II. SECRETARIAT PERSONAL REGISTER OF

Serial number. (1)	Current number. (2)	Date of receipt by Assistant. (3)	Title. (4)	From whom. (5)	Outside number and date. (6)	Submitted to Officer. (7)	Returned to Section. (8)

Sect+. II-I.

udicial (1895) Department.

(a)

ORDINARY PRINTED.

G.O., Nos. 446-447.

Dated 28th Feb. 1895.

[Despatch Abstract.]

ENACTMENTS IN FORCE IN THE AGENCY TRACTS

Communicating to the Agents to the Governor in Ganjam and Vizagapatam, opinion of the Advocate-General as to whether Act XXI of 1839 bars the operation of certain enactments in the Agency tracts in those districts, publishing a list of -- accordingly, and informing the Agents that the question of the applicability of certain other enactments has been referred to the Government of India for decision.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

-40

abstract

Govt. of [illegible]

Group I

ha[illegible]ulted

of Gunupur and Jeypore have somewhat heavy work, but there are none in these localities educated enough to associate with the District Munsifs for the purpose of a panchayet except a few vakils and Government employés whom it is not desirable to employ. Further, parties would rather settle their disputes through Court.

Regulation V of 1804 is not in force. The Agency estates of Jeypore, Bissemkatak and Payakapad now under management are being managed under the executive orders issued by Government under Rule VIII of the revised Agency rules (*vide* G.Os., Nos. 1804, 40 and 603, dated 22nd October 1889, 15th January 1890 and 1st April 1889).

Regulation IV of 1816 is in force in the Senior Assistant Agent's division, where there are three village munsifs exercising jurisdiction under this regulation.

I give in the margin the number of suits settled by them during the last three years. In other divisions there are no village munsifs. My Special Assistant Agent states that it would be impossible to enforce the regulation in his division as no one would be available to undertake the duties of a village munsif in at least 80 per cent. of the villages in his division. The Agencies of the Head and Principal Assistant Agents are equally, if not more, devoid of the means of enforcing this regulation.

Court.	Year.	Number.
Gunupur	1891	81
	1892	113
	1893	70
Rayaghada	1891	..
	1892	2
	1893	..
Narayanapatnam	1891	..
	1892	22
	1893	35

Regulation V of 1816 has been rarely enforced in the Special Assistant Agent's division. The Temporary Deputy Collector in charge of the Senior Assistant Agent's division has reported that it is in force in that division, but has not given any statistics in support of his statement.

Regulations XI of 1816, VII of 1817, I of 1819 (since repealed by Act I of 1876) and IX of 1822, have never been enforced. The first three are hardly required, as nearly three-fourths of the Agency consists of the Jeypore estate and its dependencies and special customs prevail therein regarding matters falling within the purview of the last two of these enactments.

Regulation XI of 1816 might be applied, but it would only be necessary to enforce it in very rare cases. There have never been any cases of sub-division or separate assessment in the Jeypore estate. It is desirable to apply Regulations IX of 1822 and XII of 1816. The reasons for the application of the former are obvious. It affords a summary remedy for dealing with the embezzlements committed by Revenue officials.

Regulation VI of 1831 has never been applied nor are there hereditary offices held in the Agency tracts.

Acts II of 1864 and VIII of 1865 have always been enforced and should be applied. Without the former our collection of Government dues (abkári, opium, &c.) will suffer. The latter is hardly suited to a primitive people like the genuine hill tribes of this district, but nearly the whole of the Agency has been under management since Fasli 1299 and cowles and muchilkas have been exchanged and the Act worked with as little hardship as possible. It will be a dangerous weapon in hasty hands, as the people are not educated enough to stand by their rights as in the plains, but it may be gradually introduced with much caution on the part of the officers entrusted with the administration of this part of the country.

India Act XX of 1863 has never been applied. There are no religious endowments falling under this enactment in the Agency outside the Jeypore estate and special customs govern those existing therein.

Act VI of 1844 is not at all in force in this Agency. The Principal, Senior and Head Assistant Agents have remarked that its application to their divisions is unnecessary. The Special Assistant Agent has not reported about it. But it is apparently unnecessary even here. It has never been applied heretofore.

With regard to Madras Act VIII of 1878 (the Coffee-stealing Act), I do not think it necessary for the present to extend the same to the Agency tracts. Coffee is only grown at present at Sammasingi, in the Gudem hills, close to the boundaries of the ordinary tracts, and at Anantagiri more largely by the Maharajah of Vizianagram. The latter locality is also close to the boundaries of the ordinary tracts. No thefts of coffee have ever occurred, as far as I know, nor is it likely that such will occur, the habit of coffee-drinking being almost unknown in these parts.

From C. J. WEIR, Esq , Acting Agent to the Governor in Ganjám, to the Chief Secretary to Government, dated Chatrapur, 30th June 1894, Dis. No. 23 Ag. of 1894.

I have the honour to reply to G.O., No. 1691, Judicial, dated 19th August 1893. I regret the delay which has taken place in submitting this report. References to the Assistant Agents and searches in the Agency records were, however, necessary in order to answer the questions put by Government. The matter, moreover, is somewhat intricate and various other emergent duties prevented me from dealing with it up to this date.

2. Referring to paragraph 3 (ii) of the Government Order, I have the honour to state that I have not been able to discover that any Act, which has been regarded as being in force, has been omitted from all three groups in the appendix to the Government Order. The question in paragraph 3 (i) refers, I presume, to the Acts mentioned in Groups I and II. Very many of these Acts, providing as they do for all contingencies in a highly-civilised society, have, of course, never been and are not likely to be soon enforced among the primitive inhabitants of the Agency tracts. Government has, however, pointed out that this does not affect the question of whether they are in force or not. As regards the Acts and portions of Acts referred to in Group I, I am unable to trace any instance where it was held by the local officers that an Act shown therein is not in force. Of those shown in Group II, Regulation XXV of 1802 has not, I think, been heretofore regarded as in force in these maliahs, and a great deal of it is entirely opposed to the system under which we have administered this part of the country, *e.g.*, sections 2, 8 and 11.

3. Passing then to Group III and dealing 1st with the Acts and Regulations which Government declared probably are in force, I would offer the following remarks :—

Regulation XXIX of 1802.—In none of the maliahs—with perhaps the exception of the Tumba Mutta, Jalantra Maliahs, where there is one karnam—for which sannads were issued to zemindars in 1874, are there karnams in the proper sense of the word ; a zemindar may have from time to time appointed a subordinate to make out the demand against all his maliah villages and to collect the money or assist in its collection, but none of the accounts specified in the regulation have ever been maintained. It would be quite impracticable to enforce the regulation.

Regulation VII of 1817.—There are in the maliahs no such endowments as are mentioned in the regulation and consequently the regulation has never been enforced, and is not required.

Act II of 1864—has, I believe, always been regarded as in force and it is absolutely necessary to collect the revenue. The abkári revenue is at present considerable and very rapidly increasing under the system of selling the shops by auction.

Act VIII of 1865.—As far as I can ascertain, this Act has not been regarded as in force in the Ganjám Agency. I am informed that the Gumma Bissoyi once distrained some property of his sourahs, which resulted in a rising against him. I have not been able to get the papers on the subject. The Assistant Agents are, however, unanimous that the Act should not be in force, and in this view I agree. In the greater part of the maliahs it would be difficult to say whether the relation of landlord and tenant really existed. It does not exist as between the zemindars and the patros and it is very doubtful if it exists between patros and cultivators. In many parts of the maliahs, patros received only what are known as "mamuls," *i.e.*, customary presents on certain occasions. The Assistant Agents point out that the

summary procedure by distraint authorised by the Act would, if put in force, lead to disturbances. The Act is not required and as disputes arising under it would have to be settled by the Divisional officer, who is, as a rule, at a great distance, no convenience to anybody would accrue. At present in the case of any dispute about land, which they cannot settle among themselves, the parties go to the Agency Munsifs' Courts which lie close to them and the suit is dealt with under the ordinary law.

Act III of 1869.—This is required.

Act I of 1876.—This Act is not applicable, as alienation by zemindars and hill chiefs is not permitted.

(*d*) *General Acts—Act XX of* 1863.—*Vide* remarks against Regulation VII of 1817.

3 (ii) ENACTMENTS PROBABLY NOT IN FORCE.

Regulations 1 *and* 2 *of* 1803.—Rule XXIX of the Agency rules lays down that the Agents of the Governor shall be guided by the rules now in force and exercise the same powers as are vested by the regulation in the collectors of land revenue, both as regards the realization of the public revenue and the trial of public servants charged with malversation and corruption. And it further directs that they and their assistants will continue in their revenue capacity subject to the Board of Revenue. These two regulations are therefore apparently required.

Regulation V of 1804.—At present certain portions of estates of minors under Court of Wards, situated in the maliahs, are being managed under the supervision of the Court of Wards, in the same way as the rest of the estates. The regulation is in my opinion necessary. I understand that the Jeypore estate which lies entirely in the Vizagapatam Agency tracts has been for many years under the management of the Court of Wards.

Regulation II of 1806.—There is only one Government karnam in the Agency tracts, viz., for all the villages in the Chokkapad muttah.

Regulations IV, V and VII of 1816.—These regulations are in force as rules: *vide* Rule VII, clause 1, of the Agency rules. The Special Assistant Agent reports that Regulation VII of 1816 is in constant use, but that Regulations IV and V have fallen into disuse, if indeed they ever were followed. There are indeed in the maliahs no regular heads of villages. The molikos, &c., are subordinates of the patros. Many disputes no doubt are settled amicably and informally in the village itself, but if anything beyond this is necessary, the patro is appealed to. I do not think the regulations are required. They could only be worked by the patro and he is not a head of a village as defined in section 3, Regulation IV of 1816.

Regulation XI of 1816.—The same remarks apply to this regulation. The late Special Assistant Agent, Mr. Elphinstone, considered it inadvisable that patros should exercise the powers conferred on village munsifs by the regulation of dealing with petty offences; he writes as follows:—

"*Regulation XI of* 1816 would, I think, be objectionable. Petty cases of theft or affrays and of course adultery are frequently settled by patros, but they are dealt with more as civil than as criminal cases, and patros if given power to fine and imprison without any appeal would most certainly use their powers for their own advantage. Sections 11 and 13 are practically enforced, heads of muttahs and villages generally reporting cases of suicide and accidental deaths without any delay, while stolen property is usually discovered by the losers and then the case is reported to the village maji and by the latter to the police."

On the whole I do not think the regulation is needed.

Regulation XII of 1816.—Mr. Elphinstone writes as regards this regulation:—

"In petty cases where a boundary is in dispute, it is always a piece of land that is in question, and this can be settled by the ordinary district panchayat, while in an important boundary dispute between two patros, a panchayat could not be trusted, though it might save the Divisional officer a great amount of trouble."

I agree with this view.

Regulation I of 1819.—As already pointed out, neither this regulation nor Act I of 1876 should be enforced.

Regulation IX of 1822.—Rule XXIX of the Agency rules puts this regulation in force as a rule; this and Regulation VII of 1828 seem to be required.

Regulation VI of 1831.—In this connection I would refer Government to G.O., No. 340, Judicial, dated 20th May 1882, where the point is discussed. My predecessor read the Government order as laying down that the regulation was in force in Agency tracts and directed that one claim to a hereditary office which came before him should be dealt with thereunder.

I do not read the Government order as laying down that the regulation is in force, but that the Agent was right in following the procedure of the regulation as a rule.

The Assistant Agents seem to consider the regulation is not needed, and I am not prepared to say that it is. If the regulation is to be regarded in force as a rule then I presume claims to hereditary offices and their emoluments cannot be decided in the Courts of the Agency Munsifs.

Act XXXVI of 1837.—If the Regulations IX of 1822 and VII of 1828 are enforced, this Act should be also.

Act X of 1849—might be required. The other Acts mentioned in Group III (2) do not seem to be required.

As regards the last portion of paragraph 5 of the Government order, I am informed that Act VI of 1844 is not enforced. I presume that inquiry relates to section 12 *et seq.* of the Act. It seems to me that it might be desirable in the case of some kinds of goods, especially after the through road now under construction to Boad and the Central Provinces is completed, to determine the route by which they should be imported or exported. I observe, however, that the section applies to all kinds of goods, and unless a very large number of choukis were established—which would be impracticable—enforcing the Act would work hardship.

ORDER—dated 5th October 1894, No. 2420, Judicial.

Before issuing final orders on the correspondence read above, the Government desires to be favoured with the views of the Advocate-General. The main question to be decided is whether Act XXIV of 1839 bars the operation in the Agency tracts of Ganjám and Vizagapatam of the following enactments, viz.—

Regulation	II of 1819		Group I.
Act	XXV of 1867		
,,	V of 1876		
,,	XI of 1878		
,,	XIV of 1882		
,,	II of 1886		
Regulation	XXV of 1802		Group II.
Regulation	XXIX of 1802	Sub-group (1)	Group III.
,,	VII of 1817		
Madras Act	II of 1864		
,, ,,	VIII of 1865		
,, ,,	III of 1869		
,, ,,	I of 1876		
Act	XX of 1863		
Regulation	I of 1803	Sub-group (2)	
,,	II of 1803		
,,	V of 1804		
,,	II of 1806		
,,	IV, V and VII of 1816		
,,	XI of 1816		
,,	XII of 1816		
,,	IX of 1822		
,,	VII of 1828		
,,	VI of 1831		
Act	XXXVI of 1837		
,,	X of 1849		

The enactments mentioned above have been arranged in the order adopted in G.O., dated 19th August 1893, No. 1691, Judicial. It is particularly necessary to note that the mere fact that an enactment has never been enforced in practice in the Ganjám or the Vizagapatam Agency is not sufficient reason for holding that its operation there is barred by the terms of Act XXIV of 1839.

2. At the present stage the following remarks seem to be called for:—

(1) *Regulation II of* 1819.—Mr. Wolfe-Murray gives his opinion that this Regulation is not applicable and points out that it appears in the schedules to Act XV of 1874. The latter remark is correct, though it appears in the schedules as Regulation II of 1817. But the inclusion of the enactment in the schedules is no reason for considering that it is inapplicable to the scheduled districts and it has been held on previous occasions that Regulation II of 1819 is in force in the Agency tracts of Ganjám and Vizagapatam. There is not the slightest reason for doubting the applicability of the Regulation.

(2) *Act XXV of* 1867.—As Mr. Wolfe-Murray points out, this enactment also appears in the schedules to Act XV of 1874, but there is no reason to doubt that it is enforceable in the Agencies.

(3) *Act V of* 1876.—Mr. Wolfe-Murray observes that Government ordered in G.O., dated 17th December 1887, No. 2886, Judicial, that this Act should not be enforced in respect of the hill-tribes. This is correct, but there is no reason to doubt that it is enforceable in the Agencies, although by executive order it is not, as a fact, applied.

(4) *Act XI of* 1878.—By notification the hill tribes have been exempted from certain of the restrictions imposed by this Act, but that it applies to the Agency tracts cannot be doubted.

(5) *Act XIV of* 1882.—Mr. Wolfe-Murray seems to have overlooked the fact that the appendix to G.O., dated 19th August 1893, No. 1691, Judicial, shows only sections 1, 3 and 223–229 as being in force.

(6) *Act II of* 1886.—The inhabitants generally of the scheduled districts have been exempted from paying income-tax, but the fact that such an exemption has been granted under section 6 of the Act proves, of course, that the Act *proprio vigore* applies.

(7) *Regulation XXV of* 1802.—Mr. Weir observes that Regulation XXV of 1802 has not generally been regarded as being in force in the Ganjam Agency. It may be the case that there are no permanently-settled estates in that locality, but the Jeypore Estate in the Vizagapatam Agency is held under a sanad issued under Regulation XXV of 1802 and there is no question therefore that the enactment must be held to be applicable to both Agencies, although, as a fact, it may never have been applied in Ganjam.

(8) *Regulation XXIX of* 1802.—If Regulation XXV of 1802 is in force, it seems to follow that this Regulation is in force too, but, of course, it is not a necessary consequence that karnams must be appointed where there are none at present.

(9) *Regulation VII of* 1817.—Both Agents report that this enactment has never been enforced within their territorial charges. It is very doubtful whether the terms of Act XXIV of 1839 are such as to bar the operation of the Regulation, but in an uncertain case of this character it seems safest to accept the result of the "historical inquiry" and to hold that the Regulation is not in force.

(10) *Madras Act II of* 1864.—This enactment has been worked in both Agencies and its applicability must, therefore, be regarded as proved, there being nothing in Act XXIV of 1839 which distinctly bars its application.

(11) *Madras Act VIII of* 1865.—This Act has been worked in Vizagapatam, but not in Ganjám. The difference is doubtless due to the fact that there is a proprietary estate in the former Agency, while it is difficult to say whether any of the occupiers of land in the Ganjám Agency are "land-holders" within the meaning

of the Act. If Act XXIV of 1839 does not bar the application of the enactment in the Vizagapatam Agency, it cannot do so in the Ganjám Agency and it must therefore be held that the Act is in force in both Agencies. Whether the Act should be practically applied in Ganjám is another question the answer to which must depend upon the nature of the tenure of land in that Agency. The matter is of the less importance that Act VIII of 1865 will probably be repealed before very long.

(12) *Madras Act III of* 1869.—It seems probable that this enactment is barred by Act XXIV of 1839, but it certainly ought to be extended; if this is so, and the extension can be effected by means of a notification under section 5 of Act XIV of 1874.

(13) *Madras Act I of* 1876.—Mr. Weir says that this Act is not in force because alienation by Hill Chiefs is prohibited. This remark is based on a misapprehension. The Act does not give the power to alienate where it is not at present possessed; it merely provides for separate assessment when alienation has taken place. The Act is clearly in force in Vizagapatam and must, therefore, be in force in Ganjám, but the fact that this is so will in no wise affect the prohibition against alienation by Hill Chiefs.

(14) *Act XX of* 1863.—Section 22 is of general application, but the Agents' reports show that the rest of the Act has never been enforced. It is doubtful whether Act XXIV of 1839 is enough of itself to bar the application of the enactment, but, in view of the results of the "historical enquiry," it seems best to declare that the Act is not in force.

(15) *Regulations I and II of* 1803.—Mr. Weir thinks both these enactments are required to give life to Agency Rule XXIX. The only portions of Regulation I which could affect the Agencies are sections 5, 31–33, 37, 38, 42 and 48–57 and it is doubtful if there is anything in Act XXIV of 1839 to bar the operation of these sections. The general effect of Regulation II is, however, to place Collectors in entire subordination to the Board of Revenue and this position is hardly consistent with Act XXIV of 1839. On the whole it seems best to declare that neither of the Regulations is in force. Agency Rule XXIX provides sufficiently for the general subordination of the Agents to the Board.

(16) *Regulation V of* 1804.—Mr. Weir says that the Court of Wards manages certain Maliah estates, but, if this is so, it is probable that the management extends only to those Maliah tracts which are attached to zamindaris on the plains. Mr. Weir is incorrect in his belief that the Jeypore Estate is managed by the Court of Wards and there is no reason to doubt that (as Agency Rule VIII assumes) the application of Regulation V of 1804 is barred by Act XXIV of 1839. It must, therefore, be declared to be not in force and this will cause no serious practical inconvenience for, though the Court of Wards will not in future manage the portions of zamindaris which lie within the Maliahs, these portions will be managed by the Agent under Agency Rule VIII subject to the orders of the Board of Revenue, which amounts to much the same thing.

(17) *Regulation II of* 1806.—There is no reason to doubt that this enactment applies, but, as it will probably be repealed shortly, the matter is of little consequence.

(18) *Regulations IV, V and VII of* 1816.—According to Mr. Weir, Regulation VII is still worked, but not Regulation IV or V. Mr. Wolfe-Murray says that three village munsifs exercise jurisdiction under Regulation IV and that Regulation V is occasionally used. Regulation VII has never been enforced in Vizagapatam. There is little reason to doubt that all three enactments were barred by Act XXIV of 1839 and this was probably assumed as regards Regulation IV when Madras Act I of 1889 which does not apply to the scheduled districts was passed. Admittedly Regulations IV and V are hardly ever applied in practice and to provide for the continued application of Regulation VII in Ganjám it will suffice to so amend Agency Rule VII as to leave the provisions of the enactment in force *in the form of rules having the force of law*. If this is done, all three enactments can, without inconvenience, be declared to be not in force.

(19) *Regulation XI of* 1816.—It seems that this enactment is not applied in practice and there is little doubt that it was barred by Act XXIV of 1839. It should be notified accordingly.

(20) *Regulation XII of* 1816.—The same remarks apply.

(21) *Regulation I of* 1819.—This enactment was repealed by Act I of 1876 and, if that Act is in force, as seems certain, then Regulation I of 1819 has been repealed in the Agency tracts, as elsewhere.

(22) *Regulations IX of* 1822 *and VII of* 1828.—Mr. Weir observes that Agency Rule XXIX brings these enactments into force as rules having the force of law. Mr. Wolfe-Murray says they have never been enforced, but both Agents think that Regulation IX of 1822 is necessary.

On the whole the Government is disposed to think that Regulation IX of 1822 should be declared to be in force, but Regulation VII of 1828 is on a different footing, for it gives an appeal to the Board of Revenue against decisions passed by the Collector under Regulation IX of 1822 and thus places the Collector-Agent in a position of subordination to the Board which was not contemplated by Act XXIV of 1839. Regulation VII of 1828 should therefore, the Government thinks, be declared not to be in force and this course will not cause any inconvenience, because G.O., dated 21st February 1894, No. 441, Judicial, has conferred upon the Assistant Agents the powers given to Subordinate and Assistant Collectors by section 3 of Regulation VII of 1828.

(23) *Regulation VI of* 1831.—This enactment has never been enforced in Vizagapatam and Mr. Weir rightly interprets G.O., dated 20th May 1882, No. 340, Judicial, as meaning that the provisions of the Regulation should be followed as a mere rule of procedure. The Regulation will soon be repealed in the ordinary tracts and the Government thinks that the best plan will be to declare it not to be in force in the Agencies and to make provision for the hearing of suits for village offices by means of an amendment of the Agency Rules or by the extension of the new Act as may seem most suitable hereafter.

(24) *Act XXXVI of* 1837.—This must be in force, if Regulation IX of 1822 is.

(25) *Act X of* 1849.—Mr. Weir says this enactment might be useful occasionally and it is doubtful if Act XXIV of 1839 bars its operation. But, if Regulations I and II of 1803 are declared not to be in force, it will perhaps be best to take the same course as regards Act X of 1849.

(26) As regards the other enactments falling under Group III in the appendix to G.O., dated 19th August 1893, No. 1691, Judicial, it is understood that the Agents hold the same views as Government.

(27) *Act VI of* 1844.—This enactment is unquestionably in force and it should have been added to Group I, but there is no need to bring it into actual operation as it has never been applied in practice hitherto.

(28) Mr. Wolfe-Murray's opinion that there is no need to extend Madras Act VIII of 1878 to the Vizagapatam Agency is accepted.

3. The Advocate-General will be requested to state whether he concurs with the views expressed above.

4. The revision of the Agency Rules will be undertaken when the questions now under consideration have been settled.

(True Extract.)

Chief Secretary.

To the Agent to the Governor in Ganjám.
" " " " in Vizagapatam.
" Government Solicitor.

Exd. S. J. Pereira.

Govt. of {1894} Madras.

JUDICIAL.

Issued

Recd. Encl.

G.O., 5th October 1894, No. 2420.

OCTOBER.

Abstract

Enactments in force in the Agency Tracts.

Requesting the views of the Advocate-General on the question whether Act XXIV of 1839 bars the operation of certain enactments in the Agency Tracts of Ganjám and Vizagapatam.

1894 Dept. Encln. No. To 254

Read - also the following papers:-

Re. question whether Act XXIV of 1839 bars the operation of certain enactments in the Agency Tracts of Ganjam and Vizagapatam.

Opinion

The question referred to me is whether Act XXIV of 1839 bars the operation in the Agency Tracts of the enactments mentioned in the order of Government dated the 5th October 1894, No. 24 Judicial. I think that the Act refers only to enactments relating to procedure, and to that extent I concur in the Opinion expressed on the 11th November 1885 by Mr. Shephard when acting as Advocate General. I do not however agree with Mr. Shephard when he denied that Act XXIV of 1839 has "the prospective effect suggested."

Group I

Regulation II of 1819. In the Opinion I gave on the 1st August 1887, I expressed a doubt, for the reasons therein given, as to this Regulation being in force in the Scheduled Districts (other than those to which it was extended in 1879) after the passing of Act XV of 1874. That Opinion did not touch the question now under consideration. I think that the operation of this Regulation is not barred by Act XXIV of 1839 with which it in no way clashes.

Act XIV of 1882. In his Opinion of the 1st September 1879 the late Mr. P. O'Sullivan said that the Code of Civil Procedure then in force, viz. Act X of 1877 did not apply to those Districts which are

expressly

Govt. of [illegible]

…ted out of its operation. Section 1 of …f 1882 declares that Sections 1 and 3 … …e whole of British India and the … …ons to the whole of British India except the Districts. Sections 223, 229 were subse… …xtended by G.O. dated 19th February … 84, Judicial. These sections therefore … …ne in force, and I think that the operation … the Code is barred by Act XXIV of 1839.

The remainder of the Acts falling within the group are, I think, applicable, and their operation is not barred by Act XXIV of 1839.

Group II

Regulation XXV of 1802 is one of those included in Schedule II (a) to Act XV of 1874, and is therefore presumably not in force in the Scheduled Districts. I fail to see anything in it inconsistent with Act XXIV of 1839, and therefore think that its operation is not barred by that Act.

Group III

Regulation XXIX of 1802 is declared by Act XV of 1874 not to be in force in the Scheduled Districts. but I do not think that Act XXIV of 1839 bars its operation.

Regulation VII of 1817 is also declared by Act XV of 1874 not to be in force in the Scheduled Districts. I am inclined to think that its operation is barred by Act XXIV of 1839, and agree in thinking that the safest course is to hold that it is not in force.

Madras Act II of 1864. I agree in thinking that … that there is nothing in Act XXIV of … distinctly bars the operation of this R…

Madras Act VIII of 1865 contains no … clause, and "historical enquiry" seems to … doubtful whether the Act is in force or … his Opinion of the 1st September 1879, the la… Mr. P. O'Sullivan said with regard to this Act … "understand it has never been declared to be in … "and has not been put in force in the Schedule… "Districts, and I think that it would now requi… "a declaration to apply that Act." On the 11th … November 1885 and again on the 3rd September 188… Mr. Shephard agreed with Mr. O'Sullivan. I think … that it is in force, but under the circumstance… above mentioned, the question can hardly be … said to be free from doubt. I do not think that … its operation is barred by Act XXIV of 1839.

Madras Act III of 1869. As this Act does not c… tain a power of extension, and as the "historical … enquiry" does not disclose the fact that the Act … has been treated as being or as not being in force … the course pointed out in Mr. Mackenzie's letter … of the 5th May 1884 No. 604 to the Secretary to the … Government of Bengal might be adopted if the … operation of the Act is not barred by Act XXIV … of 1839. I think that its operation is so barred … and that it cannot be extended by a Notification.

Madras Act I of 1876 and Act XX of 1863 } I am of opinion that the operation of neither of these Acts is barred by Act XXIV of 1839.

Regulation I of 1803 and Regulation II of 1803 } are included in Schedule II (a) to Act XV of 1874. In my Opinion their operation is barred by Act XXIV of 1839.

Regulation V of 1804 is included in Schedule II (a) to Act XV of 1874.

Regulation II of 1806 was repealed by Act XII of 1876 excepting Section 7 Clause 2. As it is to be entirely repealed shortly, further consideration of it seems to be unnecessary.

Regulations III, V and VII of 1816. The first two are included in Schedule II (a) of Act XV of 1874, and I think that all of them are barred by Act XXIV of 1839.

Regulation XI of 1816. Sections 8. 9. 10. 11 (Cl. 1). 13 14 & 47 are included in Schedule II (a) of Act XV of 1874, and are barred by Act XXIV of 1839.

Regulation XII of 1816. is included in Schedule II (a) of Act XV of 1874 and is barred by Act XXIV of 1839.

Regulation I of 1819 was repealed by Act I of 1876 which is still in force.

Regulation IX of 1822 is included in Schedule II (a) of Act XV of 1874. I think that the operation of this Regulation is not barred by Act XXIV of 1839.

Regulation VII of 1828 is included in Schedule II (a) of Act XV of 1874. I think that its operation is barred by Act XXIV of 1839 as it subordinates the Agent to the Board of Revenue.

Regulation VI of 1831 is included in Schedule II (a) of Act XV of 1874, and it appears that it is not required in the Agency Tracts. Under these circumstances, and because it will soon be repealed I agree in thinking that it should be declared to be not in force.

Act XXXVI of 1837 extended the criminal jurisdiction conferred by Regulations IX of 1822 and VII of 1828 both of which are included in Schedule II (a) of Act XV of 1874. Those Regulations do not seem to clash with, and therefore, their operation is not barred by Act XXIV of 1839. It therefore, follows that the Act extending them is not barred.

Act X of 1849 is included in Schedule II (a) of Act XV of 1874. I think that the operation of this Act is barred by Act XXIV of 1839.

signed J. H. Spring Branson
Advocate General.

Madras.
12th January
1895.

(True Copy)

Government Solicitor

No. 254

Jud. (1895) Department.

Govt. Papers

Fo 19 Feb 89 No 84

From

Ernest Barclay
Government Solicitor
Madras

To

The Chief Secretary
to Government
Madras.

SECRETARIAT
GOVERNMENT OF MADRAS

Dated 22nd January 1895.
Received 22 "
Regd 23 "

No. 20.

Encls 4

R.O.

Forwarded with enclosures with reference to the order of Government No. 2420. dated 5th October 1894. Judicial.

Ernest Barclay

Government Solicitor

Forder

Fo 2822: 28-12-95

Fo 2870 dist
" 2/12/85 No. 3270
" 2/11/80 No. 2969
" 29/5/84 No. 1298
" 26/6/82 No. 340

Fo. 2420: 5 Oct 1894 one Appendix
1691: 19 aug 1893 &c +
+ Scheduled Dists file

For orders:

From the Govt Solicitor
Madras 22-1-95
No. 20

Abstract - Forwarding
forms Opinion of the
Adv: Gl & 12-1-95

[5]
48—21-12-93.

Jud. DEPARTMENT.

Pap be read in Proceedings:—

P { Again G.O., dated 19 Aug 1893, No. 1691, Jud.
{ Again G.O., dated 5 Oct 1894, No. 2420, Jud.
A Current No. 254 of 1895; 22 Jan from the Govt Sol.

Current No. of 18 from order P.S. of 28 Feb. 95; No. 446.

Note
~~I have not accepted this~~
This is based on the orders contained in G.O. of 19/8/93 No. 1691 & G.O. of 5/10/94 No. 2420. If A.G. has any difficulty in understanding why certain enactments appear in the Appendices to the draft I can come round to his house & explain their inclusion. This will be easier than explaining in writing.

13/2

Please accept the Schedule districts 28/2/95

Note This is the accepted interpretation, though the wording of Act XV of 1874 is vague enough to give the Adv: Genl's remarks some support.

The Advocate-General's Opinion will be com[d] to the Agents to the Governor in Ganjam & Vizagapatam. The Hon. Mr. Spring-Branson accepts in almost every instance the views expressed in G.O. of 5 Oct. 1894, No. 2420, Jud. & the only remarks which it occurs to Gov[t] to make in connection with his Opinion are the following:—

(i) The Advocate-General speaks of Act XV of 1874 as declaring certain enactments not to be in force in the Scheduled Districts; ~~but as a fact however~~ the Act merely declares that certain enactments are in force outside those districts.

(ii) The Advocate-General holds that Madras Act III of 1869 is barred by Act XXIV of 1839 & that it cannot be extended by a Rule on the Gov[t] understands the Adv. Gen. to allude

G.27/11/79 W 2870 dis 6

a hotf[n] under sec: 3 of Act XIV of 1874; there seems no doubt that it can be applied by means of a hotf. under sec. 5 of that Act.

(iii) The Adv: Gen: agrees with Govt that Reg. VII of 1828 is probably barred by Act XXIV of 1839, but, where dealing with Act XXXVI of 1837, he speaks (probably by oversight) of this Reg[n] as not being so barred.

2. The Agents will now be informed that the enactments specified in the Appendix to this Proceedings are in force in the Agency tracts of Ganjam & Vizag[m], as regards the other enactments, forming Groups II & III in the Appendix to G.O.D. 19 Aug 1893, No. 1691, Ind[l], the G. of I. will be addressed.

3. As observed in para. 4 of the G.O. last quoted, the present Agency Rules and amendment to the Govt therefore directs, under sec. 4 of Act XXIV of 1839 & sec. 6 of Act XIV of 1874, that the following alterations in Clause 1 of Agency Rule VIII, the last part of which Clause shall be made in the "Vizi Regulations" shall be omitted from the Rules in

[illegible]

Note

There seems no objection to this & the G.O. of Aug 93 it was held that the Act probably is in force & that it was only an Executive order it has since been [illegible] that Govt. can't [illegible] that letter & the Act is in force. The A.G. should be [illegible] so & if it is proposed to

On further consideration the Govt is of opinion that sec 6 of Reg VII of 1828 is the only portion of that enactment which is repealed by Act XXIV of 1839 & the rest will accordingly be declared in force.

(iv) The Govt accepts the Adv-General's opinion that Act XX of 1863 is not barred by Act XXIV of 1839.

Note

The first group in the Appx to the G.O. of Aug 1893 contains the enactments in regard to which there is no doubt whatever; this group now appears as the Appx to this draft G.O. & a mere Executive order that the enactments quoted are in force will suffice.

Note

These alterations will I think do; for the present at all events. Clause 1 of Rule VIII implies that Regs IV, V & VII of 1816 are in force; it is now proposed to declare them not to be in force. Therefore the clause should disappear.

out the declaration that it is not in force will cause no inconvenience for Rule XXVII as now proposed to be amended will admit of the forming of District Panchayats as heretofore

~~disappear to exist~~

Clause 3 of Rule XXIX from the word "and in cases", ~~might be omitted~~ because it implies that Reg. VII of 1828 which gives an appeal to the Board against orders passed under IX of 1822 is in force, which is not the case. But, as the Agents are asked below to report whether Reg VII of '28 should not be formally extended, the clause can stand for the present.

4. It is proposed to declare that Reg. VII of 1828 is not in force in the Agency tracts, but as some appeal from orders under Reg. IX of 1822 appears necessary, the Agents will report whether Reg. VII of 1828 should not be formally extended to the Agency tracts under sec. 5 of Act XIV of 1874.

(i) The first clause of Rule VII shall be omitted.

(ii) In Rule XXVII the word & figure "Clause" at the beginning shall be omitted & for the sentence beginning "Panchayats" & ending "rules", shall be substituted the words "Panchayats assembled "under this rule shall "be guided by the pro- "visions of Reg. VII of "1816 so far as they "are consistent with "this rule"

~~the last portion of Rule XXIX beginning with the words "and in cases" to the end of Rule XXIX~~

5. The foll[g] letter will be issued to the G. of I.

[illegible] 18/4/95 [illegible] 18 Feb

Letter Agent & the Govt. Ganjam & Vizag[m]

Copy to the Govt Agent, Godavari

—— Rev. Dept.

—— Govt Sol[r]

—— Hon the C.J. with L.C.

Appendix

[Here enter Group I of the Appendix to G.O.D. 19 Aug 1893, No. 1691, Ind[l] as amended].

Over

L.R. x 141/79 No 2870 dis.

Letter ℔ 28 Feb. 95, No. 447.
Lotter Sec. to the G. of I., M. to.

Sir,

I am directed to forward a copy of the Proceedings of the Madras Govt. of this date, N°. 446, Jud., & to request that the G. of I. may be moved to sanction the issue of the draft Notifications appended to this letter.

2. In Mr. Mackenzie's letter ℔ 25 Feb 1882, N°. 279, Jud., the G. of I. informed this Govt. that it was advised that Act XXIV of 1839 had a prospective force in barring the operation in the Agency tracts of Ganjam & Vizagapatam of certain ~~enactments~~ classes of enactments passed subsequently to that year & the Madras Govt. was asked to prepare a comprehensive list of the Regulations & Acts which were supposed to be in force in the said tracts in view to the removal of all doubts by means of a Notif. under sec. 3 of Act XIV of 1874.

In Mr. Master's letter ℔ 8 Sept 1882, N°. 1245, Jud., however, this Govt. contested the view that Act XXIV of 1839 had a prospective force & objected to the preparation of a list of Acts in force in the two Agencies

DW 27/2/95

40.16 a 1 & 19/8/93

9

APPENDIX.

Group I.—Enactments which are undoubtedly in force in the Agencies.

(a) *Madras Regulations.*

~~II of 1819.~~ (sec. 2 only)

(b) *Local Acts of the Governor-General in Council.*

XXIV of 1839.
XXVII of 1857.
XXIV of 1859 (formally extended in 1861).
XXVIII of 1860 (extended in 1893)

(c) *Madras Acts.*

IV of 1862.
III of 1864 (except in certain villages in the Agencies).
V of 1865.
VI of 1865.
VII of 1865.
V of 1866.
I of 1867.
~~V of 1869.~~
VIII of 1869.
I of 1873.
V of 1879 (where Madras Act III of 1864 is in force).
III of 1882.
V of 1882 (in Vizagapatam only).
V of 1882.
XXI of 1882 (in Vizagapatam only).
V of 1884 (extended in 1894 to parts of the Ganjam agency)
~~VII of 1882.~~
VI of 1884.
II of 1885.
~~XI of 1886~~ (in certain villages in the Agencies only).
IV of 1886.
~~II of 1889.~~
III of 1889 (sections 1 and 2 throughout; the rest of the Act has been extended to certain villages in the Vizagapatam Agency only).
I of 1891.
II of 1893.
~~IV of 1893~~ (extended to parts of the Vizag. Agency in 1893).
V of 1893.

(d) *General Acts.*

XXXIV of 1850 (notified formally to be in force in 1889).
VIII of 1851.
XX of 1853.
III of 1858 (notified formally to be in force in 1889).
XIII of 1859.
XLV of 1860.
XLVII of 1860.
XVI of 1861.
VI of 1864 (section 6 only formally extended to the Ganjám Agency in 1867).
XVII of 1864.
X of 1865.
XIV of 1866.
XXVII of 1866.
~~XXV of 1867.~~
I of 1868.
V of 1869.
XX of 1869.
VII of 1870.
~~X of 1870.~~
XX of 1870.
XXVII of 1870.
I of 1871.
V of 1871.
XXIII of 1871.
XXXI of 1871.
I of 1872.
III of 1872.
IX of 1872.
XV of 1872.
XVIII of 1872.
XIX of 1872.
V of 1873.
X of 1873.
XIV of 1873.
II of 1874.
III of 1874.
IV of 1874.
IX of 1874.
XIV of 1874 (formally notified to be in force in 1889).
IX of 1875.
X of 1875.
XIII of 1875.
XVIII of 1875.
V of 1876.
IX of 1876.
XVI of 1876.
XIX of 1876.
II of 1877.
XI of 1877.
XV of 1877.
I of 1878.
VI of 1878.
VIII of 1878.

GROUP I—*cont.*

(*d*) *General Acts*—cont.

XI of 1878 (so far as regards certain matters only).
I of 1879.
III of 1879.
XII of 1879 (section 108 only).
XXI of 1879.
I of 1880.
IV of 1880.
XII of 1880.
V of 1881.
VI of 1881.
XI of 1881.
XV of 1881.
XVII of 1881.
XXVI of 1881.
I of 1882 (in Ganjám only).
II of 1882.
III of 1882.
IV of 1882.
VI of 1882.
VII of 1882.
VIII of 1882.
IX of 1882.
X of 1882.
~~XI of 1882.~~
XII of 1882 (a portion only).
XIV of 1882 (sections 1, 3 and 223—229 only).
XX of 1882.
V of 1883.
XIX of 1883.
XXI of 1883.
III of 1884.
IV of 1884.
VII of 1884.
IX of 1884 (section 10 only).
XII of 1884.
II of 1885.
III of 1885.
IX of 1885 (so far as it amends Acts XI of 1882 and VIII of 1878).
XIII of 1885.
XV of 1885.
XVIII of 1885.
II of 1886.
IV of 1886.
VI of 1886.
X of 1886.
XII of 1886 (in part only).
XIII of 1886.
XVIII of 1886.
I of 1887.
~~II of 1887.~~
III of 1887.
V of 1887.
VI of 1887.
VII of 1887 (Part II only).
IX of 1887.
XIII of 1887.
XIV of 1887.
XX of 1887.
XXI of 1887.
I of 1888.
~~II of 1888.~~
III of 1888.
IV of 1888.
V of 1888.
VI of 1888 (except sections 2—8 and, possibly, section 10).
VII of 1888 (sections 22, 23 and 66).
~~VIII of 1888.~~
XI of 1888.
XVII of 1888.
I of 1889.
II of 1889.
IV of 1889.
VI of 1889.
VII of 1889.
VIII of 1889.
XV of 1889.
XX of 1889.
I of 1890.
II of 1890.
III of 1890 (so far as it amends Act VII of 1884 only).
VI of 1890.
VII of 1890.
IX of 1890.
X of 1890.
~~XII of 1890.~~
XIV of 1890.
XV of 1890.
XVI of 1890.
XVIII of 1890.
I of 1891.
II of 1891.
III of 1891.
IV of 1891.
IX of 1891.
X of 1891.
XI of 1891.
XII of 1891.
XVIII of 1891.
~~I of 1892.~~
II of 1892.
VI of 1892 (section 1 only).
X of 1892.
I of 1893.
IV of 1893.
VII of 1893 (in Ganjám only).
VIII of 1893.
~~IX of 1893.~~
~~I of 1894~~

GROUP II.—ENACTMENTS WHICH ARE ON THE FACE OF THEM IN FORCE IN THE AGENCY TRACTS BUT WHICH APPEAR IN THE SCHEDULES TO ACT XV OF 1874.

(*a*) *Madras Regulations.*

XIX of 1802.
XXV of 1802.
XXVI of 1802.
VII of 1808.
IV of 1822.
VII of 1822.
V of 1829.
I of 1830.
V of 1831.
VI of 1831 (sec. 2 only)

II of 1819

on the ground under see. list is was necessarecessary to In reply this Govt. the reason formed (Mr. Mackenzie's letter of 28 Nov 1882, No. 11 Ind.) that the G. of I. would not press the matter.

3. Since this correspondence occurred, however, the Madras Govt. has seen reason to alter its view both as to the interpretation of Act XXIV of 1839 & as to the advantage of a list & the Agents for a clear statement of the law in force in the Agency tracts. H. E. in C. now agrees with the G. of I. that Act XXIV of 1839 probably bars the operation of enactments passed subsequently to that year & that it would be of material assistance to the Agency officers were they in possession of a complete list of the Regns & Acts which they are required to work.

4. Holding these altered views, H. E. in C. prepared in 1893 a list of enactments & circulated it for the remarks of the Agents in Ganjam & Vizagapatam (G.O. of 19 Aug 1893, No. 1691, Ind.). The Agents' replies were considered in G.O. of 5 Oct 1894, No. 242 Ind., wherein the Advocate General was requested to furnish his opinion on the subject. That officer's rem

in the accompany-
of Govt. to, after
sideration of them,
following drafts of
otifns under secs 3 & 5 of
Act XIV of 1874 have been
prepared.

5. These notifns do not contain
any enactments the operation
of which in the Agency tracts
is manifestly not barred
by Act XXIV of 1839. As regards
these, the Agents have been
instructed by Executive
order that they are in force
& that no notifns in respect
of them are necessary. With
reference, however, to para.
6 of Mr. Mackenzie's letter
to the Govt. of Bengal dy 5
May 1854, No 604, 2nd Cartain
enactments which are on
the face of them in force in
the Agencies have been
inserted in the notifns, the
ground being that, as they
appear in the Schedules to
Act XV of 1874, sufficient
doubt as to their applicability
exists to justify their being
notified under sec. 3.

6. Only one enactment (Madras
Act III of 1869) appears in
the notifn under sec. 5 &
this accordingly it is proposed
to adopt in regard to this
Act the procedure suggested
in the last paragraph para. 15 of
the Govt. Mackenzie's letter last
18 noted, that is to say, to
finally notify it under sec.
3 not to be in force & to

stated in the last sentence
of that paragraph.

10

that has such in-
was in force in the

then extend it under sec.
7. It appears unnecessary to
set out at length the reasons
which have led to the
inclusion or omission in the draft
notifns of each of the enact-
ments appearing therein. In
most cases the reason is
simply that the provisions
of the enactment are, or
are not, as the case may
be, inconsistent with the
position assigned to the
Agencies by Act XXIV of 1839.
In others the grounds upon
which the Govt has proceeded
are apparent from G.O. dy
5 Oct 1874, No 2420, Jud. dy,
& it will be seen that the
Advocate-General has
accepted the views expressed
by Govt in every instance
except that of Act XX of 1863
which he considers to be
applicable to the Agencies
& which it is accordingly
proposed to so notify.

Chas Elt

4

13/11/12

Appendix

Notification I.

Under clause (a) of sec. 3 of
the Scheduled Districts Act,
1874, the Govr in Council,
with the previous sanction
of the G. G. in C., declares
that the following enactments
are in force in the Scheduled
Districts in Ganjam &
Vizagapatam:—

A. Madras Regulations

(i) XIX of 1802
(ii) XXV of 1802
(iii) XXVI of 1802
(iv) XXIX of 1802
(v) II of 1806
(vi) VIII of 1808
(vii) II of 1819
(viii) IV of 1822
(ix) ~~VII~~ of 1822
(x) IX of 1822
(xi) ~~VII~~ of 1823 (exc. Sec. 6)
(xii) V of 1829
(xiii) I of 1830
(xiv) V of 1831
(xv) VI of 1831 (sec. 2 only).

B. Local Acts of the Gov.-Gen. in Council:
(i) XXXVI of 1837 (so far as it relates to Reg. IX of 1822)
(ii) VII of 1839
(iii) VI of 1844.

C. Madras Acts.
(i) II of 1864
(ii) VIII of 1865
(iii) II of 1871
(iv) I of 1876
(v) III of 1884
(vi) III of 1890 (so far as it amends ~~Act VIII of 1865~~ Acts in force in the Agency tracts).

D. Genral Acts.
(i) IV of 1837
(ii) XXV of 1838
(iii) XXIX of 1839
(iv) XXX of 1839
(v) XXXII of 1839
(vi) XXIV of 1841
(vii) V of 1843
(viii) XX of 1847
(ix) XIV of 1850
(x) XVIII of 1850
(xi) XIX of 1850

are printed
Proceedings
the copy
the
le

(xii) XXI of 1850
(xiii) XXXVII of 1850
(xiv) XXX of 1852
(xv) II of 1853
(xvi) XXXI of 1854
(xvii) XI of 1855
(xviii) XII of 1855
(xix) XIII of 1855
(xx) XXIII of 1855
(xxi) XXIV of 1855
(xxii) XXVIII of 1855
(xxiii) XI ~~XXXIII~~ of 1856
(xxiv) XV of 1856
(xxv) XXV of 1857
(xxvi) XXXV of 1858
(xxvii) XXXVI of 1858
(xxviii) IX of 1859
(xxix) XXI of 1860
(xxx) III of 1862
(xxxi) XVI of 1863
(xxxii) XXX of 1863
(xxxiii) XXXI of 1863
(xxxiv) III of 1864
(xxxv) VI of 1864
(xxxvi) III of 1865
(xxxvii) XV of 1865
(xxxviii) XXI of 1865
(xxxix) V of 1866
(xl) XXI of 1866
(xli) XXVIII of 1866
(xlii) XXV of 1867
(xliii) IV of 1869
(xliv) XV of 1869
(xlv) V of 1875
(xlvi) IX of 1881
(xlvii) VI of 1888 (sec. 10)

Notification 2

Under clause (b) of sec. 3 of the Scheduled Districts Act, 1874, the Gov. in Council, with the previous sanction of the G. G. in C., declares

...not the following Enactments are not in force in the Scheduled Districts in Ganjam & Vizag[apatam]:—

A. Madras Regulations.

(i) I of 1803
(ii) II of 1803
(iii) V of 1804
(iv) IV of 1816
(v) V of 1816
(vi) VII of 1816
(vii) XI of 1816
(viii) XII of 1816
(ix) VII of 1817
(x) VII of 1828 (Sec. 6 only)
(xi) VI of 1831 (Except Sec. 2)
(xii) III of 1832.

B. Local Acts of the Govr. in Council.

(i) X of 1849
(ii) VII of 1857
(iii) I of 1858

C. Madras Acts.

(i) IV of 1866
(ii) III of 1869.

D. General Acts.

(i) XIX of 1841
(ii) I of 1846
(iii) XXIII of 1863
(iv) VIII of 1870.

Notification 3 under Sec. 5 of the Scheduled Districts Act, 1874, the Govt. of Fort St. George in Council, with the previous sanction of the G. G. in C., hereby withdraws Madras Act III of 1839 (An Act to empower Revenue Officers to summon persons to attend at their Cutcheries for the settlement of ryotwar matters ...

Enactments in force in the Agency

28th February 1895, No. 446, Judicial.

Proof

Submitted for approval

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Read—again the following papers :—

G.O., dated 19th August 1893, No. 1691, Judicial.

Abstract.—Circulating lists of enactments which appear to be in force in the Agency tracts to the Agents in Ganjám and Vizagapatam with instructions to report whether they contain or omit any enactments which have always been held by the local officers not to be or to be in force in the tracts in view to the preparation of a compendious list of the enactments in force in the Agency tracts.

G.O., dated 5th October 1894, No. 2420, Judicial.

Abstract.—Requesting the views of the Advocate-General on the question whether Act XXIV of 1839 bars the operation of certain enactments in the Agency tracts of Ganjám and Vizagapatam.

Read—also the following paper :—

From the Government Solicitor, Madras, dated 22nd January 1895, No. 20.

Abstract.—Forwarding the following opinion of the Advocate-General, dated 12th January 1895:—

[*Re* question whether Act XXIV of 1839 bars the operation of certain enactments in the Agency tracts of Ganjám and Vizagapatam.]

Opinion.

The question referred to me is whether Act XXIV of 1839 bars the operation in the Agency tracts of the enactments mentioned in the order of Government dated the 5th October 1894, No. 2420, Judicial. I think that the Act refers only to enactments relating to procedure, and to that extent I concur in the opinion expressed on the 11th November 1885 by Mr. Shephard when acting as Advocate-General. I do not, however, agree with Mr. Shephard when he denied that Act XXIV of 1839 has "the prospective effect suggested".

Group I.

Regulation II of 1819.—In the opinion I gave on the 1st August 1887, I expressed a doubt, for the reasons therein given, as to this regulation being in force in the scheduled districts (other than those to which it was extended in 1879) after the passing of Act XV of 1874. That opinion did not touch the question now under consideration. I think that the operation of this regulation is not barred by Act XXIV of 1839, with which it in no way clashes.

Act XIV of 1882.—In his opinion of the 1st September 1879, the late Mr. P. O'Sullivan said that the Code of Civil Procedure then in force, viz., Act X of 1877, did not apply to those districts which are expressly excepted out of its operation. Section 1 of Act XIV of 1882 declares that sections 1 and 3 extend to the whole of British India, and the other sections to the whole of British India, except the scheduled districts. Sections 223, 229 were subsequently extended by G.O , dated 19th February 1889, No. 84, Judicial. These sections therefore are alone in force, and I think that the operation of the code is barred by Act XXIV of 1839.

The remainder of the Acts falling within this group are, I think, applicable, and their operation is not barred by Act XXIV of 1839.

GROUP II.

Regulation XXV of 1802 is one of those included in Schedule II (*a*) to Act XV of 1874, and is therefore presumably not in force in the scheduled districts. I fail to see anything in it inconsistent with Act XXIV of 1839, and therefore think that its operation is not barred by that Act.

GROUP III.

Regulation XXIX of 1802 is declared by Act XV of 1874 not to be in force in the scheduled districts, but I do not think that Act XXIV of 1839 bars its operation.

Regulation VII of 1817 is also declared by Act XV of 1874 not to be in force in the scheduled districts. I am inclined to think that its operation is barred by Act XXIV of 1839, and agree in thinking that the safest course is to hold that it is not in force.

Madras Act II of 1864.—I agree in thinking that there is nothing in Act XXIV of 1839 which distinctly bars the operation of this regulation.

Madras Act VIII of 1865 contains no local extent clause, and "historical enquiry" seems to leave it doubtful whether the Act is in force or not. In his opinion of the 1st September 1879 the late Mr. P. O'Sullivan said, with regard to this Act, "I understand it has never been declared to be in force and has not been put in force in the scheduled districts, and I think that it would now require a declaration to apply that Act." On the 11th November 1885 and again on the 3rd September 1886, Mr. Shephard agreed with Mr. O'Sullivan. I think that it is in force, but, under the circumstances above mentioned, the question can hardly be said to be free from doubt. I do not think that its operation is barred by Act XXIV of 1839.

Madras Act III of 1869.—As this Act does not contain a power of extension, and as the "historical enquiry" does not disclose the fact that the Act has been treated as being or as not being in force, the course pointed out in Mr. Mackenzie's letter of the 5th May 1884, No. 604, to the Secretary to the Government of Bengal might be adopted if the operation of the Act is not barred by Act XXIV of 1839. I think that its operation is so barred, and that it cannot be extended by a notification.

Madras Act I of 1876 *and Act XX of* 1863.—I am of opinion that the operation of neither of these Acts is barred by Act XXIV of 1839.

Regulation I of 1803 *and Regulation II of* 1803 are included in Schedule II (*a*) to Act XV of 1874. In my opinion their operation is barred by Act XXIV of 1839.

Regulation V of 1804 is included in Schedule II (*a*) to Act XV of 1874.

Regulation II of 1806 was repealed by Act XII of 1876 excepting section 7, clause 2. As it is to be entirely repealed shortly, further consideration of it seems to be unnecessary.

Regulations IV, V and VII of 1816.—The first two are included in Schedule II of (*a*) of Act XV of 1874, and I think that all of them are barred by Act XXIV of 1839.

Regulation XI of 1816.—Sections 8, 9, 10, 11 (clause 1), 13, 14 and 47 are included in Schedule II (*a*) of Act XV of 1874 and are barred by Act XXIV of 1839.

Regulation XII of 1816 is included in Schedule II (*a*) of Act XV of 1874 and is barred by Act XXIV of 1839.

Regulation I of 1819 was repealed by Act I of 1876 which is still in force.

Regulation IX of 1822 is included in Schedule II (*a*) of Act XV of 1874. I think that the operation of this regulation is not barred by Act XXIV of 1839.

Regulation VII of 1828 is included in Schedule II (*a*) of Act XV of 1874. I think that its operation is barred by Act XXIV of 1839 as it subordinates the Agent to the Board of Revenue.

Regulation VI of 1831 is included in Schedule II (*a*) of Act XV of 1874, and it appears that it is not required in the Agency tracts. Under these circumstances and because it will soon be repealed, I agree in thinking that it should be declared to be not in force.

Act XXXVI of 1837 extended the criminal jurisdiction conferred by Regulations IX of 1822 and VII of 1828, both of which are included in Schedule II (*a*) of Act XV of 1874. Those regulations do not seem to clash with, and therefore, their operation is not barred by Act XXIV of 1839. It therefore follows that the Act extending them is not barred.

Act X of 1849 is included in Schedule II (*a*) of Act XV of 1874. I think that the operation of this Act is barred by Act XXIV of 1839.

(Signed) J. H. SPRING-BRANSON,
Advocate-General.

ORDER—dated 28th February 1895, No. 446, Judicial.

The Advocate-General's opinion will be communicated to the Agents to the Governor in Ganjám and Vizagapatam. The Hon'ble Mr. Spring-Branson accepts in almost every instance the views expressed in G.O., dated 5th October 1894, No. 2420, Judicial, and the only remarks which it occurs to Government to make in connection with his opinion are the following:—

(i) The Advocate-General speaks of Act XV of 1874 as declaring certain enactments *not* to be in force in the scheduled districts; as a fact, however, the Act merely declares that certain enactments are in force *except* in the scheduled districts, that is, *outside* those districts.

(ii) The Advocate-General holds that Madras Act III of 1869 is barred by Act XXIV of 1839 and that it cannot be extended by a notification. The Government understands the Advocate-General to allude to a notification under section 3 of Act XIV of 1874; there seems no doubt that it can be applied by means of a notification under section 5 of that Act.

(iii) The Advocate-General agrees with Government that Regulation VII of 1828 is probably barred by Act XXIV of 1839, but, when dealing with Act XXXVI of 1837, he speaks (probably by oversight) of this regulation as not being so barred. On further consideration the Government is of opinion that section 6 of Regulation VII of 1828 is the only portion of that enactment which is opposed to Act XXIV of 1839 and the rest will accordingly be declared to be in force.

(iv) The Government accepts the Advocate-General's opinion that Act XX of 1863 is not barred by Act XXIV of 1839.

2. The Agents will now be informed that the enactments specified in the appendix to this Proceedings are in force in the Agency tracts of Ganjám and Vizagapatam and, as regards the other enactments, forming groups II and III in the appendix to G.O., dated 19th August 1893, No. 1691, Judicial, the Government of India will be addressed.

3. The Government directs, under section 4 of Act XXIV of 1839 and section 6 of Act XIV of 1874, that the last part of clause 1 of Agency Rule VII, beginning "*Vide* Regulations" shall be omitted.

4. The following letter will be despatched to the Government of India.

[Here enter No. 447, dated 28th February 1895, Judicial.]

(True Extract.)

Chief Secretary.

To the Agent to the Governor, Ganjám.
" " " Vizagapatam.
Copy to the Government Agent, Gódávari.
" " Revenue Department.
" " Government Solicitor.
" " Hon'ble the Chief Justice, with C.L.

disp 13/3/95

[Appendix.

Exd. S. J. Pereira.

APPENDIX.

GROUP I.—ENACTMENTS WHICH ARE UNDOUBTEDLY IN FORCE IN THE AGENCIES.

(*a*) *Madras Regulations.*

Nil.

(*b*) *Local Acts of the Governor-General in Council.*

XXIV of 1839.
XXVII of 1857.
XXIV of 1859 (extended in 1861).
XXVIII of 1860 (extended in 1893).
V of 1882.
XXI of 1882 (in Vizagapatam only).

(*c*) *Madras Acts.*

IV of 1862.
III of 1864 (except in certain villages ~~in the Agencies~~).
V of 1865.
VI of 1865.
VII of 1865.
V of 1866.
I of 1867.
VIII of 1869.
I of 1873.
V of 1879 (where Madras Act III of 1864 is in force).
III of 1882.
V of 1882 (in Vizagapatam only).
V of 1884 (extended in 1894 to parts of the Ganjám Agency).
VI of 1884.
II of 1885.
I of 1886 (in certain villages ~~in the Agencies~~ only).
IV of 1886.
III of 1889 (sections 1 and 2 throughout; the rest of the Act has been extended to certain villages in the Vizagapatam Agency only).
I of 1891.
II of 1893.
IV of 1893 (extended to parts of the Vizagapatam Agency in 1893).
V of 1893.

(*d*) *General Acts.*

XXXIV of 1850 (notified ~~formally~~ to be in force in 1889).
VIII of 1851.
XX of 1853.
III of 1858 (notified ~~formally~~ to be in force in 1889).
XIII of 1859.
XLV of 1860.
XLVII of 1860.
XVI of 1861.
VI of 1864 (section 6 only ~~formally~~ extended to the Ganjám Agency in 1867).
XVII of 1864.
X of 1865.
XIV of 1866.
XXVII of 1866.
I of 1868.
V of 1869.
XX of 1869.
VII of 1870.
XX of 1870.
XXVII of 1870.
I of 1871.
V of 1871.
XXIII of 1871.
XXXI of 1871.
I of 1872.
III of 1872.
IX of 1872.
XV of 1872.
XVIII of 1872.
XIX of 1872.
V of 1873.
X of 1873.
XIV of 1873.
II of 1874.
III of 1874.
IV of 1874.
IX of 1874.
XIV of 1874 (~~formally~~ notified to be in force in 1889).
IX of 1875.
X of 1875.
XIII of 1875.
XVIII of 1875.
V of 1876.
IX of 1876.
XVI of 1876.
XIX of 1876.
II of 1877.
XI of 1877.
XV of 1877.
I of 1878.
VI of 1878.
VIII of 1878.

GROUP I—*cont.*

(*d*) *General Acts*—cont.

XI of 1878 (so far as regards certain matters only).
I of 1879.
III of 1879.
XII of 1879 (section 108 only).
XXI of 1879.
I of 1880.
IV of 1880.
XII of 1880.
V of 1881.
VI of 1881.
XI of 1881.
XV of 1881.
XVII of 1881.
XXVI of 1881.
I of 1882 (in Ganjám only).
II of 1882.
III of 1882.
IV of 1882.
VI of 1882.
VII of 1882.
VIII of 1882.
IX of 1882.
X of 1882.
XII of 1882 (a portion only).
XIV of 1882 (sections 1, 3 and 223 — 229 only).
XX of 1882.
V of 1883.
XIX of 1883.
XXI of 1883.
III of 1884.
IV of 1884.
VII of 1884.
IX of 1884 (section 10 only).
XII of 1884.
II of 1885.
III of 1885.
IX of 1885 (so far as it amends Acts ~~XI of 1882~~ and VIII of 1878).
XIII of 1885.
XV of 1885.
XVIII of 1885.
II of 1886.
IV of 1886.
VI of 1886.
X of 1886.
XII of 1886 (in part only).
XIII of 1886.
XVIII of 1886.
I of 1887.
III of 1887.
V of 1887.
VI of 1887.
VII of 1887 (Part II only).
IX of 1887.
XIII of 1887.
XIV of 1887.
XX of 1887.
XXI of 1887.
I of 1888.
III of 1888.
IV of 1888.
V of 1888.
VI of 1888 (except sections 2—8 and, possibly, section 10).
VII of 1888 (sections 22, 23 and 66).
XI of 1888.
XVII of 1888.
I of 1889.
II of 1889.
IV of 1889.
VI of 1889.
VII of 1889.
VIII of 1889.
XV of 1889.
XX of 1889.
I of 1890.
II of 1890.
III of 1890 (so far as it amends Act VII of 1884 only).
VI of 1890.
VII of 1890.
IX of 1890.
X of 1890.
XIV of 1890.
XV of 1890.
XVI of 1890.
XVIII of 1890.
I of 1891.
II of 1891.
III of 1891.
IV of 1891.
IX of 1891.
X of 1891.
XI of 1891.
XII of 1891.
XVIII of 1891.
II of 1892.
VI of 1892 (section 1 only).
X of 1892.
I of 1893.
IV of 1893.
VII of 1893 (in Ganjám only).
VIII of 1893.
I of 1894.
III of 1894.
VI of 1894.
VII of 1894.
VIII of 1894.
IX of 1894.
X of 1894.
XII of 1894.
XVI of 1894.
XVII of 1894.

GROUP II.—ENACTMENTS WHICH ARE ON THE FACE OF THEM IN FORCE IN THE AGENCY TRACTS BUT WHICH APPEAR IN THE SCHEDULES TO ACT XV OF 1874.

(*a*) *Madras Regulations.*

XIX of 1802.
XXV of 1802.
XXVI of 1802.
VII of 1808.
II of 1819.
IV of 1822.
VII of 1822.
V of 1829.
I of 1830.
V of 1831.
VI of 1831 (section 2 only).

Govt. of {1895} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

G.O., 28th Feb. 1895, No. 446.

FEBRUARY.

Enactments in force in the Agency Tracts.

Communicating to the Agents to the Governor in Ganjám and Vizagapatam opinion of the Advocate-General as to whether Act XXIV of 1839 bars the operation of certain enactments in the Agency tracts in those districts, publishing a list of — accordingly, and informing the Agents that the question of the applicability of certain other enactments has been referred to the Government of India for decision.

28TH FEBRUARY 1895, No. 447, JUDICIAL.

JUDICIAL DEPARTMENT.

LETTER—from

THE CHIEF SECRETARY TO THE GOVERNMENT OF FORT ST. GEORGE,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT.

Letter 21 cdes
Prn 21 Copies
Despd 13/3/95

SIR,

I am directed to forward a copy of the Proceedings of the Madras Government of this date, No. 446, Judicial, and to request that the Government of India may be moved to sanction the issue of the draft notifications appended to this letter.

2. In Mr. Mackenzie's letter dated 25th February 1882, No. 279, Judicial, the Government of India informed this Government that it was advised that Act XXIV of 1839 had a prospective force in barring the operation in the Agency tracts of Ganjám and Vizagapatam of certain classes of enactments passed subsequently to that year and the Madras Government was asked to prepare a comprehensive list of the Regulations and Acts which were supposed to be in force in the said tracts in view to the removal of all doubts by means of a notification under section 3 of Act XIV of 1874.

In Mr. Master's letter dated 8th September 1882, No. 1245, Judicial, however, this Government contested the view that Act XXIV of 1839 had a prospective force and objected to the preparation of a list of Acts in force in the two agencies on the ground that no such list was necessary.

In reply this Government was informed (Mr. Mackenzie's letter dated 28th November 1882, No. 1697, Judicial), that the Government of India would not press the matter.

3. Since this correspondence occurred, however, the Madras Government has seen reason to alter its views as to the advantage of a list of the Acts in force in the Agency tracts. His Excellency in Council is now prepared to accept the view of the Government of India that Act XXIV of 1839 probably bars the operation of enactments passed subsequently to that year and that it would be of material assistance to the Agency officers were they in possession of a complete list of the Regulations and Acts which they are required to work.

4. Holding these altered views, His Excellency in Council prepared in 1893 a list of enactments and circulated it for the remarks of the Agents in Ganjám and Vizagapatam (G.O., dated 19th August 1893, No. 1691, Judicial). The Agents' replies were considered in G.O., dated 5th October 1894, No. 2420, Judicial, wherein the Advocate-General was requested to furnish his opinion on the subject. That officer's remarks are printed in the accompanying Proceedings of Government and, after due consideration of them, the following drafts of notifications under sections 3 and 5 of Act XIV of 1874 have been prepared.

5. These notifications do not contain any enactments the operation of which in the Agency tracts is manifestly not barred by Act XXIV of 1839. As regards these, the Agents have been instructed by executive order that they are in force and that no notifications in respect of them are necessary. With reference, however, to paragraph 6 of Mr. Mackenzie's letter to the Government of Bengal, dated 5th May 1894, No. 604, Judicial, certain enactments which are on the face of them in force in the Agencies have been inserted in the notifications, the ground being that stated in the last sentence of that paragraph.

6. Only one enactment (Madras Act III of 1869) appears in the notification under section 5 and it is proposed to adopt in regard to this Act the procedure suggested in paragraph 15 of Mr. Mackenzie's letter last quoted, that is to say, to first notify it under section 3 not to be in force and to then extend it under section 5.

7. It appears unnecessary to set out at length the reasons which have led to the inclusion in the draft notifications of each of the enactments appearing therein. In most cases the reason is simply that the provisions of the enactment are, or are not, as the case may be, inconsistent with the position assigned to the Agent by Act XXIV of 1839. In others the grounds upon which the Government has proceeded are apparent from G.O. dated 5th October 1894, No. 2420, Judicial, and it will be seen that the Advocate-General has accepted the views expressed by Government in every instance except that of Act XX of 1863 which he considers to be applicable to the Agencies and which it is accordingly proposed to so notify.

I have the honour to be,
Sir,
Your most obedient servant,

FORT ST. GEORGE,
28th February 1895.

Chief Secretary.

Exd. S. J. Pereira.

APPENDIX.

NOTIFICATION 1.

Under clause (*a*) of section 3 of the Scheduled Districts Act, 1874, the Governor of Fort St. George in Council, with the previous sanction of the Governor-General in Council, declares that the following enactments are in force in the Scheduled Districts in Ganjám and Vizagapatam :—

(*a*) *Madras Regulations.*

(i)	XIX of 1802.	(ix)	VII of 1822.
(ii)	XXV of 1802.	(x)	IX of 1822.
(iii)	XXVI of 1802.	(xi)	VII of 1828 (except section 6).
(iv)	XXIX of 1802.	(xii)	V of 1829.
(v)	II of 1806.	(xiii)	I of 1830.
(vi)	VII of 1808.	(xiv)	V of 1831.
(vii)	II of 1819.	(xv)	VI of 1831 (section 2 only).
(viii)	IV of 1822.		

(*b*) *Local Acts of the Governor-General in Council.*

(i)	XXXVI of 1837 ~~(so far as it relates to Regulation IX of 1822).~~	(ii)	VII of 1839.
		(iii)	VI of 1844.

(*c*) *Madras Acts.*

(i)	II of 1864.	(v)	III of 1884.
(ii)	VIII of 1865.	(vi)	III of 1890 (so far as it amends Acts in force in the Agency tracts).
(iii)	II of 1871.		
(iv)	I of 1876.		

(*d*) *General Acts.*

(i)	IV of 1837.	(xxv)	XXV of 1857.
(ii)	XXV of 1838.	(xxvi)	XXXV of 1858.
(iii)	XXIX of 1839.	(xxvii)	XXXVI of 1858.
(iv)	XXX of 1839.	(xxviii)	IX of 1859.
(v)	XXXII of 1839.	(xxix)	XXI of 1860.
(vi)	XXIV of 1841.	(xxx)	III of 1862.
(vii)	V of 1843.	(xxxi)	XVI of 1863.
(viii)	XX of 1847.	(xxxii)	XX of 1863.
(ix)	XII of 1850.	(xxxiii)	XXXI of 1863.
(x)	XVIII of 1850.	(xxxiv)	III of 1864.
(xi)	XIX of 1850.	(xxxv)	VI of 1864.
(xii)	XXI of 1850.	(xxxvi)	III of 1865.
(xiii)	XXXVII of 1850.	(xxxvii)	XV of 1865.
(xiv)	XXX of 1852.	(xxxviii)	XXI of 1865.
(xv)	II of 1853.	(xxxix)	V of 1866.
(xvi)	XXXI of 1854.	(xl)	XXI of 1866.
(xvii)	XI of 1855.	(xli)	XXVIII of 1866.
(xviii)	XII of 1855.	(xlii)	XXV of 1867.
(xix)	XIII of 1855.	(xliii)	IV of 1869.
(xx)	XXIII of 1855.	(xliv)	XV of 1869.
(xxi)	XXIV of 1855.	(xlv)	V of 1875.
(xxii)	XXVIII of 1855.	(xlvi)	IX of 1881.
(xxiii)	XI of 1856.	(xlvii)	VI of 1888 (section 10).
(xxiv)	XV of 1856.		

NOTIFICATION 2.

Under clause (*b*) of section 3 of the Scheduled Districts Act, 1874, the Governor of Fort St. George in Council, with the previous sanction of the Governor-General in Council, declares that the following enactments are not in force in the Scheduled Districts in Ganjám and Vizagapatam :—

(*a*) *Madras Regulations.*

(i)	I of 1803.	(vii)	XI of 1816.
(ii)	II of 1803.	(viii)	XII of 1816.
(iii)	V of 1804.	(ix)	VII of 1817.
(iv)	IV of 1816.	(x)	VII of 1828 (section 6 only).
(v)	V of 1816.	(xi)	VI of 1831 (except section 2).
(vi)	VII of 1816.	(xii)	III of 1832.

(*b*) *Local Acts of the Governor-General in Council.*

(i)	X of 1849.	(iii)	I of 1858.
(ii)	VII of 1857.		

(*c*) *Madras Acts.*

(i)	IV of 1866.	(ii)	III of 1869.

(*d*) *General Acts.*

(i)	XIX of 1841.	(iii)	XXIII of 1863.
(ii)	I of 1846.	(iv)	VIII of 1890.

NOTIFICATION 3.

Under section 5 of the Scheduled Districts Act, 1874, the Governor of Fort St. George in Council, with the previous sanction of the Governor-General in Council, hereby extends Madras Act III of 1869 (*an Act to empower Revenue officers to summon persons to attend at their Cutcherries for the settlement of matters connected with Revenue Administration*) to the Scheduled Districts in Ganjám and Vizagapatam.

Regr. No.

HOME 1895 DEPT.

[ ]

From the Government of
Fort St. George.

Issued

Recd. *Encl.*

Letter, 28th Feb. 1895, No. 447.

FEBRUARY.

Enactments in force in the Agency Tracts.

Requesting sanction for the issue under the Scheduled Districts Act, 1874, of notifications declaring the enactments severally applicable or not applicable to the Agency tracts in Ganjam and Vizagapatam.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following papers :—

G.O., dated 19th August 1893, No. 1691, Judicial.

ABSTRACT.—Circulating lists of enactments which appear to be in force in the Agency tracts to the Agents in Ganjám and Vizagapatam with instructions to report whether they contain or omit any enactments which have always been held by the local officers not to be or to be in force in the tracts in view to the preparation of a compendious list of the enactments in force in the Agency tracts.

G.O., dated 5th October 1894, No. 2420, Judicial.

ABSTRACT.—Requesting the views of the Advocate-General on the question whether Act XXIV of 1839 bars the operation of certain enactments in the Agency tracts of Ganjám and Vizagapatam.

READ—also the following paper :—

From the Government Solicitor, Madras, dated 22nd January 1895, No. 20.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 12th January 1895:—

[*Re* question whether Act XXIV of 1839 bars the operation of certain enactments in the Agency tracts of Ganjám and Vizagapatam.]

OPINION.

The question referred to me is whether Act XXIV of 1839 bars the operation in the Agency tracts of the enactments mentioned in the order of Government dated the 5th October 1894, No. 2420, Judicial. I think that the Act refers only to enactments relating to procedure, and to that extent I concur in the opinion expressed on the 11th November 1885 by Mr. Shephard when acting as Advocate-General. I do not, however, agree with Mr. Shephard when he denied that Act XXIV of 1839 has "the prospective effect suggested".

GROUP I.

Regulation II of 1819.—In the opinion I gave on the 1st August 1887, I expressed a doubt, for the reasons therein given, as to this regulation being in force in the scheduled districts (other than those to which it was extended in 1879) after the passing of Act XV of 1874. That opinion did not touch the question now under consideration. I think that the operation of this regulation is not barred by Act XXIV of 1839, with which it in no way clashes.

Act XIV of 1882.—In his opinion of the 1st September 1879, the late Mr. P. O'Sullivan said that the Code of Civil Procedure then in force, viz., Act X of 1877, did not apply to those districts which are expressly excepted out of its operation. Section 1 of Act XIV of 1882 declares that sections 1 and 3 extend to the whole of British India, and the other sections to the whole of British India except the scheduled districts. Sections 223, 229 were subsequently extended by G.O., dated 19th February 1889, No. 84, Judicial. These sections therefore are alone in force, and I think that the operation of the code is barred by Act XXIV of 1839.

The remainder of the Acts falling within this group are, I think, applicable, and their operation is not barred by Act XXIV of 1839.

GROUP II.

Regulation XXV of 1802 is one of those included in Schedule II (*a*) to Act XV of 1874, and is therefore presumably not in force in the scheduled districts. I fail to see anything in it inconsistent with Act XXIV of 1839, and therefore think that its operation is not barred by that Act.

GROUP III.

Regulation XXIX of 1802 is declared by Act XV of 1874 not to be in force in the scheduled districts, but I do not think that Act XXIV of 1839 bars its operation.

Regulation VII of 1817 is also declared by Act XV of 1874 not to be in force in the scheduled districts. I am inclined to think that its operation is barred by Act XXIV of 1839, and agree in thinking that the safest course is to hold that it is not in force.

Madras Act II of 1864.—I agree in thinking that there is nothing in Act XXIV of 1839 which distinctly bars the operation of this regulation.

Madras Act VIII of 1865 contains no local extent clause, and "historical enquiry" seems to leave it doubtful whether the Act is in force or not. In his opinion of the 1st September 1879 the late Mr. P. O'Sullivan said, with regard to this Act, "I understand it has never been declared to be in force and has not been put in force in the scheduled districts, and I think that it would now require a declaration to apply that Act." On the 11th November 1885 and again on the 3rd September 1886, Mr. Shephard agreed with Mr. O'Sullivan. I think that it is in force, but, under the circumstances above mentioned, the question can hardly be said to be free from doubt. I do not think that its operation is barred by Act XXIV of 1839.

Madras Act III of 1869.—As this Act does not contain a power of extension, and as the "historical enquiry" does not disclose the fact that the Act has been treated as being or as not being in force, the course pointed out in Mr. Mackenzie's letter of the 5th May 1884, No. 604, to the Secretary to the Government of Bengal might be adopted if the operation of the Act is not barred by Act XXIV of 1839. I think that its operation is so barred, and that it cannot be extended by a notification.

Madras Act I of 1876 *and Act XX of* 1863.—I am of opinion that the operation of neither of these Acts is barred by Act XXIV of 1839.

Regulation I of 1803 *and Regulation II of* 1803 are included in Schedule II (*a*) to Act XV of 1874. In my opinion their operation is barred by Act XXIV of 1839.

Regulation V of 1804 is included in Schedule II (*a*) to Act XV of 1874.

Regulation II of 1806 was repealed by Act XII of 1876 excepting section 7, clause 2. As it is to be entirely repealed shortly, further consideration of it seems to be unnecessary.

Regulations IV, V and VII of 1816.—The first two are included in Schedule II of (*a*) of Act XV of 1874, and I think that all of them are barred by Act XXIV of 1839.

Regulation XI of 1816.—Sections 8, 9, 10, 11 (clause 1), 13, 14 and 47 are included in Schedule II (*a*) of Act XV of 1874 and are barred by Act XXIV of 1839.

Regulation XII of 1816 is included in Schedule II (*a*) of Act XV of 1874 and is barred by Act XXIV of 1839.

Regulation I of 1819 was repealed by Act I of 1876 which is still in force.

Regulation IX of 1822 is included in Schedule II (*a*) of Act XV of 1874. I think that the operation of this regulation is not barred by Act XXIV of 1839.

Regulation VII of 1828 is included in Schedule II (*a*) of Act XV of 1874. I think that its operation is barred by Act XXIV of 1839 as it subordinates the Agent to the Board of Revenue.

Regulation VI of 1831 is included in Schedule II (*a*) of Act XV of 1874, and it appears that it is not required in the Agency tracts. Under these circumstances and because it will soon be repealed, I agree in thinking that it should be declared to be not in force.

Act XXXVI of 1837 extended the criminal jurisdiction conferred by Regulations IX of 1822 and VII of 1828, both of which are included in Schedule II (*a*) of Act XV of 1874. Those regulations do not seem to clash with, and therefore, their operation is not barred by Act XXIV of 1839. It therefore follows that the Act extending them is not barred.

Act X of 1849 is included in Schedule II (*a*) of Act XV of 1874. I think that the operation of this Act is barred by Act XXIV of 1839.

(Signed) J. H. SPRING-BRANSON,
Advocate-General.

ORDER—dated 28th February 1895, No. 446, Judicial.

The Advocate-General's opinion will be communicated to the Agents to the Governor in Ganjám and Vizagapatam. The Hon'ble Mr. Spring-Branson accepts in almost every instance the views expressed in G.O., dated 5th October 1894, No. 2420, Judicial, and the only remarks which it occurs to Government to make in connection with his opinion are the following:—

(i) The Advocate-General speaks of Act XV of 1874 as declaring certain enactments *not* to be in force in the scheduled districts; as a fact, however, the Act merely declares that certain enactments are in force *except* in the scheduled districts, that is, *outside* those districts.

(ii) The Advocate-General holds that Madras Act III of 1869 is barred by Act XXIV of 1839 and that it cannot be extended by a notification. The Government understands the Advocate-General to allude to a notification under section 3 of Act XIV of 1874; there seems no doubt that it can be applied by means of a notification under section 5 of that Act.

(iii) The Advocate-General agrees with Government that Regulation VII of 1828 is probably barred by Act XXIV of 1839, but, when dealing with Act XXXVI of 1837, he speaks (probably by oversight) of this regulation as not being so barred. On further consideration the Government is of opinion that section 6 of Regulation VII of 1828 is the only portion of that enactment which is opposed to Act XXIV of 1839 and the rest will accordingly be declared to be in force.

(iv) The Government accepts the Advocate-General's opinion that Act XX of 1863 is not barred by Act XXIV of 1839.

2. The Agents will now be informed that the enactments specified in the appendix to this Proceedings are in force in the Agency tracts of Ganjám and Vizagapatam and, as regards the other enactments, forming groups II and III in the appendix to G.O., dated 19th August 1893, No. 1691, Judicial, the Government of India will be addressed.

3. The Government directs, under section 4 of Act XXIV of 1839 and section 6 of Act XIV of 1874, that the last part of clause 1 of Agency Rule VII, beginning "*Vide* Regulations" shall be omitted.

4. The following letter will be despatched to the Government of India.

[Here enter No. 447, dated 28th February 1895, Judicial.]

(True Extract.)

Chief Secretary.

To the Agent to the Governor, Ganjám.
" " " Vizagapatam.
Copy to the Government Agent, Gódávari.
" " Revenue Department.
" " Government Solicitor.
" " Hon'ble the Chief Justice, with C.L.

[Appendix.

Exd. S. J. Pereira.

APPENDIX.

GROUP I.—ENACTMENTS WHICH ARE UNDOUBTEDLY IN FORCE IN THE AGENCIES.

(a) *Madras Regulations.*

Nil.

(b) *Local Acts of the Governor-General in Council.*

XXIV of 1839.
XXVII of 1857.
XXIV of 1859 (extended in 1861).
XXVIII of 1860 (extended in 1893).
V of 1882.
XXI of 1882 (in Vizagapatam only).

(c) *Madras Acts.*

IV of 1862.
III of 1864 (except in certain villages).
V of 1865.
VI of 1865.
VII of 1865.
V of 1866.
I of 1867.
VIII of 1869.
I of 1873.
V of 1879 (where Madras Act III of 1864 is in force).
III of 1882.
V of 1882 (in Vizagapatam only).
V of 1884 (extended in 1894 to parts of the Ganjám Agency).
VI of 1884.
II of 1885.
I of 1886 (in certain villages only).
IV of 1886.
III of 1889 (sections 1 and 2 throughout; the rest of the Act has been extended to certain villages in the Vizagapatam Agency only).
I of 1891.
II of 1893.
IV of 1893 (extended to parts of the Vizagapatam Agency in 1893).
V of 1893.

(d) *General Acts.*

XXXIV of 1850 (notified to be in force in 1889).
VIII of 1851.
XX of 1853.
III of 1858 (notified to be in force in 1889).
XIII of 1859.
XLV of 1860.
XLVII of 1860.
XVI of 1861.
VI of 1864 (section 6 only extended to the Ganjám Agency in 1867).
XVII of 1864.
X of 1865.
XIV of 1866.
XXVII of 1866.
I of 1868.
V of 1869.
XX of 1869.
VII of 1870.
XX of 1870.
XXVII of 1870.
I of 1871.
V of 1871.
XXIII of 1871.
XXXI of 1871.
I of 1872
III of 1872.
IX of 1872.
XV of 1872.
XVIII of 1872.
XIX of 1872.
V of 1873.
X of 1873.
XIV of 1873.
II of 1874.
III of 1874.
IV of 1874.
IX of 1874.
XIV of 1874 (notified to be in force in 1889).
IX of 1875.
X of 1875.
XIII of 1875.
XVIII of 1875.
V of 1876.
IX of 1876.
XVI of 1876.
XIX of 1876.
II of 1877.
XI of 1877.
XV of 1877.
I of 1878.
VI of 1878.
VIII of 1878.

GROUP I—*cont.*

(d) *General Acts*—cont.

XI of 1878 (so far as regards certain matters only).
I of 1879.
III of 1879.
XII of 1879 (section 108 only).
XXI of 1879.
I of 1880.
IV of 1880.
XII of 1880.
V of 1881.
VI of 1881.
XI of 1881.
XV of 1881.
XVII of 1881.
XXVI of 1881.
I of 1882 (in Ganjám only).
II of 1882.
III of 1882.
IV of 1882.
VI of 1882.
VII of 1882.
VIII of 1882.
IX of 1882.
X of 1882.
XII of 1882 (a portion only).
XIV of 1882 (sections 1, 3 and 223 — 229 only).
XX of 1882.
V of 1883.
XIX of 1883.
XXI of 1883.
III of 1884.
IV of 1884.
VII of 1884.
IX of 1884 (section 10 only).
XII of 1884.
II of 1885.
III of 1885.
IX of 1885 (so far as it amends Act VIII of 1878).
XIII of 1885.
XV of 1885.
XVIII of 1885.
II of 1886.
IV of 1886.
VI of 1886.
X of 1886.
XII of 1886 (in part only).
XIII of 1886.
XVIII of 1886.
I of 1887.
III of 1887.
V of 1887.
VI of 1887.
VII of 1887 (Part II only).
IX of 1887.
XIII of 1887.
XIV of 1887.
XX of 1887.
XXI of 1887.
I of 1888.
III of 1888.
IV of 1888.
V of 1888.
VI of 1888 (except sections 2—8 and, possibly, section 10).
VII of 1888 (sections 22, 23 and 66).
XI of 1888.
XVII of 1888.
I of 1889.
II of 1889.
IV of 1889.
VI of 1889.
VII of 1889.
VIII of 1889.
XV of 1889.
XX of 1889.
I of 1890.
II of 1890.
III of 1890 (so far as it amends Act VII of 1884 only).
VI of 1890.
VII of 1890.
IX of 1890.
X of 1890.
XIV of 1890.
XV of 1890.
XVI of 1890.
XVIII of 1890.
I of 1891.
II of 1891.
III of 1891.
IV of 1891.
IX of 1891.
X of 1891.
XI of 1891.
XII of 1891.
XVIII of 1891.
II of 1892.
VI of 1892 (section 1 only).
X of 1892.
I of 1893.
IV of 1893.
VII of 1893 (in Ganjám only).
VIII of 1893.
I of 1894.
III of 1894.
VI of 1894.
VII of 1894.
VIII of 1894.
IX of 1894.
X of 1894.
XII of 1894.
XVI of 1894.
XVII of 1894.

Govt. of {1895} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

G.O., 28th Feb. 1895, No. 446.

FEBRUARY.

Enactments in force in the Agency Tracts.

Communicating to the Agents to the Governor in Ganjám and Vizagapatam opinion of the Advocate-General as to whether Act XXIV of 1839 bars the operation of certain enactments in the Agency tracts in those districts, publishing a list of — accordingly, and informing the Agents that the question of the applicability of certain other enactments has been referred to the Government of India for decision.

JUDICIAL DEPARTMENT.

LETTER—from

THE CHIEF SECRETARY TO THE GOVERNMENT OF FORT ST. GEORGE,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT.

SIR,

I am directed to forward a copy of the Proceedings of the Madras Government of this date, No. 446, Judicial, and to request that the Government of India may be moved to sanction the issue of the draft notifications appended to this letter.

2. In Mr. Mackenzie's letter dated 25th February 1882, No. 279, Judicial, the Government of India informed this Government that it was advised that Act XXIV of 1839 had a prospective force in barring the operation in the Agency tracts of Ganjám and Vizagapatam of certain classes of enactments passed subsequently to that year and the Madras Government was asked to prepare a comprehensive list of the Regulations and Acts which were supposed to be in force in the said tracts in view to the removal of all doubts by means of a notification under section 3 of Act XIV of 1874.

In Mr. Master's letter dated 8th September 1882, No. 1245, Judicial, however, this Government contested the view that Act XXIV of 1839 had a prospective force and objected to the preparation of a list of Acts in force in the two agencies on the ground that no such list was necessary.

In reply this Government was informed (Mr. Mackenzie's letter dated 28th November 1882, No. 1697, Judicial), that the Government of India would not press the matter.

3. Since this correspondence occurred, however, the Madras Government has seen reason to alter its views as to the advantage of a list of the Acts in force in the Agency tracts. His Excellency in Council is now prepared to accept the view of the Government of India that Act XXIV of 1839 probably bars the operation of enactments passed subsequently to that year and that it would be of material assistance to the Agency officers were they in possession of a complete list of the Regulations and Acts which they are required to work.

4. Holding these altered views, His Excellency in Council prepared in 1893 a list of enactments and circulated it for the remarks of the Agents in Ganjám and Vizagapatam (G.O., dated 19th August 1893, No. 1691, Judicial). The Agents' replies were considered in G.O., dated 5th October 1894, No. 2420, Judicial, wherein the Advocate-General was requested to furnish his opinion on the subject. That officer's remarks are printed in the accompanying Proceedings of Government and, after due consideration of them, the following drafts of notifications under sections 3 and 5 of Act XIV of 1874 have been prepared.

5. These notifications do not contain any enactments the operation of which in the Agency tracts is manifestly not barred by Act XXIV of 1839. As regards these, the Agents have been instructed by executive order that they are in force and that no notifications in respect of them are necessary. With reference, however, to paragraph 6 of Mr. Mackenzie's letter to the Government of Bengal, dated 5th May 1884, No. 604, Judicial, certain enactments which are on the face of them in force in the Agencies have been inserted in the notifications, the ground being that stated in the last sentence of that paragraph.

6. Only one enactment (Madras Act III of 1869) appears in the notification under section 5 and it is proposed to adopt in regard to this Act the procedure suggested in paragraph 15 of Mr. Mackenzie's letter last quoted, that is to say, to first notify it under section 3 not to be in force and to then extend it under section 5.

7. It appears unnecessary to set out at length the reasons which have led to the inclusion in the draft notifications of each of the enactments appearing therein. In most cases the reason is simply that the provisions of the enactment are, or are not, as the case may be, inconsistent with the position assigned to the Agent by Act XXIV of 1839. In others the grounds upon which the Government has proceeded are apparent from G.O. dated 5th October 1894, No. 2420, Judicial, and it will be seen that the Advocate-General has accepted the views expressed by Government in every instance except that of Act XX of 1863 which he considers to be applicable to the Agencies and which it is accordingly proposed to so notify.

I have the honour to be,
Sir,
Your most obedient servant,

FORT ST. GEORGE,
28th February 1895.

Chief Secretary.

Fxl. S. J. Pereira.

APPENDIX.

NOTIFICATION 1.

Under clause (*a*) of section 3 of the Scheduled Districts Act, 1874, the Governor of Fort St. George in Council, with the previous sanction of the Governor-General in Council, declares that the following enactments are in force in the Scheduled Districts in Ganjám and Vizagapatam :—

(*a*) *Madras Regulations.*

(i)	XIX of 1802.	(ix)	VII of 1822.
(ii)	XXV of 1802.	(x)	IX of 1822.
(iii)	XXVI of 1802.	(xi)	VII of 1828 (except section 6).
(iv)	XXIX of 1802.	(xii)	V of 1829.
(v)	II of 1806.	(xiii)	I of 1830.
(vi)	VII of 1808.	(xiv)	V of 1831.
(vii)	II of 1819.	(xv)	VI of 1831 (section 2 only).
(viii)	IV of 1822.		

(*b*) *Local Acts of the Governor-General in Council.*

(i)	XXXVI of 1837.	(ii)	VII of 1839.
		(iii)	VI of 1844.

(*c*) *Madras Acts.*

(i)	II of 1864.	(v)	III of 1884.
(ii)	VIII of 1865.	(vi)	III of 1890 (so far as it amends Acts in force in the Agency tracts).
(iii)	II of 1871.		
(iv)	I of 1876.		

(*d*) *General Acts.*

(i)	IV of 1837.	(xxv)	XXV of 1857.
(ii)	XXV of 1838.	(xxvi)	XXXV of 1858.
(iii)	XXIX of 1839.	(xxvii)	XXXVI of 1858.
(iv)	XXX of 1839.	(xxviii)	IX of 1859.
(v)	XXXII of 1839.	(xxix)	XXI of 1860.
(vi)	XXIV of 1841.	(xxx)	III of 1862.
(vii)	V of 1843.	(xxxi)	XVI of 1863.
(viii)	XX of 1847.	(xxxii)	XX of 1863.
(ix)	XII of 1850.	(xxxiii)	XXXI of 1863.
(x)	XVIII of 1850.	(xxxiv)	III of 1864.
(xi)	XIX of 1850.	(xxxv)	VI of 1864.
(xii)	XXI of 1850.	(xxxvi)	III of 1865.
(xiii)	XXXVII of 1850.	(xxxvii)	XV of 1865.
(xiv)	XXX of 1852.	(xxxviii)	XXI of 1865.
(xv)	II of 1853.	(xxxix)	V of 1866.
(xvi)	XXXI of 1854.	(xl)	XXI of 1866.
(xvii)	XI of 1855.	(xli)	XXVIII of 1866.
(xviii)	XII of 1855.	(xlii)	XXV of 1867.
(xix)	XIII of 1855.	(xliii)	IV of 1869.
(xx)	XXIII of 1855.	(xliv)	XV of 1869.
(xxi)	XXIV of 1855.	(xlv)	V of 1875.
(xxii)	XXVIII of 1855.	(xlvi)	IX of 1881.
(xxiii)	XI of 1856.	(xlvii)	VI of 1888 (section 10).
(xxiv)	XV of 1856.		

NOTIFICATION 2.

Under clause (*b*) of section 3 of the Scheduled Districts Act, 1874, the Governor of Fort St. George in Council, with the previous sanction of the Governor-General in Council, declares that the following enactments are not in force in the Scheduled Districts in Ganjám and Vizagapatam :—

(*a*) *Madras Regulations.*

(i)	I of 1803.	(vii)	XI of 1816.
(ii)	II of 1803.	(viii)	XII of 1816.
(iii)	V of 1804.	(ix)	VII of 1817.
(iv)	IV of 1816.	(x)	VII of 1828 (section 6 only).
(v)	V of 1816.	(xi)	VI of 1831 (except section 2).
(vi)	VII of 1816.	(xii)	III of 1832.

(*b*) *Local Acts of the Governor-General in Council.*

(i)	X of 1849.	(iii)	I of 1858.
(ii)	VII of 1857.		

(*c*) *Madras Acts.*

(i)	IV of 1866.	(ii)	III of 1869.

(*d*) *General Acts.*

(i)	XIX of 1841.	(iii)	XXIII of 1863.
(ii)	I of 1846.	(iv)	VIII of 1890.

NOTIFICATION 3.

Under section 5 of the Scheduled Districts Act, 1874, the Governor of Fort St. George in Council, with the previous sanction of the Governor-General in Council, hereby extends Madras Act III of 1869 (*an Act to empower Revenue officers to summon persons to attend at their Cutcherries for the settlement of matters connected with Revenue Administration*) to the Scheduled Districts in Ganjám and Vizagapatam.

Regr No.

HOME 1895 DEPT.

[ ]

From the Government of
Fort St. George.

Issued

Recd. *Encl.*

Letter, 28th Feb. 1895, No. 447.

FEBRUARY.

Enactments in force in the Agency Tracts.

Requesting sanction for the issue under the Scheduled Districts Act, 1874, of notifications declaring the enactments severally applicable or not applicable to the Agency tracts in Ganjam and Vizagapatam.

NUMBER OF COPIES REQUIRED: { Order complete. / Letter only. / Order complete with Letter

DATED

– Print in full.
to be printed.
bstract only.
ting only.

13/7/38 CV

1-8-3-47 CV

2-1-09

7/2/10

20-8-12

2-4-13

8-8-20 B.V

19.11.26

13/2/28 11

24/11/28 11

11.10.43 I

2-9-44 E

16.7.49 DS

2/7/90 RH

4446/90/RH

Paper taken out of the Records from the charge

Press / Miscellaneous / Routine No.____, dated_____ 19

Date taken out.	For what purpose.			Initials of clerk taking the paper or of attender.	Date returned.	Initials of attender.
	Department.	C. No.	Year.			
	382	8/	21-	2-1895	DNE	
	411	8/	25-	2-1895	"	"
	435	8/	26-	2- 1895	"	
	436	8/	26-	2- 1895	"	
	446	8/	28-	2- 1895	"	