MADRAS RECORD OFFIC

Government of Madras.

DEPARTMENT.

G.O. No.

Date

Not to be folded or otherwise handled

*Proceedings of the Madras Government, Financial Department,*
*20th July* 1874.

Read the following papers:—

No. 193. From J. C. LOCH, Esq., President of the Municipal Commission, Madras, to the Hon. D. F. CARMICHAEL, Acting Chief Secretary to Government, Fort St. George, dated Madras, 4th July 1874, G. No. 135.

I have the honor to acknowledge receipt of the Order of Government in the Financial Department of 30th June, No. 1095, and to state, in reply, that Mr. W. M. Scharlieb, though he does not actually reside in the *3rd Division, has his office* in it where he spends the greater part of every day.

2. On speaking to the late Officiating President on the subject, he informs me that he thought this would be sufficient to constitute Mr. Scharlieb a resident of the Division within the meaning of the Act, and, as he was of opinion that he was in all respects well-qualified to act as a Commissioner, he had no hesitation in bringing his name to the notice of Government. I would beg to be allowed to state that my estimate of Mr. Scharlieb's qualifications is equally as favorable as that of Mr. Coleman.

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These papers will be referred to the Advocate-General. He will be requested to state whether he considers Mr. Scharlieb qualified under the Act to be a Municipal Commissioner in the 3rd Division.

OOTACAMUND, *7th July* 1874.

(Signed) D. F. CARMICHAEL,
*Acting Chief Secretary.*

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No. 194. From H. G. PRICHARD, Esq., Government Solicitor, Madras, to the Hon. D. F. CARMICHAEL, Acting Chief Secretary to Government, Fort St. George, dated Madras, 14th July 1874, No. 413, forwarding the following opinion of the Advocate-General:—

OPINION.

I do not think that the mere fact of Mr. Scharlieb having an office in the 3rd Division constitutes him a resident therein within the meaning of Section 3 of Act IX. of 1867 (M.) or renders him eligible for appointment as one of the Commissioners for it. The meaning of the word "residence" has been repeatedly discussed by the Courts. "The judges," said Erle C. J., "who have had to decide on the meaning of the word 'residence' as it occurs in several statutes have put shifting meanings on that word according to the intention of the statute upon which they were deciding." I am not aware, however, that the mere fact of keeping an office has in any instance been held to constitute residence. In Powell *v.* Guest, 34 L. J. C. P. 69, when the question was whether a man had acquired a vote by residing for six months, Erle C. J. observed, "It seems to me that the doctrine is correctly laid down in Elliot on Registration where it is said that in order to constitute *residence* a party must possess *at the least a sleeping apartment*, but that an uninterrupted abiding at such dwelling is not requisite." Under 30 and 31 Vic., C. 102, Sec. 4, a man has been held to "reside" in the house where his wife and children resided, and where he could at any time and did at least once a week sleep, though for particular causes he had a sleeping apart-

Powell *v.* Guest 34 L. J. C. P. 69.

ment elsewhere. Taylor *v.* The Overseers of St. May Abbot, L. R. 6. C. P. 309. The same was held where a man was sole tenant of lodgings and lived in them for two months out of the twelve. In all these cases however there was something more than the mere keeping of an office. The present case seems to be one of those to which the maxim that " a man's house is where his wife lives " appears to properly apply. The Queen *v.* Norwood L. R. 2. Q. B. 459. The intention of the Act would seem to be that each of the eight Divisions should be represented by four persons having a local concern in its interests. Mr. Scharlieb, if elected, would have a local interest in a Division other than that which he represents, and his election would accordingly defeat the intention of the Act.

*13th July* 1874. (Signed) H. S. CUNNINGHAM,
*Advocate-General.*

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No. 195 ORDER THEREON, 20th July 1874, No. 1201.

Copy furnished to the President of the Municipal Commission, Madras, for his information; and for his guidance in future cases.

(True Extract.)

*Acting Chief Secretary.*

To the President of the Municipal Commission, Madras.

Exd. W. H. French.

Municipal Commissioners' Office,

G. No. 135. Madras 4th July 1874

From John C. Loch
President Municipal Commissioners
Madras.

To The Honble D. F. Carmichael
Actg. Chief Secretary to Government
Vellacamund.

Sir,

I have the honour to acknowledge
receipt of the Order of Government in
the Financial Department of 30th
June No. 1095 and to state in reply
that Mr. W. M. Scharlieb though
he does not actually reside in the 3rd
Division, has his Office in it where
he spends the greater part of every
day.

2. On speaking to the late
Offg: President on the subject he
informs me that he thought this
would be sufficient to constitute
Mr. Scharlieb a resident of the
Division within the meaning of the
Act


Govt. of Madras
FINANCIAL
No. 1095 of 1874
Dated 30th June 1874.
Read
Rec.
To
THE PRESIDENT OF THE
MUNICIPAL COMMISSION
Madras.
Sir,
I am directed to forward for your information a copy of the undermentioned paper and to request that you will favour this Department with a report on the subject.
Govt. Order dated 30th June 1874, No. 1095.
JULY.
Nos. 133—135.
Madras Municipality.—The opinion of the Advocate-General that a person whose place of business is situated within, but whose place of residence is beyond, the limits of a Division of the Municipality, is not qualified under the Act to be a Municipal Commissioner for that Division, communicated to the President for information and guidance.

Act, and as he was of opinion that he was in all respects well qualified to act as a Commissioner he had no hesitation in bringing his name to the notice of Government. I would beg to be allowed to state that my Estimate of Mr Scharlieb's qualifications is equally as favourable as that of Mr Coleman.

I have the honour to be,
Sir,
Your most obedient Servant
John L. Cloete
President
Municipal Commission

# Opinion.

I do not think that the mere fact of the Secretary
having an Office in the 3rd Division constitutes him a
resident therein within the meaning of section 3 of 40 Vict
IX of 1867 (No.) or renders him eligible for appointment as one of the Commissioners for it. The meaning
of the word "residence" has been repeatedly discussed
by the Courts. The Judges, and Erle C. J. who
have had to decide on the meaning of the word
"residence" as it occurs in several Statutes have put
shifting meanings on that word according to the
intention of the Statute upon which they were deciding.
I am not aware, however, that the mere fact of keeping
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down in Elliot on Registration where it is said that
in order to constitute residence a party must
possess at the least a sleeping apartment, but that
an uninterrupted abiding at such dwelling is not
requisite". Under 30 & 31 Vic: C. 102. S. 4 a man
has been held to "reside" in the house where his
wife and children resided and where he could
at any time and did at least once a week sleep,
though for particular causes he had a sleeping
apartment elsewhere. Taylor vs The Overseers of
St.

See May Abbott. L. R. 6. C. P. 309. The same was held where a man was sole tenant of lodgings and lived in them for 2 months out of the twelve. In all these cases however there was something more than the mere keeping of an office. The present case seems to be one of those to which the maxim that "a man's house is where his wife lives" appears to properly apply. The Queen v. Norwood L. R. 2. Q. B. 459. The intention of the Act would seem to be that each of the 8 divisions should be represented by four persons having a local concern in its interests. Mr. Schanliele, if elected, would have a local interest in a division other than that which he represents, and his election would accordingly defeat the intention of the Act.

/Signed/ H. S. Cunningham
Adv. Genl.
18th May/74.

/True Copy/
H. G. Richard
Government Solicitor.

No. 413.-

Madras, 11th July 1874.

From

H. G. Prichard
Government Solicitor
Madras

To The Honble. D. F. Carmichael
Actg. Chief Secretary to Government
Ootacamund.

Sir

I have the honor to acknowledge the receipt of the Order of Government dated 9th July instant, made on letter from the President of the Municipal Commissioners to Government dated 4th July instant No. 135) and its enclosures, requesting the Advocate General's opinion as to whether Mr. W. Mc. Schaulet, Barrister at Law, is qualified, under the Municipal Act, to be a Municipal Commissioner in the 3rd Division.

2. I submitted the matter for the consideration of the Advocate General, and I now forward herewith a copy of his Opinion and return the enclosures which accompanied the above Order of Government.-

I have the honor to be,
Sir,
Your most Obedient Servant,

H. G. Prichard
Government Solicitor.

To
The Chief Secretary to Government
Ootacamund.

Sir

I have the honor to forward herewith the Opinion of the Advocate General, dated 14th July 1874, on the Order of Government, dated 9th July 1874, No. 413.-

I have the honor to be,
Sir,
Your most Obedient Servant,

H. G. Prichard
Government Solicitor.

Madras, 14th July 1874.

Encl. 19/11/74.

Encl. 20 Letter & Opn.

Encl. 10th July.
Jetson Bros. 20th July 74
The Government Inspector
Madras
To The Revg. Chief Secy. to Govt.
Forwarded.

Dated 14th
Recd 17th July

No 491

No. 415.

Enclosures 3/4 papers ret.

I forwards copy of the Advocate Generals opinion on the question whether Mr. W. M. Schaible is qualified, under the Municipal Act, to be a Municipal Commissioner in the 3rd Division and returns the papers relating thereto.

~~On Date 20 July 1874 to No 1201~~

Copy furnished to the Revd. Municipal Comr. Madras, for his information & guidance in future cases. S.E.C. 17-

No 194. —
C/17/d 20/7

To W. M. Schaible Esqr. Madras 30/7

Govt. of (1874)

Financial.

To the Presdt. Munl. Commrs.
Madras.

G. O. July. 20, 1874, No. 1201.

Mon. 193. 195.

Madras Munc. The opinion of the Advocate-General that a person whose place of business is situated within but whose place of residence is beyond the limits of a division of the Munc. is not qualified under the Act to be a Munl. Commr. for that division Comr. to the Presdt. for information & guidance