

25/3 ✓

Geno. 2809 Judicial of 27-11-1877
(B no. 220-221)

S.S.M.

2809
1

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

27th November 1877, No. 2809.

Warrants.

Read the following paper :—

No. 220. *From W. A. SYMONDS, Esq., Superintendent of the Central Jail, Salem, to the Chief Secretary to Government, dated 9th November 1877, No. 555.*

Under the provisions of Section XVIII of the Prisoner's Act, I have the honor to enclose eleven warrants, the legality of which I doubt inasmuch as the parties concerned were convicted and sentenced on a Sunday. I also annex copies of correspondence between the District Magistrate and myself upon this subject. Notwithstanding the absence of an express enactment upon the point at issue, I am of opinion that the maxim *dies dominicus non est juridicus* is one of those rules founded on public policy which the Government will probably wish to conserve, and I am under the impression that there is a ruling of the Calcutta High Court exempting Sunday from all legal business.

No. 221. ORDER THEREON, 27th November 1877, No. 2809.

The Superintendent of the Central Jail, Salem, will be informed that the warrants in question, although issued on a Sunday, are not invalid as the Lord's Day Act, 29 Car. II, Ch. 7, has been expressly repealed by the new Civil Procedure Code—vide Section 3, Act X of 1877 and the first Schedule (A) attached thereto; see also IV, Madras High Court Report, p. LXII, and VII idem, 285.

2. It is the wish of the Government however that, as far as possible, the Christian day of rest should be observed throughout British India. District Magistrates will instruct the Native Magistracy accordingly.

(True Extract.)

D. F. CARMICHAEL,
Chief Secretary.

To the Superintendent, Central Jail, Salem, with warrants.
Inspector-General of Jails.
To all District Magistrates.
To the Inspector-General of Police.

Ed. J. W. Fischer.

Salem Central Jail,

9th November 1877

K0555.

From

The SUPERINTENDENT of
Central Jail Salem.

To

The Chief Secretary to Government
Fort St. George
Madras.

Sir,

Under the provisions of Section XVIII of the Prisoners' Act, I have the honor to enclose eleven warrants, the legality of which I doubt, inasmuch as the parties concerned were convicted and sentenced on a Sunday. I also annex copies of correspondence between the District Magistrate and myself upon this subject. Notwithstanding the absence of an express enactment upon the point at issue, I am of opinion that the maxime dire dominicus now est jurisdictus is one of those rules founded on public policy which the Government will probably wish to conserve, and I am under the impression that there is a ruling of the Calcutta

Govt. of 1877 31/10/77.

JUDICIAL.

To

THE SUPERINTENDENT,
CENTRAL JAIL.

Ac,

Ac,

Salem, Ac

Dated 10th Nov 9th 77.

For

Per

End.

G.O. 274 November 1877, No. 2832.

NOVEMBER
1877.

Remains - The Superintendent, Central Jail, Salem, to be informed that certain warrants issued on a Sunday are not valid. The District Magistrate is to instruct the Native Magistrate that it is the wish of Government that as far as possible, the observance of rest should be observed throughout India.

Calcutta High Court exempting Sunday
from all legal business.

I have the honor to be

Sir

Your Most Obedient Servant

W. S. S. S.

Ag Superintendent

6900

11220

Judicial (1877) Dept
Warrants

The Superintendent of
Central Jail Salem.

The Chief Secretary to
Govt
Fort St. George
11th Nov 1877

ENCLOSURE. No. 555

Questions the legality
of Judges sitting on
Sunday.

2009
Judicial DEPARTMENT.
No.
From the Supt. Central Jail, Salem.
Dated 9 Nov 77, No. 555.

FOR ORDERS.

[Faint handwritten notes and scribbles]

*I don't think there
is any question of
legality. And to the
opposite side.*

*But I don't see how
it can be. I don't
think it desirable
that our Judges should
be seen to
violate the
law.*

1. With this letter the Supt
of the Central Jail, Salem,
has 11 warrants issued by the
Magistrate of the Bangalore
and questions their legality as having
been issued on a Sunday.
2. It is submitted that these
warrants cannot be held to be in-
valid, as the Lord's Day Act, 29
Car II, 1677, does not apply to
India. It has been ruled by the
High Court of Madras - Proceeding
No. 100 of 1869, 11 Madras H.C.R.,
page 151 - that an arrest under civil
process of a Mofussil Court on
Sunday is legal in this country.
It has also been held by the High
Court of Madras, per Mr. Justice
in Param Shook Dass v. Rasheed
and Bowling v. Rahabur & others,
11 Madras H.C.R., 285, wherein the
Judge on the other side of the High
Court had ordered the release of
a Mahomedan debtor arrested on

Sunday - that the provisions
of the Sunday Act do not
apply in this country; and
per Hermann, that, as between
Natives of India, the Sunday
Act does not apply.

21.11.77

that the Sunday
Act not be
observed throughout
B. India.

There is no doubt
of the expediency of
one day rest
in towns, irrespective
of all other considerations.
L.B.

English Statute
law, unless extended
to India, is not
binding in
this country -
The Government
are not bound to inform

Indian Department

21.11.77

Mr. Secy. The Secy.
Law to Government
Home Secy.
21.11.77

*How binding
will that attach?*

20/6 Judicial Department
7

PROCEEDINGS of the MADRAS GOVERNMENT.

READ the following letter from the

*Ag Superintendent, Central Jail, Salem, dated 9th
November 1874, No 555.*

Order thereon, 27th Nov/77 No. 2809

*The Superintendent
of the Central Jail, Salem
will be informed that the
warrants in question, although
issued on a Sunday, are
not invalid, as the Lord's
Day Act, 29 Car II, Chy, has
been expressly repealed by the
new Civil Procedure Code,
vide Section 3, Act X of 1877
and the first Schedule (it)
attached thereto. See also Villadras H.C.
R, p. 211; and 111 idem, 285.*

*2. It is the wish of
the Government however that,
as*

2209
7

as far as possible, the
disturbance, day of freshets
is observed throughout
British India. District
Magistrates will, instruct
the Police Magistrate of
each district

M.S.

To the Superintendent,
Central Jail, Calcutta with Warrants. 2209/12
The Inspector, Jail of Jail. 2209/12
All District Magistrates 2209/12
Chief of Police. 2209/12

14-8-75
 15-9-75
 21-5-10
 2-12-1881
 14-8-62
 18/5/2.8.72
 17-4-48

11/2232/11

post

Colt. of 1873 30 hours.

Date 27th 1889
 Here 187, No. 1

Nos. 220 - 221

Memorandum to the

General Staff, London, & the
 informed that certain
 warrants relating to
 on a Sunday are not in-
 valid. It has to be in-
 the law. Inquiries that
 it is the wish of the
 no for as possible. The
 Christian Day of rest
 to be observed during the
 British day.