

(1) Number of pages 60

(2) Date of repair 4.11.49

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE

Government of Madras

Judicial DEPARTMENT

G.O. No. 2969
~~B.P. No.~~

Press
~~Mis.~~

Original

Dated 2nd November 1886.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

READ—again the following papers :—

G.O., dated 20th October 1885, No. 2822, Judicial.

G.O., dated 20th August 1886, Mis. No. 2220, Judicial.

Read—the following letters :—

From the Government Solicitor, Madras, dated 11th November 1885, No. 458.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 11th November 1885 :—

OPINION.

With reference to G.O., dated the 20th October 1885, No. 2822, Judicial Department, I have to state that the question now raised appears to have been raised in 1879, with the result that it was thought advisable to make a notification under the Scheduled Districts Act (Act XIV of 1874) extending to the scheduled districts in Godáviri certain enactments, of which Madras Act VIII of 1865 was one.

2. I presume that this course was taken under the advice of the Advocate-General, who, on the 1st September 1879, gave the following opinion :—

“As to Madras Act VIII of 1865, I understand it has never been declared to be in force and has not been put into force in the scheduled districts, and I think it would now require a declaration to apply that Act.”

3. I see no reason to differ from that opinion.

4. As to Act XXIV of 1839, which the Agent mentions in section 22 of his letter, dated 21st July 1885, No. 537, I doubt whether it was intended to refer to enactments other than those relating to Civil Procedure, and I do not think it has the prospective effect suggested.

(Signed) H. H. SHEPHARD,
Ag. Advocate-General.

From the Government Solicitor, Madras, dated 1st December 1885, No. 501.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 1st September 1879 :—

OPINION.

I think it must be taken that all Acts passed by the Governor-General's Legislative Council since the passing of Act XIV of 1874, which are declared to extend to the whole of British India, extend to the scheduled districts. The Stamp Act (No. I of 1879) applies to the whole of British India, and the scheduled districts are not excepted.

2. Act XIV of 1874, section 3, authorises the Government, with the previous sanction of the Governor-General in Council, to declare what enactments are in force in the scheduled districts or any part thereof, or to declare of any enactment that it is not in force in such districts or any part thereof, and the Act draws no distinction between past and future enactments. I think therefore the Government may, as provided in section 3 of the Act, declare that Act I of 1879 (The Stamp Act) is not in force in the districts, but unless or until such declaration is made, the Act is in force in the scheduled districts. On the other hand, Acts I of 1877 (Specific Relief)

and X of 1877 (Code of Civil Procedure) do not apply to those districts which are expressly excepted out of their operations. I think Acts I and X of 1877 may nevertheless by declaration be declared to be in force in those districts, but unless and until such declaration is made they do not extend to the districts in question. The Act for the Limitation of Suits (XV of 1877) is on the same footing with the Stamp Act. The question is one upon which a reference to the Government of India may be thought to be advisable, the sanction of that Government being necessary to any declarations made under section 3 of Act XIV of 1874.

3. As to Madras Act VIII of 1865, I understand it has never been declared to be in force, and has not been put into force in the scheduled districts, and I think it would now require a declaration to apply that Act.

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

Order—dated 20th August 1886, Mis. No. 2220, Judicial.

In paragraph 22 of the Agency report for the year 1884-85, the Agent to the Governor in Vizagapatam again raised the question, whether Madras Act VIII of 1865 is in force in the Vizagapatam Agency Tracts, and gave it as his own opinion that the Act in question is not in force in those tracts, for the reason that its operation is barred by section 2 of Act XXIV of 1839, which, the Agent suggested, possesses prospective effect to all Acts subsequent, as well as prior, to itself. In G.O., dated 20th October 1885, No. 2822, the Government resolved to take the opinion of the Advocate-General on the point, and this he has submitted in the first of the foregoing papers. The Advocate-General rejects the suggestion that section 2 of Act XXIV of 1839 has the prospective effect attributed to it by the Agent, but as regards Act VIII of 1865, he quotes an opinion by the Advocate-General in 1879 to the effect that the last-named Act would require a declaration to bring it into force in the scheduled districts, and he adds that he sees no reason to differ from that view.

2. The Government fully concur in the Advocate-General's opinion that the prospective effect attributed by the Agent to section 2, Act XXIV of 1839, cannot be supported. In paragraph 2 of their letter of the 25th February 1882, No. 279, the Government of India suggested a view, different, indeed, to that put forward by the Agent, but similar in effect. They remarked that "though Act XXIV of 1839 only expressly suspends the law relating to civil and criminal justice and to the collection of the revenue existing at the date of its enactment" (these words disposing of the Agent's interpretation of section 2), yet, as section 4 of the Act confers power to make rules for the guidance of the Agents and officers subordinate to them, "it might be held to bar by implication the operation of any enactment relating to the above matters which may have been passed after the date" on which Act XXIV of 1839 came into force. It appears to this Government that the prospective effect here attributed to section 4 of Act XXIV of 1839 is as equally unsustainable as that attributed by the Agent to section 2. In replying to the Government of India, 8th September 1882, No. 1245, Judicial, the Government expressed its inability to accept the argument put forward, and the Government of India, in its letter, No. 1697, dated the 28th November 1882, which closed the correspondence, observed that it had expressed no decided opinion, but had merely made a suggestion on the point. There is therefore every reason to think that the view, which has always been maintained by this Government, is correct, namely, that Act XXIV of 1839 has no prospective effect, and therefore all enactments, which *prima facie* apply to the whole of the Madras Presidency, apply also to the Agency Tracts of Ganjam and Vizagapatam, unless expressly excluded. This view appears to be in accordance with paragraph 1 of the Advocate-General's opinion, dated the 1st September 1879, and with the principle laid down by the Advocate-General in November 1885.

3. But the Advocate-General writing in 1879, though he thought that all Acts of the Governor-General's Council passed since 1874, which are declared to extend to the whole of British India, extend also to the scheduled districts, yet gave it as his opinion that Madras Act VIII of 1865 would require a declaration to put it in operation in those tracts, and this was accepted by the Advocate-General in November 1885. The Government observe that no reasons for this opinion are recorded.

Primâ facie Act VIII of 1865 would be in force in the Vizagapatam Agency; it is not included in the schedules to Act XV of 1874; therefore it is not clear why it should require a declaration to bring it into force. The Government therefore, while accepting the principle laid down by the Advocate-General, are unable to follow his deduction from it. They accordingly resolve to refer the matter, with the foregoing remarks, again to the Advocate-General, for a further consideration of the question, whether Madras Act VIII of 1865 is or is not in force in the Agency Tracts of Vizagapatam, and in order to the reasons for thinking it not so in force being recorded, if the Advocate-General remains of that opinion.

(True Extract.)

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Government Solicitor.

READ—also the following paper:—

From the Government Solicitor, Madras, dated 3rd September 1886, No. 335.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 3rd September 1886:—

OPINION.

With reference to G.O., dated 20th August 1886, Mis. No. 2220, Judicial Department, I am not disposed to alter the opinion already formed by me in this matter. In giving it I referred to the opinion given by the Advocate-General in 1879, and to the circumstance that in districts standing, as I believe, in exactly the same position as those now in question, a notification was in the same year thought to be necessary with reference to this same Act VIII of 1865. In the preamble to Act XIV of 1874 it is recited that there were at that time parts of British India which had never been brought under the operation of the general Acts, and that there was uncertainty as to which Acts were in force in those parts. Powers were given to Government by that Act to declare what Acts are and what are not in force in the districts mentioned in the 1st schedule.

2. The question, as it presents itself to me, is whether it can be said with any certainty that Act VIII of 1865 was then in force in the scheduled districts, or whether it is not one of the Acts as to which a notification was required. Considering the action of Government in 1879 and the doubts even now expressed by district officers on the question, I do not think it can safely be said that a notification is not needed. It seems to me that there has been, and even now is, uncertainty as to the applicability of Act VIII of 1865, and looking at the terms of the Act no one can say it is altogether unnatural. It will be seen on reference to sections 69 and 74 of the Act that it was intended primarily to apply in districts in which there was a Zillah Judge having jurisdiction and a Civil Procedure Code in force; and although these provisions may not make it impossible to work the Act in a scheduled district, they might reasonably cause doubt as to whether it was to be extended to them. That the Act is not in terms restricted in its operation to any part of the Presidency seems to me immaterial, for it was only with reference to Acts, the operation of which was left undefined, that Act XIV of 1874 was framed. In my opinion, as there is room for uncertainty and uncertainty appears to have existed, the only safe course is to make a notification under that Act.

3. No argument against this view can, I think, be founded on the omission of Act VIII of 1865 from the schedules to Act XV of 1874. The only schedule in which the Act could appear would be the 2nd schedule referred to in the 4th section of the Act, and if any inference is to be drawn from its non-appearance in that schedule, the inference must be that Act VIII of 1865 is not in force in any part of the non-scheduled districts, for it is only in respect of those districts that Act XV of 1874 makes any declaration with regard to the Regulation and Acts mentioned in the 2nd schedule.

(Signed) H. H. SHEPARD,
Ag. Advocate-General.

ORDER—dated 3rd November 1886, No. 2969, Judicial.

The Government, having considered the opinion of the Advocate-General forwarded with the foregoing letter, are not prepared to issue a notification under Act XIV of 1874 regarding the operation of Madras Act VIII of 1865 in the Agency Tracts of Vizagapatam. It is allowed by the Advocate-General, and may be assumed to be correct, that that Act, *prima facie*, applies to the Agency Tracts, and is not barred

2ND NOVEMBER 1886, No. 2969, JUDICIAL.

by any expressions in Act XXIV of 1839. There is clear evidence that the Act has for years been actually worked in the Agency Tracts—a fact which the Agent's doubts cannot upset. As the Act is, *prima facie*, in force and in actual fact is in force, there can exist no ground for doubting the legality of proceedings under it. A notification under section 3 of Act XIV of 1874 must be one of *fact* only, and there is here clearly no need for such a declaration. The Government therefore will not take any action in the matter, but the question which has arisen will be borne in mind when the amendment of the Rent Recovery Act comes up for consideration in the Legislative Department.

(True Extract.)

Ag. Chief Secretary.

To the Government Solicitor.
" Revenue Department.
" Legislative Department.
" Agent to the Governor, Vizagapatam

Opinion

With reference to the Order of Government dated the 20th October 1885, No 2822, Judicial Department, I have to state that the question now raised appears to have been raised in 1879, with the result that it was thought advisable to make a Notification under the Scheduled Districts Act (Act XIV of 1874) extending to the Scheduled Districts in Co. viz certain enactments of which Madras Act VIII of 1865 was one.

I presume that this course was taken under the advice of the Advocate General who, on the 1st September 1879, gave the following opinion.

"As to Madras Act VIII of 1865 I understand it has never been declared to be in force and has not been put into force in the Scheduled Districts, and I think it would now require a declaration to apply that Act."

I see no reason to differ from that opinion.

As to Act XXIV of 1839 which the Agent mentions in § 22 of his letter dated 21st July 1885 No 537, I doubt whether it was intended to refer to enactments other than those relating to Civil Procedure and I do not think it has the prospective effect

Gobt. of (1886) Madras.

JUDICIAL

Issued

Recd.

Encl.

G.O., 2nd November 1886, No. 2969.

NOVEMBER.

Scheduled Districts.

Declining to issue a notification under Act XIV of 1874 regarding the operation of Madras Act VIII of 1865 in the Agency Tracts of Vizagapatam, but stating that it will be borne in mind when the amendment of the Rent Recovery Act comes up for consideration.

20-10-85: 2822
13-10-86: 2619
7-11-79: 2867-77
+ 8-8-82 file
Ret (C. S. G. 84) 1-99000/-

1 Abstract
Judicial (1885) Department

From
Ernest Barclay
Government Solicitor
Madras

To
The Chief Secretary to Government
Madras

c 15458.
Dated 11 November 1885
Recd 12

Enclosures 2
Forwarded with enclosures
with reference to the Order
of Government dated 28th Oct.
1885 N^o 2522. Judicial
Department

Ernest Barclay
Government Solicitor

N^o 501

3 Abstract

Madras 1st December 1885

From
Ernest Barclay
Government Solicitor
Madras

To
The Chief Secretary to Government
Madras

Sir, I beg to acknowledge receipt of your
Official Memorandum dated 30th ultimo
N^o 2026, Judicial Department, and as therein
requested, I herewith forward a copy of the
opinion of the Advocate General given on
the 1st September 1879 in connection with
the operation of certain Acts in the
Scheduled Tracts.

I am, Sir,
Your Obedient Servant
Ernest Barclay
Government Solicitor

ect suggested

[Signed] M. H. Shepherd
Acting Advocate General

Madras 11th November 1883

/ A True Copy /

Wm Barclay

Government Solicitor

Opinion.

I think it must be taken that all Acts passed by the Governor General's Legislative Council since the passing of Act XIV of 1874, which are declared to extend to the whole of British India, extend to the Scheduled Districts. The Stamp Act (No. I of 1879), applies to the whole of British India, and the Scheduled Districts are not excepted.

Act XIV of 1874 Section 3 authorises the Government with the previous sanction of the Governor General in Council, to declare what enactments are in force in the Scheduled Districts or any part thereof or to declare of any enactment that it is not in force in such Districts or any part thereof, and the Act draws no distinction between past and future enactments. I think therefore the Government may, as provided in Section 3 of the Act declare that Act I of 1879 (the Stamp Act) is not in force in the Districts, but unless or until such declaration is made the Act is in force in the Scheduled Districts. On the other hand Acts I of 1877 (Specific Relief) and X of 1877 (Code of Civil Procedure) do not apply to those districts which are expressly excepted out of their operation. I think

think Acts I and X of 1877 may nevertheless
by declaration be declared to be in force
in those districts but unless and until such
declarations are made they do not extend to the
districts in question. The Act for the limitation
of suits (XV of 1877) is on the same footing
with the stamp Act. The question is one
upon which a reference to the Government
of India may be thought to be advisable.
The sanction of that Government being
necessary to any declarations made under
Section 3 of Act XIV of 1874.

As to Madras Act VIII of 1865, under
which it has never been declared to be in
force and has not been put into force in
the Scheduled Districts and I think it will
now require a declaration to apply that
Act.

(Signed) J. O'Sullivan
Advocate General

Madras
27th September 1879
And the copy
of the
Government Solicitor

PC 904488/85

No. 2026/85

(1885) Department

From
The Government Solicitor
Madras

To
The Chief Secretary to Govt
Madras

Forwarded to the Agent
to the Governor in Vizag.
in continuation of G.O.
20th Oct. /85, No 2822.

No 501

Dated 1st Decr 1885
Recd 2/12

HAS
5/12 8/12/85

Forwards

vide my opinion
revised on M. H. H. -
- Arch's Note
13/12/85

Albion - 10/12/85
11/12/85
11/12/85

Enclosure!

Forwarded with reference to Official
Memorandum dated 30th Ultimo
No 2026, a copy of opinion given
by the Advocate General on the
1st Sept 1879 in connection with
the operation of certain Acts in
the Scheduled Tracts.

Not for the Honble Member.

1. With ref: to the Honble Member's
Note dated 4th inst., on the Note
for the Chief Secy. dated 21st July,
the Reference Dept. have, after a
long search, found the original G.O.
7th Nov. 1879. No. 2870 - w^h appears
to have been mislaid. Altho
this G.O. does not give the exact
form of the reference made to the
Adv. General - (w^h seems not to have
been kept) - it is pretty clear
from the letters read in the Order,
that his opinion of the 1st Sept 1879
was given generally as to the
"scheduled districts" - & with special
reference to the effect of Act XIV of
1874: and the last para., regard-
ing Act VIII of 1865, was on a
point not brought prominently
forward, & perhaps not very
fully considered.

2. With ref. to the Honble Member's
D.O. of this date. With Mr. Hudleston's
Note to Col. Hearse.

Mr. Hudleston's remarks that
Act 14 & 15 of 1874 leave Ganjam &
Vizag. "precisely as they were" is
correct - & this is the only part of the
Note - w^h in any way affects the
question now before Govt. (C 4488).

The earlier remarks of Mr. Hudleston
regarding Sec 3 of Act 14 of 1874
are incorrect - & contain the
same mistake - w^h became a
question of dispute betw: him & Mr.
Carmichael in 1879 & w^h was finally
set at rest on a reference to India
recorded in G.O. 7th Nov. 79. No. 2869

SLV
18/8

~~18/8/86~~

16

Dear Andrew,

I came across
this among my papers
a few days ago -
See how far it
accords with the
view you have
adopted regarding
these acts
Yours sincerely
S/8/86 of Master

22. Aug. 76.

My dear Mr. ... In a Petitioner's query

about Act 14. of 76.

I am far from having had a deal
of talk at this act: and I think I have
interpreted myself now of the position of
things. viz:

Act 15 ought to be inserted what Mr.
in the Statute book. I make this go clear:

Act 15 declares that all the acts inserted
in the Schedule attached to it are in force
the out British India. Subt in the
District occupied in the act: Schedule attached
to it. Thus in effect including the

which has been assessed the in fact
 the. also. etc. & much extended copyright
 & how to meet.

By making the right of deposit come
 but it is not in the schedule.

At I apply under act 10. is only
 applicable by special declaration. This
 act just in this case is applied.

On this letter from the C. P. S. with
 shortly be addressed. but it does
 not seem likely that any immediate
 action is pressing necessary.

Yours truly
 J. D. Watson

to the same to do
 and the 50. roots
 in it

For April - May 14
 amount - 50s for
 burial -

Please say whether
 any papers are to
 accompany 80. N. 2220

No

Reference is made
 to correspondence
 with C. S., but I
 suppose the substance
 given in the draft
 is sufficient for
 the Advocate Genl. &

66
 2073

NOTE FOR THE CHIEF SECRETARY.

The Honble Member has passed the order regarding the Scheduled Districts questions, but thinks it would be well, in order to clear the way for Mr. Shephard a little, to send him a copy of G.O. 7: Nov 1879 no. 2870, with a deini. official, letting him know ^{that} the view which the Govt. in that year (1879) took, was entirely opposed to what Mr. Sullivan said. A draft G.O. is accordingly submitted.

ALP
1878.

NOTE FOR THE CHIEF SECRETARY.

to make rules, that cannot by
bar the operation of other acts which
expressly or tacitly applicable to
the Presidency. An answer
sent to India on this point in para. 3
of 8th Sept 82 - no 1245 - which, it seems,
is unanswerable. It says -
the operation of all acts later than
19 was already barred in the
new tracts, why did Act III of
73 (Madras) go out of its way to
exclude those tracts from the operation
of the act? To this argument
Govt of India, in their answer dated 20th
82 no. 1697 - made no reply: they
replied that the draughtsmen prob-
ably used the words to make assurance
of course: but they said the Govt of
India had not expressed any decided
opinion, but had merely thrown out a
suggestion. It will be noted that this
suggestion, as it practically was, is
entirely unnoticed in Mr. Hammick's
note on the subject.

I would therefore submit that the
argument put forward by the Agent in
para. 22 of his Annual Report is
entirely unsustainable, and that the
Govt of India has practically retraced
the suggestion of the same view. In
addition to this, 2 advocates
have pronounced against the
Agent's view. (See last para of Mr. Shep-
herd's opinion - 11: Nov 85 - undisputed)
If the Agent's view is rejected, then
it follows that Act VIII of 1865 is
in force in the Viceroys Agency, and
on point Mr. Wilson's note on Mr.
Hammick's Memo^{rs} seems conclusive.

NOTE FOR THE CHIEF SECRETARY.

It is, however, to be pointed out: —

(1) that Mr. O'Sullivan - as ^{adv. Gen.} - in opinion of 1st Sept 1879. distinctly said he did not think Act VIII of 1865 could be put in force ^{now} without a declaration under sec. 3 act XIV of 1874. But, he gives no ground whatever for this opinion - it seems to be totally at variance with the opinion he had expressly just above as to the Imperial Acts.

(2) that Mr. Shepherd has said he sees "no reason to differ from that opinion"

In view of these 2 opinions, I submit that the papers may now be disposed of by an order, resolving to resubmit the question to the ^{adv. Gen.} for reconsideration & a careful form of reference with the be drawn up. & it will be seen whether the ^{adv. Gen.} cannot be brought round.

This will dispose of the papers - which have been long lying over, & ~~may~~ not do any harm: it is not open to the objection taken by the H. M. to the proposed disposal last Dec. (see his O.O.)

Alp.

21/7.

Yes - but get up the papers with ref. to which all the point referred in 1879. 2/2 may be right in their own case but in 1874. It does not follow however that the same opinion is to be taken on the same case.



Dear Wilson,

The draft endorsement
no. C. no 4485
of 1885 Judicial seemed
true to the facts of
the previous orders
of the Court without
perhaps sufficient con-
sideration and as
Hammock had studied
the correspondence
arising out of the Seidels

Friend A. C. Adams
kindly for his views
she has written the
accompanying
note.

The subject is a
somewhat compli-
cated one but no
doubt have more
than one occasion
expressed their
sentiments in the
meaning of the

Resolution embodied
in the A. C. A. No 14 &
15 of 1874 he showed
I think follow their
wishes as closely
as possible. I wish
you would kindly
look through the
papers & see what
is the best course
practicably

Yours sincerely
Chas. A. B.

21 Dec 1885

Dear Walter

I have given into
the matter referred to you
of 31/1/85 and have recd
my opinion on Hammerich's note
which with the other papers I
return herewith. I must ap-
pologize for having kept the papers
so long but today is the first day that
I have had time to look at them

Yr. fr.

W. L. L. W.

Mr Dawes.
NOTE FOR THE UNDER SECRETARY.

If the coll sent to Malaya² was intelli-
gible, and the ref. dept did its work
properly, there should be no need for
this second delay.

Orig^l of G.O. 7-Nov. 1879 no. 2870 should
in any case have been sent up. Also
the Agent's orig. letter 31st May 1879-
no. 224 - which seems to be with orig G.O.
7-Nov. 1879 - but is read in orig G.O. 25
Sept 79.

The papers sent up are useless, as
they stand.

Alg
10/8.

TE FOR THE CHIEF SECRETARY.

Mr Dawes

Please send for the papers belonging
to the reference to Wth Mr O^r Sullivan's
opinion, (d^y 1st Sept 1879, copy of
w^h was rec^d in C44 88/85,)
was a reply.

I do not think they are forthcoming.

Alp

57c.

Note

This is fine:

I rec^d it last night.

The papers received from Max
are put up. It will be observed
that the letter from the Agent,

1731-579. 721. 574.
Baz. Received two drafts.
one in T.O. 25 Sep. 1879. No. 2470,
where the opinion of the Adv.
pub. is read but not forthcoming.
The other in T.O. 7. Nov. 1879.
No. 2870. Original of which should
have been sent up and is being
called for. This is a reply to the agent.
which is a reply to the agent.
revenue was not made till the
reply from the Govt. of India to
our letter 25. Sep. 1879. No. 2470.
was received. On the back of
the paper containing the minutes
removes it with the approval of
Mr. Comstock and the office
to retain the Adv. note & send it to the office.

23
by Arch. Lunderstand
he wished it to be put away
safely and not sent to
India. If required this
will be provided with to be made
often and a further search
directed to be made among
the Conf. papers but it
this perhaps was done then
the Adv. was asked each
year to furnish a copy.
10/8.

Despatched
with the copy of G.O. 2870 of 1879

No. 401 D. of 26/8/85

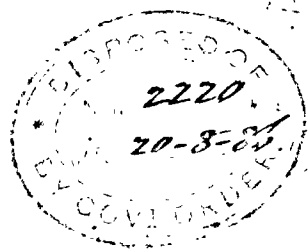
My dear Shepherd,

With reference to G.O. 20th Aug.
1886, No. 22nd ^{1st} Ind. Dept., referring to
you for further consideration & opinion,
the question, whether, ^{Madras} Act VIII of 1865 is in
force in the Agency tracts of Vizagapatam,
I am to state, for ~~your~~ your information,
that Mr O'Sullivan's opinion of the
1st September 1879 did not refer to the
Godavari D^{ist}, as you appear in your opinion
of the 11th Nov. 85, to suppose, but to
the Vizagapatam Agency. Mr O'Sullivan's
opinion was obtained on a letter from
the Agent in Vizagapatam. (Record).
in G.O. 7th November 1879 No. 2870. Copy
of this G.O. is enclosed, & I am to
draw your attention to para. 3 thereof,
it was passed after a consideration of
Mr O'Sullivan's opinion but not in
accordance with ^{his} opinion.

Yours sincerely

[Signature]

21/8



Go to advocate

28/1886

From order

Sp. 2220

95/10

CURRENT NO. Judicial 3381

Opinion

With reference to the Order of Government dated 20th August 1886, No 2220 this, Judicial Department, I am not disposed to alter the opinion already formed by me in this matter. In giving it I referred to the opinion given by the Advocate General in 1879 and to the circumstance that in Districts standing, as I believe, in exactly the same position as those now in question, a notification was in the same year thought to be necessary with reference to this same Act VIII of 1845. In the preamble to Act ~~XIV~~ of 1874, it is recited that there were at that time parts of British India which had never been brought under the operation of the General Acts, and that there was uncertainty as to which Acts were in force in those parts. Powers were given to Government by that Act to declare what Acts are and what are not in force in the Districts mentioned in the 1st schedule.

The question, as it presents itself to me, is whether it can be said with any certainty that Act ~~VIII~~ of 1845 was then in force in the Scheduled Districts, or whether it is not one of the Acts

as to which a Notification was required. Con-
sidering the action of Government in 1879 and
the doubts were now expressed by District
Officers on the question, I do not think it can
safely be said that a Notification is not needed.
It seems to me that there has been and there
now is uncertainty as to the applicability of
Act VIII of 1865, and looking at the terms of
the Act no one can say it is altogether un-
natural. It will be seen on reference to
Sections 19 and 24 of the Act that it was
intended primarily to apply in Districts
in which there was a Zillah Judge having
jurisdiction, and a Civil Procedure Code
in force; and although these provisions may
not make it impossible to work the Act
in a Scheduled District they might reason-
ably cause doubt as to whether it was to be
extended to them. That the Act must in
terms restricted in its operation to any part
of the Presidency seems to me immaterial,
for it was only with reference to Acts the
operation of which was left undefined that

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Act XIV of 1874 was framed. In my opinion, as
there is room for uncertainty and uncertainty ap-
pears to have existed, the only safe course is to
make a Notification under that Act.
No argument against this view can I
think be founded on the omission of Act VIII of
1865 from the Schedules to Act XV of 1874. The only
Schedule in which the Act could appear, would be
the second Schedule referred to in the 4th Section
of the Act, and if any inference is to be drawn from
its non-appearance in that Schedule, the inference
must be that Act VIII of 1865 is not in force in
any part of the non-scheduled Districts,
for it is only in respect of those Districts
that Act XV of 1874 makes any declaration
with regard to the Regulation and Acts
mentioned in the second Schedule.

Sd/- H. H. Shephard
Acting Advocate General

2 September 1886

True Copy /
William Morgan
Acting Government Solicitor

No 2220-20-8-86.
 No 950-20-4-79
 No 2476-25-9-79
 No 2069-2-11-79
 No 2870-2-11-79
 No 950-5-9-84
 No 2022-2-10-85
 No 2619-12-10-84

CURRENT NO. 3381
 Judicial. (1886) Department
 from

William Morgan
 Ag Government Solicitor
 Madras
 The Chief Secretary
 to Government
 Cochinamund.

Dated Madras 3 Sept 1886
 Recd

12385

Enclosure 1

Forwarded with enclos-
 ure with reference to Order
 of Government No 2220 this
 dated 20 August 1886 - Ju-
 dicial Department -

William Morgan
 Ag Govt Solicitor

Judicial DEPARTMENT.

C. No. 3381.
 the ag. Government Solicitor - 3rd Sept 86.
 No. 385.

FOR ORDERS.

The Advocate General's opinion on
 the question of law relating to the
 Scheduled Districts is submitted for
 orders in continuation of the ~~notes~~
 notes on G.O. 20 August 1886 - No.
 2220. is founded.
 The question is - whether Madras
 Act viii of 1865 - is in force in the
 Agency Tracts of Vizagapatnam. In
 G.O. 7 November 1879. No. 2870 the
 Govt held that the Act undoubtedly
 was in force there. The question was
 again ^{raised} by the Agent in the Agency Rep.
 last year. & the Adv. Genl. gave it as
 his opinion that the Act is not in
 force without a declaration being made
 under sec. 3 of the Scheduled Districts
 Act 1874. In G.O. 20 Aug 86. No. 2220 -
 the Govt resolved to refer the question
 back again to the Adv. General. In the
 reply now for orders, the Adv. General
 refuses to alter his opinion.
 The Advocate General's view seems to
 be briefly this: - as a matter of fact,

doubt has been felt & expressed by various officers as to whether act viii of 1865 is in force. It is, therefore, a case for a Notification under sec 3 Act xiv of 1874. And, until the doubt has been removed by such a Notification, the Act cannot be said with certainty to be in force.

This opinion of the Adv. Genl. is, it is submitted, illogical, as was suggested to him in para of G.O. of the 20th August 86. no. 2220. Either the Act is in force & legally extends to the Agency tracts in question, or it is not so in force. Prima facie, as that order shows, it does extend to the Agency tracts. Until the contrary is proved, therefore, it is in force. The existence of doubt in the minds of some officers cannot suspend its operation, tho' it might render it desirable to lay the doubt at rest by a Notification under sec. 3 act xiv of 1874. It is submitted - that the Adv. Genl. should have confined himself to saying that the issue of such a Notification seemed desirable, & should not have laid down that Act viii of 1865 is not in force.

It is a little difficult to know what is to be done now. When the Adv. Genl. gave his opinion last Nov. - it was proposed to communicate it to the officers of the Agency - but the Honble Member then suggested that this would faithfully repeal previous orders. (G.O. to Mr. Wilson dated 31st Dec. 85) In the face

* declaring either that act viii of 65 is in force or is not in force.

As to the practical question whether it is expedient that act viii of 65 should be in force, reference is requested to the Agent's paras 23 of Agency Rept G.O. 20 Oct 85, no. 2822

The question then is whether the Act is to be declared in force or not in force. On this point I have no objection to the discretion of the

I would request information to be sent to the G.O. letter in G.O. 29 May 1887. no. 1298. There seems no doubt on the face of the Statute book that Act

of the Adv. Genl's repeated opinion, however, it hardly seems that G.O. 7 Nov. 1879. no. 2870 could be left to stand as it is, and it is submitted that the best course may be to issue a Notification under sec. 3 Act xiv of 1874 pointing out the reasons which had the Govt. to hold that G.O. 7 Nov. 185 1879 no. 2870 is still correct in law.

There being no objection, I am, in the order of 1865 which 29/9/1887 is operative, it seems prima facie that the Act extends to the whole of the Agency - there is nothing in Act xiv of 1874 which affects this point; even relating, as it does, to the rules & regulations made at a later date. It is only by then construing the section that it can be found to have effect. Act xiv & xv of 1874 enable the Govt. to declare, by declaring acts to be, or not to be in force, in scheduled Dist. & this may now be done by declaring Act viii of 1865 to be or not to be in force in Nagapattinam as the Govt. think fit.

Tudl

Scheduled District

FOR ORDERS.

VIII of 1865 is in force in the
Scheduled District. The Act extends
in terms to the whole Presidency &
all are agreed that the bar - if there
be a bar - in Reg. XXIV of 1839
is not prospective. Under the G.
I. instructions we have therefore
look to the history of the district to
see whether the Act has been enforced
or not. Mr. Carmichael in letter dated
with G.O. 7 Nov 1879 No. 2870 bears
testimony that in his time the Act
was considered in force & was worked
in the Agency tracts. & from Mr. Tenny
report it appears that it is still worked.
There is no getting over these facts. Though
under the G. I. instructions, the case
is not a proper one for a notice deciding
the Act not in force.
Further I submit that the question is
of no practical importance. Whether
the Agent acts qua Civil Collector or qua
Civil Court is not of much consequence.
Appeal from him or his subordinate in
the one capacity lies to him in the other,
and hence no doubt the exercise of jurisdiction
on the application of the district provisions.
Sept Act VIII of 1865 will soon be
repealed & disappear from the Statute-book.
The new Act will doubtless repeal it al-
together & provide for its own extension
at the discretion of Govt. Whether the new
Act should be extended or not to
the Agency tracts can be then decided.
On the whole I submit the - now
steps in the matter should be taken
now.
C-4/10 As to the present disposal
of the papers, I submit that
an order to the above effect

should issue, pointing out that
the Adv. Gen.'s second opinion viz.
that there is an uncertainty whether
the Act is in force or not is not founded.
The Agents' doubt can rest on that
point, & cannot be; but that the
legality of enforcing it is doubtful.
This is another matter altogether. It
might accordingly refuse to apply.
any Act if it were XIV of 1876.

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Just: Department.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following

Again G.O. 20 Aug 86 - No. 2220.
From Govt Solicitor - 3 Sept 86 - No 385

Order of 13/11/86, No 2969

The Government having
considered the opinion of the Advocate General,
forwarded with the foregoing letter, are
not prepared to issue a Notification
under Act XIV of 1874 regarding the
operation of Madras Act VIII of 1865 in
the Agency Tracts of Vizagapatam. It
is allowed by the Advocate General and
may be assumed to be correct that
that act prima facie applies to the
Agency tracts - and is not barred by any
expressions in Act 24 of 1839. There is
clear
the evidence of fact that the Act has
been actually worked in the
Agency tracts, a fact which the
Agent's doubts cannot upset. As

the Act should ¹⁰ prima facie be in force
and in actual fact is in force. there
can exist no ground for doubting
the legality of ^{proceedings under it} its being put in force.
A notification under sec. 3 of act XIV of
1874 must be one of fact only - and
there is here clearly no need for
such a declaration. The Govt. therefore
will not take any action in the
matter, but the application of the
law ^{in question which has} will be ~~in accordance with the law~~
~~regulating the recovery of~~
~~rent to the Orissa Tracts will be~~
~~considered when the subject comes~~
~~up for treatment in the Legislative~~
~~Dept.~~

ADP
1/21

ADP
1/21

Adm. Genl.
Rev. Secy.
Secy. to Govt.
Sgt. Major
12/1/85

5/2/86

27/6/86

12-1-09

18-5-26-11

16-7-49-55

PRESS.

Judicial DEPARTMENT.
G.O. DATED *2^d November 1886*
No. *2969*

First copy sent to Press.

tract.]

Instructions.

...ing to issue a
under Act XIV of
ing the operation
Act VIII of 1865 in
Agency Tracts of Vijaya Patana
stating that it will be
in mind when the
ment of the Rent Re-
y Act comes up for
operations