

No. 1,016.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 24th July 1880.

Read again Board's Proceedings, dated 2nd March 1880, No. 298.

Read also the following letter from F. A. NICHOLSON, Esq., Acting Collector of Coimbatore, to C. A. GALTON, Esq., Secretary to the Board of Revenue, dated 7th July 1880, No. 117:—

In reply to Board's Proceedings, No. 298, of 2nd March 1880, I have the honor to report as follows:—

On communicating with the Superintending Engineer I received letter, No. 891, of 21st May 1880 (copy enclosed), stating that no action had been taken, or was intended to be taken, in the matter of defending the suit, as neither the contractor nor Overseer could show any authority for what they did or allowed to be done. The Sub-Overseer could give no authority, and the late Overseer in charge of the work, Adykalam Pillai, now Supervisor in the Local Fund Department, had not replied to the reference. On the 22nd June I received No. 1,178 (sent in original, to be returned) from the Superintending Engineer, in which Supervisor Adykalam Pillai states that he thinks Mr. Shaw must have ordered the entry upon the lands, but the Superintending Engineer doubts the probability of this. The Supervisor also considers that the Revenue authorities had probably been consulted, and the Superintending Engineer concludes that the lands had been entered upon before the compensation of Rs. 1-8-0 was tendered. In his letter, No. 941, of the 25th May (copy enclosed), however, the Superintending Engineer is of opinion that the plaintiff has sustained a wrong and suggests that I should make an inquiry with a view to settling proper compensation. It is clear from the records that plaintiff has sustained damage to a considerable extent: that extent I will discuss subsequently. But the first question is the responsibility for the damage. Mr. Wilson has stated clearly (*vide* the Proceedings under reply) that the second entry, for which the chief damages are claimed, was in February 1879, subsequent to this office letter of the 7th January, in which the Department of Public Works were requested not to take up any further lands except upon formal application to the Revenue Department. Considering therefore that the mere tender of compensation for previous damage would not render the Collector responsible for unauthorized Department of Public Works action, Mr. Wilson recommended the answer forwarded with his letter, simply denying the Collector's responsibility.

But from the Deputy Collector's letter with enclosures now sent it will be clear that the Collector is responsible directly for part of the claim. The compensation of Rs. 1-8-0 was tendered for damage done to 76 cents of land in 1878. There was a ragi crop on 5 cents, 8 cents were waste and 63 cents quarried for metal contained 200 plantains and 7 cocoanuts. The ragi crop was valued at Rs. 1-8-0, the plantains and cocoanuts at Rs. 64; but the Deputy Tahsildar considered that this Rs. 64 was fully balanced by the excavation of the land, which lowered the level and fitted it for nunjah cultivation. This opinion of the Deputy Tahsildar was endorsed by the Revenue authorities, who actually tendered only Rs. 1-8-0. The plaintiff, however, disagrees with the Revenue Department, and part of the damages claimed by him are for the damage done to the 63 cents of land. Apart therefore from the merits of the case, it is evident that the Collector is bound to answer in part of this suit. With regard to the subsequent entry on 97 cents of land, the Superintending Engineer appears to consider that it was entered upon prior to the settlement of the compensation of Rs. 1-8-0, and the inference therefore is that the Collector is equally responsible with the Department of Public Works. The records, however, show that it was probably in February 1879 that this second entry was made, while the compensation was settled in October 1878: hence the Collector can hardly be responsible for the second entry by the Department of Public Works. But I wish to point out that the question of individual responsibility may be waived: it being clear that

the plaintiff has suffered damage; that he suffered this damage at the hands of Government servants in the execution of an emergent Government work; that the Collector is bound to answer at least part of this suit; and that the Collector is usually accepted as the general representative of Government, I consider that it will be better to accept the responsibility of answering this suit in full: it must be answered either by the Department of Public Works or by the Revenue Department, and as the Collector is already in it, he may as well answer the whole.

The further question is whether Government should answer for its contractor and Overseer (first and second defendants). Its contractor is evidently treated throughout as under the orders of the Engineering Department: he appears to have merely executed the work pointed out to him, and the Superintending Engineer evidently considers the Overseer in immediate charge to be responsible for the entry on this land. And as regards second defendant, who was only a Sub-Overseer, it is true that he can show no authority, but it appears to me impossible to expect him to show written authority for such a matter, and it would be still more improper if we were to shift responsibility upon a minor subordinate in the face of the fact that there was a European Engineer in direct charge of the work and an Overseer under him and above the Sub-Overseer. The work was an emergent famine work: what was done was done with no malice but *bonâ fide* to carry out the work, and if there was (which is even yet doubtful) any overstepping of exact bounds, it may be technically an error, but none on the merits. I think therefore the Government should accept the responsibility and answer the suit in full, and I would only remark that if the minor subordinates should on further inquiry be found responsible it will be open to Government to adjust matters with them irrespective of the decision in this suit.

As regards the extent of damage, the Deputy Collector's letter (enclosed in original) is perfectly clear and embodies the results of inquiries ordered upon Board's Proceedings. As regards the first entry upon 76 cents of land for which Rs. 1-8-0 was tendered, the acts are as above noted. The Deputy Collector considers that the Rs. 64 should have been tendered in addition, and I agree with him, for whatever the supposed value of the lowering of the level, the entry was against plaintiff's will and destroyed the existing crop of fruit trees; moreover, the best soil must have been removed from the land. Under ordinary circumstances, we should have bought the land at something more than the above rate. As regards the second entry on 97 cents, which area includes 13 cents already entered on, 27 cents were fit for paddy cultivation but had no crop; 70 cents were tope and contained 461 fruit trees, which were all destroyed or fatally injured by the extensive excavations. The land is useless for cultivation as it is now, and to fill it up would cost a sum larger than the land is worth as earth would have to be carried above a furlong. It is therefore proposed to buy it outright, as it may be useful to Government hereafter, as the value is less than it would cost to fill it up, and as it may subsequently perhaps be levelled and let out. The local value is Rs. 150 for paddy land and Rs. 300 for tope land, and it should be noted that allowing the ordinary value for plantain and cocoanut trees this latter value

	RS.	A.	P.
Paddy land, 27 cents, at Rs. 150.	40	8	0
Tope land, 1'33 cents, at Rs. 300.	399	0	0
Add 15 per cent. for compulsory nature of acquisition on Rs. 439-8-0	66	0	0
Ragi crop	1	8	0
Proportion of suit fees on Rs. 506	65	0	0
Interest on Rs. 439-8-0 for eighteen months, at 6 per cent.	39	8	0
Interest on one-fourth suit fees = Rs. 65 for six months, say	2	0	0
Total	613	8	0

I consider that a more liberal proportion than the strict quarter share should be

allowed. The plaint sets out Rs. 1,000 as the cost of filling up the pits: the Wudders asked the Deputy Tahsildar Annas 4 per cubic yard, considering the distance of good earth: allowing only 2 annas, the cost would be very heavy. I think two-fifths of the total costs should be allowed, which would give Rs. 102-8-0 instead of Rs. 65, or Rs. 651 (say Rs. 650) instead of Rs. 613-8-0. I consider that an offer of Rs. 650 in quittance of all demands, and on condition of the conveyance of the land to Government, would satisfy the equity of the case.

If I were empowered to make this offer to the plaintiff it is possible that the case might be settled out of Court. Should he refuse, I would suggest that the money be paid into Court saddled with the above conditions. The only difficulty I feel is as to the mode of obtaining possession of the land if the money were paid into Court, as the Court could not decree the transfer of plaintiff's land in a suit for damages by plaintiff. I request instructions on this matter in the order to be passed.

I also beg to request orders at the earliest possible date. The suit was originally fixed for settlement of issues on the 31st May: I obtained an adjournment of two months to investigate the case, so that the next hearing will be on the 31st instant and the Court might object to a further adjournment. With regard to the delay, I have the honor to state that the Superintending Engineer was written to on the 5th March, but no reply was received till 24th May 1880; that thereupon the Deputy Tahsildar was directed to make a local inquiry, and on his report a further inquiry by himself and again by Tahsildar was ordered. The final report was only received here on the 1st instant. The matter being very obscure and the parties scattered has led to much delay.

ENCLOSURES Nos. 1 to 4.—Correspondence.

THE above papers, which relate to a suit brought against the Collector of Coimbatore in the District Munsif's Court at Coimbatore, will be submitted for the orders of Government.

2. In the letter printed in the Board's Proceedings above recorded Mr. Wilson reported that a suit had been brought by one Shumsodeen Rowten against himself and a contractor and Overseer of the Department of Public Works for damages to the extent of Rs. 2,000 on account of the entry of the Public Works Officers on his land in 1878 and 1879, the removal of earth therefrom for the Kullar-Mettupálaiyam Road then under construction, and the destruction of the fruit trees standing thereon; it was proposed to defend the suit, so far as the Collector was concerned, by denying his liability, as the entry on plaintiff's land had been in no way authorized by him, but was, in fact, in one instance in direct opposition to his orders, and as beyond offering a sum of Rs. 1-8-0 as compensation to the plaintiff the Revenue authorities had had nothing to do with the matter. The Board thereupon requested the Collector to report (1), what action it was intended to take to defend the Officers of the Public Works Department; (2), on what considerations the compensation to the plaintiff was fixed by the Revenue authorities at so low a sum as Rs. 1-8-0 while the amount claimed by the plaintiff is Rs. 2,000; and (3), what amount of compensation the plaintiff is justly entitled to. In the second letter above recorded, Mr. Nicholson, the Acting Collector, complies with the requisition.

3. As regards the first question, Mr. Nicholson reports that the Superintending Engineer does not intend to take any action in the matter of the suit as neither the contractor nor the Overseer had any authority for what they had done. The plaintiff's land appears to have been entered upon on two occasions; in 1878, 63 cents were dug up and on complaints being received of the action of the Public Works Officers the compensation to the plaintiff was fixed at Rs. 1-8-0 and the amount was tendered to him but refused. The Executive Engineer in charge of the range was at the same time informed that as the Kullar Road had been stopped as a famine work formal application should be made to the Revenue Department for any further lands that might be required, and it appears that it was after this intimation

had been given that .97 cents of land belonging to the plaintiff were entered upon and the fruit trees thereon destroyed. It is difficult now to decide who is really responsible for the trespass. The work for which earth was taken was under the immediate superintendence of a European Officer, Mr. Shaw, assisted by an Overseer and Sub-Overseer (third defendant); the Overseer (now a Local Fund Supervisor), who speaks from recollection, states that Mr. Shaw must have given orders to enter upon the land although this is considered improbable by the Superintending Engineer; and the Sub-Overseer is unable to state on what authority earth was taken from plaintiff's land. The contractor appears to have acted throughout under the orders of the Public Works Officers and to have taken earth from such land as was pointed out to him. In these circumstances, and considering that earth was taken for an emergent Government famine work, the Board concur with Mr. Nicholson in thinking that Government should accept the responsibility and give the plaintiff fair compensation for the damage sustained by him.

4. As to the amount of compensation, that offered at first to the plaintiff, viz., Rs. 1-8-0, appears to have been fixed by the Deputy Tahsildar for the loss of crop alone on 13 cents only out of the 63 cents entered upon in 1878, nothing being allowed for the earth taken out of the land as it was considered that the plaintiff was really benefited by the lowering of the level of the land, it being thereby rendered fit for wet cultivation. The amount was evidently inadequate, and the plaintiff was entitled to be paid for the earth taken from his land. Mr. Nicholson considers that a sum of Rs. 650, Rs. 572 on account of the land entered upon in 1878 and 1879 and Rs. 78 on account of costs of suit, together with interest will be a fair amount of compensation provided the plaintiff makes over the land to Government, and requests authority to settle the case on these terms. The Board are of opinion that the compensation proposed is reasonable, and recommend that the Collector be authorized to offer the above sum to the plaintiff on condition of his withdrawing the suit and transferring the land to Government. If he does not accept the terms offered the Collector should put in a written statement to the effect that the entry upon plaintiff's land was not authorized by Government but that they are nevertheless willing to pay as compensation for the damage sustained by him a sum of Rs. 650 less the value of the land in its present state, which should be ascertained by the Collector.

5. The Collector is requested to apply for an adjournment of the hearing to 31st August 1880.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Secretary.

To the Secretary to Government, Revenue Department,
with original letter and its four enclosures in No. 5,265
of 1880 and one in No. 1,174 of 1880 to be returned, and
copy of Board's Proceedings, dated 2nd March 1880, No. 296.
„ Collector of Coimbatore.

GOVERNMENT OF MADRAS.
REVENUE DEPARTMENT.

29th July 1880, No. 895.

No. 449. READ THE FOLLOWING PAPER:—

Proceedings of the Board of Revenue, dated 24th July 1880, No. 1,016.

ABSTRACT.—Submitting for orders papers relative to the suit brought against Collector of Coimbatore in the District Munsif's Court for certain damages by Shumsoodeen Router and making certain proposals.

ORDER THEREON, 29th July 1880, No. 895.

No. 450.

Miscellaneous.

THE proposals of the Board are approved and sanctioned.

(True Extract.)

(Signed) C. G. MASTER,
Secretary to Government.

To the Board of Revenue, with six enclosures.

Exd. A. S. Rodgers.

45 Copies.

1880.
Board of Revenue,
MADRAS.

To

THE SECRETARY TO GOVT.,
REVENUE DEPARTMENT,
&c., &c., &c.

Dated July 24th.

Printed August 12th.

Received

PROCEEDINGS, 24TH JULY 1880, No. 1,016.

JULY.
No. 1,016.

Suit—in District Munsif's Court, Coimbatore, by one Shumsoodeen Rowten claiming compensation for damage sustained by him in consequence of removal of earth by Public Works Officers from his lands in 1878 and 1879.—Passing orders on letter from Collector regarding the —.

Govt. of Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated July 29th.

Printed August 5th.

Recd.

Encl.

G.O., 29th July 1880, No. 895.

JULY.

Nos. 449-450.

Suit—brought against the Collector of Coimbatore in the District Munsif's Court for certain damages by Shumsodeen Rauter.—Approving and sanctioning the proposals of the Board of Revenue relative to the —.



Pro. Rev. Dept. 29 July 1880 No 895

[Mar. Wks. Form No. 111.]

GOVT.
OF MADRAS.

18 8/1.82

P. W.
DEPT.

EXAMINER, P. W. ACCOUNTS.

Madras,

MAY

28th 1881.

Office Note No. 216.

Enc. 2

To

W.

PLEASE SEE ITEM (B) IN THE
ACCOMPANYING DISALLOWANCE LIST (TO
BE RETURNED) ON THE CONTINGENT BILL
OF THE COIMBATORE DIVISION FOR FEB-
RUARY 1881 AND SAY WHETHER THE
CHARGE OF RS.50 ON ACCOUNT OF THE
FEES DUE TO GOVERNMENT VAKIL VEERA-
BACRA IYER IN SUIT NO.799 OF 1879
IN THE DISTRICT MUNSIFF'S COURT
COIMBATORE, CAN BE FINALLY ADMITTED
BY THIS OFFICE. THE DEFENCE OF THE
SUIT IN QUESTION WAS, IT WILL BE
OBSERVED, UNDERTAKEN ON THE AUTHORITY
OF G.O. REVENUE DEPARTMENT NO.895
DATED THE 29TH. JULY 1880, AND THE
AMOUNT OF RS.50 PAID IN THE CIVIL
DEPARTMENT AND TRANSFERRED TO THE
P.W. DEPARTMENT IN THE ACCOUNTANT
GENERAL'S MADRAS EXCHANGE ACCOUNT
FOR FINAL ADJUSTMENT.

KEEP WITH

Genl. No.

dated

18

Rev. Report 29 July 1881 2. cc -

C.O.N. No 216 of 28.5.81.

No 1577 W

PUBLIC WORKS DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

UNDER date the 24th June 81

Read the following:—

M.W.

For orders.

The G.O. quoted as authority for the charge of Rs 50 does not appear to meet the requirements of Code para 354.

That G.O. merely authorises the Collector to offer compensation to the plaintiff for entry on his land, on condition of his withdrawing his suit, & does not specifically sanction the defence of the latter - nor has any decision been given as to whether the charges shall be borne by the State.

Cy
11/6.

Draft order authorising C. to admit the charge of Rs 50 - (it would appear to be impossible to put upon any one person as responsible for the trespass) - and send him for instructions C.M. 10.6.81.

Office note from the Enr. P.W.D. H.S. No 216 of 28th Mar 1881.

MA

The charge of Rs 50 may be finally admitted by the Enr. P.W. Accts.

Cy

CEN

Att.

15/6/81

Enr P.W.D. 24.6.81

Cy 16/6/81 12-6-81
Q. 13.6.81 Cl 16/6

B. n. 1577 W 724 June 1881

Issue