14.2.24 II ✓

6-8-24 B V ✓

21/1.65

11-3-12

16/5/27

# Legislative (1895) Department.

ORDINARY PRINTED.

G.O., No 110

Dated 28th Oct. 1895

24/25

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[Despatch Abstract.]

BILL TO AMEND ACT IV OF 1884 (THE MADRAS DISTRICT MUNICIPALITIES ACT).

Stating that in view of the Honourable the Advocate-General's opinion as to the meaning to be attached to the word "trading" used in schedule A to Madras Act IV of 1884, the words "carrying on business" be substituted for the word "trading" wherever the latter term occurs in that schedule.

## BACK PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

## FURTHER PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|---|---|---|---|---|---|---|---|
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ORDINARY, PRINTED.

Legal DEPARTMENT.

G.O., DATED 28. 10. 95

No. 110.

Indexed

Paper No. 98

First copy sent to Press.

Returned for signature.

Despatched in print.

[Despatch Abstract.]

Bill to amend Act IV of 1884 (The Madras Dt Municipalities Act)

Stating that in view of the Hon'ble the Advocate-General's opinion as to the meaning to be attached to the word 'trading' used in Schedule A of the ——, as revised by the Select Committee, ~~that~~ the word 'carrying on business' should be substituted for the word 'trading' wherever it occurs in that Schedule.

SLIP PAPER, No. OF 18

3/

READ AGAIN ORDER OF GOVERNMENT, DATED
18 , No.

FURTHER PAPER, No.

ENCLOSURES.

CURRENT No.

STATEMENT WITH DITTO.

ORDER, &c., OF GOVERNMENT—A.

PAPERS KEPT OUT OF FILE FOR DESPATCH IN ORIGINAL
(not paged).

NUMBER OF COPIES REQUIRED.
- Order complete.
- Letter only.
- Order complete with Letter.

N.B.—
A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.
R = Print, but not for monthly volume.

---

18

All communications should be addressed to the Secretary.

No. 396 R.T.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

RAILWAY TRAFFIC.

To

The Joint Secretary to the Government of Madras,
Public Works Department, Railway Branch.

R
Com 6/8
Leg No 8-

Simla, the 31st July 1895.

Sir,

I am directed to forward for information copy of Government of India memorandum No.293 R.T. dated 19th June 1895 and enclosure, containing the opinion of the Honourable the Advocate General of Bengal on the question of liability of the East Coast railway to pay professional tax to Municipal Bodies in the Madras Presidency.

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

F. L. Hebbert

Under Secretary.

Documents accompanying :-
Copy of endorsement referred to and enclosure.

Communicate to Manager E.C.R!
8/8 95

A.R.K.

P. W. CURRENT No. 6006

Encls 2

Recd: 6.8.95

Legn. 5
Fund
1
254
5958

---

No.293 R.T.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

RAILWAY TRAFFIC.

Simla, the 19th June 1895.

The under-mentioned paper is forwarded to the Director General of Railways for information with reference to his No.393 T dated the 31st August 1894.

By Order,

(Sd.) F.B.Hebbert
Under-Secretary.

Document referred to :-

Copy of extract from opinion by the Honourable the Advocate General, dated 9th March 1895 regarding professional tax leviable on the East Coast railway

A.R.K.

Pds.2
6006/95

Legis. ~~Fund~~ 5 Dept.
Bundle No. 2
No. 254
C. No. ~~3958~~

Extract from opinion by the Honourable the Advocate General, dated 9th March 1895.

---

A State Railway would not be liable to pay the tax under Section 53 schedule A of Madras Act IV of 1884 inasmuch as the Secretary of State for India in Council is not a "person" within the meaning of Section 3(XXIX) of that Act.

x x x x

A,R,K,

CHIEF SECRETARY
18 AUG. 1895
GOVERNMENT OF MADRAS

O.W.S.1
6006/95

1895
Legn: Fund
Enclos. No. 3
P. 254
C. No. ~~3958~~

---

No. 630 R, dated 30.9.95

B/-

PUBLIC WORKS DEPARTMENT,
RAILWAY BRANCH.

# PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following

Letter from the Govt. of India P. W. Deptt. – } Ry. No. 396 R. T. of 31st July 95

Communicated to the Manager East Coast Railway and to the Local and Municipal Department for information. –

CHIEF SECRETARY
18 AUG. 1895
GOVERNMENT OF MADRAS

FRM

R

Whether the Sec: of State for India in Council falls within the terms of schedule A of (M) Act IV of 1884, is one thing – I incline to think that he does, for it is hard to say that a man who works a railway is not a trader. (But the reason given by the Bengal Adv. Genl. seems to me simply absurd.) The definition of "person" given in S. 3 (XXIX) of the Act is not exclusive – It says that companies &c are included, not that anyone not mentioned is excluded – If the definition ran "means and includes" or "means" as such definitions often do, it would be different – But it simply says "includes" – If the Bengal Adv. Genl's opinion is to prevail, no one not a company &c, as mentioned in the definition, is liable to pay tax under S. 53 & Schedule A, (which is absurd.)

W
13 Aug

I think India sh.d be told that we cannot accept the Ben: Adv. Genl's opinion — or, I should not say "we cannot accept" – we have no power in the matter except to advise Munl. Cts & we shouldn't advise them to accept this opinion as binding on them.

BS
14/8/95

His Excellency the Governor

Hon. Mr. Bliss

Hon. Mr. Grose

CURRENT NO. ~~3958~~

FRM
10/8

To
The Manager East Coast Ry
– & – Local & Munl: Deptt.

I don't think the opinion is sound & that we should act upon it. The definition of "person" is not exclusive

JG 14/8

D/1790 D. 17th August 1895

Transferred to Judicial Dept. for favour of opinion

F. Rupcott
16/8/95

To Secy to Govt
P. W. D. Ry Branch

2nd/ Judicial Dept

~~CURRENT NO. 3958~~

1696 D 9.7.94
585 D 8.3.94

From, P. W. D.
Ry Branch

No. 790 D.

Dated 17th
Recd 18th } August '95
Regd 19th
Enc: 3.

B/-
No. 6390 R. dated 30.9.95

Subject

Transfs for favor of opinion, certain papers regarding the liability of the E. C. Ry to pay professional tax to municipal bodies in the Madras Presy.

us 24/8

1895
Legl Dept
Enclos. No. 4
To
C. No. 254

(with Endt

12/8/95
R 15/8

---

3 P

Letter from the Government of India, P. W. Department, No. 396 R. T., dated 31st July 1895, with two enclosures.

No. 870 D. 28th August 1895

Forwarded to the Honorable the Advocate General, Madras, for favor of opinion as to whether the Secretary of State for India falls within the terms of Schedule A of Madras, Act IV of 1884.

F. R. Upcott

Joint Secy: to Govt. P. W. D. Ry. Branch

1895
Legis
No. 5
254

Madras 30th. August 1895.

From

The Honorable J. H. Spring Branson
Advocate General

To

F. R. Upcott Esqre
Joint Secretary to Government
Public Works Department
Railway Branch
Ootacamund

Sir,

With reference to the order of Government dated the 28th. instant, No 870 D, I have the honor to state that the Secretary of State for India does not fall within the terms of Schedule A of Madras Act IV of 1884.

2. I return the papers sent to me.

I have the honor to be
Sir
Your most obedient Servant

J. H. Spring Branson.
Advocate General

1895

From

The Advocate General
Madras

To

The Joint Secretary to Govt:
Public Works Dept:
Railway Branch
Ootacamund

Dated 30th August

---

1895
Legis. Dept.
Enclos. No. 6
To
O. No. 254

Subject

Madras Act IV of 1884 - Stating that the Secretary of State for India does not fall within the terms of Schedule A of

. . . . . . .

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Public Works Department
Railway Branch:
Ootacamund 12th Septr 1895

No. 971 D.

1. Government of India letter No. 396 R.T. dated 31st July 1895 with two enclosures

2. P. W. D. Endorsement No. 870 D dated 28 August 1895.

3. Letter from the Hon: the Advocate General Madras, dated 30th August 1895.

4. Note by the Hon: Mr. Bliss of 11th Augt 1895

Referred again to the Hon: the Advocate General, Madras with a note by the Hon: Mr. Bliss for favor of opinion.

F Upcott

Jt: Secy: to Govt: P. W. D. Ry: Branch

Legis 5
7
254

Sent to Press
22/10/95

---

Madras 17th. September 1895.

From

The Honorable J. H. Spring Branson
Advocate General

To

F. R. Upcott Esqre.
Joint Secretary to Government
Public Works Department
Railway Branch
Ootacamund

Sir,

With reference to the order of Government dated the 12th. instant, No. 971 D, I have the honor to forward herewith my further opinion as to whether the Secretary of State for India falls within the terms of Schedule A of Madras Act IV of 1884. and to return the papers sent to me.

I have the honor to be
Sir
Your most obedient Servant
J. H. Spring Branson.
Advocate General

1895.

From

The Advocate General
Madras

To

The Joint Secretary to
Govt.
Public Works Dept.
Railway Branch
Ootacamund

Dated 17th September.

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1895
Legis. Dept.
Enclos. No. 9
In
No. 254

Subject.

Madras Act IV of 1884. Forwarding further opinion as to whether the Secretary of State for India falls within the terms of Schedule A of ..... and returning papers.

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68

## Opinion.

1. I understand the Opinion of the Advocate General of Bengal to mean that the Secretary of State for India in Council is neither a "natural person" nor a "person in law" (a) within the meaning of Section 3 (xxix) of Madras Act IV of 1884, and therefore that State Railways owned by him cannot be taxed under Section 53 of the Act.

2. I based my previous Opinion (b) upon a different ground, viz: that "the Secretary of State for India in Council does not fall within the terms of Schedule A of the Act." I see no reason to doubt the correctness of that Opinion.

3. The word "trade" "has the technical meaning of buying and selling." (c). I think the Legislature used the word "trader" in Madras Act IV of 1884, Schedule A as meaning only one who "trades," i.e. buys and sells. That is the meaning of the words "merchant," "wholesale Trader," "Trader," and "Wholesale" and "Retail dealers," though they may have acquired a slight difference of meaning relating to the nature and magnitude of the "trade" carried on. The "Chambers of Commerce" composed of merchants, and the "Trades Associati

(a) See the discussion of the meaning of this word "person" in the judgments of the Lord Chancellor and of Lord Blackburn in Pharmaceutical Society v London & Provincial Supply association L. R. 5 ap. Cases 857.

(b) dated 30th August 1895.

(c) Per Willes, J. in Harris v Amery, 35 L.J. C.P., 92: S.C. L.R., 1 C.P., 148.

composed of other "traders" illustrate this difference -

4. In relation to his carrying business as the proprietor of State Railways, the Secretary of State for India is not a common carrier, but ~~of~~ even if he were that would not make him a "trader". As a bailee for hire he would not be a "trader", and I fail to see how he can be brought within any of the other classes of "persons" specifically mentioned in Schedule A.

J. H. Spring Branson.

Advocate General.

Madras
17th September
1895.

1895
Legl. Dept.
Enclos. No 8
To
C No 754.

omit this page & the next

His Excellency the Governor
Hon Mr. Bliss
Hon Mr. [illegible]

The legal luminaries appear to be against my hon. colleagues. What do they propose to do? I will not oppose any further reference they may wish to make.

4 Sep

The case was not properly stated to the Adv. Genl. From the terms of the Refce he would not understand it in the least. It should be put to him as in my note of 14/8/95

7/9/95

I think the question shd be referred to him again as the Hon Mr. Bliss proposes

JG
7/9

The fresh opinion does not appear in any way to alter the situation. I do not well see how we can refuse to accept it.

20 Sep

Cir 3/9 R 8/9 again cir 19.9.95 R 24/9

Note

The opinion of the Hon the Advocate General Madras is herewith put up.

I am in doubt as the opinion stands, how to carry out the orders conveyed in the note of the Hon members of Council or recirculate the papers

2/9 95

Referred again to the Hon. the Advocate General Madras with a note by the Hon Mr. Bliss in favour of opinion

10/9 95

The Hon members note & the further opinion of the Hon Advocate General Madras is submitted

19/9 95

The Adv. Genl. may be right in holding that the word "trade" in this case has the technical meaning of buying & selling, but that is by no means the primary meaning of the word — If he is right, we ought to alter Schedule A as it stands in the Bill now on

Land ("Every company trading - - - -" in three places) or the M.R. & S.I.R. will escape, which they should not do

23/9/95

The opinion must be accepted. I agree however with my Hon. colleague that railway companies shd pay, & the wording of the Schedule shd be altered.

JG 23/9

Submitted to His Excellency the Governor — The opinion of the Hon. the Advocate Genl. Accepted that the East Coast Ry is not liable to pay tax under sec 63 of Schedule A of Madras Act IV of 84 & be communicated to the Manager & Local & Municipal Dept.

Yes W

The alteration of the wording of the act if authorised by His Ex. in Council should be submitted to the Judicial Dept. for necessary action

24/9

Cirl. to Hon. Members

25/9

I quite agree that railway companies should be made to pay their fair share of local taxation.

W

25 Sep

The Legve Dept must see to this. For "trading," "carrying on business" shd. be substituted, or some such phrase

27/9/95

JG 28/9

Issue the G. O. already written

Forward the papers to the Judicial Dept. for necessary action to amend the act so as to include Ry Cos. both state & private

28/9/95

24/9 R 25/9

78

Print this

CURRENT NO. 254

CHIEF SECRETARIAT
3 OCT. 1895
GOVERNMENT OF MADRAS

No. 1115 D. 2nd October 1895.

Forwarded to the Legislative Department for favor of necessary action with regard to the amendment of the Act so as to include Railway Companies both State & Private.

F. Rupcott

Jt. Secy. to Govt. P. W. D. Ry Br.

(To be returned)

W. Mis 26995 R 2879

1 The Hon'ble Mr H. W. Bliss, CIE
2 The Hon'ble Mr J. Grose

Liability of the S. C. Ry to pay [illegible] tax to Municipal bodies in the Presidency

[ G/9 ]
2,000—2-4-95.

Current No. 254

Legislative DEPARTMENT.

From The Public Works Dept
Ry Branch

No. 1115 D

Dated 2nd
Received 3d } Octr 1895
Regd. 4th

Enclosures 9

SUBJECT.

Forwarding certain papers re the liability of the E. C. Ry to pay professional tax to Municipal bodies in the Madras Presy, for favour of necessary action with regard to the amendment of Act IV of 1884 so as to include Ry companies both State & Private

C.S.

~~Order~~
~~75~~

~~Communicated to the Legislative Council~~

~~To The Hon'ble members of the Legislative Council~~
~~„ „ P. W. D.~~

~~**Note** The current & its enclosures are to be returned to the P. W. D.~~

C.S.

~~Transferred to the Local & Municipal Dept with the remark that the amendment proposed~~

may be

Legislative
4/10

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No. , LEGISLATIVE, OCTOBER 1895.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following papers:—

From F. B. HEBBERT, Esq., Under Secretary to the Government of India, Public Works Department (Railway Traffic), to the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, dated Simla, the 31st July 1895, No. 396-R.T.

I am directed to forward, for information, copy of Government of India memorandum, No. 293-R.T., dated 19th June 1895, and enclosure, containing the opinion of the Honourable the Advocate-General of Bengal on the question of liability of the East Coast Railway to pay professional tax to Municipal bodies in the Madras Presidency.

ENCLOSURE.

EXTRACT from opinion by the Honourable the Advocate-General, Bengal, dated 9th March 1895.

A State railway would not be liable to pay the tax under section 53, schedule A of Madras Act IV of 1884, inasmuch as the Secretary of State for India in Council is not a "person" within the meaning of section 3 (XXIX) of that Act.

* * * * *

No. 870-D.

Forwarded to the Honourable the Advocate-General, Madras, for favour of opinion as to whether the Secretary of State for India falls within the terms of schedule A of (Madras) Act IV of 1884.

(Signed) F. R. UPCOTT,
*Joint Secy. to Govt., P.W.D.,*
*Railway Branch.*

*28th August* 1895.

From the Honourable J. H. SPRING-BRANSON, Advocate-General, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 30th August 1895.

With reference to the order of Government, dated the 28th instant, No. 870-D, I have the honour to state that the Secretary of State for India does not fall within the terms of schedule A of Madras Act IV of 1884.

2. I return the papers sent to me.

Q of Refce

From the Honourable J. H. SPRING BRANSON, Advocate-General, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 17th September 1895.

With reference to the order of Government, dated the 12th instant, No. 971-D, I have the honour to forward, herewith, my further opinion as to whether the Secretary of State for India falls within the terms of schedule A of Madras Act IV of 1884 and to return the papers sent to me.

ENCLOSURES.

## OPINION.

1. I understand the opinion of the Advocate-General of Bengal to mean that the Secretary of State for India in Council is neither a "natural person" nor a "person in law" * within the meaning of section 3 (XXIX) of Madras Act IV of 1884, and therefore that State railways owned by him cannot be taxed under section 53 of the Act.

* See the discussion of the meaning of this word "person" in the judgments of the Lord Chancellor and of Lord Blackburn in *Pharmaceutical Society* v. *London and Provincial Supply Association* (L R., 5 Ap. cases 857.)

2. I based my previous opinion † upon a different ground, viz., that "the Secretary of State for India in Council does not fall within the terms of schedule A of the Act." I see no reason to doubt the correctness of that opinion.

† Dated 30th August 1895.

3. The word "trade" has the technical meaning of "buying and selling." ‡ I think the Legislature used the word "trader" in Madras Act IV of 1884, schedule A, as meaning only one who "trades," *i.e.*, buys and sells. That is the meaning of the words "merchant," "wholesale trader," "trader," and "whole- sale" and "retail dealers," though they may have acquired a slight difference of meaning relating to the nature and magnitude of the "trade" carried on. The "Chambers of Commerce" composed of merchants, and the "Trades Associations" composed of other "traders" illustrate this difference.

‡ Per Willes, J., in *Harris* v. *Amery*, 35 L. J. C. P., 92, S.C. L.R., 1.C.P., 148.

4. In relation to his carrying business as the proprietor of State railways, the Secretary of State for India is not a common carrier, but even if he were, that would not make him a "trader." As a bailee for hire he would not be a "trader," and I fail to see how he can be brought within any of the other classes of "persons" specifically mentioned in schedule A.

MADRAS,
*17th September* 1895.

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

---

No. 1115-D.

Forwarded to the Legislative Department for favour of necessary action with regard to the amendment of the Act, [so as to include Railway Companies both State and private.]

*2nd October* 1895.

(Signed) F. R. UPCOTT,
*Joint Secy. to Govt., P.W.D.,*
*Railway Branch.*

ORDER—No. 110, Legislative, dated 26th October 1895.

In view of the Honourable the Advocate-General's opinion as to the meaning to be attached to the word "trading" as used in schedule A to Madras Act IV of 1884, the Government considers that the following amendment should be made in the amending Bill as revised by the Select Committee :—

*For the word "trading" wherever it occurs in Schedule A, substitute the words "carrying on business."*

2. This amendment will render Railway Companies obnoxious to profession tax, though State railways will be exempt in view of the fact that the Secretary of State in Council is not a "person."

(True Extract.)

Sd. Ag *Under Secy. to Govt.*
28/10/95

To the Hon'ble members of the Legislative Council.
" Local and Municipal Department.
" Public Works Department.

UNDER SECRETARY
28 OCT 95

G.O. 110. Legve of 28-10-95.

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[G./24.]
200—5-10-95.

Legve DEPARTMENT.

8 8

Papers to be read in proceedings :—

Again G.O , dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated , from
" " " 189 , " , "
" " " 189 , " , "

Print. A Procee.

ORDER. 28. 10. 95 No. 110

In view of the Hon'ble the Advocate-General's opinion as to the meaning to be attached to the word "trading" as used in Schedule A to Madras Act. IV of 1887, the Govt. considers that the following amendment should be made in the amending Bill as revised by the Select Committee:—

"For the word "trading" wherever it occurs in Schedule A, substitute the words "carrying on business"

2. This amendment will render the Railway Companies obnoxious to Profession Tax, though State Railways will be exempt in ~~consequence~~ view of the fact that the Secy. of State in Council is not a "person".

J. O.
2
22. X. 95

Legve Council

L & M Dept
Pwd

## FROM ORDERS.

C. S.

---

No. 110 , Legislative, 28th October 1895.

### GOVERNMENT OF MADRAS.

### LEGISLATIVE DEPARTMENT.

Read—the following papers:—

From F. B. HEBBERT, Esq., Under Secretary to the Government of India, Public Works Department (Railway Traffic), to the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, dated Simla, the 31st July 1895, No. 396-R.T.

I am directed to forward, for information, copy of Government of India memorandum, No. 293-R.T., dated 19th June 1895, and enclosure, containing the opinion of the Honourable the Advocate-General of Bengal on the question of liability of the East Coast Railway to pay professional tax to Municipal bodies in the Madras Presidency.

Enclosure.

Extract from opinion by the Honourable the Advocate-General, Bengal dated 9th March 1895.

A State railway would not be liable to pay the tax under section 53, schedule A of Madras Act IV of 1884, inasmuch as the Secretary of State for India in Council is not a "person" within the meaning of section 3 (XXIX) of that Act.

* * * * *

No. 870-D.

Forwarded to the Honourable the Advocate-General, Madras, for favour of opinion as to whether the Secretary of State for India falls within the terms of schedule A of (Madras) Act IV of 1884.

(Signed) F. R. UPCOTT,
*Joint Secy. to Govt., P.W.D.,*
*Railway Branch.*

*28th August* 1895.

From the Honourable J. H. SPRING-BRANSON, Advocate-General, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 30th August 1895.

With reference to the order of Government, dated the 28th instant, No. 870-D, I have the honour to state that the Secretary of State for India does not fall within the terms of schedule A of Madras Act IV of 1884.

2. I return the papers sent to me.

Proceedings
Dy. ~~from the~~ Public works Department ~~to the~~ No 971-D, dated 12th September 1895

110

From the Honourable J. H. SPRING BRANSON, Advocate-General, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 17th September 1895.

With reference to the order of Government, dated the 12th instant, No. 971-D, I have the honour to forward, herewith, my further opinion as to whether the Secretary of State for India falls within the terms of schedule A of Madras Act IV of 1884 and to return the papers sent to me.

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ENCLOSURES.

## OPINION.

1. I understand the opinion of the Advocate-General of Bengal to mean that the Secretary of State for India in Council is neither a "natural person" nor a "person in law"* within the meaning of section 3 (XXIX) of Madras Act IV of 1884, and therefore that State railways owned by him cannot be taxed under section 53 of the Act.

2. I based my previous opinion † upon a different ground, viz., that "the Secretary of State for India in Council does not fall within the terms of schedule A of the Act." I see no reason to doubt the correctness of that opinion.

3. The word "trade" has the technical meaning of "buying and selling." ‡ I think the Legislature used the word "trader" in Madras Act IV of 1884, schedule A, as meaning only one who "trades," *i.e.*, buys and sells. That is the meaning of the words "merchant," "wholesale trader," "trader," and "whole- sale" and "retail dealers," though they may have acquired a slight difference of meaning relating to the nature and magnitude of the "trade" carried on. The "Chambers of Commerce" composed of merchants, and the "Trades Associations" composed of other "traders" illustrate this difference.

4. In relation to his carrying business as the proprietor of State railways, the Secretary of State for India is not a common carrier, but even if he were, that would not make him a "trader." As a bailee for hire he would not be a "trader," and I fail to see how he can be brought within any of the other classes of "persons" specifically mentioned in schedule A.

MADRAS,
*17th September* 1895.

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

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* See the discussion of the meaning of this word "person" in the judgments of the Lord Chancellor and of Lord Blackburn in *Pharmaceutical Society* v. *London and Provincial Supply Association* (L. R., 5 Ap. cases 857.)

† Dated 30th August 1895.

‡ Per Willes, J., in *Harris* v. *Amery*, 35 L. J. C. P., 92, S.C. L.R., 1.C.P., 148.

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~~No. 1115-D.~~

Forwarded to the Legislative Department for favour of necessary action with regard to the amendment of the Act, so as to include Railway Companies both State and private.

~~2nd~~ *October* 1895.

(Signed) F. R. UPCOTT,
*Joint Secy. to Govt., P.W.D.,*
*Railway Branch.*

Proceedings
Dy. ~~from the~~ Public works Department No 1115-D, dated 2nd october 1895

---

2

110

28th

ORDER—No. 110, Legislative, dated 28th October 1895.

In view of the Honourable the Advocate-General's opinion as to meaning to be attached to the word "trading" as used in schedule A to Madras Act IV of 1884, the Government considers that the following amendment should be made in the amending Bill as revised by the Select Committee:—

*For the word "trading" wherever it occurs in Schedule A, substitute the words "carrying on business."*

2. This amendment will render Railway Companies obnoxious to profession tax, though State railways will be exempt in view of the fact that the Secretary of State in Council is not a "person."

(True Extract.)

Ag *Under Secy. to Govt.*

To the Hon'ble members of the Legislative Council.
" Local and Municipal Department.
" Public Works Department.

51 26 sign
707 paper docket

Please see query on pages 1 & 2.

Proof
30/10

No. 110, LEGISLATIVE, 28TH OCTOBER 1895.

Please Strike off 26 sign copies + 25 ~~the~~ spare copies + 70 copies with the paper docket into wanted by 2 pm tomorrow. This paper has been included in the Agenda paper. CRR 30/10

## GOVERNMENT OF MADRAS.

## LEGISLATIVE DEPARTMENT.

READ—the following papers :—

From F. B. HEBBERT, Esq., Under Secretary to the Government of India, Public Works Department (Railway Traffic), to the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, dated Simla, the 31st July 1895, No. 396-R.T.

I am directed to forward, for information, copy of Government of India memorandum, No. 293-R.T., dated 19th June 1895, and enclosure, containing the opinion of the Honourable the Advocate-General of Bengal on the question of liability of the East Coast Railway to pay professional tax to Municipal bodies in the Madras Presidency. S. 2.

### ENCLOSURE.

EXTRACT from opinion by the Honourable the Advocate-General, Bengal, dated 9th March 1895.

A State railway would not be liable to pay the tax under section 53, schedule A of Madras Act IV of 1884, inasmuch as the Secretary of State for India in Council is not a "person" within the meaning of section 3 (XXIX) of that Act. S. 2.

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### No. 870-D.

Forwarded to the Honourable the Advocate-General, Madras, for favour of opinion as to whether the Secretary of State for India falls within the terms of schedule A of (Madras) Act IV of 1884.

(Signed) F. R. UPCOTT,
*Joint Secy. to Govt., P.W.D.,*
*Railway Branch.*

*28th August* 1895.

From the Honourable J. H. SPRING-BRANSON, Advocate-General, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 30th August 1895.

With reference to the order of Government, No. 870-D, dated the 28th instant, I have the honour to state that the Secretary of State for India does not fall within the terms of schedule A of Madras Act IV of 1884.

2. I return the papers sent to me.

Proceedings
~~From the~~ Public Works Department No. 971-D, dated 12th September 1895.

From the Honourable J. H. SPRING-BRANSON, Advocate-General, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 17th September 1895.

With reference to the order of Government, No. 971-D, dated the 12th instant, I have the honour to forward, herewith, my further opinion as to whether the Secretary of State for India falls within the terms of schedule A of Madras Act IV of 1884 and to return the papers sent to me.

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ENCLOSURE.

## OPINION.

1. I understand the opinion of the Advocate-General of Bengal to mean that the Secretary of State for India in Council is neither a "natural person" nor a "person in law"[*] within the meaning of section 3 (XXIX) of Madras Act IV of 1884, and therefore that State railways owned by him cannot be taxed under section 53 of the Act.

2. I based my previous opinion[†] upon a different ground, viz., that "the Secretary of State for India in Council does not fall within the terms of schedule A of the Act." I see no reason to doubt the correctness of that opinion.

3. The word "trade" has the technical meaning of "buying and selling."[‡] I think the Legislature used the word "trader" in Madras Act IV of 1884, schedule A, as meaning only one who "trades," *i.e.*, buys and sells. That is the meaning of the words "merchant," "wholesale trader," "trader," and "whole- sale" and "retail dealers," though they may have acquired a slight difference of meaning relating to the nature and magnitude of the "trade" carried on. The "Chambers of Commerce" composed of merchants, and the "Trades Associations" composed of other "traders" illustrate this difference.

4. In relation to his carrying business as the proprietor of State railways, the Secretary of State for India is not a common carrier, but even if he were, that would not make him a "trader." As a bailee for hire he would not be a "trader," and I fail to see how he can be brought within any of the other classes of "persons" specifically mentioned in schedule A.

MADRAS,
17*th September* 1895.

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

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[*] See the discussion of the meaning of this word "person" in the judgments of the Lord Chancellor and of Lord Blackburn in *Pharmaceutical Society* v. *London and Provincial Supply Association* (L. R., 5 Ap. cases 857.)

[†] Dated 30th August 1895.

[‡] Per Willes, J., in *Harris* v. *Amery*, 35 L. J. C. P., 92, S.C. L.R., 1 C.P., 148.

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Proceedings
~~From the~~ Public Works Department No. 1115-D, dated 2nd October 1895.

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ORDER—No. 110, Legislative, dated 28th October 1895.

In view of the Honourable the Advocate-General's opinion as to meaning to be attached to the word "trading" as used in schedule A to Madras Act IV of 1884, the Government considers that the following amendment should be made in the amending Bill as revised by the Select Committee:—

*For the word "trading" wherever it occurs in Schedule A, substitute the words "carrying on business."*

2. This amendment will render Railway Companies obnoxious to profession tax, though State railways will be exempt in view of the fact that the Secretary of State in Council is not a "person."

(True Extract.)

L. DAVIDSON,
*Ag. Under Secy. to Govt.*

To the Hon'ble Members of the Legislative Council.
" Local and Municipal Department.
" Public Works Department.

Exd. T. K. Narayana Iyengar.

Govt. of {1895} Madras.

**LEGISLATIVE.**

*Issued*

*Recd.* *Encl.*

**G.O., No. 110, 28th October 1895.**

**OCTOBER.**

## Bill to amend Act IV of 1884 (The Madras District Municipalities Act).

Stating that in view of the Hon'ble the Advocate-General's opinion as to the meaning to be attached to the word "trading" used in Schedule A of the —, as revised by the Select Committee, the words "carrying on business" should be substituted for the word "trading" wherever it occurs in that schedule.

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