M.R.O. 1—77,006—8-6-31.

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MADRAS RECORD OFFICE.

Government of Madras.

Financial **DEPARTMENT.**

G.O. No. 1437 Press Mis. -

177-178.

Dated 26-8- 1876.

7/8

Not to be folded or roughly handled

No. 177. Read the following Proceedings of the Board of Revenue, dated 22nd July 1874 No. 1923 :—

Read again Board's Proceedings, dated 11th June 1874, No. 1,424.

Read the following letter from A. WEDDERBURN, Esq., Collector of Coimbatore, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 12th May 1874, No. 117.

I HAVE the honor to request the opinion of the Board of Revenue, and, if necessary, of the Law Officer of Government, whether a person can be prosecuted under Section 74 of Local Funds Act, for aiding in the evasion of a river bridge toll, by allowing carts to pass through his land, and thus cross the river-bed, collecting a fee for the same.

2ndly. Or whether, to prevent such evasion, it would be legal to toll a channel bridge, leading to the land where such evasion is accomplished, the ticket clearing the Bhowany bridge.

Or 3rdly, and generally, whether it be legal thus to toll traffic entering a town, otherwise than by the bridge, for the up-keep of which the toll was instituted. The town is that of Bhowany, which is not a municipality.

THE Board resolve to refer this question to the Government Pleader for his opinion.

(A true Copy and Extract)

(Signed) J. GROSE,
Secretary.

Read also the following letter from W. M. SCHARLIEB, Esq., Acting Government Pleader, Madras, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 24th June 1874, No. 103 :—

IN reply to the Board's Proceedings, dated 11th June 1874, No. 1,424, I have the honor to report, that the person who unauthorizedly collects a fee for allowing carts to pass through his land, whereby these carts cross over the river in evasion of the toll levied at the bridge under the Local Funds Act (IV. of 1871), is clearly chargeable with the offence of cheating or extortion, as the case may be. Section 74 of the Act in question provides that every person, other than those authorized to collect rates, taxes, or tolls, under the Act, "who shall levy or demand any rate, tax, or toll, shall be deemed to have committed the offence of cheating or extortion, as the case may be, and shall be liable to such punishment as is prescribed for those offences respectively by the Indian Penal Code." I am not aware that there is any provision for punishing any person for merely aiding another to evade any tax or toll leviable under the Act, by allowing him, for instance, to enter his private grounds with his cart, and thence cross over the river, so long as he abstains from taking any reward or fee for such assistance.

2. The Collector of Coimbatore proposes to prevent such acts of evasion by tolling the channel bridge leading to the land where the evasion in question is accomplished. I do not see that there can be any objection to this measure, provided the channel bridge referred to, and the road on which it stands are not private property, but are included in the Circle, which, under Section 3 of the Act it is necessary should have been declared a Circle within the meaning of the Act and for the operation of the Act.

3. As to Mr. Wedderburn's third question, it appears to me that it cannot be illegal to levy a toll on traffic entering a town at any point other than the express, erection for which the levy of the toll was primarily intended ; for, I do not find any restriction that it should be so levied at the particular bridge, or other erection, for whose up-keep it is intended. The preamble of the Act is that it is necessary to increase the funds available for the construction, repair, and maintenance of roads and communications, and also to raise funds by means of local rates for education and other objects of public utility calculated to promote the health and the comfort or convenience of the inhabitants of places not included within the limits of any municipality. Section 3 provides for Government declaring by Notification in the *Fort Saint George Gazette* any district, or part of a district, to be a Circle within the meaning of the Act. Section 26 declares generally that the funds thus raised are to be applied, among other objects, to the construction, repair, and maintenance of roads and communications within the Circle. Section 34 says that the funds, among other assets, are to consist of rates, taxes, and tolls authorized by the Act. Section 36 provides for I., Rates or Cesses on occupied land ; II., Taxes on houses ; and III., Tolls upon carriages, carts, or animals, *passing along roads within the Circle.* Here it will be particularly noted that the words are, *passing along roads within the Circle* : all, therefore, that is essential is, that to legalize the toll it should be levied on a conveyance or animal passing along some road within the Circle. Section 63 then provides for a notification that such and such tolls will be levied on carriages, carts, and animals passing on such and such roads within the Circle, to be specified in the Notification, and for the erection of toll bars and so forth. Section 68 further provides that a table of tolls shall be conspicuously put up at each gate or station.

4. This appears to be all the legislation on the subject connected with the questions raised by Mr. Wedderburn ; and from the foregoing, it appears to me that it is perfectly competent for the Local Fund Board to levy tolls at any point on a road within the Circle and specified in the Notification required by Section 63, irrespective of the erection for whose up-keep the toll may be primarily intended, and that it is competent also for them in order to prevent evasion of the toll leviable at the Bhowany Bridge, to toll the channel bridge mentioned, provided it is on a road within the Circle and specified in the Notification.

This opinion will be communicated to the Collector of Coimbatore but the Board cannot agree with it.

2. The case put by Mr. Wedderburn is this : There is a bridge with a toll gate on it established under the Local Fund Act. An owner of land on the bank of the river lets carts pass through the land and thus through the river on payment of a fee, and the toll gate is thereby evaded.

3. He asks if the landowner who lets the carts pass through his land can be prosecuted under Section 74 of the Local Funds Act. Mr. Scharleib is of opinion that if the man takes a fee for letting the carts pass, he is chargeable with cheating or extortion as being a person other than those authorized to collect rates, taxes or tolls under the Act who levies or demands any rate, tax or toll. The Board observe that Section 74 of the Local Funds Act seems to them to refer only to cases in which sums are levied *under color of the Act.* It is true that the qualifying words

are not used in the sentence " who shall levy or demand any rate, tax or toll" but the words must mean rate, tax or toll *leviable under the Act* for if not, a man would cheat or extort if he charged a fee for letting carts avail themselves of a ford across a river provided by him a hundred miles away from any Local Fund toll bar. The Board are decidedly of opinion that in the case put by Mr. Wedderburn, the man is not liable to punishment under Section 74. Toll bars must be placed so as to make it as difficult as possible to evade the toll, but if the difficulty is faced, as for instance if carts go many miles round instead of by a direct route or cross a river by going through the bed instead of over a bridge, no law is broken.

4. Mr. Wedderburn's next question is, whether the evasion can be stopped by putting a toll bar on a channel bridge leading to the land, " the ticket clearing the Bhowany Bridge." Mr. Scharlieb says this can be done " provided the channel bridge referred to and the road on which it stands, are not private property but are included in the Circle." The Board observe that private property is not excluded from the circle within which it lies, and that under Section 63 tolls may be levied on carts passing along any roads on the Circle. If Mr. Wedderburn can make out a case for this new toll-gate he should apply in the usual way, stating particularly what amount of evasion the gate will stop, and submitting a plan of the locality. Of course if the road or the bridge is private property (which is very improbable) the fact is an important one and must be stated.

5. Mr. Wedderburn's third question is whether it is legal to toll traffic entering a town otherwise than by the bridge for the up-keep of which the toll (the Board presume he means the toll now levied only on the bridge) was instituted. Mr. Scharlieb is no doubt right in his opinion that the Local Fund Board can levy tolls at any point of a road within the Circle and specified in the Notification required by Section 63, but the Local Board must first obtain the sanction of Government, and a very strong case must be made out before Government will allow the existing number of toll bars to be increased, and a stronger case still before Government will permit toll bars to be placed all round a town.

6. These Proceedings will be submitted for the information of Government.

Transferred to the Financial Department.

C. G. MASTER,
Acting Secretary to Government.

6th August 1874.

No. 178. Order thereon, 26th August 1874, No. 1437.

The Government concur with the Board of Revenue in considering that a fee levied for permission to have right of way through private land is not a rate tax or toll within the meaning of Section 74 of the Local Funds Act.

(True Extract.)

Acting Chief Secretary.

To the Board of Revenue.
,, Revenue Department.

Exd. G. A. Turton.

Govt. of 1874 Madras.

FINANCIAL.

To

THE BOARD OF REVENUE,

&c.,

&c.,

Dated August, 26th.

Recd.

G.O., 26th August 1874, *No* 1437.

AUGUST.
Nos. 177-178.

Local Funds Act.—Concurrence expressed with the Board of Revenue in considering that a fee levied for permission to have right of way through private land is not a rate, tax or toll within the meaning of Section 74 of the Local Funds Act.

No. 1,424.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 11th June 1874.

Read the following letter from A. WEDDERBURN, Esq., Collector of Coimbatore, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 12th May 1874, No. 117:—

I HAVE the honour to request the opinion of the Board of Revenue, and, if necessary, of the Law Officer of Government, whether a person can be prosecuted under Section 74 of Local Fund Act, for aiding in the evasion of a river bridge toll, by allowing carts to pass through his land, and thus cross the river-bed, collecting a fee for the same.

2ndly. Or whether, to prevent such evasion, it would be legal to toll a channel bridge, leading to the land where such evasion is accomplished, the ticket clearing the Bhowany bridge.

Or 3rdly, and generally, whether it be legal thus to toll traffic entering a town, otherwise than by the bridge, for the up-keep of which the toll was instituted. The town is that of Bhowany, which is not a municipality.

THE Board resolve to refer this question to the Government Pleader for his opinion.

(A true Copy and Extract.)

(Signed) J. GROSE,
Secretary.

To the Government Pleader.

Copy to the Collector of Coimbatore.

Exd. G. A. Turton.

1874.

Board of Revenue

MADRAS.

PROCEEDINGS, 11TH JUNE 1874, No. 1,424.

Encl.

Received.

JUNE.

No. 1,424.

River bridge toll.—Opinion of Government Pleader requested on questions raised by Collector of Coimbatore, regarding evasion of — by parties, by allowing carts to pass through their lands and thus cross river-bed.

No. 1,923.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 22nd July 1874.

Read again Board's Proceedings, dated 11th June 1874, No. 1,424.

Read also the following letter from W. M. SCHARLIEB, Esq., Acting Government Pleader, Madras, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 24th June 1874, No. 103 :—

IN reply to the Board's Proceedings, dated 11th June 1874, No. 1,424, I have the honor to report, that the person who unauthorizedly collects a fee for allowing carts to pass through his land, whereby these carts cross over the river in evasion of the toll levied at the bridge under the Local Fund Act (IV. of 1871), is clearly chargeable with the offence of cheating or extortion, as the case may be. Section 74 of the Act in question provides that every person, other than those authorized to collect rates, taxes, or tolls, under the Act, "who shall levy or demand any rate, tax, or toll, shall be deemed to have committed the offence of cheating or extortion, as the case may be, and shall be liable to such punishment as is prescribed for those offences respectively by the Indian Penal Code." I am not aware that there is any provision for punishing any person for merely aiding another to evade any tax or toll leviable under the Act, by allowing him, for instance, to enter his private grounds with his cart, and thence cross over the river, so long as he abstains from taking any reward or fee for such assistance.

2. The Collector of Coimbatore proposes to prevent such acts of evasion by tolling the channel bridge leading to the land where the evasion in question is accomplished. I do not see that there can be any objection to this measure, provided the channel bridge referred to, and the road on which it stands are not private property, but are included in the Circle, which, under Section 3 of the Act, it is necessary should have been declared a Circle within the meaning of the Act and for the operation of the Act.

3. As to Mr. Wedderburn's third question, it appears to me that it cannot be illegal to levy a toll on traffic entering a town at any point other than the express erection for which the levy of the toll was primarily intended ; for, I do not find any restriction that it should be so levied at the particular bridge, or other erection, for whose up-keep it is intended. The preamble of the Act is that it is necessary to increase the funds available for the construction, repair, and maintenance of roads and communications, and also to raise funds by means of local rates for education and other objects of public utility calculated to promote the health and the comfort or convenience of the inhabitants of places not included within the limits of any municipality. Section 3 provides for Government declaring by Notification in the *Fort Saint George Gazette* any district, or part of a district, to be a Circle within the meaning of the Act. Section 26 declares generally that the funds thus raised are to be applied, among other objects, to the construction, repair, and maintenance of roads and communications within the Circle. Section 34 says that the funds, among other assets, are to consist of rates, taxes, and tolls authorized by the Act. Section 36 provides for I., Rates or Cesses on occupied land ; II., Taxes on houses ; and III., Tolls upon carriages, carts, or animals, *passing along roads within the Circle.* Here it will be particularly noted that the words

are, *passing along roads within the Circle* : all, therefore, that is essential is, that to legalize the toll it should be levied on a conveyance or animal passing along some road within the Circle. Section 63 then provides for a notification that such and such tolls will be levied on carriages, carts, and animals passing on such and such roads within the Circle, to be specified in the Notification, and for the erection of toll bars and so forth. Section 68 further provides that a table of tolls shall be conspicuously put up at each gate or station.

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THIS opinion will be communicated to the Collector of Coimbatore but the Board cannot agree with it.

2. The case put by Mr. Wedderburn is this : There is a bridge with a toll gate on it established under the Local Fund Act. An owner of land on the bank of the river lets carts pass through the land and thus through the river on payment of a fee, and the toll gate is thereby evaded.

3. He asks if the landowner who lets the carts pass through his land can be prosecuted under Section 74 of the Local Funds Act. Mr. Scharleib is of opinion that if the man takes a fee for letting the carts pass, he is chargeable with cheating or extortion as being a person other than those authorized to collect rates, taxes or tolls under the Act who levies or demands any rate, tax or toll. The Board observe that Section 74 of the Local Fund Act seems to them to refer only to cases in which sums are levied *under color of the Act*. It is true that the qualifying words are not used in the sentence " who shall levy or demand any rate, tax or toll" but the words must mean rate, tax or toll *leviable under the Act* for if not, a man would cheat or extort if he charged a fee for letting carts avail themselves of a ford across a river provided by him a hundred miles away from any Local Fund toll bar. The Board are decidedly of opinion that in the case put by Mr. Wedderburn, the man is not liable to punishment under Section 74. Toll bars must be placed so as to make it as difficult as possible to evade the toll, but if the difficulty is faced, as for instance if carts go many miles round instead of by a direct route or cross a river by going through the bed instead of over a bridge, no law is broken.

4. Mr. Wedderburn's next question is, whether the evasion can be stopped by putting a toll bar on a channel bridge leading to the land, " the ticket clearing the Bhowany Bridge." Mr. Scharlieb says this can be done " provided the channel bridge referred to and the road on which it stands, are not private property but are included in the Circle." The Board observe that private property is not excluded from the circle within which it lies, and that under Section 63 tolls may be levied on carts passing along any roads on the Circle. If Mr. Wedderburn can make out a case for this new toll-gate he should apply in the usual way, stating particularly what amount of evasion the gate will stop, and submitting a plan of the locality. Of course if the road or the bridge is private property (which is very improbable) the fact is an important one and must be stated.

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6. These Proceedings will be submitted for the information of Government.

(A true Copy and Extract.)

J Grose

Secretary.

To the Acting Secretary to Government, Revenue Department,
with Board's Proceedings, dated 11th June 1874, No. 1,424.

To the Collector of Coimbatore.

Transferred to the Judicial Dept

Chas Cev
Dy Secy to Govt

6 Augt 1874.

C12/8 A20/8

No. 2607.

Financial Department

Revenue 1874.

Board of Revenue,

MADRAS.

PROCEEDINGS, 22ND JULY 1874, No. 1,923.

Dispd 1 Augt 1874

Encl.

No. 1600

Received 3 August 1874.

Recd 7 — do. —

JULY.

No. 1,923.

River bridge toll.—Opinion of Acting Government Pleader on questions raised by Collector of Coimbatore with regard to evasion of — by a party by allowing carts to pass through his land and thus cross river bed, communicated to Collector with remarks.—Opinion not concurred in.—Board's Proceedings, submitted to Government.

With gdrs
Transferred

5

Octacamund 26th August 1874 No. 1137.

The Govt. concur with the Board of Revenue in considering that a fee levied for permission to leave right of way through private land is not a rate tax or toll within the meaning of Section 74 of the Local Funds Act.

11/8

No 2578

The Board of Rev
Rev Department 5/9

Govt. of {1874} Madras.

Finl.

To -

The Board of Revenue.

Secy.

G. O. 26 Augt., 1874, No. 1437.

Nos. 177-178

Local Funds Act.

Local Funds Act.

Concurrence expressed with the Board of Revenue in considering that a fee levied for permission to have right of way through private land is not a rate, tax or toll within the meaning of Section 76 of the