

1. Number of pages. 26
2. Date of ... 30-1-37
3. Initials ...
M.R.O. 1-25,000-15-10-35

MADRAS RECORD OFFICE.

Government of Madras.

DEPARTMENT.

G.O. No.

Press
Mis.

Dated

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Department,
27th October 1869.*

No. 104. Read the following letter from the Government Solicitor, to the Chief Secretary to Government, Fort Saint George, dated Madras, 15th September 1869, No. 503.

I have the honour to acknowledge the receipt of the Order of Government, dated 19th August 1869, No. 1162, Public Department, requesting the Advocate-General's Opinion with reference to the 14th and 25th paragraphs thereof, relative to the proposed additions to certain Rules framed under the Contagious Diseases Act XIV. of 1868.

2. I submitted the matter for the consideration of the Advocate-General, and have also conferred with him thereon ; and

3. I now forward a copy of the Advocate-General's Opinion.

—
O P I N I O N.

On the first point on which my Opinion is requested, I think that the provisions of the Merchant Shipping Act, 1867, Chap. 124, Section 10, do not apply to India. This Act might, if it were thought expedient, be so extended or adapted by the Governor-General in Council. It repeals Sections 227 and 231 of the Merchant Shipping Act, 1854, and provides new enactments in their stead. These Sections are in Part III. of the Merchant Shipping Act, 1854, which Part the Governor-General in Council is, by Section 288, empowered to extend or adapt to India. It is under this Section that certain Sections of Part III. have been so extended and adapted in our Act I. of 1859 : and as 30 and 31 Vic., Chap. 124, are to be read as part of the Merchant Shipping Act, and as Act 30 and 31 Vic., Chap. 124, is in lieu of a portion of Part III. of the Merchant Shipping Act, 1854, the Governor-General could extend or adapt it.

2. But I think it would be a round-about and awkward way of effecting what can be better provided for in the New Port Rules which are at present being framed with the view of their submission to this local Legislature ; and I advise that the necessary provisions for preventing sailors landing from ships without a clean Bill of Health be incorporated with the New Port Rules.

3. As to the second point, I entirely concur with the Royapettah Police Magistrate's decision.

4. Registration is not compulsory. No common prostitute can live in Madras unless registered ; but the Act contains no provision for absolutely bringing such a woman on the Register. She may be prosecuted, fined and imprisoned for non-registration ; but that is all ; she may still refuse ; though probably such course would induce her to register. The Health Officer has no power to enforce the attendance of any common prostitute at his office for the purpose of registration. What is called a "notice" is in fact a "summons." The woman served with it, is *directed* to attend, and it is not the less a summons, nor can it evade the character of a summons by being headed "notice." It was this which, I have no doubt, called forth Sir Adam Bittleston's remarks, which were, however, *obiter dicta*, and not necessary for the decision of the case before him.

*Proceedings of the Madras Government, Public Department,
27th October 1869.*

5. If a woman, suspected of being amenable to the Contagious Diseases' Act, does not upon request attend the Health Office, the next step is to prosecute her before a Magistrate, and have her punished under Section 4 of the Act. Once duly registered, a woman can be compelled to attend regularly for examination, under the penalty of fine or imprisonment or both, on conviction of refusal to attend.

6. I think that, when the Health Officer has received information that a woman is a common prostitute, he should serve her with a notice, pointing out that he has received such information, and requesting or inviting her to attend his office, pointing out at the same time the penalties to which she renders herself liable if she neglects to attend, and the Health Officer has to prosecute her for non-attendance. I think also that it would be well that the "Rules" should state that such a notice is to be served, and that the form of notice should be set out in the Schedule.

7. According to the Rules at present in force the Police are to take the initiative in discovering common prostitutes. If this course had been adhered to, there would have been no necessity for the Health Officer to issue any notices. But the Police, I understand, have hitherto abstained from this duty, probably from a fear of letting loose the Police Force on these unfortunate women, and so submitting them to the chance of additional extortion. Government has called the attention of the Police to the propriety of assisting the Health Officer, in its last Proceedings; and probably the Police may now, in conformity with such expression of opinion, take some initiatory steps. A woman who had registered, even voluntarily, on the requisition of the Health Officer, might, on being prosecuted for subsequent non-attendance, plead that her registration was not valid, inasmuch as she had not "complied" with the Government Rules, by going in the first instance before the Police. I doubt if such a plea would hold good should her registration be found to have been voluntary; but to obviate all chance of such a contingency, I think it would be well if the Rules were altered so as to make the action of the Police in the first instance not imperative, but permissive. It might be safely left to the Police authorities to decide how far they could take initiative action without adding to the probabilities of extortion. Dr. Stanbrough, with whom I have conferred, thinks that it would be better if the action of the Police were altogether excluded as an initiatory proceeding; he thinks that the Act would be far more difficult to work if Rule 5 were acted on; and that if the Police will give him such assistance as is contemplated in his new Rule 50, sent herewith, he will be able to carry out the provisions of the Act satisfactorily.

8. I subjoin a Draft Notice and Rule which will not require the sanction of the Governor-General. Section 26 of the Act empowers the local Government to make Rules from time to time consistent with the Act. No mention is made of any sanction of such Rules by the Governor-General. The only points as to which such sanction is necessary, are, the application of the Act to a new locality (Section 3), and the assignment of salaries and establishments (Section 5).

6th September 1869.

(Signed) J. B. NORTON,
Advocate-General.

Proposed New Rule.

The Health Officer, on receiving information that a particular woman is a common prostitute, may issue a notice to her in the form contained in the Schedule, requesting her attendance at

*Proceedings of the Madras Government Public Department,
27th October 1869.*

his office for the purpose of registration, and informing her of the consequences of her non-attendance.

Form of Notice.

Having received information that you are carrying on the business of a Common Prostitute, I hereby request you to attend at my office at _____ on the _____ day of _____ for the purpose of registration, and I further hereby give you notice that, in the event of you not complying with this request, you will render yourself liable to be prosecuted, that it will be my duty to prosecute you, and that I shall prosecute you before a Magistrate of the Town of Madras under the Indian Contagious Diseases' Act 1868, and the Rules framed by the Government of Fort Saint George in conformity therewith; and that on your conviction of carrying on the business of a common prostitute without being registered, you will be liable to be imprisoned for a term not exceeding one month, or to be fined in an amount not exceeding one hundred rupees, or to both.

No. 105. ORDER THEREON, 27th October 1869, No. 1464.

In the Opinion above recorded the Advocate-General submits his views on the two points referred to him in G. O., dated the 19th August last, No. 1162, viz.—

1st.—Whether the provisions of the Merchant Shipping Act of 1867, Chap. 124, paragraph 10, can be applied to sailors at the port of Madras, so as to insure sailors suffering from venereal disease being prohibited from landing.

2ndly.—The extent to which the Rules framed by Government under the Contagious Diseases' Act require alteration, so as to meet the objection raised by the Magistracy to the notice issued by the Health Officer to women who, without presenting themselves for registration, carry on common prostitution.

2. With reference to the first point the Advocate-General thinks that the provisions of the Merchant Shipping Act, 1867, Chap. 124, Section 10, do not apply to India, and that the best means of preventing sailors from landing without a clean Bill of Health, is to incorporate the necessary provisions for attaining that object in the New Port Rules which are now being framed.

3. As regards the second point, Mr. Norton submits an additional Rule and draft of Notice. The notice is not a summons, but a requisition to the women discovered to be practising common prostitution to present themselves before the Health Officer for registration and examination; and an intimation that, in the event of their not complying with the requisition, they will be prosecuted under the Contagious Diseases' Act of 1868.

4. The Governor in Council approves the Advocate-General's suggestion on the first point, and directs the Assistant Secretary in the Legislative Department to arrange for the incorporation of the requisite provisions in the New Port Rules, due consideration being given to the case of small vessels not carrying a Medical Officer, and not being in a position to give a clean Bill of Health.

5. The Governor in Council also approves the additional Rule and draft of Notice submitted by the Advocate-General, and directs that they be adopted and notified in the *Port Saint George Gazette*.

*Proceedings of the Madras Government, Public Department,
27th October 1869.*

6. Adverting to the suggestion made in paragraph 7 of the Opinion above referred to, the Governor in Council resolves to request the Advocate-General to place himself in communication with the Commissioner of Police and the Health Officer, and to modify the present Rule 5, so as, without initiatory Police aid, to insure the provisions of the Contagious Diseases' Act being successfully carried out.
(True Extract.)

Actg. Secy. to Govt.

„ Commissioner of Police.
„ Inspector-General of the Indian Medical Department.
„ Government Solicitor.
„ Legislative Department.
„ Master Attendant, Madras.

Opinion.

On the first point on which my Opinion is requested, I think that the provisions of the Merchant Shipping Act 1857 Chap. 124 Section 10. do not apply to India. This Act might, if it were thought expedient, or adapted by the Governor General in Council. It repeals Sections 227 and 231 of the Merchant Shipping Act 1854, and provides new enactments in their stead. These sections are in Part 3 of the Merchant Shipping Act 1854, which part the Governor General in Council is, by Section 288 empowered to extend or adapt to India. It is under this Section that certain Sections of Part 3 have been so extended and adapted in our Act 1 of 1859: and as 30 and 31 Vic. Chap. 124 are to be read as part of the Merchant Shipping Act, and as Act 30 and 31 Vic. Chap. 124 is in lieu of a portion of Part 3 of the Merchant Shipping Act 1854, the Governor General could extend or adapt it.

2. But I think it would be a roundabout and awkward way of effecting what can be better provided for in the New Port Rules which are at present being framed with the view of their submission to this local Legislature, and I advise that the necessary provisions for preventing Sailors landing from Ships without a clean bill of Health be incorporated with the new Port Rules.

3. As to the second point, I entirely concur with the Royapettah Police Magistrate's decision.

4. Registration is not compulsory. No common prostitute can live in Madras, unless registered: but the Act contains no provision for absolutely bringing such a woman on the Register. She may be presented, fined and imprisoned for non-registration; but that is all; she may still refuse; though probably such a course would

Govt. of 1869: Madras.

PUBLIC.

To

THE HEALTH OFFICER, MADRAS.
&c., &c., &c.

Dated October, 27th.

Recd.

Recd.

G. O., 27th October 1869, No. 1464.

OCTOBER.

Nos. 104-105.

Passing Orders relative to the proposed additions to certain Rules framed under the Contagious Diseases Act XIV. of 1868.

N^o 503.-

Madras, 15th September 1869.

From *W. G. Pritchard*
Government Solicitor
Madras

To The Honorable R. S. Ellis, C. B.,
Chief Secretary to Government
Fort St. George.

Sir,

1. I have the honor to acknowledge the receipt of the Order of Government noted in the margin, requesting the Advocate General's Opinion with reference to the 14th and 25th paras: thereof, relative to the proposed additions to certain Rules framed under the Contagious Disease Act XIV of 1868. -

2. I submitted the matter for the consideration of the Advocate General, and have also conferred with him thereon, and

3. I now forward a Copy of the Advocate General's Opinion. —

I have the honor to be,

Sir,
Your most Obedient Servant,

H. G. Pritchard

Government Solicitor

Proposed

1919 August 19 Nov 13/12 143.

P. M. 1869 - Sept
 17th Wm. Henry Chittenden
 of the Government collector
 of
 Providence
 Mr. Chittenden to you to
 start the George

October 15th Wednesday

of 503.
Hepes
Endorse 1.

5) ⁴ Formed a copy of the
photostat Franklin Johnson
relating to the proposed
additions to the proposed
Harvard under the Contingent
Disburse of XIV of 1878 -

would induce her to register. The Health Officer has no power to enforce the attendance of any common prostitute at his office for the purpose of registration. What is called a "Notice" is in fact a summons. The woman served with it, is directed to attend, and it is not the less a summons, nor can it evade the character of a summons by being headed "Notice". It was this which I have no doubt called forth Sir Adam Bittleson's remarks which were however, obiter dicta, and not necessary for the decision of the Case before him.

5. If a woman, suspected of being amenable to the Contagious Disease Act, does not upon request attend the Health Office, the next step is to prosecute her before a Magistrate and have her punished under Section 4 of the Act. Once duly registered, a woman can be compelled to attend regularly for examination, under the penalty of fine or imprisonment or both on conviction of refusal to attend.

6. I think that when the Health Officer has received information that a woman is a common prostitute he should serve her with a notice pointing out that he has received such information, and requesting or inviting her to attend his office, pointing out at the same time the penalties to which she renders herself liable if she neglects to attend and the Health Officer has to prosecute her for non-attendance. I think also that it would be well that the Rules should state that such a notice is to be served, and that the form of notice should be set out in the Schedule.

7. According to the rules at present in force the Police are to take the initiative in discovering common Prostitutes. If this course had been adhered to there would have been no necessity for the Health Officer to issue any notices. But the Police, I understand, have hitherto abstained from this duty, probably from a fear of letting loose the Police force on these unfortunate women, and so submitting them to the chance of additional

additional extortion. Government has called the attention of the Police to the propriety of assisting the Health Officer, in its last Proceedings; and probably the Police may now, in conformity with such expression of opinion, take some initiatory steps. A woman who had registered, even voluntarily, on the requisition of the Health Officer, might on being prosecuted for subsequent non-attendance, plead that her registration was not valid, inasmuch as she had not "complied" with the Government rules, by going in the first instance before the Police. I doubt if such a plea would hold good should her registration be found to have been voluntary; but to obviate all chance of such a contingency, I think it would be well if the rules were altered so as to make the action of the Police in the first instance not imperative, but permissive. It might be safely left to the Police authorities to decide how far they could take initiative action without adding to the probabilities of extortion. Dr. Stanbrough, with whom I have conferred thinks that it would be better if the action of the Police were altogether excluded, as an initiatory proceeding; he thinks that the Act would be far more difficult to work, if Rule 5 were acted on, and that if the Police will give him such assistance as is contemplated in his new rule 50. sent herewith, he will be able to carry out the provisions of the Act satisfactorily.

8. I enclose a draft Notice, and Rule which will not require the sanction of the Governor General. Section 26 of the Act empowers the local Government to make rules from time to time consistent with the Act. No mention is made of any sanction of such rules by the Governor General. The only points as to which such sanction is necessary, are, the application of the Act to a new locality (Sec 3) and the assignment of Salaries and Establishments (Sec 5).

/Signed/ John Bruce Norton
Adv. Genl.
6th Sep: 1869.

Proposed

Proposed new Rule. -

The Health Officer on receiving information that a particular woman is a common prostitute may issue a Notice to her in the form contained in the Schedule, requesting her attendance at his office for the purpose of registration, and informing her of the consequences of her non-attendance.

Form of Notice.

Having received information that you are carrying on the business of a Common Prostitute, I hereby request you to attend at my office at
on the _____ day of _____
for the purpose of registration, and I further hereby give you notice that in event of your not complying with this request, you will render yourself liable to be prosecuted, that it will be my duty to prosecute you, and that I shall prosecute you before a Magistrate of the Town of Madras under the Indian Contagious Disease Act 1868 and the Rules framed by the Government of Fort St. George in conformity therewith, and that on your conviction of carrying on the business of a common prostitute without being registered, you will be liable to be imprisoned for a term not exceeding one month, or to be fined in an amount not exceeding One hundred Rupees or to both. -

/ True Copy /

A. G. Richard

Government Solicitor. -

Public Deptt.

Memo. for Orders.

In accordance with the requisition contained in the G. O. of 19 August last No. 1162 the Advocate General has submitted his opinion on the following points.

1st whether the provisions of the Merchant Shipping Act 1867 Chap. CXXIV - para 10 can be applied to sailors at the port of Madras, so as to secure sailors suffering from venereal disease being prohibited from landing.

2nd, the extent to which the Rules framed by Govt. under the Contagious diseases Act require alteration so as to meet the objection raised by the

Copy of the Advocate General's
Opinion dated 6 September
1869.

Decisions by the Government
relative to the Chief
Secretary to Government
of the Madras, dated 15th
September 1869, c. No. 303.

By Mr. J. H. C. J. J.
Secretary to Govt. of Madras

N.

See notes
by Mr. J. H. C. J. J.

See notes
by Mr. J. H. C. J. J.

the Magistracy to the
Notices which are now
issued by the Health
officer to women who,
without presenting them-
selves for registration,
carry on the business
of common prostitution

The Advocate General
considers that the best
way to prevent sailors
landing without a clean
bill of health is to incor-
porate the provisions ne-
cessary for this object
in the New Port Rules
which are at present
being framed with the
view of their submission
to the local Legislature.

This course seems the
simplest and best, and
I submit that instructions
to

I think so

N.
a good example plan but
there will be difficulties
with small vessels, not
carrying a medical
officer. WDM

WDM

1872
to this effect- may be
issued to W. Mayne, the
Assistant Secretary in
the Legislative Department.

As regards the second
point, Mr. Norton has
framed an additional
Rule and a separate
form of Notice which is
not a summons, but
an invitation to the
women discovered to be
practising common pro-
stitution to present
themselves before the
Health officer for Regis-
tration and Examination.

Failing to accept this
invitation, the women
will be prosecuted under
the Contagious Diseases
Act.

Agree N.
WDM

The Advocate General's
suggestion

suggestion appears to meet the objection raised by the Magistracy and may, I submit, be approved and the Rule adopted - the alteration of the Rule and the addition to the Form of Notice in the Schedule being duly notified in the Gazette.

In para 7 of his opinion, Mr Norton being, to notice that under the Rules in force, the Police should take the initiative in discovering common prostitutes, for under Rule 5 it is declared unlawful for any common prostitute to reside within the limits of the Town of Madras without

yes.
W.N.

without the permission of the Commissioner of Police.

This Rule has, as observed by Mr Norton, proved a dead letter probably because the Commissioner of Police was afraid of the extortion which would be practised by the Police upon the prostitutes if they had anything to do with enforcing the provisions of the Contagious Diseases Act, and he suggests that Rule 5 be altered so as to make the action of the Police in the first instance not imperative but permissive.

would not make the proposed alteration but simply employ the police tentatively - as far as they can be trusted. Mr. Langford says is that the best

I submit that it is not desirable entirely to relieve the Police from the task of discovering common

common prostitutes. They are intimately connected with the criminal classes and should be well known to the Police of Madras. In every country where prostitution is controlled — the Police have the prostitutes on their register and without license from the Police they cannot carry on the business of prostitution.

If the Government are disposed to adopt Mr. Norton's suggestion he may be requested, in communication with the Commissioner of Police and the Health officer, to modify the present Rules 5 & 6; but I submit that the Government should

[illegible]

should reiterate their instructions contained in para 20 of the Order of the 19th August last, that it is the duty of the Police actively to assist the Health Officer in the detection of common prostitutes who have not registered in accordance with the Rules framed by Govt. under the Contagious Diseases Act

The Government can hardly accept as a reason for the Police neglecting a duty essentially be-
longing to them, that they are so corrupt that the Commissioner could not trust them with this duty.

21

Public Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the
Government Solicitor, Madras.
(Here enter No. of Sept. 1869, No. 500)

Order thereon 27 October 1869 No. 146

In the Opinion
above recorded the Advocate
General submits his views
on the two points referred
to him in G.O. dated the
19th August last, No. 116, viz.
1st Whether the pro-
visions of the Merchant
Shipping Act of 1857 Chap.
CXXIV, para. 10, can be
applied to Sailors at the
port of Madras, so as to
exclude Sailors suffering
from venereal disease
being prohibited from landing.

W.M.

A.P.

Recd from Secy 6/10
c. 6/10/69
R.H.
c. 15 - a. 6/10/69
R.H.

2ndly, The extent to which the Rules framed by Government under the Contagious Diseases Act require alteration, so as to meet the objection raised by the Magistracy to the Notice issued by the Health Officer to women who, without presenting themselves for registration, carry on common prostitution.

3. With reference to the first point the Advocate General thinks that the provisions of the Merchant Shipping Act 1867, Chap. 124, Section 10, do not apply to India, & that the best means of preventing sailors from landing with a clean bill of health, is to incorporate the necessary provisions for attaining that object in the New Port

23*

Port Rules which are now being framed.

As regards the second point, Mr. Norton submits an additional Rule and draft of Notice. The Notice is not a summons but a requisition to the women discovered to be practising common prostitution to present themselves before the Health Officer for registration and examination; and an intimation that, in the event of their not complying with the requisition, they will be prosecuted under the Contagious Diseases Act 1868.

H

4. The Governor in Council approves the Advocate General's suggestion on the first point, and directs the Assistant Secretary in the Legislative Department to arrange for the incorporation of the requisite provisions in the New Port Rules, due consideration being given to the case of small vessels not carrying a Medical Officer and not being in a position to give a clean bill of health.

5. The Governor in Council also approves the additional Rule & Dept of Notice submitted by

the Advocate General, and directs that they be adopted and notified in the Port of George Gazette.

6. Adverting to the suggestion made in paragraph 7 of the Opinion above referred to, the Governor in Council resolves to request the Advocate General to place himself in communication with the Commissioners of Police and the Health Officer, and to modify the present Rule 5 so as to ensure the provisions of the Contagious Diseases Act being successfully carried out.

without interfering Police aid,

A.A.

Note Rule 6 - do not seem to require any modification

The Health Officer, paras
The Commissioners of Police - 2/11
The Government Solicitor - 2/11
The Health Officer - 2/11

Contagious Diseases
Act

1044705

Cont. of 1863 & 1864

To
The Health Officer, London

Date Dec 27 1869, No. 1464
Recd.

Nos. 14, 15

Having order, relative to the
proposed addition to the
Rules framed under the
Contagious Diseases Act of
1863.

As to the
and

22/10
22/10