M.R.O. 1—82,400—29-11-50.

MADRAS RECORD OFFICE.

Government of Madras.

Public Works **DEPARTMENT.**

Ex. 26-5-57

G.O. No. 993 Press Mis.

55-56

Dated 23—5— 18 57

Not to be folded or roughly handled

No. 55. Read the following Extract from the Proceedings of the Board of Revenue, dated 22nd April 1857, No. 1250.

Read again Extract Minutes of Consultation, (No. 139) P. W. D. (Public) dated 20th January, and entered in Consultation 3rd February 1857.

In these proceedings, the Government communicate a letter from D. Eliott, Esq. Member of the Legislative Council, on the subject of the draft Act for the protection of works of Irrigation, &c. and instruct the Board, as soon as the Penal Code is published, to take the provisions referred to by Mr. Eliott into considèration and to report to Government how far they will effect in their opinion the object contemplated in the Draft Act in question.

2. The portion of the Code to which Mr. Eliott refers is the XVII. Chapter beginning at the 48 Section, where "Mischief" is treated of, and the Board are of opinion that sufficient provision is there made for the punishment of *wanton* mischief or injuries. One part however of the Draft Act (Clause 5) was intended to guard against the fraudulent appropriation of water, and though this offence might perhaps be deemed punishable as "mischief" by Section 48 of the Code, because it "causes wrongful loss" to other parties and "makes such change" as "diminishes the value or utility of the property," yet the Board cannot think that this was intended, and they observe that Section 53 which treats more particularly of rivers and reservoirs limits "mischief" to the abstraction of water when it is drawn off or diverted by a person "*intending thereby to cause a diminution of the supply of water for agricultural purposes.*" The theft of water remains therefore to be guarded against, as it is committed to carry on agriculture and not to lessen it, and Government may deem it desirable to call Mr. Eliott's attention to this point, in order that due provision may be made in the Code for the punishment of this particular offence.

3. The Board take the opportunity of remarking that it seems necessary to alter the wording of Section 53 of the Code so as to make it provide for cases where a person seeks to injure another by mischievously drawing off water used for domestic and other purposes, and not for agriculture only. At present a person could not be punished under it, who mischievously drained a reservoir which supplied water for the household use of a family or enabled a trade to be carried on though the Legislature doubtlessly intended to repress this description of mischief also.

4. Clauses 3 and 4 of the draft Act were intended to provide for the reparation of injuries done to Public Works, first by levying a fine on the offender, and secondly, where this cannot be effected, by a charge in equitable portions on the occupants of the adjoining lands. The Board concur with Mr. Eliott that the first of these measures will be more properly dealt with in the rules for "Procedure," and they see no prospect of carrying out the second, as they share Mr. Eliott's opinion that such a provision would not be admitted into a general Code and the Legislature is declaredly averse to special Legislation.

5. The remaining part of the draft Act (Clauses 6 and 7) was intended to arm public officers with authority to compel labor, on payment of due remuneration, when emergencies arise requiring the immediate strengthening or repair of Public Works. This subject must be provided for, Mr. Eliott observed, by special Legislation; and he pointed out that strong reasons must be shewn to induce the Legislative Council to pass an Act for the purpose. In anticipation of this difficulty, Government called for statements to shew that the custom has been of long continuance and cannot be dispensed with; and this information was furnished by the Board in their Proceedings of 15th December last No. 4233.

(A true Extract.)

(Signed) J. D. SIM,
Acting Secretary.

No. 56. Ordered in consequence that the following letter be despatched.

From H. FORBES, Esq., Acting Secretary to the Government of Fort Saint George; to W. MORGAN, Esq., Clerk of the Legislative Council, dated 23rd May 1857, No. 993.

SIR,

Para. 1. In a letter dated 28th December 1856, Mr. Eliott, Member of the Legislative Council for this Presidency, pointed out certain provisions in the Penal Code, which he thought

would render it unnecessary, to bring before the Legislative Council, a Bill to provide specially for the objects contemplated in the Draft Act proposed by this Government, "for the better "preservation of works of Irrigation, Navigation, and Drainage," which was forwarded to him with Mr. Bourdillon's letter of the 9th August 1856.

2. Immediately on the receipt of Mr. Eliott's letter, this Government called on the Board of Revenue to consider, as soon as the Penal Code should have been published, whether the provisions referred to by Mr. Eliott would, in their opinion, effect the object contemplated in the Draft Act.

Ex. Pro. 22d April 1857, *No.* 1250.

3. I am now desired by the Right Honorable the Governor in Council to forward a copy of the reply which the Board of Revenue have furnished to this requisition. The Board state that sufficient provision is made in Clause 48, Chapter XVII. of the proposed Penal Code, for the punishment of *wanton* mischief or injuries; they observe however that one object contemplated by Section V. of the Draft Act, was to guard against the fraudulent appropriation of water, and though this offence might probably be punishable as "mischief," under the above clause, as causing "wrongful loss" to other parties, and making "such change" as "diminishes the value or utility of the property," yet they cannot think this was intended; especially as Clause 53 of the Penal Code, which treats more particularly of rivers and reservoirs, limits, "mischief" to the abstraction of water when it is drawn off, or diverted, so as to cause "a diminution of the supply of water for agricultural purposes." They say therefore, that the theft of water remains to be guarded against, as it is committed to carry on agriculture, and not to lessen it; and they suggest that attention be directed to this point, in order to due provision being made for the punishment of this particular offence.

4. I am desired to point out, that disputes about water for irrigation, are more numerous, and are carried on with greater virulence in the Provinces of this Presidency, than those on any other matter; and when two villages draw their supply from one tank, and the scantiness of the supply renders it necessary that they should each be supplied for a regulated number of hours, it is not unusual to attempt undue appropriation during the night, an act which, if discovered by the rival village, ends in an affray of a very serious character. The Government are therefore of opinion that the suggestion made by the Board of Revenue is good, and that provision should be made to punish the act of taking water from a public tank or channel, without due authority, although it may be intended that the water shall be used for agricultural purposes.

5. The Board suggest also that the wording of Clause 53 of the Penal Code should be altered, so as to provide for cases where a person seeks to injure another by mischievously drawing off water used for domestic and other purposes, and not for agriculture only. They think that an offence of this description cannot be punished under the provisions of the Penal Code, as it stands at present, though it was doubtless the intention of the Legislature to repress this description of mischief also.

6. The Governor in Council concurs also in the view thus expressed by the Board of Revenue, and he requests that the necessary measures may be taken for having the amendments proposed by them brought under the consideration of the Legislative Council.

To Mr. Eliott 17*th January* 1857, *No.* 119.
From do 7*th March*, „ „
To do 26*th do* „ „ 294.

7. The concluding paragraph of the Board's Proceedings refers to the provisions of the Draft Act for regulating and legalizing compulsory labor, which has formed the subject of correspondence with Mr. Eliott on the dates noted in the margin.

Revenue Department

No. 1250

Extract from the Proceedings of the Board of Revenue dated 22nd April 1857.

Read again Extract Minutes of Consultation (No 139) PWD (Public) dated 20th January and entered in Consultation 5th February 1857.

In these proceedings Government communicate a letter from D. Eliott Esq Member of the Legislative Council, on the subject of the draft Act for the protection of works of Irrigation &c, and instruct the Board, as soon as the Penal Code is published, to take the provisions referred to by Mr Eliott into consideration and to report to Government how far they will effect in their opinion the object contemplated in the draft Act in question.

2. The portion of the Code to which Mr Eliott refers is the ~~XVII~~ Chapter beginning at the 48 Section, where "Mischief" is treated of, and the Board are of opinion that sufficient

sufficient provision is there made for the punishment of wanton mischief or injuries. one part however of the Draft Act (clause 5) was intended to guard against the fraudulent appropriation of water, and though this offence might perhaps be deemed punishable as "mischief" by Section 48 of the Code, because it "causes wrongful loss" to other parties and "makes such change" as "diminishes the value or utility of the property"; yet the Board cannot think that this was intended and they observe that Section 53 which treats more particularly of rivers and reservoirs limits "mischief" to the abstraction of water when it is drawn off or diverted by a person "intending thereby to cause a diminution of the supply of water for agricultural purposes". The theft of water remains therefore to be guarded against, as it is committed to carry on agriculture and not to lessen it, and Government may deem it desirable to call Mr. Elliott's attention to this point, in order that due provision may be made in the Code for the punishment of this particular offence.-

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3. The Board take the opportunity of remarking that it seems necessary to alter the wording of Section 53 of the Code so as to make it provide for cases where a person seeks to injure another by mischievously drawing off water used for domestic and other purposes and not for agriculture only. At present a person could not be punished under it, who mischievously drained a reservoir which supplied water for the household use of a family or enabled a trade to be carried on though the Legislature doubtlessly intended to repress this description of mischief also.

4. Clauses 3 and 4 of the Draft Act were intended to provide for the reparation of injuries done to Public Works - first by levying a fine on the offender, & secondly, where this cannot be effected by a charge in equitable portions on the occupants of the adjoining lands. The Board concur with Mr Elliott that the first of these measures will be more properly dealt with in the rules for "Procedure", and they see no prospect of carrying out the second, as they share Mr Elliott's opinion that such a provision would not be admitted

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(A true extract)

J. D. Lewis
Acting Secretary

To
H. Forbes Esq.
Acting Secretary to Government,
Rev. Department.

Dist. Dispatched

Rev. Dept.

From [illegible] No. 993 dated [illegible]

To

W. Morgan, Esqr.

Clerk of the Legislative Council

for the Madras Presidency

Sir,

I am directed by the Governor in Council to acknowledge the receipt of your letter dated 28th December 1854, addressed to the Secretary to the Board of Revenue, and to request that you will inform Mr. Elliott, a member of the Legislative Council for this Presidency, that the Governor in Council has perused with much interest the observations which he has been pleased to offer in his letter dated 28th December 1854, pointing out certain provisions in the Penal Code, which he thought would render it unnecessary to bring before the Legislative Council a Bill to provide specially for the objects contemplated in the Draft Act proposed by this Government "for the better preservation of works of Irrigation, Navigation, and Drainage," which was forwarded to [illegible] with the letter [illegible]

Dy No. 814

Public Works Dept. Despatch from Board of Revenue dated 26th ultimo

Copy of a Letter from the Board of Revenue

Dated 22nd } Read 23rd } April 1857.

No. 1250

Rec'd No. 993. 29 May

Submitting observations on the Provisions contained in the new Penal Code, and stating that they will effect the objects contemplated in the Draft Act for the preservation of Works of Irrigation &c.

No 55.

Govt. 20 Aug 57 No 180
Do 31 Aug 57 No 1017-3
Do 12 Sept 57 No 1108
Do 24 Oct 57 No 1502

Copy to Collector of Chingleput

By Order of the Council of Law

[illegible]

Clerk to Council

[illegible]

Sec. Legislative Council

Ag. Supt. Engr. 11th Aug. 1858

Bourdillon's letter of the 9th August 1856.

2 Immediately on the receipt of Mr Elliott's letter, the Government called on the Board of Revenue to consider, as soon as the Penal Code should have been published, whether the provisions referred to by Mr Elliott would, in their opinion, effect the object contemplated in the draft Act.

3 I am now desired by the Right Honorable the Governor in Council to forward a copy of the reply which the Board of Revenue have furnished to this requisition. The Board state that sufficient provision is made in Clause 18, Chapter XVII, of the proposed Penal Code, for the punishment of wanton mischief

or

L Reg: 22 April 1857. 6 Recs

or injuries, they observe however that one object contemplated by Sec: V of the Draft Act, was to guard against the fraudulent abstraction of water, and though this offence might probably be punishable as "mischief," under the above clause, as causing "wrongful loss" to other parties, and making "such change" as "diminishes the value or utility of the property," yet they cannot think this was intended, especially as to clause 53 of the Penal Code, which treats more particularly of rivers and reservoirs, limits "mischief" to the abstraction of water when it is drawn

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off, or diverted, so as to cause a diminution of the supply of water for agricultural purposes. They say therefore, that the theft of water remains to be guarded against, as it is committed to carry on Agriculture, and not to lessen it; and they suggest that attention be directed to this point, in order to due provision being made for the punishment of this particular Offence.

5 I am desired to point out, that disputes about water for irrigation, are more numerous, and are carried on with greater virulence in the Provinces of this Presidency, than those on any

any other matter, and when two villages draw their supply from one tank, and the scantiness of the supply renders it necessary that they should each be supplied for a regulated number of hours, it is not unusual to attempt undue appropriation during the night, an act which, if discovered by the rival village, ends in an affray of a very serious character. The Government are therefore of opinion that the suggestion made by the Board of Revenue is good, and that provision should be made

to

to punish the act of taking water from a public tank or channel, without due authority, although it may be intended that the water shall be used for agricultural purposes.

5 The Board suggest also that the wording of Clause 53 of the Penal Code should be altered, so as to provide for cases where a person seeks to injure another by mischievously drawing off water used for domestic and other purposes, and not for agriculture only. They think that an Offence of this description cannot be punished under the provisions

provisions of the Penal Code, as it stands at present, though it was doubtless the intention of the Legislature to reserve this description of mischief also.

5 The Governor in Council ~~entirely~~ concurs also in the views taken by the Board of Revenue, and he requests that the necessary measures may be taken for bringing the Amendments proposed by them ~~being~~ brought under the consideration of the Legislative Council.

6 The concluding paragraph of the Board's Proceedings refers to the provisions of the Draft Act for regulating and legalizing compulsory

Labor

labor, which has formed
the subject of Correspondence
with Mr Elliott on the
dates noted in the Margin.

To Mr Elliott 17th Jany 1857 No 119
From — do 7th March — —
To — do 26th do — — 294

Fort St. George
23d May 1857

22-1-60

Public Works 1857 Despatch
Dated 26th May.

No 992.

To the Clerk of the Legislative
Council of India for
the Madras Presidency.
Dated 23d May/57.

Communicating
approval of the &c. &c.
modifications of pro-
visions of the Se- provid-
ing for the better de-sig-na-
tion of works of tion
Navigation and ma-ga-

No 55, 1 06.

Rec'd 11th May 1858.