

- (1) பக்கங்களின் எண்ணிக்கை 34
 (2) புதுக்கித் திருப்பிய நாள் டிசம்பர் 1995
 (3) ஆதாரங் குறிப்பீவர் சுருக்கொப்பம்

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

Judicial துறை

அரசாணை எண். மு. கோப்புத் தாள் எண்.	214 (118-121)	அச்சகம் பலவகை
நாள் :	28.1.1881.	199

க.யு.ந.

மெய்யுக்களோ கண்டியடி கையாளவோ கட்டாது.

219

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

28th January 1881, No. 214.

Processes.

Read the following paper:—

No. 118. From L. McIVER, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated Madras, 11th January 1881, No. 89.

I am directed by the Honorable the Judges of the High Court to forward copy of a letter received from the District Judge of Madura; and, with reference thereto and the G.O., dated 15th August 1878, No. 1633, to request that Government may be pleased to propose to the Government of Ceylon and the Straits Settlements reciprocity in the execution of commissions by judicial officers free of cost.

ENCLOSURE No. 1.

From P. P. HUTCHINS, Esq., District Judge of Madura, to the Acting Registrar of the High Court of Judicature, Appellate Side, dated Madura, 9th July 1880, No. 178.

I have the honor to forward, for the orders of the Chief Justice and Judges of the High Court, a copy of a letter from the Subordinate Judge of Madura (East) with its enclosures.

2. The Subordinate Judge addressed a commission to the Registrar of the Supreme Court of Penang for the examination of three witnesses. The Registrar examined the witnesses and demands a fee of 75 dollars for himself and 50 for the Clerk and Interpreter, equivalent to Rs. 168½ and Rs. 111 respectively, or Rs. 277½ in all.

3. The commission is addressed to the Registrar individually. He is to take the examinations himself and not to lay it before the Court for execution. The Subordinate Judge expected him to do the work for nothing, but I cannot see that he was in any way bound to do so. Section 388 of the Code can only apply to Courts governed by the Code. We should be bound by Sections 388 and 391 to execute commissions issued by the Courts at Penang, but it does not follow that any reciprocal obligation is imposed on the Courts at Penang or their officers. We could issue a commission to the Registrar or any properly-qualified person under Section 387 (old Code, Section 178), but, unless he is bound, like ourselves, to execute it free of charge, we should, of course, have to provide for his remuneration in the manner prescribed by Section 397 (old Code, Section 182).

4. This seems so clear that, but for the importance of the subject and a diversity of practice regarding it and for the further question of the amount to be paid, I should not have thought it necessary to trouble their Lordships. A charge of more than Rs. 90 for each witness does seem rather excessive, but perhaps it will bear comparison with the fees formerly payable for similar services on the Original Side of the High Court.

5. The subject is very important in this district, because of its trading commission with Ceylon. The interchange of commissions between our Courts and the Courts of that Island is a matter of constant occurrence. We always attend to their requisitions, and those Courts have rarely made any difficulty about executing our commissions or processes free of cost. In fact, the practice had become so familiar to us that we had come to consider that their law also imposed on them an obligation, and that we were justified in complaining when our processes were not attended to. Hence my letter embodied in G.O., 15th August 1878, No. 1633, Judicial Department, and hence also the enclosed correspondence between the District Judge of Tinnevely and the Supreme Court of Colombo. Even subsequent to this correspondence commissions have been executed free of charge by the Courts of Ceylon.

செப்பெருவரை பெயர் K.V.P.

செப்பெருவரைக்காக எடுத்த தொகை
செலவு செய்யப்பட்ட நாள் 1885
4000/10/25

சரிபார்க்கும்
மு. ப. எ.
கையொப்பம்

ஆராய்ச்சி
உதவியாளர்
கையொப்பம்

6. My object in submitting these remarks is not only that their Lordships may see exactly how the present case stands, but that they may be enabled to judge whether some reciprocity ought not to be obtained from the Courts of Ceylon and the Straits Settlements. It seems somewhat absurd that Ceylon, at all events, should be treated as a foreign country, and the Government of that Island has already expressed its willingness to assist us (see letter recorded in the Government Order already quoted).

No. 119. ORDER THEREON, 28th January 1881, No. 214.

Recorded.

2. Application will be made accordingly.

(True Extract.)

R. DAVIDSON,
Chief Secretary.

To the Hon'ble the Judges of the High Court,
with covering letter.

Exd. F. R. Bantleman.

Govt. of (1881) Madras

JUDICIAL.

To
THE HONBLE THE JUDGES
OF THE HIGH COURT.

Dated January, 28th.

Issued

Recd.

Encl.

G.O., 28th January 1881, No. 214.

JANUARY.
Nos. 116-121.

Processes.—Letter from the Acting Registrar, High Court, forwarding copy of one from the District Judge, Madura, and requesting that Government may be pleased to propose to the Government of Ceylon and the Straits Settlements reciprocity in the execution of commissions by judicial officers free of cost, recorded.



3/2/81

JUDICIAL DEPARTMENT.

Processes.

No. 215.

To

THE HON'BLE THE COLONIAL SECRETARY,
Straits Settlements, Singapore.

SIR,

It having been brought to the notice of the Judges of the High Court that the Registrar of the Supreme Court of Penang had demanded a heavy fee for executing a commission for the examination of witnesses addressed to him by one of the Courts in the South of the Presidency, I am directed to inquire, at the suggestion of the High Court, whether the reciprocal *free* execution of commissions in civil suits between the Courts in British India and those in the Straits will be adopted by the Government of the latter.

2. By Sections 388, 389, and 391 of the Code of Civil Procedure, 1877, the Courts in India are bound to execute commissions for the examination of witnesses issued by the Courts at Penang or other foreign and Colonial Courts, but a reciprocal obligation does not appear to be imposed by your Government on the Courts of the Straits Settlements or their officers.

3. The interchange of commissions between the Courts in India and the Courts under the Government of Ceylon is a matter of constant occurrence, and while their requisitions have been attended to, those Courts have rarely made any difficulty in executing Madras commissions free of cost. I trust, therefore, a similar reciprocity will be obtained in respect to the Courts in the Straits.

I have the honor to be,

Sir,

Your most obedient servant,

FORT ST. GEORGE,
23th January 1881.

Chief Secretary.

Ed. F. R. Bantleman.

Govt. of (1881) *Madras*
JUDICIAL.

To
THE HON'BLE THE COLONIAL SECY.
Straits Settlements, Singapore.

Dated January, 1881.

28th January 1881, No. 218.

JANUARY.
Nos. 118-121.

*Processes.—Inquiring whether the reciprocal
free execution of commissions in civil suits be-
tween the Courts in British India and those in the
Straits will be adopted by the Government of the
latter.*

JUDICIAL DEPARTMENT.

Processes.

No. 218.

To

THE HON'BLE THE COLONIAL SECRETARY,
Colombo.

SIR,

Adverting to the correspondence ending with letter from this Government, dated 15th August 1878, No. 1636, in respect to the service, by the Courts in Ceylon, of processes issued by Courts in British India, I am directed to ask further, whether the Government of Ceylon would adopt a suggestion made to this Government by the Honorable the Judges of the High Court at Madras for the reciprocal execution of commissions for the examination of witnesses in civil suits free of cost.

2. As the law at present stands, by Sections 388, 389, and 391 of the Code of Civil Procedure, 1877, the Courts in India are bound to execute the commissions of foreign Courts free of charge; but as no reciprocal legal obligation appears to be placed on the Courts in Ceylon, the Government are desirous of ascertaining whether the Ceylon Government will accept the proposal made as to reciprocity in the execution of commissions free of cost.

I have the honor to be,

Sir,

Your most obedient servant,

FORT ST. GEORGE,
28th January 1881.

Chief Secretary.

Exd. F. R. Bantleman.

JUDICIAL

To THE HONORABLE THE COLONIAL SECY.,
Colombia

Dated January, 28th.

5. *Conclusions*

12

G. G., 23rd January 1881, No. 219.

JANUARY.
Nos. 118-121.

PROCESSES.—Enquiring, in continuation of correspondence in respect to the service by the Courts in Ceylon of processes issued by Courts in British India, whether the Government of Ceylon would adopt a suggestion made to the Madras Government by the High Court for the proposed execution of commissions for the examination of witnesses in civil suits filed at cost.

High Court of
Judicature, Madras,
11th January 1881.-

copied by
Wm. H.

Frank

Lewis M^r Iver Esquire

Acting Registrar of the High Court
of Judicature at Madras.

No
The Honorable R. Davidson C. S. S.
Chief Secretary to Government
Honorable Sir,

I am directed by the Honourable the Judges of the High Court to forward copy of a letter received from the District Judge of Madras, and with reference thereto and the G. O. dated 15th August 1878 N^o 1633, to request that Government may be pleased to propose to the Government of Bengal and the Straits Settlement, reciprocity in the execution of Commissions by Judicial officers free of costs.

I have the honor to be,

Honorable Sir,

Your most obedient servant,

Leaves 1st 2nd

Acting Registrar
of the State of New York

No 175
1880

Madras, District Court.
9th July 1880.

From P. P. Mutchins Esquire.
District Judge of Madras.

To Lewis. M^r Iner Esquire
Acting Registrar of the High Court
of Judicature, Appellate Side.
Madras.

Sir,
I have the honor to forward for
the orders of the Chief Justice and Judges
of the High Court a copy of a letter from
the subordinate Judge of Madras (East)
with its enclosures.

2. The subordinate Judge addressed a
commission to the Registrar of the Supreme
Court of Oudh for the examination of three
witnesses. The Registrar examined the
witnesses and demands a fee of 75 Dollars
for himself and 50 for the clerk and
Interpreter, equivalent to Rs 166 1/2 and 111
respectively, or 277 1/2 in all.

3. The commission is addressed to the Registrar individually: He is to take the examination himself and not to lay it before the Court for execution. The Subordinate Judge expected him to do the work for nothing, but I cannot see that he was in any way bound to do so. Section 388 of the Code can only apply to Courts governed by the Code. We should be bound by sections 388 and 391 to execute commissions issued by the Courts at Penang, but it does not follow that any reciprocal obligation is imposed on the Courts at Penang or their officers. We could issue a commission to the Registrar or any properly qualified person under Section 387 (old code section 178), but, unless he is bound, like ourselves, to execute it free of charge, we should of course have to provide for his remuneration in the manner prescribed by Section 397 (old code section 182.)

+ what on
paper only
will be
done

4. This seems so clear that, but for the importance of the subject and a diversity of practice regarding it and for the further question of the amount to be paid, I should not have thought it necessary to trouble their Lordships. A charge of more than Rupees 90 for each witness does seem rather excessive but perhaps it will bear comparison with the fees formerly payable for similar services on the original side of the High Court.

5. The subject is very important in this District because of its trading commission with Ceylon. The interchange of commissions between our Courts and the Courts of that Island is a matter of constant occurrence. We always attend to their requisitions, and those Courts have rarely made any difficulty about executing our commissions or processes free of cost. In fact the practice had

become so familiar to us that we had come
to consider that their Law also imposed
on them an obligation and that we were
justified in complaining when our pro-
cesses were not attended to. Hence my
letter embodied in G.O. 15th August 1878,
N^o 1633, J.D. and hence also the enclosed
correspondence between the District
Judge of Tinnevely and the Supreme
Court of Colombo. Ever subsequent to
this correspondence commissions have been
executed free of charge by the Courts of Ceylon.

b. My object in submitting these
remarks is not only that their Lordships
may see exactly how the present case
stands, but that they may be enabled
to judge whether some reciprocity ought
not to be obtained from the Courts
of Ceylon and the Straits Settlements.
It seems somewhat absurd that

Ceylon, at all events, should be treated

91214 4 80.
as a foreign country and the Government
of that Island has already expressed
its willingness to assist us (see letter
recorded in the G. O. already quoted)

I have ^{been}
Signed / P. P. Hutcheon
District Judge.

/True copy/

Dever. H. Van
Acting Registrar,
Appellate Side.

240
Wor

Enclosure I.

Dear letter from the
Acting Registrar of the
High Court of Judicature
at C. Madras, dated
11th January 1881, No 39.

512/3

In bud: 88-89

Received

11/21/80
Judicial Department

Not. and P. 11/21/80
Not. and P. 11/21/80

No 215 Depd 8/2/81

To

The Honble the Colonial Secretary
Straits Settlements
Singapore

Sir,

It having been brought
to the notice of the Judges
of the High Court that
the Registrar of the
Supreme Court of Penang
had demanded a heavy
fee for executing a
for the examination of witnesses
Commission, addressed
to him by one of the
Courts in the South for
the

1
Of the Presidency
~~Commission~~, I am directed
to enquire, at the sug-
-gestion of the High
Court, whether the recip-
-rocal free execution of
Commissions in Civil
Suits between the Courts
in British India and
those in the Straits
will be adopted by the
Government of the
latter ~~Colonies~~.

2. By ³⁸⁹secs 388 & 391 of
the Code of Civil Procedure,
1844, the Courts in India
are bound to execute
for the examination of witnesses
Commissions, issued by
the

12/2/47 P
the Courts at Penang
or other foreign ^{Colonial} Courts,
but a reciprocal obligation
does not appear to be ^{by your fort}
if not imposed on the
^{Straits Settlements}
Courts of the ~~Colonies~~
or their officers.
3. The interchange
of commissions between
~~among~~ the Courts within
~~the Straits~~ & the Courts
under the Government
of Ceylon is a matter
of constant occurrence
and while their requisitions
have been attended to,
those Courts have rarely
made any difficulty
about executing ⁱⁿ Madras
Commissions.

Commissions free of cost.
I trust, therefore, a similar
reciprocity will be
obtained in respect to
the courts in the Straits.

872
1871

Fort St. George.
January 1881

To
The Honble
the Colonial Secy
Colombo.

Recd 8/2/81

Sir,
Adverting to the cor-
respondence ending
with letter from this
Govt. of 15 Aug. 1878 No 1636,
in respect to the service,
by the courts in Ceylon,
of process issued
Sd/-

13/2/81 P
by Courts in British
India, Law, at the
instance of the High
Court, Madras, directed
to ask further, whether
the Govt of Ceylon would
adopt the suggestion
made to this Govt by
the Honble the Judges,
of the High Court at Madras
for the reciprocal

execution of Commissions
for the examination of witnesses
in Civil suits free of cost.

2. As the law at
present stands, by Sec
388 & 391 of the Code of
Civil Procedure, 1859,
the courts in India are
bound

bound to execute the
commissions of foreign
Courts free of charge,
but as no reciprocal
legal obligation appears
to be placed on the
Courts in Ceylon, the
Government are desirous
of ascertaining whether
the Ceylon Govt will
accept the proposal
made as to reciprocity
in the execution of
commissions free of
cost.

S.S.
18/11/81

15 copies

collected 15 copies

Fort St. George
January 1881

18/2/89

Xmas 1881

15/2/4.
Just: DEPARTMENT.

No. 88.

From the As: Registrar of the High Court
Dated 11th January 1887. No. 39. forwarding

Copy of a letter from
the Dist. Judge, Madras,
and requesting that Govt.
may propose to the Govt.
of Ceylon and the Straits
Settlements reciprocity in
the execution of Commis.
Sends from Justice in
India. free of cost.

The G.O. 15 Aug. 78. no 1633
quoted by the Judge of
Madras, in which a letter
from Ceylon expressing
willingness to accept our
Com. referred to the
14/1 - Service of process 87.512/1

FOR ORDERS.

11/12/86
papers; and during
the office will be made
available for
21/1/87
and some other papers
which are being
adopted to be
suggested. made thus
to be done - for the
improvement of the service
of Com. forms, etc.
1887. 1/1/87
R 2/1

18/2/4

Quantity of
and for
at

FOR ORDERS.

the 21/4/41

10/10/41 214/41

14/12/10 ✓

23/12/13 ✓

21-12-24 ✓

26.5.36 ✓

Colt. of 1881 Madras.

Just

17
214

214, 215 & 216

G.O. 28th Jan'y 1881, No 4 A

Nos. 118-121.

Procees. Letter from the
Sg. Regt., High Ct., for
copy of one from the 2^d
Judge, Madras, & re-
questing that for may be
pleased to propose to the for
of High Ct. and the Straits
Settlements to reciprocity in the
execution of ~~common~~ commis-
sions by, Just. off. free
of cost, recorded.

Enquiring whether the
reciprocal free execution of
commissions in Civil suits betw
the Ct. in British India & those
in the Straits will be adopted by
the for of the latter.

Enquiring, in
connection of correspondence
respect to the service, by
Ct. in Ceylon, of procees
by for in British India, whether
the for of High Ct. would adopt
a suggestion made to the for
for by the High Ct. for the
reciprocal execution of commissions
for the execution of writs for
Civil suits free of cost.