No 352. Read the following letter from the Government Pleader, Madras, to the Secretary to Government, Public Works Department, dated Madras, 20th November 1871, No. 155 :—

With reference to the Proceedings of Government noted in the margin, I have the honour to state that I have conferred with the Collector of Salem on the subject of the disputes between Major Hunter and the Government, and have carefully considered the further papers connected with the subject, forwarded to me subsequently to the date of the above Proceedings, and the following is my opinion upon the questions referred to me.

G O, 9th September 1871, No 2,302
,, 2nd October ,, ,, 2,504A.

2. From the information which I have now obtained, I am of opinion that Major Hunter's claim to those portions of the Ahtoor and Nagalore Ghaut roads, which pass through his estates of Patchipadi and Karaduzoor on the Shevaroy Hills as his own property, is entirely unfounded. Major Hunter purchased those estates from Government in February 1864, prior to which they were Government waste lands. The deeds of conveyance to him, dated 12th April 1864, contain a reservation of all existing and customary rights of Government and adjoining proprietors in all existing roads and paths, and the papers before me appear to show conclusively that the roads in question were existing at that date, and were, therefore, reserved out of the conveyance. To make this clear it will be necessary shortly to go into the history of these roads separately.

3. The Ahtoor Ghaut was commenced by Major Hunter in 1861 with Rupees 800 granted by Government to meet a like sum supplied by the planters of the district. Prior to that there had been a native path taking nearly the same line, but not, as I understand, going through the land which afterwards became Major Hunter's Patchipadi estate Subsequently, a further grant of Rupees 5,000 was made by Government for the completion of a road by Major Hunter, 6 feet wide and with a gradient of 1 in 9. In May 1863 a further sum of Rupees 5,000 was placed at his disposal on his undertaking to widen the road to 12 feet throughout. Thus, before Major Hunter purchased his estate, Government had, while the land was their own property, sanctioned a road 12 feet wide through it, and had actually paid the money for its construction to him, thereby dedicating to the public a road of those dimensions, and the rights of Government and the public in such a road were, therefore, reserved by the clause in Major Hunter's deed of conveyance before alluded to.

4. The foregoing remarks apply equally to the Nagalore Ghaut, for which Rupees 2,750 altogether were paid at different times by Government to Major Hunter, the last grant being in June 1863, made upon his undertaking, as in the case of the Ahtoor Ghaut, to make the road 12 feet in width throughout.

5 It is possible that Major Hunter may contend that roads of 12 feet width were not completed at the time of his purchase, and that therefore it cannot be said that they were existing roads within the meaning of the reservation clause in the deeds of conveyance. It does appear from the report of Major Shaw Stewart and Mr. Pinson that at that date, which was some months subsequent to his

purchase of the lands, he had not completed the construction of the roads according to his contract, and, in fact, up to the present time he never has done so; but, I think, this can make no difference in the case. As far as Government were concerned all the necessary steps had been taken for the construction of roads of the specified dimensions for the use of the public, and but for Major Hunter's breach of contract roads of the full dimensions would have actually been in existence at the time of his purchase. That he should obtain by his own breach of contract that which he never would have obtained under his conveyance without it is, to my mind, an idea too monstrous to be seriously entertained. It must be remembered too that the roads had been more or less open and used by the public ever since 1861, so that at the utmost the dispute can be only as to the width of the existing roads at the time of his purchase.

6. I believe Major Hunter relies a good deal upon the fact that the area of the roads was not deducted from the total area included in his title-deeds, but this, which was no doubt a mistake, cannot, I think, avail him in the face of the clause expressly reserving and excepting out of the conveyance the existing roads and paths The roads are, moreover, marked in the plans attached to the deeds which were signed by Major Hunter as correct.

7. I think that the best way to settle the matter will be by a suit against Major Hunter to establish the title of Government to the roads in question, in which damages can also be claimed for the injury which he has caused to parts of the ghauts. The form of the suit would be one for a declaration of the right of Government and the public to a 12 feet road through Major Hunter's estates, for an injunction to compel him to remove the coffee plants which he has planted within the limits of the roads, and to restrain him from interfering with the officers of the Public Works Department in keeping the roads in repair and for damages for the injury done by him to the roads

8. With regard to the second question referred to me, namely, "whether in the event of Major Hunter refusing to render an account of the expenditure incurred by him from the Government grant of Rupees 12,550, he is liable to prosecution in the Civil Courts for malversation or misappropriation of public money," my opinion is in the negative. The sums making up that amount appear to have been given to Major Hunter as the contract price, for which he undertook to construct the roads. This is expressly stated in the Proceedings of Government of 2nd August 1862, G O, No. 1,834, to have been the intention of Government in respect to the first grant of Rupees 5,000 for the Ahtoor Ghaut, and the other grants making up the Rupees 12,550 appear to have been made on similar terms. Of course if a deliberate intention to defraud the Government by obtaining money, which he had no intention of applying to the purpose for which it was given, were brought home to Major Hunter, he would be liable to a criminal prosecution, but this I apprehend is not suggested. In my opinion, therefore, the only legal proceeding that can be taken against him in this matter is an action for breach of contract, and considering that more than seven years have elapsed since Major Shaw Stewart and Mr. Pinson reported against the way in which Major Hunter had executed the work, that the opinion of those gentlemen is to some extent in direct conflict with that of other officers of Government who had previ-

Proceedings of the Madras Government, Public Works Department, 20th December 1871.

ously reported favourably of Major Hunter's conduct in the matter, and, as to the amount actually expended, with that of several of the present local officers, as I am informed, I do not advise any such proceeding being taken.

No. 353 ORDER THEREON, 20th December 1871, No. 3,205.

ESTABLISHMENT, No. 20.

IN this letter the Government Pleader expresses his opinions on the questions which were referred to him for consideration in G. O, No. 2,302, dated 9th September 1871, in connection (1) with the claim put forward by Major Hunter to those portions of the Ahtoor and Nagalore Ghaut roads which pass through his estates of Patchipadi and Karaduzoor on the Shevaroys, and (2) with the expenditure alleged to have been incurred by him from the Government grant of Rupees 12,550.

2. Under the views expressed in paragraphs 2 to 7, His Excellency the Governor in Council resolves to authorize the Superintending Engineer of the 5th Division to institute a suit against Major Hunter with the objects indicated in paragraph 7, damages being claimed for the injury caused to parts of the ghauts.

3. For the reasons explained in paragraph 8, the intention to prosecute Major Hunter in the event of his refusing to render an account of the outlay incurred from the Government funds placed at his disposal must be abandoned.

(True Extract)

Colonel, R.E.,
Secretary to Government.

To the Government Pleader
,, Superintending Engineer, 5th Division
,, Collector of Salem
,, Revenue Department.
,, Controller of Public Works Accounts
,, Financial Department

Exd S T. Augustin.

Govt. of [1871] Madras.

PUBLIC WORKS.

To

THE GOVERNMENT HEADER

&c, &c, &c

Rcd December 20th

Read Encl.

G O, 20th December 1871, No 5,215

DECEMBER.

Nos. 352-353

Major Hunter—Passing orders on the letter from the Government Pleader advising as to the legal proceedings to be taken against Major Hunter in the matter of the Ahtoor and Negalore Gnauts on the Shevaroy Hills.

Public Works Depart
No 3205
Proceedings of the Madras Government
Read the following

The Govt Pleader
Madras

(H.C. No 155 of 20th Nov/71)

In this letter the Govt Pleader expresses his opinions on the questions which were referred to him for consideration vide Govt Order No 2302 dated 9th Sept 1871 viz Connection (1) with the claim put forward by Major Hunter to those portions of the Pykoor & Kagalore Ghat road which pass through the estates of Pathapadi and Karadigoor on the Shevaroy and (2) with the expenditure alleged to have been incurred

Public Work 1871 Department
No of Govt Order (Secy)
From No 3205
The Govt Pleader
Madras
To The Secy to Govt
Public Works
Dated 20th November
Received 23rd
No 155

Major Hunter.
advises as to legal proceedings against in the matter of Pykoor & Kagalore Ghat on Shevaroy Hills

No 3205 - 20th Dec 71

C/No 352

by him from the Government grant of Rs 12,550.

Under the views expressed in Paras 2 to 7 H.E. the Governor in Council resolves to authorize the Superintending Engineer of the 6th Div. to institute a suit against Major Hunter with the objects intended in Para 7. Damages being claimed for the injuries caused to parts of the Estate.

For the reasons explained in Para 8, the intention to prosecute Major Hunter in the event of his refusing to render an Account of the outlay incurred from the Govt Funds placed at

5-6

Public Works Department.

Letter from the Government Pleader, Madras, dated 20th November 1871 No. 155.

Circulated

Send Take for the case advised by the Govt Pleader

for orders -

Sd/- H. Sullivan

Fort St George. Secy to Govt PWD.
25th Novr 1871

1/fo 5581.

Govt of [1871] Victoria.

PUBLIC WORKS.

To *The Government Leader*

Date

Read Ent.

A 0.20 "Dec" 71, No. 3205

Nos. *362 & 363*

Major Hunter. Paying orders on
the letter from the Govt.
Leader advising us the
legal proceedings to be
taken against Major Hunter
in the matter of the Editor
& Reporter of Hansard in the
Treasury Hills.