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Judicial Department

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GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

9th August 1878, No. 1595.

Courts.

Read the following papers:—

No. 37. *From A. C. BURNELL, Esq., Ph.D., District Judge of South Tanjore, to the Chief Secretary to Government, dated Tanjore, 19th July 1878, No. 446.*

I have the honor to bring to the notice of Government the two conflicting opinions that now obtain in respect of the question whether the District or the Subordinate Court now corresponds to the "Zillah Court" used in Clause 7 of Section 16 of Regulation III of 1802. The Government has, in its Proceedings, dated 2nd April last, No. 704, ruled that in respect of the personal property of persons dying intestate action should, with reference to the above Regulation, be taken by the District Court as at present constituted; whereas the High Court, in its Proceedings dated the 25th April 1878 (copy herein enclosed), has ruled that the "Judges of the Zillah Courts," as used in the above Regulation, means "the persons who are now designated Subordinate Judges." In this conflict of opinion on the part of the highest authorities, I beg respectfully to ask the decision of Government as to whether it is the District or the Subordinate Judge that now corresponds to the "Zillah Judge," who is to hear complaints against Village Munsifs under Regulation IV of 1816. The practice of the Courts here has been that such complaints are disposed of by the Subordinate Judges, probably by an analogy, following the ruling of the High Court quoted above.

ENCLOSURE No. 1.

*Proceedings of the High Court of Judicature at Madras, 25th April 1878, No. 872.*  
Read letter, dated 28th March 1878, from the Acting District Judge of North Tanjore, submitting for the orders of the High Court a letter from the Subordinate Judge.

The Subordinate Judge doubts whether since the repeal of Section 1 of Act VII of 1843 he is authorized to act under Clause 7 of Section 16 of Regulation III of 1802.

That clause prescribes the procedure to be adopted by the "Judges of the Zillah Courts" in cases of persons dying intestate and leaving personal property to which there is no claimant. Since the passing of Act VII of 1843, the Principal Sadr Amins have exercised the jurisdiction vested in the Judges of the Zillah Courts.

The repeal of that Act might possibly re-vest the power in the Zillah Judge if there were one, but there is not.

The better opinion therefore is that the repeal of the Act has not prevented the words "the Judges of the Zillah Courts" in Regulation III of 1802 from meaning the persons who are now designated Subordinate Judges. The words have acquired that interpretation and should retain it until the old Regulation is swept away.

An interpretation of a subsisting enactment is not necessarily altered by the improvident repeal of a law by which it acquired it, unless the repeal revivifies some other arrangement inconsistent with that acquired interpretation.

(True Extract.)

(Signed) H. WIGRAM,  
Registrar, Appellate Side.

No. 1307.

Referred to the Advocate-General for his remarks.

2. It is observed that Section 8 of the Madras Civil Courts Act, 1873, distinctly states that the *present Zillah Courts* shall be the first District Courts under this Act. Section 3 also declares that the District Courts were heretofore designated Zillah Courts.

3. The High Court appear to have overlooked these sections of an Act which had only just come into force at the date of their Proceedings quoted.

OSTACAMUND,  
24th July 1878.

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

No. 33. From ERNEST BARCLAY, Esq., Government Solicitor, Madras, to the Chief Secretary to Government, dated Madras, 30th July 1878, No. 306, forwarding the following opinion of the Advocate-General:—

## OPINION.

The ruling of the High Court dated the 25th April 1873 is decisive upon the question there determined, and it must be taken that the Zillah Judge mentioned in Regulation III of 1862, Section 16, Clause 7, means the Subordinate Judge under Act III of 1873. By analogy the Subordinate Judge is probably the proper person to hear complaints under Regulation IV of 1816.

2. It is not clear whether the High Court, in arriving at the conclusion set forth in their Proceedings dated the 25th April 1873, adverted to the provisions of Sections 1 and 8 of Act III of 1873, and the matter can be brought under the notice of the High Court for the purpose of having the point reconsidered whenever a fit occasion may arise.

MADRAS,  
24th July 1878.

(Signed) P. O'SULLIVAN,  
Advocate-General.

No. 32. ORDER THIRBON, 9th August 1878, No. 1595.

Communicated to the District Judge, who, it is suggested, may now fully bring the matter before the High Court, in accordance with paragraph 2 of the Advocate-General's opinion.

(True Extract.)

D. F. CARMICHAEL,  
Chief Secretary.

To the District Judge, South Tanjore.  
Government Secretary.

St. 446

Tanjore  
19<sup>th</sup> July 1878.

From

A. C. Bunnell, M. D.  
District Judge of  
South Tanjore

To

The Honble G. F. Carmichael  
Chief Secretary to Govt.  
Madras.

Honorable Sir

I have the honor to bring to  
the notice of Government the two conflicting  
opinions that now obtain in respect of the  
question whether the District or the Subordinate  
Court more corresponds to the 'Zillah Court'  
used in Clause 7 of Section 16 of Regulation 3  
of 1802. The Government has, in its Proceedings  
dated 2<sup>nd</sup> April last, No 704, ruled that in  
respect of the personal property of persons  
dying intestate, action should, with reference  
to the above Regulation, be taken by the  
District Court, as at present constituted,  
whereas the High Court, in its Proceedings  
dated the 25<sup>th</sup> April 1873, (copy herein enclosed),  
has ruled that the 'Judges of the Zillah Courts',  
as used in the above Regulation means, the persons

GOVERNMENT OF MADRAS

JUDICIAL.

THE DISTRICT JUDGE,  
SOUTH TANJORE.

10/10/78

100, 21 August 1878, No. 1000.

100057.

No. 37-30.

RECEIVED  
GOVERNMENT OF MADRAS  
JUDICIAL DEPARTMENT  
10/10/78

A

Who are now designated Subordinate judges.  
In this conflict of opinion on the part of  
the highest authorities, I beg respectfully  
to ask the decision of Government as to  
whether it is the District or the Subordinate  
Judge that must Complain to the District  
Judge who is to hear Complain against  
Village Munsifs under Regulation 4 of 1816.  
The practice of the Courts here, has been  
that such Complain are disposed of  
by the Subordinate judges, probably by an  
error. Following the ruling of the  
High Court quoted above.

I have the honor to be  
Honorable Sir

Your Most Obedient Servant

I have the honor to be  
Obedient Judge

No 872.

Proceedings of the High Court of  
Judicature at Madras, 28<sup>th</sup> April 1873.

Read letter dated 28<sup>th</sup> March  
1873 from the Acting District Judge of  
North Tanjore submitting for the orders  
of the High Court a letter from the  
Subordinate Judge.

The subordinate judge doubts  
whether since the repeal of section 1 of  
Act VII of 1843, he is authorized to act  
under clause 7 of section 16 of Regula-  
tion III of 1802.

That clause prescribes the  
procedure to be adopted by the Judges  
of the "Zillah Courts" in cases of persons  
dying intestate and leaving personal  
property to which there is no claimant.  
Since the passing of Act VII of 1843,  
the Principal Sadr Amins have exer-  
cised the jurisdiction vested in the  
Judges of the Zillah Courts.

The repeal of that Act might  
possibly revert the power in the Zillah  
Judge if there were one, but there is  
not.

The

Enclosure — 1

See a letter from the District  
Judge of North Tanjore  
dated 19 July 1872 & 4/6.

Copy of the Proceedings of  
the High Court dated 28<sup>th</sup>  
April 1873 - 1892.

L. M. L. 1873.

6

The better opinion therefore is that the  
repeal of the Act has not prevented  
the words "The Judges of the Zillah Courts"  
in regulation II of 1802 from meaning  
the persons who are now designated -  
"Subordinate Judges". The words have  
acquired that interpretation, and  
should retain it until the old Regu-  
lation is swept away.

An interpretation of a  
subsisting enactment is not necessarily  
altered by the improvident repeal of  
a law by which it acquired it, unless  
the repeal provides some other arrange-  
ment inconsistent with that acquired  
interpretation.

(True extract).

[Signed] H. Wigram,

Registrar,

Appellate side.

(True copy)

*Howe*

District Judge

24 1-6 P  
Madras, 30<sup>th</sup> July

Madras, 30<sup>th</sup> July 1878.

From

Ernest Barclay

Government Solicitor

Andreas

To

The Honorable D. F. Carmichael

Chief Secretary to Government  
Cotnamund

Continued

13.

1. I have the honor to acknowledge receipt of the Order of Government dated 24<sup>th</sup> July 1878 N<sup>o</sup> 1307 (made on letter from the District Judge of South Canara to Government dated 19<sup>th</sup> July 1878 N<sup>o</sup> 446) and its enclosure requesting the Advocate General's remarks on the question whether the District or the Subordinate Court now corresponds to the "Zillah Court" used in Clause 7 of Section 16 of Regulation 3 of 1862.

2. I submitted the matter for the consideration of the Advocate General and I now forward herewith a copy of his opinion and return the enclosure in which accompanied the above Order of Government.

I have the honor to be,

Sir,

Your most Obedient Servant

Lucretia Burleigh

Government Solicitor.

TO BE RETURNED  
WITH REPLY.

✓ 1507

9

Reference is to Acknowledgment  
for in remarks.

2. It is proposed that Section 8 of the  
Marine Civil Courts Act, 1879 should be

By Motion that the prison file may  
stand as the first district Court

under the bed. - Nothing else.  
We leave next to Bristol Court

the residents organized  
Hill County.

Mr. High and others

can find David had only just  
come with him, and it was

same will prove to be the  
prevalent quality.

1875-1876

Daniel 19 July 1872  
 Received 923 - 20 - 27

Received 772-80

Barbours.

Regarding the decision of  
Govt. as to whether the Division  
or the Subordinate Society shall  
own Campgrounds & the buildings  
there is to have Campgrounds given  
to the Society under Regulation  
4 of 1916.

2

Opinion.

The ruling of the High Court dated the 25<sup>th</sup> April 1873 is decisive upon the question here determined, and it must be taken that the Zillah Judge mentioned in Regulation III of 1862 Section 16 Clause 7 means the Subordinate Judge under Act III of 1873. By analogy the subordinate Judge is probably the proper person to hear complaints under Regulation IV of 1816.

It is not clear whether the High Court, in arriving at the conclusion set forth in their Proceedings dated the 25<sup>th</sup> April 1873, adverted to the provisions of Sections 1 and 2 of Act III of 1873 and the matter can be brought under the notice of the High Court for the purpose of having the point reconsidered whenever a fit occasion may arise.

/signed/ P. C. Mulla.

Advocate General.

Madras, 29<sup>th</sup> July 1878.

/True copy/

James Hailey

Government Secretary.

Enclosure in letter from  
the Government of Madras  
to the Chief Secretary to  
Government dated 22<sup>nd</sup> July 1878 No.  
306.

L. M. H. 2055/78.



Bill. of 1878) 334

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U.S. 9th Aug 1878 11

nos 37-39

Count - Theobald

General's opinion a  
question whether  
about the value

Count - more money

to the Bill & c

used in balance

Section 16 of the

- from 3rd 1872.

to the Bill & c

Count - more money

Europe, with 1878

that it may come by

being the matter

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