

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	131	Press ~~Mis~~
Dated	23-1-1867	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
23rd January 1867.*

No. 234. Read the following letter from the Magistrate of South Arcot, to the Chief Secretary to Government, Fort Saint George; dated Cuddalore, 6th September 1866, No. 43.

With reference to the enclosed Proceedings* of the High Court, conveying an opinion by the Judges, at variance with that expressed by the Advocate General, and circulated for the guidance of all

• Dated 18th August 1866.

Magistrates in the Proceedings of Government, under date the 27th March last, No. 465, I have the honor to request instructions as to the course to be followed in the matter referred to, whether the opinion of the High Court as recorded in the enclosed, or that of the Advocate General as communicated in the Government Proceedings above quoted. Uniformity of procedure is of course very necessary, and I presume that the decision of the High Court on the point in question must supersede that of any other authority.

Proceedings of the High Court of Judicature at Madras, 18th August 1866.

Read letter dated the 24th ultimo, from the Session Judge of Tinnevely, forwarding, as called for in High Court's Proceedings, dated the 25th May last, the Proceedings of Government, dated the 27th March 1866, No. 465, and the correspondence connected therewith.

Read also letter dated the 31st ultimo, from the Session Judge of Madura, bringing to notice the position taken by the Magistracy upon the Order of Government, dated 27th March 1866.

1. The High Court learn from these papers that an opinion of the Advocate General has been communicated to the Magistracy, to the effect that a Magistrate has no power under the Code of Criminal Procedure to summon a witness resident in another District.

2. The Court have considered the provisions of the Code upon this subject, and are unable to concur in the conclusion arrived at by the Advocate General. When the legislature has intended special limits to the power of summoning, it has expressed them as in Section 144. The provisions of Sections 186, 227, 253, 262, and 367 as to the summoning of witnesses are quite general: "the Magistrate shall ascertain the names of any persons acquainted with the facts of the case and shall issue his Summons to such persons;" the accused may give in "a list of witnesses whom he may wish to be summoned," and "the Magistrate shall receive the list and summon the witnesses;" "the Magistrate shall summon any witness that may be offered in behalf of the accused," and so forth. There is no restraining clause as in the case of a Warrant, which, it is expressly provided by Section 83, shall "ordinarily be executed within the jurisdiction of the Magistrate of the District in which it is issued." There was no necessity for any express enactment as regards the mere service of a Summons beyond the limits of the Magistrate issuing it.

3. The High Court are clearly of opinion that Magistrates are at liberty to issue Summonses for service upon witnesses beyond the limits of their own Districts.

(True Extract).

(Signed) T. WILKINS,
Deputy Registrar, Appellate Side.

(True Copy).

(Signed) C. W. READE,
Magistrate.

No. 235. ORDER THEREON, 23rd January 1867, No. 131.
To be recorded.
(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. Cartledge.

No. 27th March 1868 at 2076 210.
15th August - 4008 to 710.

Recd of 5 July

Post. 1868 Office

From the Registrar of
the Court

To the Chief Secretary
to Government

Date 6th September 1868
No 43

Enclosure 1 No 902

Reference to the Court
to his presence in the
arrangement to in the
enclosed Proceeding of the
Regd Court dated 18th
August 1868 respecting the
power to stamp and register in
another district.

23rd Dec 1868 P. 131.

Recorded

234. 235

Wm. L. L. L.

Wm. L. L. L.

the following letter
to be sent to

As.

To the Registrar of the Court
the following letter
to be sent to