary to the Government of India, Home Department (Simla), No. 1634, Judicial, dated Fort Saint George, 16th October 1866.

With reference to my letter, dated 8th August last, No. 1230, I am directed to enclose a ruling of the High Court, in accordance with the opinion of the Advocate-General at Calcutta, regarding the currency of summonses beyond the district in which they are issued.

2. I am to add that the opinion of the Advocate-General of Madras was circulated, in consequence of the High Court having refused to give any opinion on the question, when it was submitted to them by the Magistrate of the Godavery district in April 1865. In future, the instructions conveyed in your letter of the 10th ultimo will be duly observed.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Recd 18/10/86
With a copy of the ruling

Judicial Department.

No. 1634.

To

The Secretary to the Government
of India,

Home Department. Simla

Sir,

With reference to my
letter dated 8th August last, No. 1230,
I am directed to enclose a
ruling of the High Court
in accordance with the
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General at Calcutta
regarding the currency of
Summonses beyond the dis-
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18 Aug 1886.

W.D.

14
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in April 1865. In future
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10 ult^o reply will be duly observed.

I D

Int. St. George
16. Oct. 1865

9-10-14

Ludwig Webb Depantt.

1st Lt.

To

The Secy. to the Govt of

India

Recd 16th October 1914.

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