

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	392	Press Mis.
Dated	17-4-	1867.

Not to be folded or roughly handled

17th April 1867.

No. 66. Read the following letter from the President of the Municipal Commission, Godavery District, to the Chief Secretary to Government, Fort Saint George; dated Duvva, 25th January 1867, No. 23.

I have the honor to forward, for the information of Government, copy of a letter received from the Vice-President of the Municipalities of Rajahmundry and Ellore, detailing some difficulties that have occurred to him in putting Act X of 1865 into effect in those places; I also send copy of my reply in regard to the difficulties mentioned in paragraphs 2 and 3 of that letter. It does not appear to me that they call for a reference to Government.

2. The questions raised in paragraph 6 of the Vice President's letter present difficulties to myself also, and I do not feel competent to give any positive opinion on them. In looking carefully over the Act, I observe that in three Sections only (60, 64, 68) is it specially declared that the fine or penalty referred to must be levied "on conviction before a Magistrate."

In nearly all the clauses under the head "General Conservancy," it is stated that the offending party shall be liable to a certain penalty, but does not say who is to impose it. Sections 136, 137, and 138 appear to me to read as if meant to refer only to penalties leviable under sections which specify "on conviction by a Magistrate," and point to him as the party to adjudge the amount of fine.

3. If in Sections 148, 149 the word "may" were "shall" or "must" the course of proceeding would be perfectly clear.

That the word "may" is sometimes used in this sense, I infer from the opinion of the Advocate General of Bengal, communicated with Proceedings of Board of Revenue, No. 3680, of 17th June 1864, and under Order of Madras Government of 6th June 1864.

4. I beg that I may be informed whether the word "may" in the Sections above referred to is so used in the Towns' Improvement Act.

From the Vice-President, to the President of the Municipal Commission; dated Peddapuram, 15th January 1867, No. 6.

I have the honor to draw your attention to certain points in the Towns' Improvement Act, and to request that the difficulties alluded to may be referred to Government for solution.

2. The first difficulty, to which I allude, is the wording of Schedule B; you will observe that one Anna is fixed as the toll on "every horse laden or ridden," and six Pice on "every horse not laden or ridden," and that "every buffalo or bullock laden," and "every pony or ass laden or ridden," pay six Pice. The question is, what is the meaning of the words "laden," "ridden"?

Is a rider who dismounts from his horse outside the toll gate and has the horse led through the gate to pay one Anna or six Pice?

Is a horse with an empty saddle, a bullock with an empty pack, laden or not?

In the first of these cases there is palpable evasion of the toll—but no punishment is provided for wilful evasions.

3. Again, no other animals but those specified in Schedule C. are taxable by the Commissioners. In Ellore there are several barren cows used for draught purposes, for which the Commissioners, at a general Meeting, when I was not present, decided that licenses should be issued. I have pointed to them that, according to the law, such animals are not liable to Municipal tax, nor to toll, but I presume that it was intended by the legislature that all draught animals of whatever sex were to pay taxes.

*Proceedings of the Madras Government, Public Department,
17th April 1867.*

4. I beg to suggest an amendment in Schedules B. and C. as follows :—

After the word bullock read “ or other animal kept for draught purposes,” and recommend that if the Schedule cannot be amended that the following Bye-Law may be sanctioned under Section 143 of the Act :—

(1.) In Schedules B. and C., cows used for draught purposes shall for the purposes of this Act be taken to be included in the word bullock.

5. I would also recommend the following Bye-Law to remove doubts, unless it was the intention of Government to exempt from taxation the owners of animals entering the Towns for the purpose of purchasing merchandize, &c :—

(1.) Horses with empty saddles, and bullocks with empty packs, shall be deemed to be “ laden,” and liable as such to tolls under Schedule B.

6. The remaining point to which I wish to draw attention is the wording of Sections 141 and 149.

From a perusal of these two Sections, it would appear that the Commissioners had power to recover fines and penalties by summary processes of distraint.

The wording in Section 149, it will be observed, is “ every fine or penalty, &c.,” *may*, not *must*, be recovered before a Magistrate ; but I can hardly suppose that Government intended to vest such autocratic power in a corporation. It seems to me that the only safeguard from oppression, in enforcing the penalties prescribed by the General Conservancy clauses, is the right of the people to be heard in their defence before a Magistrate, and I imagine it was with this view that Government have declined, in several instances, to allow the Sub-Magistrate to be a member of the Municipal Commission.

I think that a Notification should be issued clearing up this point, if I am right in my supposition, that it was the intention of Government that fines and penalties should not be recoverable except by summary proceedings before a Magistrate, or by Suit in a Civil Court.

From the President of the Municipal Commission, to the Vice-President of the Municipal Commission, Rajahmundry and Ellore ; dated Duvva, 25th January 1867, No. 22.

I have the honor to acknowledge the receipt of your letter, No. 6, of 15th instant, and to state that I have forwarded copy of it to the Chief Secretary to Government. But it appears to me that only the last part of your letter (paragraph 6) calls for any opinion from Government.

2. In regard to the words “ laden and ridden,” I do not think there is any difficulty.

If a person rides a bare-backed and unbridled horse up to a toll gate, dismounts, and leads him through, and then mounts again, I think the animal must be considered as not laden or ridden during the passage through the toll. If the horse have a saddle on his back, or any thing for the rider to sit on, no matter how small, or be bridled, I think he must be considered laden “ to that extent,” and so tolled as a laden animal. In weighing a jockey for a race, I believe he is weighed with saddle, bridle, spurs, whip, in fact all his equipment ; therefore, in this case, the bridle is part of the weight the animal is laden with.

In the same way, I consider a bullock with an empty pack or pack-saddle on his back, or indeed with any thing on his back, laden “ to that extent,” and so taxable.

3. I do not believe that Government possess the power of making any addition to the animals declared taxable under Schedules B. and C. They have once already declared as much in answer to a request of mine, that dogs may be declared to be taxable, and if they cannot add to the Schedule, they certainly cannot declare animals not taxable under them to be so by a Bye-Law.

4. Although by the Section of definitions in the Towns Improvement Act (Section 2), it is stated that words importing the masculine gender shall include the feminine, it would be, I think, a rather strained reading of this to say that the word “ bullock,” ordinarily meaning a castrated bull, means also a cow for any purpose whatsoever.

*Proceedings of the Madras Government, Public Department,
17th April 1867.*

No. 67. ORDER THEREON, 17th April 1867, No. 392.

The Governor in Council is clearly of opinion that fines and penalties under Madras Act X of 1865, can only be recovered either by prosecution before a Magistrate or by Suit in a Civil Court.

(True Extract.)

Chief Secretary.

To the President of the Municipal Commission, Godavery District.
„ President of

Exd. S. T. Augustin.

No 6

Reddapuram 3
15th January 1867

From

A Wigram Esq
Vice President

To

James Fraser Esq
President of the Municipal
Commission.

Sir,

I have the honor to draw
your attention to certain points in
the Towns improvement Act and
to request that the difficulties alluded
to may be referred to Government
for solution:

2

The first difficulty to which
I allude is the wording of schedule B.
You will observe that one anna is
fixed as the toll on "every horse or
laden or ridden" and six pice on
"every horse not laden or ridden", and
that "every buffalo or Bullock laden
and every Pony or Ass laden or ridden
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is the meaning of the words "laden
— ridden"?

Is a rider who dismounts from
his horse outside the toll gate and
has the horse led through the gate to
be considered as ridden?

Is a horse with an empty saddle
a bullock with an empty pack
laden or not?

In the first of these cases
there is palpable evasion of the
toll and enforcement is provided
for wilful evasions.

Again no other animals but
those specified in schedule C are
liable by the Commisseries. In
Hawke there are several harness cows
used for draught purposes, for which
the Commisseries act as general

carting, when law is not present,
decided that licenses should be
issued. I have pointed out to
them that according to the law
such animals are not liable to
municipal tax, nor to toll, but I
presume that it was intended by
the legislature that all draught
animals of whatever sort were to
pay taxes.

I beg to suggest an amendment
in schedules B & C as follows.

After the word bullock read
"or other animal kept for draught
purposes" and recommend that if
the schedule cannot be amended

that the following bye law may
be sanctioned under Sec 149 of
the Act.

In schedule B & C cows used
for draught purposes shall for the
purposes of this Act be taken to be
included in the word bullock.

I would also recommend the
following Bye Law to remove doubts
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the owners of animals entering the
Towns for the purpose of purchasing
merchandise &c.

Horses with empty saddles
and bullocks with empty packs shall
be deemed to be "laden" and liable
as such to tolls under schedule B.

The remaining point to which
I wish to draw attention is the
wording of sections 141 and 149.

From a perusal of these two sections
it would appear that the Commisseries
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The wording in Sec 149, it will
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be issued clearing up this point, if
I am right in my supposition, that
it was the intention of Government
that fines and penalties should
not be recoverable except by
summary proceedings before a Ma-
gistrate or by suit in a Civil Court.

This seems
to be correct
New
Municipal
1891

Shame Behan Secy
Ld

Your most obedient servant

(Signed) H. J. Ingram
Vice President

J. F. F. F.
(President)

Comp. Secy

No 22

Godavery District
Magistrate's Office
Jamm the Sahib
Duvva 25th January 1867

From

James Fraser Esq
President Municipal
Commission

To

A. Wigram Esq
Vice President
Municipal Comm
Rajahmundry

Sir,

I have the honor to acknowledge the receipt of your letter No 6 of 15th Instant and to state that I have forwarded a copy of it to the Chief Secretary to Government. But it appears to me that only the last part of your letter (para 6) calls for any opinion from Government.

In regard to the words "laden & riden" I do not think there is any difficulty.

If a person rides a horse bare & unbridled horse up to a toll gate dismounts and leads him through, and then mounts again, I think the animal must be considered as not laden or riden.

1867 Jth

In a letter from the
President Municipal
Commission to the
Chief Secretary to
Govt of 15th 29

Dated 25th January
1867

Copy of a

Letter from the Vice

President detailing

certain difficulties

in the working of the

Commission

Let

on Public No 125767

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le Klubbungedn le,

No 23

Goodeney District
Magistrate's Office
Tanjore District
Dindur 25th January 1867

From

To James Fraser Esq.
President Municipal
Commission
The Honorable A. A. Arbuthnot
Chief Secretary to Government
Fort Saint George

Sir

I have the honor to forward
for the information of Government
copy of a letter received from the
Vice President of the Municipality
of Rajahmundry and Ellore,
detailing some difficulties that
have occurred to him in putting
Act X of 1865 into effect in those
places; I also send copy of my
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mentioned in paras. 2 & 3 of that
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2 The questions raised in
para 6 of the Vice President's letter
present difficulties to myself also.

1807-28

In a letter from the
President Municipal
Commission to
the Chief Secretary
to Govt No 23

Dated 25th Jan'y 1867
Recd

For Mr. Fraser Esq.

Copy of a

letter to the Vice

President Municipal

Commission detailing

some difficulties

in the Town of Rajahmundry

and Ellore

and I do not feel competent to
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In looking carefully over the Act,
I observe that in 3 sections only
(60, 64, 68) is it specially declared
that the fine or penalty referred
to must be levied "on conviction
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In nearly all the clauses under
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That the word may is some-
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right
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from the opinion of the Ad-
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Board of Revenue No 3680, of 17th
June 1864 & under orders of
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I beg that I may be in-
-formed whether the word "may"
in the sections above referred to
is so used in the Towns Improve-
-ment Act.

Shame the same the
Sir
your most obedt
servt

J. Fraser
President Municipal
Commissioners

@ K. Subbarayan
P@

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from
the President of the Municipal Commn.
Godavery Dist.

Dated 25th Jan'y 1867 No. 23.

Order Theorem No 392 dated 17th April 1867.

The Governor in
Council is clearly of
opinion that fines and
penalties under Madras
Act X of 1865 can only be
recovered either by prosecution
before a Magistrate or
by suit in a Civil Court.

To the Pres^t of the Muncl Commn
Godavery Dist. } despd 27/4
- Presidents of all Municipalities

Recd No 6 June 1867 No 59 465-
Pub No 4 Oct 1867 No 145 250.
No 30 - 226-227

Recd 17 April
1867 Dist

W.C.

S.O. No 392

The President
Municipal
Commn
Godavery Dist
The Chief Secretary
to Govt

Dated 25th Jan'y 1867
No 23

No 23

Enclosed is
No 125

Printing and Stationery
the Government of
Madrass
Government Press
Madras

Public 1867. Department.

No. 392

PROCEEDINGS OF GOVERNMENT.

Dated. 17. April 1867.

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