

M. P. O. 1002-16 9-48.

(1) Number of pages 42
(2) Date of repair 6.11.49
(3) Initials of the Referencer _____

MADRAS RECORD OFFICE

Government of Madras

Judicial DEPARTMENT

G.O. No.	<u>1604-1605</u>	Press
B.P. No.		Misr
Dated <u>11th</u> <u>August</u>		18 <u>93</u>

Original

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following papers :—

G.O., dated 19th January 1893, Nos. 137, 138, Judicial.

ABSTRACT.—Directing, with remarks, that steps be taken for declaring the Boundary Marks Act XXVIII of 1860 in force in the Rampa country; for extending it to the taluks of Bhadrachalam and Rékapalle, the Dutsarti and Guditeru muttas and the scheduled districts in the districts of Ganjam and Vizagapatam; and for declaring Act XIV of 1874 in force in certain villages in the Gódvári district.

G.O., dated 18th February 1893, No. 377, Judicial.

ABSTRACT.—Passing orders on the Revenue Department office-note inquiring whether Regulation XII of 1816 (Madras) is in force in the scheduled tracts of the Vizagapatam district.

G.O., dated 18th May 1893, No. 1043, Judicial.

ABSTRACT.—Referring to the Law officers the question of the applicability of Act XXVIII of 1860 to zemindaries.

READ—also the following papers :—

From C. J. LYALL, Esq., C.S.I., C.I.E., Secretary to the Government of India, Home Department (Judicial), to the Chief Secretary to the Government of Madras, dated Simla, the 14th June 1893, No. 667.

I am directed to acknowledge the receipt of your letter No. 138, Judicial, dated the 19th January 1893, submitting for sanction draft notifications to give effect to the following proposals :—

(1) to declare, under section 3 of Act XIV of 1874, that Act XXVIII of 1860 (Boundary Marks) is in force in the Rampa country;

(2) to extend the said Act, by notification under section 5 of Act XIV of 1874, to the taluks of Bhadrachalam and Rékapalle, the Dutsarti and Guditeru muttas and the scheduled districts in the districts of Ganjam and Vizagapatam;

(3) to declare Act XIV of 1874 to be in force in certain localities to which the Secretary of State in Council extended the provisions of section 1, Statute 33 Vict., Cap. 3, on the 4th April 1891.

2. In reply I am to say that it has been found necessary to revise the draft notifications submitted with your letter, and a copy of the revised drafts is forwarded herewith. It will be seen that the references to amending Acts have been omitted from draft notifications I and II. It is unnecessary to specify in a notification under section 3 or section 5 of the Scheduled Districts Act enactments which have modified any Act dealt with by such a notification, since the effect of the notification is to declare in force or extend (as the case may be) the enactment in the form in which, at the date of the notification, it stands on the Statute Book. I am also to point out that notification II as drawn up by the Madras Government would purport to include the Laccadives, which have been decided to be foreign territory, though not yet removed from Part I of the Schedule to Act XIV of 1874. For this and other reasons

it seems to the Government of India preferable to set out in detail in this notification the scheduled districts to which it is intended to apply. This has been done in the revised draft notification by reproducing in it heads I and II of Part I of the Schedule to Act XIV of 1874 as modified by Act XII of 1891, and by Madras Government's notification No. 217, dated the 29th June 1881.

3. I am to request that, unless the Madras Government see any objection, the revised draft notifications may, under the orders of the Governor in Council, be published in the *Gazette of India* and the *Local Gazette* as notifications made with the previous sanction of the Governor-General in Council.

ENCLOSURES.

NOTIFICATION I.

In exercise of the power conferred by section 3 of the Scheduled Districts Act (XIV of 1874), and with the previous sanction of the Governor-General in Council, the Governor of Fort St. George in Council is pleased to declare that Act XXVIII of 1860 (*an Act for the establishment and maintenance of boundary marks, and for facilitating the settlement of boundary disputes, in the Presidency of Fort St. George*) is in force in the Rampa country, being a scheduled district in the Gódvári district.

NOTIFICATION II.

In exercise of the power conferred by section 5 of the Scheduled Districts Act (XIV of 1874), and with the previous sanction of the Governor-General in Council, the Governor of Fort St. George in Council is pleased to extend Act XXVIII of 1860 (*an Act for the establishment and maintenance of boundary marks, and for facilitating the settlement of boundary disputes, in the Presidency of Fort St. George*) to the following scheduled districts, viz.:—

I.—In Ganjam.

The Goomsur Maliahs, including Chokapad.
The Suradá Maliahs.
The Chinnakimedi Maliahs.
The Peddakimedi Maliahs.
The Bódaguda Maliahs.
The Surangi Maliahs.
The Parlákimedi Maliahs.

The Muttas of Koradá and Ronabá (otherwise called Srikarma).
The Juradá Maliah.
The Jалантра Maliah.
The Mandasa Maliah.
The Budarasinghi Maliah.
The Kuttingia Maliah.

II.—In Visagapatam.

The Jeypore Zemindari.
Golconda Hills west of the river Boderu.
The Mádugula Maliahs.
The Kasipur Zemindari.
The Panchipenta Maliahs.

Mondemkolla, in the Merangi Zemindari.
The Konda Muttas of Merangi.
The Gumma and Konda Muttas of Kurpam.
The Kottam, Itám and Konda Muttas of Palkonda.

III.—In the Gódvári District.

The Bhadráchalam Taluk.
The Rékapalle Taluk.

The Dutsarti and Guditeru Muttas in the Golconda hills.

NOTIFICATION III.

In exercise of the power conferred by section 3 of the Scheduled Districts Act (XIV of 1874), and with the previous sanction of the Governor-General in Council, the Governor of Fort St. George in Council is pleased to declare that the said Act is in force in the villages in the Gódvári district to which, by Resolution of the Secretary of State for India in Council, dated the 4th April 1891, the provisions of section 1 of the Statute 33 Vict., Cap. 3, were made applicable.

From the Government Solicitor, Madras, dated 20th July 1893, No. 257.

ABSTRACT.—Forwarding the following opinion of the Advocate-General and the Acting Government Pleader, dated 20th July 1893.

OPINION.

The question raised is whether the provisions of Act XXVIII of 1860 are applicable only to cases where the boundary of Government land (occupied or unoccupied) marches with that of the lands of other owners, or extend also to cases where questions arise as to the boundaries of the latter class of lands.

2. There are no express words in any part of the Act restricting its operation to cases in which conflict exists or may arise as to the boundaries between Government lands on one side and zemindari or other proprietary lands on the other.

3. The object of the Legislature in passing the said Act and making provision for the establishment and maintenance of permanent boundary marks as disclosed in the preamble appears to be two-fold, viz.:—

- (1) the better security of landed property in general, the prevention of encroachments and adjustment of disputes respecting such property in this Presidency, and
- (2) the identification of lands assessed to or exempt from revenue (see preamble).

4. But the preamble cannot either restrict or extend the enacting part of the Act when the language of the latter is plain and not open to doubt either as to its meaning or its scope. It is chiefly from the main body, the purview of the Act, that the will of the Legislature is to be learned.

5. Turning then to the enacting part of Act XXVIII of 1860 we must see whether it is plainly less extensive than the preamble. In our opinion the language of the enacting part is very general and seems to be intended to apply to both classes of cases specified above. If the Legislature meant to confine the applicability of the Act to the identification of Government lands, they would have distinctly said so.

6. The express and prominent reference made not only in the preamble but in the enacting part of the Act to the prevention and adjustment of boundary disputes in general, appears to us to show that the Legislature intended the applicability of the Act to be general.

7. Section 2, which now stands as the first of the enacting provisions, opens with a clause empowering the Collector or other officer, *duly qualified under the Act*, to take steps for compelling owners and occupants to set up and maintain boundary marks, *should he find such demarcation necessary for the prevention or adjustment of disputes*.

8. Section 7 goes further and empowers the said officers even when in their opinion no necessity exists for taking action under section 2, to direct a survey and demarcation to be made if proprietors or occupants of lands express a wish generally for the erection of boundary marks by Government. We fail to see anything in the Act depriving zemindars or occupants of holdings in zemindaries of the benefit of these provisions for demarcation.

9. The words of section 9 are also very comprehensive, and offences respecting "any boundary marks whatsoever whether established under this Act or otherwise existing or any survey or other marks or any marks set up for investigation or adjudication of disputes by an officer of Government or any person acting under his orders" are thereby made punishable.

10. A reference to these few leading provisions of the Act is, in our opinion, sufficient to show that according to its scope and language as well as its objects, the enactment is applicable to zemindaries and other proprietary lands equally with Government lands.

MADRAS,
20th July 1893.

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

(Signed) S. SUBRAMANIYA AIYAR,
Ag. Government Pleader.

ORDER—dated 11th August 1893, No. 1604, Judicial.

The opinion of the Advocate-General and the Government Pleader upon the question whether Act XXVIII of 1860 is applicable to zamindaris and other proprietary estates will be communicated to the Revenue Department.

2. It does not appear to be expedient to invest the Manager of the Jeypore estate with powers under Act XXVIII of 1860 to settle boundary disputes between jirayat villages in the estate as he will often represent one of the parties. The powers should be conferred on the Divisional officers having jurisdiction.

3. The draft Notifications extending Act XXVIII of 1860 to the Scheduled Districts and declaring Act XIV of 1874 to be in force in certain villages in the Gódvári district, as revised by the Government of India, will be published in the *Gazette of India* and the *Fort St. George Gazette*.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the Revenue Department, with original papers returned.

„ Agent to the Governor, Ganjam.

„ „ „ Vizagapatam.

„ Government Agent, Gódvári.

Copies to the Government Solicitor and Government Pleader.
Gazette (Notifications).

ENDORSEMENT—dated 11th August 1893, No. 1605, Judicial.

Copy forwarded to the Superintendent, Government Printing, India, Calcutta, with the request that the revised Notifications may be published in the *Gazette of India* as desired in Mr. Lyall's letter of the 14th June 1893, No. 667.

J. F. PRICE,
Chief Secretary.

Govt. of {1893} Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O., &c., 11th August 1893,
Nos. 1604, 1605.

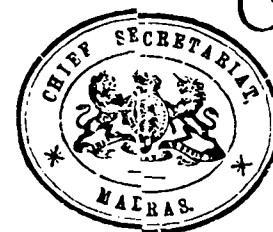
AUGUST.

Boundary Marks Act XXVIII
of 1860.

Communicating to the Revenue Department the opinion of the Advocate-General and Government Pleader upon the question whether the — is applicable to zamindaris and other proprietary estates, and directing publication in the *Gazette of India* and the *Fort St. George Gazette* of notifications extending the Act to the scheduled districts and declaring Act XIV of 1874 to be in force in certain villages in the Gódvári district.

[G
63]

Revenue Department.



PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following paper:—

Proceedings of the Court of Wards, dated 16th August 1880, No. 1, 172.
Abstract.— Requesting that Lieutenant-Colonel C. J. Stuart and Mr. J. Somers may be specially invested with powers under Act XXVIII of 1860 to dispose of boundary disputes in Parakimedi Zeminari in Ganjam District under Court of Wards.

Order thereon: 25th September 1880 No. 172.
The Government do not consider that an officer employed by the Court of Wards to survey and settle the lands of their Minor Ward can be invested with powers under Act XXVIII of 1860.
2. Section 22 clearly contemplates only the settlement of the outer boundary of an estate when the survey and settlement of the Government land adjoining with it elicits the fact that a dispute exists as to the dividing line.

(True Extract)
(D). L. G. Maule
to be sent to C.

PROCEEDINGS OF THE COURT OF WARDS.

READ—the following letter from A. THOMPSON, Esq., Acting Principal Assistant Collector, to the Collector of Ganjam, dated Kasibuga, 18th October 1882, No. 514; and endorsement by H. St. A. GOODRICH, Esq., Collector, dated 1st November 1882, No. 3913:—

The Court of Wards, in their Proceedings, No. 6980, dated 8th September 1882, have ordered that the cost of demarcation stones in the Parlákimedi Estate should be recovered from the ryots as arrears of rent.

I have therefore the honor to inquire by what legal means this sum can be recovered from the ryots as arrears of rent. Whether Act XXVIII of 1860 can be held to apply to the present survey of the Parlákimedi Zemindari by officers paid by the estate appears to me to be very doubtful. Even if this Act does apply to the present survey, it will be necessary under Section 6 that the cost of boundary marks should be recovered as arrears of Land Revenue, and not as arrears of rent. Again, Section 8 declares that the cost of marks for unoccupied fields shall be defrayed by Government. I am not aware of any authority by which the word "*rent*" may be substituted for "*Land Revenue*" in Section 6, or the words "*the Estate*" for "*Government*" in Section 8. It is very possible that the ryots will pay the amount in question if a little compulsion be exercised, but the question is whether it is proper that the administration of the Parlákimedi estate, which ought to be a model to all other Zemindars, should use compulsion or pressure of any kind in order to exact more than the ryots are bound to pay.

It is clear that if the sum in question were to be levied by distraint under Act VIII of 1865, a Revenue Court would be compelled to cancel the distraint on appeal as illegal; nor do I see what defence could be made by the Agents of the estate against a charge or claim brought under Section 5 of Act VIII of 1865 for double the amount of "any sum exacted in excess of the rent or other authorized charge specified in his putta" by a landholder who "shall not levy any unauthorized tax under any name or under any pretence," *e.g.*, under the name of cost of demarcation stones.

Endorsement, No. 3913.

Submitted for the early orders of the Court of Wards. The undersigned considers it better to obtain the opinion of the Advocate-General in this matter, if the Court would escape civil liability.

2. The following is the correspondence which has passed in the matter:—

Court's Proceedings, dated 26th July 1881, Mis. No. 7179.

Do.	"	28th April 1882, No. 3150.
Do.	"	9th June " " 4214.
Do.	"	8th Sept. " " 6980.

RESOLUTION—dated 12th December 1882, No. 3081.

The papers will be referred to the Government Pleader with the request that he will favor the Board with his opinion on the following point.

2. Is Act XXVIII of 1860 to be read as applying to lands within Zemindaries as well as to Government lands? And can an officer specially "appointed by the Government for the purpose" exercise the functions assigned to him by the Act on lands in permanently-settled estates?

3. The Court of Wards observe that Government in their Order, Revenue Department, No. 1228, of 25th September 1880, have ruled that Section 22 of the Act only applies to settlements of "the outer boundary of an estate when the survey and settlement of the *Government* land marching with it elicits the fact that a dispute exists as to the dividing line." But the present question is wider than that, and concerns the applicability of the entire Act.

4. The immediate point before the Court is as to whether ryots in a permanently-settled estate under the management of the Court of Wards can be held liable to pay their quota of the cost of providing demarcation stones for their own fields, in a complete survey and settlement of the entire Zemindari, now in progress.

(A true Copy and Extract.)

(Signed)

R. SEWELL,
Acting Sub-Secretary.

To the Government Pleader, with Board's Proceedings,

Mis. No. 6980, of 8th September 1882; Mis. No. 6517, of

25th August 1882; Mis. No. 3150, of 28th April 1882;

Mis. No. 7179, of 26th July 1881; Mis. No. 4214,

of 9th June 1882 in original; and G.O., of 25th

September 1880, No. 1278, to be returned.

Copy to the Collector of Ganjam.

1882.
Court of Wards,
MADRAS.

Printed December, 23rd.

Proceedings, 12th December 1882, No. 3081.

Requesting the opinion of the Government Pleader as to whether Act XXVIII of 1860 can be held applicable to lands within Zemindaries, and whether the officer specially appointed by Government under it can exercise the functions assigned to him on lands in permanently-settled estates.

1007
REVENUE DEPARTMENT.
1882/1883

COURT OF WARDS, 5TH FEBRUARY 1883, No. 308.

PROCEEDINGS OF THE COURT OF WARDS.

READ—the following letter from H. H. SHEPHARD, Esq., Government Pleader, to the Sub-Secretary to the Court of Wards, dated Madras, 10th January 1883, No. 9:—

With reference to the Proceedings of the Court of Wards noted in the margin, 12th December 1882, No. 3081. I have the honor to submit the following opinion.

I do not think that the provisions of Act XXVIII of 1860 apply to lands lying within the limits of permanently-settled estates. Looking to the references made to land revenue as well in the Act itself as in the Act of 1855 which it replaces and to the absence of any reference except in Section 22 to an intermediate holder, such as a Zemindar, I think that the Act can be intended to apply only to disputed boundaries as between holders of land liable to pay revenue direct to Government.

2. I return all the papers.

RESOLUTION—dated 5th February 1883, No. 308.

Communicated to the Collector of Ganjam with reference to the Court's Proceedings quoted.

2. The latter part of the Court's Proceedings of the 8th September last, No. 6980, directing the recovery of the cost of the demarcation stones from the ryots as arrears of rent is cancelled, and the necessary outlay must be met from the Estate Funds.

(A true Copy and Extract.)

(Signed) J. A. DAVIES,
Acting Sub-Secretary.

To the Collector of Ganjam.
Copy to the Government Pleader.

Exd. A. Grubert.

1883.
Court of Wards,
MADRAS.

CHIEF SECRETARY
Printed February 1883
GOVERNMENT OF MADRAS

Proceedings, 5th February 1883, No. 308.

Communicating, with remarks, to the Collector of Ganjam letter from the Government Pleader advising as to whether Act XXVIII of 1860 can be held applicable to lands within Zemin-daries, and whether the officer specially appointed by Government under it can exercise the functions assigned to him on lands in permanently-settled estates.

-after the day of 1883:-
1883

7-2-1883
Ind: 40.377 of 18/2/93
Abstract Passing order on the
Rev: Dept. of Public Works regarding
the Regulation XI of 1816
(which is in force in the
Scheduled Tracts of the
Vijayanagara Dt.)

Ind: 40 1043 - 18/5/93
Abstract Regarding to the lower
Officers the question of the
applicability of Act XXVIII
1860 to Zamin-daries.

Ans. again 10. 20. 30. 40. 50. 60. 70. 80. 90. 100. 110. 120. 130. 140. 150. 160. 170. 180. 190. 200. 210. 220. 230. 240. 250. 260. 270. 280. 290. 300. 310. 320. 330. 340. 350. 360. 370. 380. 390. 400. 410. 420. 430. 440. 450. 460. 470. 480. 490. 500. 510. 520. 530. 540. 550. 560. 570. 580. 590. 600. 610. 620. 630. 640. 650. 660. 670. 680. 690. 700. 710. 720. 730. 740. 750. 760. 770. 780. 790. 800. 810. 820. 830. 840. 850. 860. 870. 880. 890. 900. 910. 920. 930. 940. 950. 960. 970. 980. 990. 1000.

600

1000

19TH JANUARY 1893, Nos. 137, 138, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following paper :—

G.O., dated 5th June 1891, No. 1071, Judicial.

ABSTRACT.—Directing that the notification making applicable section 1 of Statute 33 Vic., cap. 3, to certain parts of the Godáviri district be published in the *Fort St. George Gazette* and extending to the above tracts the rules prescribed from time to time for administering the Godáviri Agency tracts.

READ—also the following papers :—

Proceedings of the Board of Revenue (Land Revenue), dated 6th October 1892, Mis. No. 6324.

Read—the following letter from E. C. JOHNSON, Esq., Agent to the Governor in Ganjam, to the Chief Secretary to Government, Judicial Department (through the Secretary to the Commissioners of Land Revenue, Madras), dated 24th September 1892, No. 220 :—

Disputes have of late arisen regarding the boundary between the Chinna Kimedi and Pedda Kimedi Maliahs; and it seems necessary that a definite boundary should be laid down. At the time of the Ganjam and Orissa survey it was not settled on account of the disturbed state of the Sowrahs, and nothing seems to have been done since. There are valuable forests upon the debatable land: and, as long as the boundary remains undetermined, it is almost impossible to prevent illicit felling of trees in our Chinna Kimedi Maliahs.

2. In these circumstances I have the honour to request that Government will be pleased to appoint the Special Assistant Agent, Mr. Elphinstone, under section 2 of Act XXVIII of 1860, to determine and demarcate the boundary.

Resolution—dated 6th October 1892, Mis. No. 6324.

Forwarded.

2. The Board supports the Agent's proposal.

(True Copy and Extract.)

(Signed) F. LEVY,
for Ag. Secretary.

To the Chief Secretary to Government, Judicial Department.

Proceedings of the Board of Revenue (Land Revenue), dated 15th October 1892, Forest Mis. No. 1102.

Read—the following papers :—

G.O., dated 4th March 1892, Mis. No. 1239, and reference thereon, dated 16th March 1892.

From H. F. W. GILLMAN, Esq., Acting Special Assistant Agent, Godáviri District, to the Government Agent, Godáviri District; dated Rajahmundry, 17th June 1892, No. 175:—

As directed in your endorsement, No. 356, dated 26th May 1892, I have the honour to submit my opinion on the suggestion of Government in its order, No. 3334, dated 24th March 1892, whether it would not be advisable to extend the Boundary Marks Act XXVIII of 1860 to the Agency tracts of this district.

2. I may first briefly note the nature of demarcation work that has to be done. That which calls for immediate attention is the demarcation of the Government unreserved lands in Bhadrachalam taluk where these adjoin proprietary village lands. Boundary marks distinguishing the two classes of lands were erected at the settlement of 1867. Owing, however, to the difficulty experienced at that time in procuring masons and stone-cutters, heaps of stones placed round posts stuck in the ground were erected to a great extent instead of masonry pillars. In some cases these marks have disappeared; in others they are so much at variance with the maps prepared at the settlement, as to induce the belief that they have been altered by the proprietors for their own benefit. Three cases have come under my notice in which proprietors have taken advantage of the difficulty in distinguishing the boundary marks to cut timber (in one instance 350 teak logs) in Government jungle and export it as if cut on their own proprietary land.

In Rampa it will probably be necessary at no very future date to demarcate out the mokhasa villages in which the proprietors have full forest rights, from surrounding village lands, the forests on which belong to Government.

In Polavaram and Yellavaram divisions it may be necessary hereafter to demarcate the boundaries between Government and proprietary lands.

3. Such is the work that has, and may have, to be done. The best way of accomplishing it seems to me to be to invest the Special Assistant Agent with the powers set forth in section 2 of Act XXVIII of 1860.

I am not at all in favour of extending the arbitration clauses in the Act to the Agency. In the first place the frequent references to arbitration that would be necessary would involve undue delay. The second and most weighty objection is that arbitrators selected from residents in the Agency could not be trusted to give a fair and impartial decision, as they would be influenced by the proprietors and zemindars concerned.

4. As you have suggested, Act II of 1884 should be extended at the same time as the Boundary Marks Act, of which it is a continuation.

5. Your endorsement, with its enclosures, is herewith returned.

No. 69.

Submitted to the Board of Revenue, through the Conservator of Forests, Northern Circle, adverting to its reference, dated 16th March last, on Forest Register No. 558 of 1892.

2. I agree with the Special Assistant Agent in recommending that Act XXVIII of 1860, with its supplement, Act II of 1884, should be extended to the whole of the Agency tracts in this district. I also consider that, in consideration of the difficulty of finding suitable arbitrators, it will be well to omit that portion of Act XXVIII of 1860 which relates to the reference of matters in dispute to arbitration. This will involve the omission of sections 10 to 14 and the first 41 words of section 25 of that Act.

COCANADA,
23rd August 1892.

(Signed) A. W. B. HIGGENS,
Government Agent.

No. 287-C.

Forwarded. The Acting Conservator fully endorses Mr. Gillman's remark as to the uncertainty of the boundaries of the villages granted in proprietary right in the Upper Godáviri settlement in 1867.

2. The question of mokhasa rights to forest land in Rampa has recently been fully discussed in Proceedings, Forest No. 458, dated 23rd August 1892.

BELLARY,
13th September 1892.

(Signed) E. D. M. HOOPER,
Ag. Conservator of Forests.

Resolution—dated 15th October 1892, Forest Mis. No. 1102.

Submitted to Government, with reference to G.O., dated 4th March 1892, No. 1239, Revenue.

2. The Board supports the recommendation of the Government Agent to extend Act XXVIII of 1860 and Madras Act II of 1884 to the Godáviri Agency with the exception of those portions of the former Act indicated by Mr. Higgins.

(True Extract.)

(Signed) W. S. MEYER,
Ag. Secretary.

To the Secretary to Government, Revenue Department.
Copy to the Conservator of Forests, Northern Circle.
" " Government Agent, Godáviri.

ORDER—dated 19th January 1893, No. 137, Judicial.

The correspondence read above relates to the extension of the Boundary Marks Act XXVIII of 1860 to the scheduled districts of Godáviri and Ganjam.

2. The scheduled districts in Godáviri fall into five groups, viz.—

- (1) the taluks of Bhadrachalam and Rékapalle;
- (2) the Rampa country;
- (3) the Dutsarti and Guditeru muttas;
- (4) the areas scheduled in 1883; and
- (5) " " in 1891.

3. The taluks of Bhadrachalam and Rékapalle formed a portion of the Central Provinces until 1874, and as Act XXVIII of 1860 extends to the Presidency of Fort St. George only, it was not in force in these taluks prior to their transfer to the jurisdiction of the Madras Government. The Act has not been extended to Bhadrachalam and Rékapalle since 1874 and it is therefore not in force there at present. Steps will now be taken to extend the Act to those localities under section 5 of the Scheduled Districts Act, 1874.

4. There is nothing in Act XXVIII of 1860 which renders it inapplicable to the scheduled districts, and the Act has been in force in the Rampa country since its commencement. As, however, Act XXVIII of 1860 appears in the second schedule to the Laws Local Extent Act, 1874, among the Acts which are in force elsewhere than in the scheduled districts, and as some doubt might in consequence be felt as to the applicability of the Act to the scheduled districts, the Government considers it desirable that a formal notification should be issued under section 3 of the Scheduled Districts Act, 1874, declaring the Act to be in force in the Rampa country.

5. The Dutsarti and Guditeru muttas formed until 1881 a portion of the Vizagapatam Agency tracts. These tracts are subject to Act XXIV of 1839 and are in consequence withdrawn from the operation of the ordinary enactments relating to the administration of civil and criminal justice and to the collection of the revenue. Act XXVIII of 1860 is such an enactment inasmuch as it confers powers of civil jurisdiction upon certain revenue officers and therefore the Act is not in force in the Agency tracts of Vizagapatam and Ganjam. The transfer of the Dutsarti and Guditeru muttas to Godáviri in 1881 did not alter their position in this respect, and as Act XXVIII of 1860 has not been extended to them since their

transfer, it is not now in force there. Steps will accordingly be taken to extend the Act to these localities by a notification under section 5 of the Scheduled Districts Act, 1874.

6. The areas scheduled in 1883 are set out in G.O., dated 20th July 1883, No. 1903, Judicial. No notification in respect of these tracts is necessary. Act XXVII of 1860 was unquestionably in force in them prior to 1883 and is declared to have been so by Act XV of 1874. They were not withdrawn from the operation of the Act by the mere fact of their having been so scheduled. The Act is therefore in force in these localities at present.

7. The areas scheduled in 1891 are specified in G.O., dated 5th June 1891, No. 1071, Judicial. The remarks made in para. 6 *supra* apply to these localities also; the Act is at present in force in them. In this connection it is observed that the Scheduled Districts Act, 1874, has not been formally declared to be in force in these areas by notification under section 3 of the Act, although rules framed under section 6 of the Act have been extended thereto. This defect will now be remedied.

8. For the reasons given in paragraph 5 *supra*, it appears to Government that Act XXVIII of 1860 is not in force in the Agency tracts of Vizagapatam and Ganjam. Steps will now be taken to extend the Act to both these areas by notification under section 5 of the Scheduled Districts Act, 1874.

9. The following letter will be despatched to the Government of India:—

(True Extract.)

C. A. GALTON,
Ag. Chief Secretary.

To the Revenue Department.
" Agent to the Governor, Ganjam.
" " Vizagapatam.
" Government Agent, Godavari.

LETTER—to the Secretary to the Government of India, Home Department, dated Fort St. George, 19th January 1893, No. 138, Judicial.

I am directed to forward a copy of the Proceedings of this Government of this date, and to request that the Government of India may be moved to accord sanction to the notifications contained in the annexure to this letter.

2. It will be seen that His Excellency in Council proposes—

(1) to declare, under section 3 of Act XIV of 1874, that the Boundary Marks Act XXVIII of 1860, is in force in the Rampa country;

(2) to extend the said Act, by notification under section 5 of Act XIV of 1874, to the taluks of Bhadrachalam and Rékapalle, the Dutsarti and Guditeru muttas and the scheduled districts in the districts of Ganjam and Vizagapatam;

(3) to declare Act XIV of 1874 to be in force in certain localities to which the Secretary of State in Council extended the provisions of section 1, Statute 33 Vic., cap. 3, on the 4th April 1891.

3. The declaration under section 3 of Act XIV of 1874 in respect of the Rampa country is proposed with reference to paragraph 6 of Mr. Mackenzie's letter, dated 5th May 1884, No. 604, to the Secretary to the Government of Bengal; the Government of India therein expresses the opinion that the circumstance that an enactment is included in one of the first five schedules to Act XV of 1874 is a sufficient reason for making it the subject of a declaration under section 3 of the Scheduled Districts Act when the question of its applicability to a scheduled district arises.

4. The Government has come to the conclusion that the Boundary Marks Act is not in force in any portion of the scheduled districts in this Presidency, except the Rampa country and the areas in the Godavari district scheduled in 1883 and 1891, and as its extension to all the scheduled districts appears desirable, notifications under section 5 of Act XIV of 1874 are proposed.

5. The omission to declare Act XIV of 1874 to be in force in the localities referred to in the Secretary of State's despatch, dated 9th April 1891, No. 7, Judicial, was due to an oversight, which it is proposed to rectify.

C. A. GALTON,
Ag. Chief Secretary.

ANNEXURE.

NOTIFICATION I.

In exercise of the powers conferred upon him by section 3 of the Scheduled Districts Act, 1874, and with the previous sanction of the Governor-General in Council, the Governor in Council is pleased to declare that the Boundary Marks Act, 1860, as amended by Act II of 1884 (Madras) and Act XII of 1891, is in force in the Rampa country, being one of the scheduled districts in the district of Godavari.

NOTIFICATION II.

In exercise of the powers conferred upon him by section 5 of the Scheduled Districts Act, 1874, and with the previous sanction of the Governor-General in Council, the Governor in Council is pleased to extend the Boundary Marks Act, 1860, as amended by Act II of 1884 (Madras) and Act XII of 1891, to all the scheduled districts within the Presidency of Madras, except the Rampa country and the tracts in the Godavari district to which, by Resolutions of the Secretary of State in Council, dated 8th May 1883 and 4th April 1891, the provisions of section 1 of the Statute 33 Vic., cap. 3, were declared applicable.

NOTIFICATION III.

In exercise of the powers conferred upon him by section 3 of the Scheduled Districts Act, 1874, and with the previous sanction of the Governor-General in Council, the Governor in Council is pleased to declare that the said Act is in force in the villages in the Godavari district to which, by a Resolution of the Secretary of State in Council, dated 4th April 1891, the provisions of section 1 of the Statute 33 Vic., cap. 3, were made applicable.

Exd. S. J. Pereira.

Govt. of {1893} Madras.
JUDICIAL.

G.O., &c., 19th Jan. 1893,
Nos. 137, 138.

JANUARY.

Boundary Marks Act XXVIII
of 1860.

Directing, with remarks, that steps be taken for declaring the — in force in the Rampa country; for extending it to the taluks of Bhadrachalam and Rekapalle, the Dutsarti and Guditeru muttas and the scheduled districts in the districts of Ganjam and Vizagapatam, and for declaring Act XIV of 1874 in force in certain villages in the Godavari district.

[25]

Judicial Department.



PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following paper:—

Office Note from the Revenue Department, dated 21st December 1892 No. 315.

Order 18th February 1893 No. 377.

In consequence of the passing of Regulation XXIV of 1839, the Agency tracts of Vizagapatam have been removed from the area to which Regulation III of 1816 is applicable, if it is decided to re-extend the enactment to those tracts a Notification under Section 5 of the Scheduled Districts Act 1874, will be necessary.

2. In this connection the attention of the Revenue Department will be invited to G.O. dated 13th September 1888, No. 1956, Judicial, which seems to have at times escaped notice.
(True Extract)

Attentively
By Under Secretary

To
The Revenue Department, with copy of Hon'ble Member's
order to be put in force.

Again G.O., dated 18, No.

Again G.O., dated 18, No.

Current No. of 18, dated from

Current No. of 18, dated from

*No. 1065-8-16/1/93.**despatched 18/93 — The Secy. to the Govt of India
Home Dept.**Li.*

*I am directed to invite
attention to my letter of the 19. Jan.
last, No 138, prob. requesting
the sanction of the Govt of India
to the issue of the Arms Licence
forwarded and to ^{request that} ~~engage~~
^{an early} ~~submit~~ reply to that commu-
nication may be expedited.*

15/6/93

Remit to Secy

Repl. - C.S. - 2614/93.

Rel'd to Secy
15/5/93

Recd - also the [unclear]

13. 26
13. 26

No. 667.

FROM

C. J. LYALL, ESQ., C.S.I., C.I.E.,
Secretary to the Government of India,

TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF
MADRAS.

CHIEF SECRETARY
GOVERNMENT OF MADRAS
20 JUN 93

Home Department.
Judicial.

Simla, the 14th June 1893.

SIR,

I AM directed to acknowledge the receipt of your letter No. 138, Judicial, dated the 19th January 1893, submitting for sanction draft notifications to give effect to the following proposals :—

- (1) to declare, under section 3 of Act XIV of 1874, that Act XXVIII of 1860 (Boundary Marks) is in force in the Rampa country ;
- (2) to extend the said Act, by notification under section 5 of Act XIV of 1874, to the taluks of Bhadrachalam and Rékapalle, the Dutsarti and Guditeru muttas and the scheduled districts in the districts of Ganjam and Vizagapatam ;
- (3) to declare Act XIV of 1874 to be in force in certain localities to which the Secretary of State in Council extended the provisions of section 1, Statute 33 Vict., Cap. 3, on the 4th April 1891.

2. In reply I am to say that it has been found necessary to revise the draft notifications submitted with your letter, and a copy of the revised drafts is forwarded herewith. It will be seen that the references to amending Acts have been omitted from draft notifications I and II. It is unnecessary to specify in a notification under section 3 or section 5 of the Scheduled Districts Act enactments which have modified any Act dealt with by such a notification, since the effect of the notification is to declare in force or extend (as the case may be) the enactment in the form in which, at the date of the notification, it stands on the Statute Book. I am also to point out that notification II as drawn up by the Madras Government would purport to include the Laccadives, which have been decided to be foreign territory, though not yet removed from Part I of the Schedule to Act XIV of 1874. For this and other reasons it seems to the Government of India preferable to set out in detail in this notification the scheduled districts

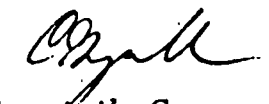
4-0829 June 81.
201255-72
to which it is intended to apply. This has been done in the revised draft notification by reproducing in it heads I and II of Part I of the Schedule to Act XIV of 1874 as modified by Act XII of 1891, and by Madras Government's notification No. 217, dated the 29th June 1881.

3. I am to request that, unless the Madras Government see any objection, the revised draft notifications may, under the orders of the Governor in Council, be published in the *Gazette of India* and the Local Gazette as notifications made with the previous sanction of the Governor General in Council.

I have the honour to be,

SIR,

Your most obedient Servant,


Secretary to the Government of India.

14 480
NOTIFICATION I.

✓
XXVIII
In exercise of the power conferred by section 3 of the Scheduled Districts Act (XIV of 1874), and with the previous sanction of the Governor General in Council, the Governor of Fort St. George in Council is pleased to declare that Act XXVII of 1860 (*an Act for the establishment and maintenance of boundary-marks, and for facilitating the settlement of boundary-disputes, in the Presidency of Fort St. George*) is in force in the Rampá country, being a scheduled district in the Godavari district.

NOTIFICATION II.

✓
In exercise of the power conferred by section 5 of the Scheduled Districts Act (XIV of 1874), and with the previous sanction of the Governor General in Council, the Governor of Fort St. George in Council is pleased to extend Act XXVIII of 1860 (*an Act for the establishment and maintenance of boundary-marks, and for facilitating the settlement of boundary-disputes, in the Presidency of Fort St. George*) to the following scheduled districts, viz.:—

I.—In Ganjam.

- ✓ The Gumsur Maliahs, including Chokapad.
- ✓ The Surada Maliahs.
- ✓ The Chinna Kimedi Maliahs.
- ✓ The Pedda Kimedi Maliahs.
- ✓ The Bodaguda Maliahs.
- ✓ The Surangi Maliahs.
- ✓ The Parla Kimedi Maliahs.
- ✓ The Muttas of Koradá and Ronaba (otherwise called Srikarma).
- ✓ The Juradá Maliah.
- ✓ The Jalandra Maliah.
- ✓ The Mandasa Maliah.
- ✓ The Budarasinghi Maliah.
- ✓ The Kuttingia Maliah.

II.—In Visagapatam.

- ✓ The Jeypur Zamindári.
- ✓ Golconda Hills, west of the River Boderu.
- ✓ The Madugol Maliahs.
- ✓ The Kasipur Zamindári.
- ✓ The Panchipenta Maliahs.
- ✓ Mondemkolla, in the Merangi Zamindári.
- ✓ The Konda Muttá of Merangi.
- ✓ The Gumma and Korda Muttas of Kurpam.
- ✓ The Kottam, Rám and Konda Muttas of Pálkonda.

III.—In the Godavari District.

- ✓ The Bhadrachalam Taluk.
- ✓ The Rékapalle Taluk.
- ✓ The Dutsarti and Guditeru Muttas in the Golconda Hills.

NOTIFICATION III.

✓
In exercise of the power conferred by section 3 of the Scheduled Districts Act (XIV of 1874), and with the previous sanction of the Governor General in Council, the Governor of Fort St. George in Council is pleased to declare that the said Act is in force in the villages in the Godavari district to which, by Resolution of the Secretary of State for India in Council, dated the 4th April 1891, the provisions of section 1 of the Statute 33 Vict., Cap. 3, were made applicable.

The question raised is whether the provisions of Act XXVIII of 1860 are applicable only to cases where the boundary of Government land (occupied or unoccupied) marches with that of the lands of other owners, or extend also to cases where questions arise as to the boundaries of the latter class of lands.

2. There are no express words in any part of the Act restricting its operation to cases in which conflict exists or may arise as to the boundaries between Government lands on one side and Zemindary or other proprietary lands on the other.

3. The object of the Legislature in passing the said Act and making provision for the establishment and maintenance of permanent boundary marks as disclosed in the Preamble appears to be two-fold viz:-

(1) the better security of landed property in general the prevention of encroachments and adjustment of disputes respecting such property in this Presidency, and

(2) the identification of lands assessed to or exempt from Revenue (see Preamble).

4. But the preamble cannot either restrict or extend the enacting part of the Act when the language of the latter is plain, and not open to doubt either as to its meaning or its scope. It is chiefly from the main body, the purview of the Act, that the will of the Legislature is to be learned.

5. Turning then to the enacting part of Act XXVIII of 1860 we must see whether it is plainly less extensive than the Preamble. In our opinion the language of the enacting part is very general and seems to be intended to apply to both classes of cases specified above. If the Legislature meant to confine the applicability of the Act to the

identification of Government lands they would have distinctly said so.

6. The express and prominent reference made not only in the preamble but in the enacting part of the Act, to the prevention and adjustment of Boundary disputes in general, appears to us to show that the Legislature intended the applicability of the Act to be general.

7. Section 2 which now stands as the first of the enacting provisions opens with a clause empowering the Collector or other officer, duly qualified under the Act, to take steps for compelling owners and occupants to set up and maintain boundary marks, should he find such demarcation necessary for the prevention or adjustment of disputes.

8. Section 7 goes further and empowers the said officers even when in their opinion no necessity exists for taking action under Section 2, to direct a survey and demarcation to be made if proprietors or occupants of lands express a wish generally for the erection of boundary marks by Government. We fail to see any thing in the Act depriving -- Zemindars or occupants of holdings in Zemindaries of the benefit of these provisions for demarcation.

9. The words of Section 9 are also very comprehensive, and offences respecting "any boundary marks whatsoever whether established under -- "this Act or otherwise existing or any survey or other marks or any -- "marks set up for investigation or adjudication of disputes by an Officer of Government or any person acting under his orders" are thereby made punishable.

10. A reference to these few leading provisions of the Act is, in -- our opinion, sufficient to show that according to its scope and language as well as its objects, the enactment is applicable to Zemindaries and other proprietary lands equally with Government lands.

(Signed) J.H. Spring Branson,

Advocate General.

Madras,

20th July 1893.

(Signed) S. Subramaniam,

Acting Government Pleader.

(True Copy)

W. B. B. B.

Government Solicitor.

62-2614/93 +
papers marked on it +
file...

(1893) Department

H. M. & Co.

From.

Ernest Barclay
Government Solicitor
Madras

Subd with ref to H. M. & Co. remarks
on the note for order under cover
of G.O. of 18. May '93, No 1043. Just.

To
The Chief Secretary to
Government
Coatacamund

No 257.

Dated 20 July 1893
Recd 22 - 80

Enclosed.

Forwarded with Enclosures
with reference to the order
of Government dated 18
May 1893. No 1043. Judicial
Department.

Ernest Barclay

Government Solicitor

6
Abstract Form of the
Simp Op. of the Ad. J.
O. 20-7-93

R 22/7
C 24/7

mel

From
The Government of India
Home Dept

No. 667

Dated 14th June 1893
Recd 20th — do —
Enc one
Spare copies 7
Spare copies to Enc 7.

Forwarding copy of revised
draft notification re. certain
Amendments to the Scheduled
Districts in the Madras Prov.
R.S. 22/6

1043:18.5.93 mis
377:18.2.93
1378:19.1.93

Alce
W.S.
P.S.

The revised draft notice forwarded
as revised)
by the Govt of India
will be published
(Gazette of India & the)
in the Fort St. George Gazette
Act XXVIII of 1860
revised draft notice I is appar-
ently a printer's mistake for
Act XXVIII of 1860
The error will be
rectified.

What has become of the reference
to the Adv. Gen. about this Act?

W.S.
24 June

To the Agent to the Govt in Tanjore.
Govt Agent, Erode.
Rev. Secy.
Tanjore (No. 7)

Endorsement

Copy forwarded to the Govt
of India, Secy. to Govt, Secy. to Govt,
Printing, India, Calcutta. with
the request that the revised draft
notice may be published in the
Gazette of India as decided in the
Ld. Secy's letter of the 14th June 93, no
667 R.S. 22/6

W. H. D. N.
District Collector
P. O. 1043

C. N. 1043

Note for Mr.

With reference to Mr. Sany's envelope. Ep. 7 is May 1893, No 1043, last, is put up. No reply to it has yet been received.

28 June.
29/6/93

I think that it would be well to defer the publication of these notifications until we receive the opinion of the Law Officers on the question referred to them. If the Act cannot be applied at all to Zamindars, it will be useless to extend it to the greater portion, in fact nearly the whole, of the leased British.

W. H. D. N.
20 June

20/6/1894-5-11-1892

C. S.
Laid over until a reply is received to P. O. 1043/93.

C. S. 10/6
1894

NOTE FOR THE CHIEF SECRETARY.

I have added para. 2 to the draft with reference to Mr. Sany's remarks.

19
7 June

Papers to be read in Proceedings:—

abstracts { _____ 19 Jan
only { Again G.O., dated 15 Feb
 { Again G.O., dated 15 May

1893, No. 137. *Ind.!*
1893, No. 377. *Ind.!*
1893, No. 1043. *Ind.!*

Current No. 2614 of 1893, dated 14 June from the G. of I.

Current No. 3071 of 1893, dated 20 July from the Genl. Secy.

This is a satisfactory opinion.

10th para 8 - which indicates
that there is no necessity to
take power in the Tenancy
Bill to order a survey of
Jaindani land.

Primly - but - the
fact that the
effect is to be
taken away all from
the by which the
primary thing is
into the Treasury
the for the
the

1000
1000

This Act does not go nearly
So far as Chap. 2. of
the B. S. A. w.

Two

1. *Case*

w

2. It does not appear to be expedient to invest the Manager of the Tripore Estate with powers under Act XXVIII of 1860 to settle boundary disputes between jirayat villages in the estate as he will often represent one of the parties. The powers should be conferred on the Divisional Officers having jurisdiction.

10/8/93

Order 11 Aug 1893. N^o 1604.
P.S.

The opinion of the Adv. Gen: & the
Govt. Pleader upon the question
whether Act XXVIII of 1860 is
applicable to ~~the~~ ^{certain} Zamīn-
dāris & other proprietary estates
will be communicated to the
Rev. Dept.

2. The Draft Notifications extending Act XXVIII of 1860 to the Scheduled Districts & declaring Act XXV of 1879 to be in force in certain villages in the Coimbatore District as revised by the Govt. of India, will be published in the Gazette of India & the Fort St. George Gazette.

[illegible]

Endorsement No. 1605. *Dep't of
Int'l Affs*
Copy forwarded to the Supl^y /
Govt. Printing, India, Calcutta, 22/1/88
with the request that the revision

Notifⁿ may be published in the
Gazette of India as directed in
Mr. Lyall's letter of the 19th June
1893, N^o 667.

20th July
31/7

Note

This is all that is necessary
in the Judicial Dept. The Rev.
Dept. will now decide the question
raised in Board's Proc^o of 2 Nov.
1893, N^o 669, namely, whether Mr.
Taylor is to be invested with
powers under Act XXVIII of 1880 to
settle boundary disputes in the
Tijpore Estate. The question whether
Reg. XII of 1816 is in force in the
Agencies may be dropped because

- (i) there is no need to consider it if
Act XXVIII of 1880 is applicable;
- (ii) H. has recently agreed that
an Act passed by Act XXIV of 1857
cannot be re-introduced as an Act
by rules framed under XXIV of 1859.

It will be observed that India says
in para. 2 of its letter that the Laccadives
are not British Territory; this
remark is of course incorrect
so far as the Canara Laccadives
are concerned?

25 July
31/7/93

Office (Madras)

Send copy (in manuscript & at once)
to the Pol^y Dept. of the remarks
surrounded with a red ink line.

25 July
31/7

Appointed of
Act XXVIII of 1880
to be invested with
powers

I think it is for the Govt. to decide this
question. Certainly would not invest the
manager of the Estate with these powers, as
he is often represented a party to the dispute.
The powers should be conferred upon necessary
officials, having jurisdiction
in the Agency. 24/7
5/8 W

25 July
31/7
P.S.

It is important that this distinction should
be pointed out to India with reference to
the Confidential Political correspondence
about the Malabar Laccadives. I believe
the distinction exists, and that the Canara
Laccadives, though they originally belonged
to the Commission houses, were, or have
of them been, resigned in consideration
for Malabar. The way in which they
were resigned should be looked up.

W. 25 July
Are not the Canara Laccadives called
"Anadiv" in distinction from
the Laccadives?

I think not, the largest island
C 31/7 of the Canara group is called
"Anadiv" but the whole group
is usually spoken of as a point
of the Laccadives. 25/7

Abstract of the
in the

25/7
30/7

25/7/93

ORDINARY, PRINTED.

Indians DEPARTMENT.
G.O., DATED 11 May 3
No. 1604
1605

INDEXED.

First copy sent to Press.

Returned for signature.

Despatched in print.

[Despatch Abstract.]

Boundary Marks Act
XXVIII of 1900

Copy to the Revenue Dept.
the opinion of the Advo-
cate General & Govt. Secy
des upon the question
whether the — is appli-
-cable to Zemindari
& other proprietary es-
tates & directly publi-
cation of notification
extending the Act to
the Scheduled districts
& declaring Act XI
1914 to be in force
in certain archaags in
the Gorkhari district
as revised by the Govt.
India & forwarded
of these provisions
by Govt. Secretary
calls with request

22-5-11

20-8-12

L-9-26 ✓

16.7.49 85 ✓

that the revised notification
may be published
in the Gazette of India