

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	899	Press
	15-16	Mis.
Dated	3-7	~~19~~ 1888

Not to be folded or roughly handled

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Cm 919

Fort St. George, Judicial Consultation, 6th July 1858.

No. 15. Read the following Extract Minutes Consultation in the Public Works Department, dated 22nd June 1858, No. 1176.

Referring for consideration copy of a letter from the Chief Engineer, submitting a correspondence which took place between the District Engineer of the Godavery District and the Collector of Masulipatam, as to the interpretation to be placed on Section 14 of Act 3 of 1857, regarding cattle trespass. (Vide Public Works Consultation, 22nd June 1858, Nos. 66 and 67.)

No. 16. ORDER THEREON, No. 899 ; dated 3rd July 1858.

The late Acting Magistrate of Masulipatam having stated that his interpretation of Act III of 1857, is one received from the Court of Foujdaree Adawlut, Resolved that the papers communicated with the above Extract be referred to the Court, who will be so good as to inform Government of any ruling which they may have made to the effect mentioned by Mr. T. J. Knox, as also offer any observations that may occur to them on the subject.

(Signed) T. PYCROFT,
Chief Secretary.

No. 1176.

Extract from the Minutes of Consultation under date the 22nd June 1858.

Read the following letter from Colonel C. E. FABER, Chief Engineer; to W. H. BAYLEY, Esq., Acting Secretary to Government, dated 19th May 1858, No. 423.

SIR,

I have the honor to submit, for the consideration and orders of Government, a letter from the District Engineer of the Godavery Division, No. 973 of the 12th March 1858, forwarding an attested Extract from the Masulipatam District Gazette, and a copy of a correspondence which took place between him and the Collector, on the subject of the Notification therein made to the effect, that any person sending to the pound, cattle caught trespassing, would render himself liable to a fine of Rupees 100, unless he could prove that damage had actually been done by them.

2. The District Engineer having fully stated the case, and shown how thoroughly the interpretation now sought to be put upon the Act nullifies its operation, I need say no more than that, in my opinion, Section 14 is merely intended to put a check upon malicious impounding of cattle on false pretences of their having been trespassing, and only requires proof of the fact, that is, of the cattle having been found on ground interdicted to them by law, and not of the damage done by them, to justify their seizure, as the Act was framed for the very purpose of *preventing* damage by trespass, and will become a protection to cattle straying, if the meaning given to it by Mr. Knox be upheld.

Letter from Captain F. H. RUNDALL, District Engineer, Godavery Division; to Colonel C. E. FABER, Chief Engineer, dated Camp at Bobberlunka, 12th March 1858, No. 973.

SIR,

The Magistrate of Masulipatam has published an order in his District Gazette to the effect that Act 3 of 1857, regarding the trespass of cattle is only to be enforced in cases where actual damage has been sustained, and has further requested me to warn my Subordinates, that they will be liable to a fine of 100 Rupees, in the event of their being unable to prove that damage has been inflicted by the cattle which they seize and send to the pound.

2nd. In reply, I pointed out to him, that were his Interpretation of the Acts correct, and his orders issued, they would amount virtually and practically to an entire nullifying of the Act itself, which I conceive to have been primarily intended to prevent the act of trespass, as well as to provide for the recovery of damage sustained thereon. It is quite possible for cattle to trespass upon the limits of Public Works, such as on the berm of Canals, without occasioning positive injury, and in many places it has become a regular practice with the villagers to drive their cattle at night to the channel bank for the purpose of grazing, as grass is always to be found near the water. This will, it is presumed be considered an act of trespass, although it may be unaccompanied with injury, at all events it would be difficult to prove that the cattle then and there seized, were the occasion of any injury which might be found in the morning; and as in the Masulipatam District, the Magistrate always insists, in cases which are brought before him, upon having a misdemeanour proved on the evidence of two unimpeachable witnesses, the probability is, that no conviction will ever take place of trespass, as the law may be still further strained by the demand of proof as to which particular cow or cows in a herd, occasioned the damage complained of, a result which would of course be tantamount to the abolition of the Act altogether.

3rd. The Magistrate in his rejoinder stated, that the interpretation of the Act was, that given by the Fouzdary Adawlut, and that the occasion of his letter to me was, the fact of over-zeal on the part of the Members of the Department of Public Works, for the protection of their works which had led to an enforcement of the Act with a severity which had "greatly irritated the people."

4th. Is it not questionable, whether the encouragement of trespassing, as the Magistrate of Masulipatam's order in his District Gazette will assuredly produce, will tend to soothe the people more than by enforcing the Act in its spirit as well as in its letter, and so at length teaching the people the necessity of respecting not only the property of Government, but that of one another, in the same manner as the people of England have been taught so thoroughly to understand.

5th. I would beg to suggest a reference being made to higher authority for the proper interpretation of Act No. III. and whether, if not already implied, a Clause providing for actual trespass unaccompanied by damage might not be advantageously inserted.

Letter from T. J. KNOX, Esq., Acting Magistrate of Masulipatam; to Captain F. H. RUNDALL, District Engineer, Godavery Division, Dowlaiswarum, dated Ellore, 16th February 1858, No. 47.

SIR,

Para. 1. I have the honor to request you will make all your Subordinates to understand thoroughly, that under Act III. of 1857, any person who sends cattle to the pound and is afterwards unable to prove that damage has been done by these cattle, is liable under Section 14 of the Act, to a fine of 100 Rupees for an illegal seizure.

2. I make this request, because I have reason to believe some of your Subordinates, consider the fact that the cattle are on a Government bank, sufficient to justify their sending them to the pound, whereas it is incumbent on them to prove the damage done, should an appeal be made.

Letter from Captain F. H. RUNDALL, District Engineer, Godavery Division; to the Collector of Masulipatam, dated Camp at Bobberlunka, 26th February 1858, No. 938.

SIR,

With reference to your letter of the 16th Instant, I have the honor to observe, that the tenor of the order you wish me to issue to my Subordinates and which I see has already been prominently brought forward in your District Gazette, appears to me exactly calculated to do away with the purpose for which the Act was solicited to be framed, viz., to prevent "trespassing" which is quite liable to take place without the accompaniment of damage. In this country where the parties enumerated in Clause XIV. to be admitted as adjudicators are almost invariably amongst the offenders, being the principal owners of cattle, it will be rather difficult to prove to them that damage has been sustained on any Public Work on which their cattle are found trespassing. As I feel confident that your notice in the Gazette will be productive of numberless disputes between the two Departments, I think it will be expedient to obtain the sense of the Government as to the interpretation of the Act, for if necessary an additional Clause should be inserted to obviate the loophole now existing, according to your interpretation.

Letter from T. J. KNOX, Esq., Acting Magistrate of Masulipatam; to Captain F. H. RUNDALL, District Engineer, Godavery Division, dated Goodewadah, 4th March 1858, No. 63.

SIR,

1. In reply to your letter dated 26th February, I have the honor to state, that the interpretation of Act III. of 1857, you object to, is one received from the Court of Fouzdary Adawlut for they have ruled that this Act only applies to cases where damage is done.

2. I think you have made some mistake as to the adjudicators named in Clause XIV. I do not see how the Magistrate and his Assistants and the District Moonsiffs are likely to be offenders against the Act, and it is not often that Heads of Police, if the Act includes them, have cattle.

3. I have already suggested to Government that any Officer of the D. P. W. pounding cattle under the Act, should send direct to the Magistrate a memorandum shewing the damage done, and so provide against any complaint under Section 14.

4. I believe zeal for the protection of their works, and ignorance of the necessity of damage being necessary to constitute trespass, have led some Subordinates in the D. P. W. to make the Act operate with a severity which has greatly irritated the people.

Extract Minutes Consultation, dated 4th April 1857 No. 399
Do. do. do. do. 18th " 1857 " 441
Do. do. do. do. 14th " 1858 " 483

Referred to the Judicial Department with reference to the orders in that Department noted in the margin.

(A true Extract.)

W. A. Bayley
Acting Secretary to Government.

To the Judicial Department.

23. JP

John Smith

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At
M.G.
O.

June 29th 1858.
P. M. 4.5.

For Let. to Com. J. P. V. 1858. Sept 18.

Ms. B. 1. 1. 1. 1.

Abstract Numbered from
taken in the Quaker book
Sept. 11. 1766

29/22. d
29/24 June 1888

No. 1143.

2 spans of field.

Regarding for consideration
copy of a letter from the
Chief Engineer in building
a corn plantation to the
two places between the
Dutch Engineers of the
Government and the
Sells of the mission
are to be in the present
of the place on the 14
of Dec. 3 of 1857 regarding
cattle and horses.

C. 28 d. m. 15.
Re 2 d. m.

The subject -

Fong Nam ^{Adams} ^{with McCulloch} } Disposed of Jp
D.P.S.

H. H. It seems necessary
to know what the Fong Nam
- can send before giving
any order. The Act does
certainly seem to require
that damage shall have
been done - but then eating
a wasteful of grass is
damage - and when cattle
are found on the grassy
slopes of embankments
it may fairly be assumed
that they have not kept their
mouths shut - And Mr
I know has throughout
been in help of innocent carrying
-ing out the Act & seems
determined as far as de.
-pends on him to make it
a dead letter. His notice
in the paper is very likely
to bring about that end.

Jp

June 16. 1855 to Aug 7. 1855
at 2 of 1855.
From 1855.

In Aug. to Concord N. H.
from 1855 to 1858.

(No. 299)

Oct. 1st. 1855 to 1858.

at 3 of 1855.

Oct. 1st. 1852.

15410.

28 June
R 2 July