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MADRAS RECORD OFFICE.

Government of Madras.

Public **DEPARTMENT.**

G.O. No.

1285

Press

Mis.

Dated

14-9-1869

1869

Not to be folded or roughly handled

No. 1285.

FROM

THE HONOURABLE R. S. ELLIS, C. B.,
Chief Secretary to the Government of Fort Saint George,

TO

THE SECRETARY TO THE COUNCIL OF THE GOVERNOR
 GENERAL FOR MAKING LAWS AND REGULATIONS.

SIR,

I am directed to acknowledge the receipt of your letter, No. 1-122, dated Simla, 1st May 1869, requesting an expression of the opinion of His Excellency the Governor of Madras in Council on the provisions of the "Indian Expropriation Bill."

2. In reply I am directed to state that, though His Excellency in Council is not aware that the existing law as contained in Act VI. of 1857 has for most purposes been found inefficient or inconvenient in practice in this Presidency, he is in favour of the enactment of the proposed law, the provisions of which appear to him generally equitable and well considered.

3. I am also instructed to forward the accompanying precis of the remarks and suggestions made by certain persons in this Presidency who have been consulted by the Governor in Council, and to make the following observations on points of detail:—

Section 5.—With reference to the remarks of the Board of Revenue, this Government is of opinion that notice to the occupier will suffice; and observe that, in the case put by Mr. Thomas, the parties will always be at liberty to demand what they at first refused, and no legislative provision is necessary.

Section 6.—The punishment should be reduced one-half, and the nature of the imprisonment specified.

Section 7.—It is presumed that it is intended to vest in the local Government the power of deciding what are works for public purposes.

After the words "for the supply of water" should be added "for the purpose of irrigating land, for moving machinery, and for all other purposes connected with agricultural or manufacturing industry and sanitation." It is desirable to affirm in unambiguous language the right of Government to occupy and traverse land for the purpose of extending common agricultural irrigation.

Section 8.—There is no necessity for any changes in this section such as are proposed by Messrs. Thomas and Kindersley.

Sections 11, 23.—This Government concurs with the Board of Revenue and Mr. Thomas that these sections are incomplete in the points specified by them.

Section 29.—The arbitrators should not be entitled to fees in all cases but only where the Collector considers the grant of fees desirable.

Section 45.—It would be best to provide that there should be only two assessors, and that the opinion of the Judges concurring with either should be final.

Section 47, Clause 4.—This Government concurs in the suggestion of Messrs Ramayyangár and Muttusvámi Ayyar that an express provision declaratory of the right of land-owners to bring suits against Government for subsequent damage or its occurrence should be inserted.

FORT SAINT GEORGE,
 14th September 1869.

I have the honour to be,
 Sir,
 Your most obedient servant,

Chief Secretary.

PRECIS OF REMARKS AND SUGGESTIONS RELATIVE TO THE "INDIAN
EXPROPRIATION BILL."

Section of the Act on which remarks are made.	Remarks of gentlemen consulted.
4. Whenever it appears to the local Government that any immovable property is likely to be needed for public purposes or for a work of public utility, it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and his servants and workmen, to enter upon and survey and take levels of such property, and to probe or bore to ascertain the nature of the soil ; and to set out the boundaries of any such property and the intended line of any such work, and to mark such boundaries and line by cutting trenches or placing land-marks ; and, where otherwise the survey cannot be completed and the boundaries and line marked, to cut down and clear away any part of any standing crop, jungle, or tope of trees in the direction of the intended boundaries and line ; Provided that no person shall enter into any building or upon any enclosed garden (unless with the consent of the occupier thereof) without previously giving such occupier twenty-four hours' notice of his intention to do so. 5. The officer so authorized shall take account of all necessary damage done as aforesaid to immovable property, and shall forthwith offer payment for such damage to the persons interested. In case the offer is not accepted, the damage shall be allowed for in the compensation awarded for such property under the provisions hereinafter contained. 6. Whoever wilfully obstructs any person in lawfully setting out such boundaries or line, or wilfully destroys, damages, or displaces any land-mark, or effaces or fills any trench intended to mark such boundaries or line, shall, on conviction before a Magistrate, be liable to be imprisoned for any term not exceeding six months, or to fine not exceeding two hundred Rupees, or to both. 7. Whenever it appears to the local Government that any immovable property is needed for a public purpose or for a work of public utility, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders.	After "any standing crop, jungle, or tope of trees," the words "any hedge or wall not being a wall supporting a roof" should be added. <i>Mr. Kindersley, Officiating Judicial Commissioner of Mysore.</i> After "to probe or bore" the words "or to dig trial pits" should be added. <i>Mr. Latham, Chief Engineer, Irr. and Canal Co.</i> Notice should be given to owner as well as occupier, more especially as a penalty for removal of marks is provided in Section 6— <i>Board of Revenue.</i> In case the property is afterwards not required and the offer made by the officer not accepted, there is no provision for awarding compensation, and the parties will be driven to a civil suit. <i>Mr. Thomas, Acting Collector of South Canara.</i> Six months is a very severe punishment. <i>Mr. Kindersley, Officiating Judicial Commissioner of Mysore.</i> The nature of the imprisonment should be specified. <i>Honourable V. Ramayyengar, Actg. Registrar General of Assurances.</i> It is impossible that any enumeration of works of public utility can be exhaustive for all time. While works of public utility are defined, works for a public purpose are not. The local Government should be left to judge in each case. <i>Mr. Thomas, Acting Collector of South Canara.</i>

INDIAN EXPROPRIATION BILL—(Continued.)

Section of the Act on which remarks are made.	Remarks of gentlemen consulted.
The declaration shall state the district or other territorial division in which the property is situate, the object for which it is needed, its approximate area, and, where a plan shall have been made of the property by any such officer as aforesaid, the place where such plan may be inspected. Works of public utility shall, for the purposes of this section, be held to comprise the following and no others :— (1). Bridges, roads, railways, tramways. (2). Canals. (3). Works for the storage or for the supply of water. (4). Improvements of rivers or harbours. (5). Docks, quays, jetties. (6). Drainage works. (7). Works for the protection of land from floods or erosion by rivers. (8). Electric telegraphs, and all works subsidiary thereto. The said declaration shall be conclusive evidence that the purpose for which the immovable property is needed is public, or (as the case may be) that the work for which it is needed is of public utility ; and, after making such declaration, the local Government may acquire the property in manner hereinafter appearing. The circumstance that the whole or any part of a work is to be executed by, or directly for the benefit of, private persons or companies or Municipal bodies, shall not prevent its being deemed a work of public utility within the meaning of this section. 8. Whenever any immovable property shall have been declared to be so needed for a public purpose or for a work of public utility, the local Government shall direct the Collector of the district to take order for the acquisition of the property. Provided that nothing in this Act shall be taken to compel the Government to complete the acquisition unless an award shall have been made or a reference directed under the provisions hereinafter contained. 10. The Collector shall then cause a notice to be affixed in some conspicuous place upon the property, and published by proclamation in the neighbouring bazaars and villages, to the effect that the property is about to be taken by Government under this Act.	List of works is incomplete. Military buildings, public offices, burial grounds, latrines, and other works of public convenience should be added. In case where there is no plan the declaration should specify the boundaries. <i>Board of Revenue.</i> Works for the storage of gas should be added. <i>Messrs. Latham and Henslowe, Chief Engineer, and Agent Irr. and Canal Co.</i> The declaration should be only <i>prima facie</i> and not conclusive evidence of the purpose being a public one, or the work one of public utility. A private cesspool, which is a work of drainage, might be represented by a local officer as a work of public utility though really one for private benefit. <i>Mr. Kindersley, Officiating Judicial Commissioner of Mysore.</i> The proviso should stand apart as a substantive section. For "a reference" made, substitute "possession taken." <i>Mr. Thomas, Acting Collector of South Canara.</i> Should not notice be sent by post to parties not within the district? Should the proclamation be printed or oral? <i>Mr. Kindersley, Officiating Judicial Commissioner of Mysore.</i>

INDIAN EXPROPRIATION BILL—(Continued.)

Section of the Act on which remarks are made.	Remarks of gentlemen consulted.
He shall also serve notice to the same effect on the occupier (if any) of such property and on all such persons, known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue district in which the property is situate. Such notice shall state the particulars of the property so required, and shall require all persons interested in the property to appear personally or by agent before the Collector at a time and place therein mentioned, such time not being less than fifteen days after the date of publication of the notice; and to state the nature of their interests in the property, and the amount and particulars of their claims to compensation for such interests. 11. The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the property or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement. 23. And if the parties cannot agree with respect to the nomination of the arbitrators, or if the persons nominated by them refuse to accept the arbitration, or, having accepted it, die, or desire to be discharged, or refuse, or become incapable to act, and the parties are desirous that the nomination shall be made by the Collector, he shall appoint some proper persons to arbitrate the matter. 29. The arbitrators on making their award shall be entitled to reasonable fees for their services, the amount of which shall be fixed by the Collector subject to the orders of the Commissioner or other superior Revenue authority.	Penalties should be provided for making false statements. <i>Board of Revenue.</i> There is no provision for failure to comply with the requirement. <i>Mr. Thomas,</i> <i>Acting Collector of South Canara.</i> Incomplete. No provision is made for the parties not being desirous that the nomination of arbitrators should be made by the Collector. <i>Board of Revenue.</i> This may be remedied by changing "and the parties are desirous" to "or the parties." <i>Mr. Thomas,</i> <i>Acting Collector of South Canara.</i> No remuneration should be allowed to arbitrators. The effect of the section as it stands will be to cause the owner to purchase his compensation at a dear rate. If the intention be to impose a charge as a restraint, it would be better to provide that no sum beyond the Collector's offer should be granted. If there be no such intention, let the matter be settled under Section 36 by a Judge with assessors. (It would seem that unpaid assessors are meant). <i>J. K. Raman Nayar,</i> <i>Principal Sadr Amin</i> <i>of Calicut.</i>

INDIAN EXPROPRIATION BILL—(Continued.)

Section of the Act on which remarks are made.	Remarks of gentlemen consulted.
31. The proceedings of the arbitration shall be deposited in the office of the Collector, and every person interested therein shall be entitled to a copy of the award under the seal and signature of the Collector. Such copy shall be <i>prima facie</i> evidence of the matters therein stated. 32. No award of arbitrators made in accordance with the provisions of this Act shall be liable to be reversed or altered, except by the decision of a Civil Court, on the ground of corruption or misconduct of the arbitrators. In case the award shall be so reversed, the matter shall be referred to other arbitrators to be appointed in the same manner as the first. All suits to set aside an award under Section 28 shall be instituted within three months from the date of the award. 37. On or after the day last referred to the Judge shall require the assessors so appointed to appoint, by writing under their hands, on or before a day to be fixed by the Court, a qualified person to be a third assessor for the purpose aforesaid. In case of failure to make such appointment within the time so specified, the Judge shall himself appoint the third assessor. 39. If, before such amount is determined, any of the assessors dies or desires to be discharged, or refuses or becomes incapable to act, the party by whom he was appointed, or, if he were appointed by the Judge, the Judge may appoint some other qualified person to act in his place; and, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another, the Judge and the other assessors may proceed <i>ex parte</i>. Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying or desiring to be discharged, or refusing or becoming incapable.	As the award itself is no evidence against strangers, the copy would not be so either, except as to the fact of an award having been made. <i>Mr. Kindersley,</i> <i>Officiating Judicial Commissioner</i> <i>of Mysore.</i> Respectable men will be-unwilling to serve as arbitrators if the only mode of appeal is by attributing to them corruption or misconduct. <i>Mr. Kindersley,</i> <i>Officiating Judicial Commissioner</i> <i>of Mysore.</i> The third assessor is useless. The Judge seems to have no weight in the decision. His opinion, agreeing with that of one assessor, should be final on questions of fact. As it is, the assessor named by the owner would probably yield in the choice of the third assessor to the Government assessor, and the confidence felt in the Court would be lowered. <i>Messrs. Henslowe and Latham,</i> <i>Agent, and Chief Engineer</i> <i>Irr. and Canal Co.</i> It is not clear what is to be done in the case of an assessor simply neglecting to appear on the day appointed. <i>Mr. Kindersley,</i> <i>Officiating Judicial Commissioner</i> <i>of Mysore.</i> It would be well to state expressly that in the case referred to in the section, the proceedings need not commence <i>de novo</i>. <i>Board of Revenue.</i>

INDIAN EXPROPRIATION BILL—(Continued.)

Section of the Act on which remarks are made.	Remarks of gentlemen consulted.
40. Every assessor appointed under this Act, not being an officer of Government, shall be entitled to receive such fees for his services as the Judge shall direct, not exceeding the sum of fifty Rupees for each full day employed. Such fees shall be deemed to be costs in the proceeding. 44. In case of a difference of opinion between the Judge and the assessors or any of them upon a question of law, or practice or usage having the force of law, the opinion of the Judge shall prevail and his decision thereon shall be final. 45. In case of any such difference of opinion upon any question of fact, or as to the amount of the compensation to be awarded, the decision of the Judge shall be final provided he agree with the majority of the assessors or with one of the assessors if there be but two. But if the Judge differs from all or from the majority of the assessors, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the High Court within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.	Remuneration to the assessors is objectionable. The owner may lose not only the increase to the compensation offered by the Collector he seeks for, but also forfeit even the amount offered in fees. <i>J. K. Raman Nayar,</i> <i>Principal Sudder Ameen of Calicut.</i> It is not clear whether the decision of the Judge concurring with the assessors is open to appeal. <i>Mr. Kindersley,</i> <i>Officiating Judicial Commissioner of Mysore.</i> Government interests are overpoweringly represented. Besides being duly represented among the assessors, the decision of their officer is paramount in questions of law, and practically so in questions of fact. Each party should name an assessor or two if one party desire it and the other consent. These assessors or the Judge should nominate the third or fifth assessor. The assessors alone should decide questions of fact. If the Judge concur, there should be no appeal. If he dissent, appeal should lie. The Judge should decide questions of law subject to appeal. Thus abuse will be checked by the Judge, Government interests will be duly weighed, and only in the absence of abuse will the decision be final. <i>Mr. Thomas,</i> <i>Acting Collector of South Canara.</i> There should be only two assessors, and the Judge's opinion concurring with either should be final. <i>Messrs. Henslowe and Latham,</i> <i>Agent, and Chief Engineer, Irr. and Canal Co.</i> The procedure under the Act should be simple and should not entail vexatious and costly litigation as a penalty for <i>bona fide</i> mistakes by the land-owner in the valuation of his property. The existing procedure, which is simple and cheap, should be retained. If the award so arrived at be considered by Government exorbitant in amount, the Collector should have power to refer to a Court consisting of the Judge and three arbitrators named by each party. The majority should decide questions of fact, and on questions of law the Judge's opinion should be final, but he should be empowered to state a case for the decision of the High Court. <i>T. Muttusvami Ayyar,</i> <i>Magistrate of Police.</i>

INDIAN EXPROPRIATION BILL—(Continued.)

Section of the Act on which remarks are made.	Remarks of gentlemen consulted.
46. In determining the amount of compensation to be awarded for property acquired under this Act, the Judge alone, or the Judge and assessors (as the case may be), shall take into consideration— <i>First.</i>—The price which the property would be likely to fetch if sold then and there by public auction. <i>Secondly.</i>—The damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such property from his other property; and <i>Thirdly.</i>—The damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner, or his earnings.	<i>Clause 1.</i>—It is not clear whether the price to be considered when portion of an estate is taken is the price which the portion would fetch or the price of the whole estate. <i>Clause 2.</i>—Provision should be made for certain damage not, strictly speaking, sustained at the time of awarding compensation, <i>e. g.</i>, if before compensation is fixed, a work, say a road, is completed, and water thereby cut off from land then fallow, or land thereby thrown open to incursions of cattle, no damage is then caused; though, if the land were under crop, the damage would be serious. The case is different from prospective damage not appreciable at the time of awarding compensation. Therefore, after "compensation" add "and the cost of measures necessary to protect such land from damage." <i>Mr. H. S. Thomas,</i> <i>Acting Collector of South Canara.</i> The Bill lays down procrustean and inflexible principles to regulate the decisions of the Judges, which principles ought to be evolved by them from each case. The Bill is, therefore, retrogressive, as tending to hamper the free action and independence of the Courts. <i>Honourable V. Ramayyengar,</i> <i>Actg. Registrar Genl. of Assurances.</i> The rules laid down are wholesome, and the appeal to the Court will act as a check on the valuation by the officers of Government. <i>Messrs. Henslowe and Latham,</i> <i>Agent, and Chief Engineer, Irr. and Canal Co.</i> Clause 1 is inconsistent with Clause 1 of Section 46. By the latter, the price which the property would fetch at auction is to be considered; but the degree of urgency, which is one of the elements which would determine the price at auction, is under the latter clause to be left out of consideration. <i>Honourable V. Ramayyengar,</i> <i>Actg. Registrar General of Assurances.</i> Clause 2 should be omitted. Liberal consideration is due to a person violently dispossessed of property, it may be of small value in the market, but, from association and religious feelings, possessing high value in the owner's eyes.—<i>Board of Revenue.</i> Clause 2 is neither fair nor just. A man's disinclination to part with ancestral property should be allowed for. This is different from property got on darkhast for the asking. <i>Honourable V. Ramayyengar,</i> <i>Actg. Registrar General of Assurances.</i>
Matters to be neglected in determining compensation. 47. But the Judge or assessors shall not take into consideration— <i>First.</i>—The degree of urgency which has led to the acquisition. <i>Secondly.</i>—Any disinclination of the person interested to part with the property acquired. <i>Thirdly.</i>—Any damage sustained by him which, if caused by a private person, would not render such person liable to a suit. <i>Fourthly.</i>—Any damage which, after the time of awarding compensation, is likely to be caused by, or in consequence of, the execution of the proposed work. <i>Fifthly.</i>—Any increase to the value of the property acquired likely to accrue from the execution of the proposed work thereon, or which would be likely to accrue to such value if the work were executed on any other property; or	

INDIAN EXPROPRIATION BILL—(Continued.)

Section of the Act on which remarks are made.	Remarks of gentlemen consulted.
<i>Sixthly.</i> —Any outlay or improvements on the property acquired, made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Act.	The disinclination should be fairly weighed in order to keep compensation on this head separate, the arbitrators should fix the price without it, and submit a recommendation to the Government for an enhancement of the compensation in the shape of an added percentage of the price. <i>Mr. Thomas,</i> <i>Acting Collector of South Canara.</i> The dictum of Lord Truro (quoted in the Note appended to the Bill) that the value should be ascertained with reference to the applicability of the property to ordinary purposes discharged of any prescribed application should not be extended to a country (like Indian) of small landed proprietors, where the attachment of the people to their land is strong. It would also be considered an outrage on religious feeling if a pagoda site were taken and value-like ordinary arable land. When property is required for a public purpose, compensation should be made, on a liberal scale and with reference to its peculiar value to the owner, and not to the ordinary market price. Extra compensation if given on account of this peculiar value should not be awarded merely as a matter of grace but should be recoverable in a Court of law. <i>T. Muttusvami Ayyar,</i> <i>Magistrate of Police.</i> <i>Clause 4.</i>—It should be provided in the Act that future suits may be brought against Government for subsequent damage on its occurrence. <i>Honourable V. Ramayyengar,</i> <i>Actg. Registrar General of Assurances.</i> It should be distinctly stated in the body of the Act that a land-owner may seek compensation on the occurrence of subsequent damage. <i>T. Muttusvami Ayyar,</i> <i>Magistrate of Police.</i> <i>Clause 5.</i>—Where land is from other circumstances, such as extension of irrigation or the like, certain to become within a short time greatly enhanced in value, it would be unjust in the extreme not to take this into account. <i>Clause 6.</i>—This clause is at best superfluous. The fraud against which it is directed is unlikely to occur, and, if it did, no Judge worthy of the name would pass it over. <i>Honourable V. Ramayyengar,</i> <i>Actg. Registrar General of Assurances.</i> A clause should be added to Section 47 excluding from consideration any prospective advantage of whatever kind to the proprietor from the proposed work. <i>Mr. Thomas,</i> <i>Acting Collector of South Canara.</i>

INDIAN EXPROPRIATION BILL—(Continued.)

Section of the Act on which remarks are made.	Remarks of gentlemen consulted.
	Sections 46 and 47 would operate most unfairly. <i>Mr. Elwin,</i> <i>Agent and Manager,</i> <i>Madras Railway Company.</i> A clause should be added excluding any increase to the value of other property of the person interested, accruing or likely to accrue from the execution of the proposed work.—<i>Chamber of Commerce.</i>
48. Where the person interested has made a claim to compensation pursuant to the notice mentioned in Section 10, the amount awarded shall not in his case exceed the amount so claimed or be less than the amount tendered by the Collector under Section 12. Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered. Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded shall not be less than, and may exceed, the amount so tendered. 57. The powers of this Act shall extend to authorize the occupation and use by Government, for any time not exceeding three years, of any waste or arable land. The Collector shall pay to the owners and occupiers of such land such compensation for the occupation and use thereof, either in a gross sum of money or by monthly or other periodical payments, as shall be agreed upon between him and such owners and occupiers respectively; and, in case they differ about the compensation, the same shall be settled by a single arbitrator, to be appointed by the Collector and such owners or occupiers, or, when they cannot agree in the choice of an arbitrator, then by an arbitrator to be appointed by the local Government.	<i>Clause 1.</i>—Suppose the Judge ascertained that the real value of the land was less than had been offered by the Collector, why should the latter amount be forced upon the owner? <i>Clause 2.</i>—Why should a man who failed to prefer a claim be restricted to the amount of the Collector's offer, and so mulcted for a mere fault of omission? The reference to the Judge and assessors is useless if they are precluded from weighing circumstances which may come out in the investigation. <i>Honourable V. Ramayyengar,</i> <i>Actg. Registrar General of Assurances.</i> The powers of the Act should also extend to placing restrictions on such use of private property as may be injurious to public interests. A single arbitrator selected by Government might be suspected of partiality. The same procedure as in other cases under the Act should be adopted, except that there should be three arbitrators sitting by themselves, and an appeal should lie from them to the Court. A provision should be added to the Act empowering all parties to compound for compensation at any stage of the proceedings before an award is made. <i>Mr. Thomas,</i> <i>Acting Collector of South Canara.</i> It is of great importance that the principles should be defined by legislative enactment, and the provisions of the Act seem equitable.—<i>Chamber of Commerce.</i> The Bill is, on the whole, good, and its provisions equitable.—<i>Board of Revenue.</i> The Act is sufficiently well calculated to protect public as well as private interests. <i>G. L. Morris,</i> <i>Collector of Tanjore.</i>

INDIAN EXPROPRIATION BILL—(Concluded.)

Section of the Act on which remarks are made.	Remarks of gentlemen consulted.
	The Bill is well calculated to meet the objects in view. <i>Mr. Logan, Acting Agent, Great Southern of India Railway.</i> The provisions of the Bill appear fair and equitable, but Act VI. of 1857 has not worked ill in this Presidency. <i>Honourable J. B. Norton, Advocate General.</i> Act VI. of 1857 has worked well, and it is doubtful whether the proposed Bill will be an improvement on it. <i>Mr. Elwin, Agent and Manager, Madras Railway Company.</i> The provisions of the Bill are reasonable. <i>J. K. Raman Nayar, Principal Sadr Amin of Calicut.</i> It is contended that the Bill is based on English law. But certain provisions are confessedly taken from French law, and one (Clause 1, Section 47) has never been declared or enacted. If express enactment of the principles laid down in the Act has not been found necessary in England, why should it be needed in India? Supposing Sections 47 and 48 to be sound and equitable, it is inadvisable to lay down fixed rules for deciding cases which are of great variety and should be decided on their individual merits. The Bill is unfair, unjust, retrogressive, and likely to cause discontent if passed into law. The error should be on the side of liberality; but this measure, if Sections 46, 47, and 48 be retained, will be regarded as if Government were legislating for the invasion of private rights and dictating its own terms to weaker parties. <i>Honourable V. Ramayyengar, Actg. Registrar General of Assurances.</i>

ST SAINT GEORGE,
September 1869.

R. S. ELLIS,
Chief Secretary.

Communicating the opinion of this Government on the provisions of the "Indian Expropriation Bill."

SEPTEMBER.
No. 77.

G. O., 14th September 1869, No. 1285.

Recd. Encl.
Dated September, 14th.

THE SECRETARY TO THE

COUNCIL OF THE GOVERNOR

GENERAL FOR MAKING

LAWS AND REGULATIONS.

To

PUBLIC.

Govt. of 1869} **Quindim.**

Expropriation Bill.

Section of the Act on which remarks are made	Remarks of Gentlemen consulted	Remarks of Members of Government
4. Whenever it appears to the Local Government that any immovable property is likely to be needed for public purposes or for a work of public utility, it shall be lawful for any Officer either generally or specially authorised by such Government in this behalf, and his servants and workmen, to enter upon and survey and take levels of such property, and to probe or bore to ascertain the nature of the soil; and to set out the boundaries of any such property and the intended line Power to mark out of any such work, and to mark such boundaries and line by entering trenches or placing land-marks; and where otherwise the survey cannot be completed and the boundaries to be clear land, and line marked, to cut down and clear away any part of any standing crop, jungle or tops of trees in the direction of the intended boundaries and line: Provided that no person shall enter into any building or upon any enclosed garden (unless with the consent of the occupier thereof) without previously giving such occupier twenty-four hours notice of his intention to do so.	~~Language and action~~ After any standing crop, jungle or tops of trees, any hedge or wall not being a well supported by sides. Porting a roof. The Under Secretary. After to probe or bore "suggested" at the words "to dig trial pits" "to station." Notice should be given to owner, as well as occupier, more especially as a penalty for removal of marks is provided in Section 6. Board of Revenue. In case the property is afterwards not required and the offer made by the officer not accepted, there is	It should suffice, in my opinion, to give notice to the "occupier". So far it also to the owner, would in present cases cause delay, & embarrassment to the Govt. Thank to. N

5. The officer so authorised shall take account of all necessary damage done as aforesaid to immovable property, and shall forthwith offer payment for such damage to the persons interested.

In case the offer is not accepted, the damage shall be allowed for in the compensation awarded for such property under the provisions hereinafter contained.

6. Whoever wilfully obstructs any person in lawfully setting out such boundaries or line, or willfully destroys, damages, or displaces any land-mark, or fills any trench intended to mark such boundaries or line, shall, on conviction before a Magistrate, be liable to be imprisoned for any term not exceeding six months, or to fine not exceeding two hundred Rupees, or to both.

7. Whenever it appears to the Local Government that any immovable property is needed for a public purpose or for a work of public utility, a declaration shall be made to that effect under the signature of a Secretary to such Government, or of some Officer duly authorized to certify its orders.

The declaration shall state the District or other territorial division in which the property is situate, the object for which it is needed, its approximate area, and, where a plan shall have been made of the property by any such officer as aforesaid, the place where such plan may be inspected.

Works of public utility shall, for the purposes of this section, be held to comprise the following and no others:

- (1) Bridges, roads, railways, tramways;
- (2) Canals;
- (3) Works for the storage or for the supply of water;
- (4) Improvements of rivers or harbours;
- (5) Docks, quays, jetties;
- (6) Drainage works;
- (7) Works for the protection of land from flooding.

(8) Electric telegraphs; and all works subsidiary thereto. The said declaration shall be conclusive evidence that the purpose for which the immovable property is needed is public or utility.

(as the case may be) that the work for which it is needed is of public utility; and after making such declaration the Local Government may acquire the property in manner hereinafter appearing.

The circumstance that the whole or any part of a work is to be executed by, or directly for the benefit of, private persons or companies or municipal bodies shall not prevent its being deemed a work of public utility within the meaning of this section.

8. Whenever any immovable property shall have been declared to be so needed for a public purpose or for a work of public utility, the Local Government shall direct the Collector of the District to take order for the acquisition of the property. Provided that nothing in this Act shall be taken to compel the Government to complete the acquisition unless an award shall have been made or a reference directed under the provisions hereinafter contained.

no provision for awarding compensation - and the parties will be driven to a civil suit. Mr. Mr. Thomas.

in months is a very severe punishment - Mr. Hindersley.

the nature of the imprisonment should be specified. Ramanujam.

It is impossible that any enumeration of works of public utility can be exhaustive for all time. - While works of public utility are defined, works for a public purpose are not. The local Government should be left to judge in each case.

List of works is incomplete - Military buildings, public offices, burial grounds, latrines, and other works of public convenience should be added.

In case where there is no plan, the declaration should specify the same - Board of Revenue.

Works for the storage of gas should be added - Mr. Latham & Mr. Menlove. The declaration should be only prima facie and not conclusive evidence of the purpose being a public one; on the work one of public utility.

A private cesspool, which is a work of drainage, might be represented by a local officer as a work of public utility though really one for private benefit. Mr. Hindersley.

The provision should stand apart as a substantive section. For a reference "made, substitute 'proposition taken.' Mr. Thomas.

They will, of course, always demand what they at first desired - I would not dispute what is a very trifling matter. W.D.

It is not to be expected by Mr. W.D.

yes W.D. There must be world. I think to enough - R. 100 paces. The sentence of our Government are left to be any. Severe N.

But that this means -

They would be satisfied with work for a public W.D.

I would omit the words no. W.D.

May it be for a public purpose W.D.

So 3 I would add for the purpose of erecting land for moving machinery and for all other purposes connected with agriculture. Is a private cesspool a work of drainage? W.D.

Lowered will change the working W.D.

10. The Collector shall then cause a notice to be affixed in some conspicuous place upon the property, and published by proclamation in the neighbouring bazaris and villages, to the effect that the property is about to be taken by Government under this Act.

He shall also serve notice to the same effect on

Notice to occupiers. The occupier (if any) of such property and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested; as reside, or have agents authorised to receive service on their behalf, within the Revenue District in which the property is situate.

Such notice shall state the particulars of the property so required, and the persons interested in the property to appear personally or by agent before the Collector at a time and place therein mentioned, such time not being less than fifteen days after the date of publication of the notice; and to state the nature of their interests in the property and the amount and particulars of their claims to compensation for such interests.

The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the property or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

23. And if the parties cannot agree with respect to the nomination of the arbitrators, or if the appointment of arbitrators is not made by them, the arbitrators shall be appointed by the court.

persons nominated by them to arbitrate, or, having accepted it, die, or desire to be discharged, or refuse, or become incapable to act, and the parties are desirous that the nomination shall be made by the Collector, he shall appoint some proper persons to arbitrate.

29. The arbitrators on making their award shall be entitled to reasonable fees for their services, the amount of which shall be fixed by the Collector subject to the orders of the Commissioner or other superior revenue authority.

31. The proceedings of the arbitration shall be deposited in the office of the Collector, and every person interested therein shall be entitled to a copy of the award, under the seal and signature of the Collector. Such copy shall be *prima facie* evidence of the matters therein stated.

should not not be sent by post to
parties not within the district? Should
the proclamation be printed or oral?
The undersigned

Mr. Vanderhey.

Practices should be provided for making false statements - Board of Revenue.

There is no provision for failure to comply with the requirement. Mr. Thomas.

Incompleto - No provision is made for the parties not being desirous that the nomination of arbitrators should be made by the Collector - Board of Revenue.

and the parties are desirous "to" or "the
parties" Mr. Thomas.

The remuneration should be allowed to
be a gratuity.
The effect will be to raise the money to be
paid for the remuneration at a clear
rate. If the intention be to impose
a charge as a restraint, it would be better
to provide that no sum beyond the
collected offer should be granted. If
there be no such restriction, the most
that be settled in an election is a
lodge with a record. It will seem
that the unpaid offers are in fact
paid. J. H. Homan, Secy.

As the award itself is no evidence against strangers, the copy would not be so either, except as to the fact of an award having been made. Mr. Underhill

I think well - I will
 myself - have to do to
 Petersburg or Boston
 yes N.
 W. S. W.

~~Ex-77 of this - Remand for de cost
Littles - yr wry~~

~~More about Ex-76 of Remand for de cost
yr wry~~

Dear Mr

I would grant remission
to the contributors in
cases in which the collector
shows it desirable but it
is not to be done that
all cases pass over to
— granted. N.

32. No award of arbitrators made in accordance with the provisions of this Act shall be liable to be reversed or altered, except by the decision of a Civil Court on the ground of corruption or misconduct of the arbitrators.

In case the award shall be so reversed, the matter shall be referred to other arbitrators to be appointed in the same manner as the first.

Limitation of suits to set aside award.
All suits to set aside an award under section twenty-eight shall be instituted within three months from the date of the award.

37. On or after the day last referred to, the Judge shall require the assessors so appointed to appoint by writing under their hands, on or before a day to be fixed by the Court, a qualified person to be a third assessor for the purpose aforesaid.

In case of failure to make such appointment within the time so specified, the Judge shall himself appoint the third assessor.

39. If, before such amount is determined, any of the assessors dies or desires to be discharged, or refuses or becomes incapable to act, the party by whom he was appointed, or, if he were appointed by the Judge, the Judge may appoint some other qualified person to act in his place; and, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another, the Judge and the other assessors may proceed *ex parte*.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying or being discharged, or refusing or becoming incapable.

40. Every assessor appointed under this Act, not being an officer of government, shall be entitled to receive such fees for his services as the Judge shall direct, not exceeding the sum of fifty rupees for each full day employed.

Such fees shall be deemed to be costs in the proceeding :—

45. In case of a difference of opinion between the Judge and the assessors Difference on questions of law, or any of them upon a question of law or practice or usage having the force of law, the opinion of the Judge shall prevail and his decision thereon shall be final.

45. In case of any such difference of opinion upon any question of fact, or as to the amount of the compensation to be awarded, the decision of the majority of the assessors or Judge shall be final, provided he agree with the majority of the assessors or with one of the assessors if there be but two.

But if the Judge differs from all or from the majority of the assessors, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom, to the High Court within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

Respectable men will be unwilling to
serve as arbiters of the only mode
of appeal & by attending to them corrupt
them or mis-conducts the Ministry.

The 3^d speaker is useless. The Judge seems to have no weight in the decision. His opinion, agreeing with that of one speaker should be final on questions of fact. As it is, the speaker named by the winner would probably yield in the choice of the 3^d speaker to the last speaker and the confidence felt in the Court would be lowered. *Wm. M. Stone & Co. shares.*

It is not clear whether the donee in the case of an appointor simply neglects to appear on the day appointed or whether the donor has

It would be well to state properly that in the case referred to in the petition, the proceedings need not commence de novo - Board of Review.

Remuneration to the applier is objectionable. The owner may threaten not to do this, in case he refuses to the compensation offered by the Collector, but also forfeit even that amount in fees - Dr. Ramachand

It is not clear whether the decision of the Judge concurring with the speakers is
 fair to appear — Mr. Kindred.

Government interests are overpowered by
representatives.
Besides being so among the papers, the
decision of their officer is paramount
in questions of law, and practically so
in questions of fact.

Each party should name an affeeror or two if one party desires it into the other consent. These affeerors or the judge to nominate the 3^d & 4th affeerors. The addressors alone should decide questions of fact. If the judge conceiv, there should be no appeal. If he dissent, appeal should lie. The judge should decide questions of law, subject to appeal. 20

46. In determining the amount of compensation to be awarded for matters to be considered in determining the amount of compensation, the Judge and assessors (as the case may be) shall take into consideration—

First, the price which the property would be likely to fetch if sold then and there by public auction;

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of serving such property from his other property; and

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immovable, in any other manner, or his earnings.

Clause 1. It is not clear whether the price to be considered when fixation of rate is taken is the price which the portion is sold for, or the price of the whole estate.

Clause 2. Provision should be made for certain damages not strictly speaking sustained at the time of awarding compensation, e.g. if before compensation is fixed, a work, say a road, is completed, and water thereby cut off from land then fallen or land thrown open to view, signs of cattle, no damage is then caused; tho' if the land were under crop the damage would be serious. The case is different from prescriptive damage not appraised at the time of awarding compensation. After "Compensation" add "and the cost of measures necessary to protect such land from damage." Mr. Thomas.

The Bill lays down principles and inflexible principles to regulate the

decisions

This advice will be checked by the Judge Government or to be settled by the Judge and only in the absence of advice will the decision be final. It is obvious there should be only two referees and the Judge's opinion concurring with either should be final. Mr. Thomas.

The procedure under the Act should be simple and ~~not~~ ^{should not be} expensive and costly. It is a penalty for bona-fide mistakes by the landowner in the valuation of his property. The existing procedure which is simple and cheap should be retained. If the award is considered to be

desired by Government, an arbitrator's amount the Collector should have power to refer to a Court consisting of the Judge and

3 Arbitrators named by each party. The ~~decision of the majority~~ ^{majority of the arbitrators} on questions of fact ~~will be final~~, and the opinion of the law the Judge's opinion ~~shall be final~~, but he should be empowered to state a case for the decision of the High Court. Mr. Thomas.

The best plan (WV)

Mr. N.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded, shall not be less than, and may exceed, the amount so endorsed.

57. The powers of this Act shall extend to authorize the occupation and use by Government for any time not exceeding three years of any waste or arable land.

The Collector shall pay to the owners and occupiers of such land such compensation for the occupation and use thereof, either in a gross sum of money or by monthly or other periodical payments, as shall be agreed upon between him and such owners and occupiers respectively; and in case they differ about the compensation, the same shall be settled by a single arbitrator to be appointed by the Collector and such owners or occupiers, or when they cannot agree in the choice of an arbitrator, then by an arbitrator to be appointed by the Local Government.

Clause 2.
They should a man who failed to prepare claim he restricted to the demand of the collector & for a number of years more fault of him? the reference to the Judge and appeal is useless if they are precluded from weighing circumstances which may come out in the investigation. ~~Claimant's interest~~
The powers of the Act extend to the extent to placing restrictions on such interest private property or may be injurious to public interests.

A single arbitrator selected by Government might be suspected of partiality. The same procedure as in other cases under the Act should be adopted except that there should be three arbitrators sitting by themselves and one of them should be nominated by the Court.

A provision should be added to the Act regarding all parties to be concerned for compensation at any stage of the proceedings before an award is made. Mr. Thomas

It is of great importance that the principle should be defined by legislation in the Act and the provisions of the Act should be amended. ~~Chancellor of Exchequer~~

The bill is on the whole good and it is good and desirable. Board of Revenue.

The Act is sufficiently well calculated to protect public as well as private interests. Mr. Justice

The Bill is well calculated to meet the objections raised. ~~Chief & Manager G.S.S.P.~~

The provisions of the Bill appear fair and equitable, but Act VII of 1857 has not worked ill in this. ~~President~~ Mr. Justice

Act VII of 1857 has worked well, and it is not likely whether the proposed Bill will be an improvement on it. Mr. Justice
The provisions of the Bill are reasonable. J. K. Raman Nair

4/11/1884

4/11/1884

4/11/1884

think that they should be declared as the basis of the law - but specially

WJ

It is contended that the Bill is based
on English law. But certain provisions
are borrowed from French law
and one clause section 67 has never been
declared or enacted. If express enactment
of the principles laid down in the Bill
has not been found necessary in England,
why should it be needed in India?
Suggering sections 47 & 48 to be sound
and equitable, it is unreasonable to lay
down fixed rules for deciding cases which
are of great variety and should be decided
on their individual merits.
The Bill is unfair, unjust, retrogressive
and likely to cause discontent if passed
into law. The error should be on the side
of liberality, but this measure, if sections
28, 47 and 48 be retained with the proposed
as if Government were insisting on its
rights and dictating it in terms to
the weaker party.

Pamanyangar.

The value of the Bill
for this Presidency is
chiefly in the provision
which gives to the tenant
the right of taking up
dry land for the
purpose of growing
agricultural irrigation
which was cut out in
Sangore & elsewhere.
I consider therefore that
this right should be
afforded in the most
effective unambiguous
language. See remark
above Section 7. Para (3)
c p 2

N^o 211

From

Whitley Stokes Esq^{re}
Secretary to the Council of the Gov^t Gen^l
for making Laws and Regulations

To

The Chief Secretary to Gov^t
Fort St. George

Dated Simla the 15th July 1869

Legislative Department Sir

I am directed to invite
your attention to the Circular of this

N^o 122, dated 1st May, relating to the Department marginally
Indian Appropriation Rules. } noted, and to request

the favour of an early reply thereto.

I have the honour to be

Sir
Your Obedient Servant

Whitley Stokes

Secretary to the Council of the Gov^t Gen^l
for making Laws and Regulations

No. 2221

GREAT SOUTHERN OF INDIA RAILWAY.

AGENT'S OFFICE,

NEGAPATAM, 5th July 1869

From

THE AGENT,

Great Southern of India Railway,

To

P. Ellis Esquire
Chief Secretary to Government
Madras.

SIR,

I have the honor to acknowledge receipt of your letter No. 741 of 2nd ultimo with a copy of the Bill to amend the law for the acquisition of land needed for Public purposes. I have gone carefully through the same and so far as I can see the Bill appears well calculated to meet the objects in view.

I have the honor to be
Sir

Yours most obedt servant
D. M. S. P.
Acting Agent

Recd. 1869 July 11
J. M. S. P.
Chief Secy to Govt
Madras

1869 July 11
D. M. S. P.

Call for an early
reply to the reference
concerning the Bill
=Sanation Bill

223, 27, 74
1869

228 days.

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Bottle 189 Sept
Lemon. + 10 more = 100 lbs
Spent, Gold & Silver
32 1/2

\$57
~~188~~ July
L.O.

No 1040

From the Chairman
on the Specification
W.B.

ABSTRACT.—Forwarding, for remarks, copies of the “ Bill to amend the law for the acquisition of land needed for public purposes,” and of the “ Statement of Objects and Reasons,” and note accompanying it.

ABSTRACT.—*Madras Salt Excise Act.*—Requesting the Board of Revenue to submit their opinion as to the expediency or otherwise of making the Expropriation Bill provide for all cases of compensation under this Act.

2. The Board have carefully examined the Act and consider it on the whole good, and its provisions equitable and supported by the rulings of the law Courts. So far as the Madras Presidency is concerned, the hands of the Revenue Authorities are strengthened by it, and sound principles for their guidance are laid down.

4. Section 4 should provide for due notice being given to the land-owner, more especially as Section 6 provides a penalty of six months' imprisonment and 200 Rupees fine for obstruction or displacement of marks.

c. With reference to Section II, the Board would provide for the infliction of penalties for the delivery of a false Statement.

8. With regard to Section 39, (referring to the appointment of a new Assessor, in case of failure, through death or other cause, of one of those originally appointed,) it appears to the Board that it might be well to state that in such case it is not necessary to open the proceedings *de novo*.

10. With reference to Government Order of the 23rd June 1869, No. 191, in the event of this Act becoming law, and Act VI. of 1857 being repealed, the Board see no objection to introduce a Clause in substitution of the Arbitration Clause of the Salt Excise Bill, declaring that *mutatis mutandis* the provision of Parts 4, 5 and 6 of the Expropriation Act shall be made applicable to cases in which compensation is claimed for the supervision of Salt Pans.

(Signed) A. MACGREGOR.

To the Chief Secretary to Government, Public Department.

Exd. T. Cartledge.

Mysore Judicial Commissioner's Office
Dated Bangalore 12th July 1869.

From

J. R. Kindersley Esquire
Offr. Judicial Commissioner
of Mysore

To

The Chief Secretary to the
Government of North South George

Sir,

As requested by your letter No 741 of the 2nd
ultimo I have the honor to submit a few ob-
servations on the bill to amend the law for
the acquisition of land for public purposes.

I have the honor to be

Sir,

Your Most Obedient Servant

J. R. Kindersley

Offr. Judicial Commissioner

No. 700
133

Received 12/7/69

1869. 1869

Board of Revenue,

MADRAS.

PROCEEDINGS, 6TH JULY 1869, No. 4,805.

Encl.

Received

11/1683

JULY.

No. 4,805.

Expropriation Bill.—Modifications in
certain Sections of —, suggested to Government,
and opinion expressed in favor of introduction
of a clause in substitution of arbitration clause
of Salt Lease Bill, declaring that Expropriation
Act shall be made applicable to cases in which
compensation is claimed for supervision of Salt
Pans.

C 23 1869

14 12 1869

ERH

Mysore Judicial Commissioner's Office

Dated Bangalore 12th July 1869.

From

J. R. Kindersley Esquire

Offr. Judicial Commissioner

of Mysore

To

The Chief Secretary to the
Government of North South George

Sir,

As requested by your letter No 741 of the 2nd
ultimo I have the honor to submit a few ob-
servations on the bill to amend the law for
the acquisition of land for public purposes.

I have the honor to be

Sir,

Your Most Obedient Servant

J. R. Kindersley

Offr. Judicial Commissioner

No 700
133

Received 12/7/69

July 1869.

Board of Revenue,
MADRAS.

PROCEEDINGS, 6TH JULY 1869, No. 4,805.

Encl.

Received

No 1683

JULY.

No. 4,805.

Expropriation Bill.—Modifications in certain Sections of —, suggested to Government, and opinion expressed in favor of introduction of a clause in substitution of arbitration clause of Salt Excise Bill, declaring that Expropriation Act shall be made applicable to cases in which compensation is claimed for supervision of Salt Pans.

ERH

Observations on the Disappropriation Bill.

Section 4. "Any standing crop, jungle, or tops of trees." Why not
also any hedge or wall, not being a wall supporting
a roof?

Section 6. Six months imprisonment seems a very severe
punishment.

Section 7. It seems rather hard that the mere declaration
of government, made probably on the report of a local
officer, should be conclusive evidence that the purpose
for which the immovable property is needed is public,
or that the work is one of public utility. The ground
may be required as a private cesspool. This is a
work of disrepute, and may therefore be reported as a
work of public utility, and it makes no difference
that it is for the benefit of private persons. If the
government were once to declare that such cess-
pool was a work of public utility this would be
conclusive evidence of the fact. I would therefore
suggest that such declaration should be only
prima facie evidence of the purpose for which the
property

property is needed being public, or of public utility.

Should not notice be sent by post to absentees not within the district? Should the proclamation be

printed or oral?

As the award itself would be no evidence against

strangers of the facts recited therein, it must be con-

cluded that the copy would be no evidence against

strangers except to show that such award had been

made.

Respectable men will be unwilling to serve as

arbitrators, if the only mode of appeal is by attri-

bution to them corruption or misconduct.

It is not clear what is to be done in case of an assessor

simply neglecting to appear on the day appointed.

It is not quite clear whether the decision of the judge

concurring with the assessors is open to appeal.

J. B. Henderson

Off. Judicial Commissioner

CH

Public 1869 Sept
From J. R. Kindersley Esquire
Off. Judicial Commissioner
To the Chief Secretary of Mysore
Dated to the Govt of Fort St George
Despatched 12th July 1869
Proc. 14th Sept 1869

Received 16th -
Enclosures No. 1
General No. 700
No. 133
1869/70

Submits observations
on the Bill to amend the law
on the acquisition of land
on public purposes.

C 23 Aug 1869
R 27

No. 184

Madras Irrigation Canal Co.
Madras 12th July 1869

From,

The Agent and Manager
Madras Irrigation Canal Co.

To,

The Hon^{ble} R. S. Ellis
Chief Secretary to Government
Fort Saint George.

Sir,

With reference to your letter No. 741 of
2^d June 1869 forwarding a "Bill to amend
the law for the acquisition of land needed
for public purposes," I have the honor to
transmit herewith copy of a letter from our
Chief Engineer and to express my concur-
-rence in the observations and suggestions
therein contained.

No 381 of 26th
June 1869.

I have the honor to be,
Sir,

Your most Obedt Servt
W. Kistner Esq

Agent and Manager

C 23.8/17
1874

No 1266.

24

From

H. Wigram Esquire,
Acting Registrar of the High
Court of Judicature at Madras.

To

H. R. Stokes Esquire,
Acting Under Secretary to
Government.

Sir,

In reply to your letter to
Mr Justice Collett dated 8th July
1869, inviting his attention to a
former letter dated 2^d June No 741
and requesting his opinion on the
appropriation Bill as early as prac-
ticable I am instructed to inform
you that Mr Justice Collett is
unable from want of leisure
to offer any remarks.

High Court of
Judicature, Madras,
14th July 1869.

I have the honor to be,
Sir,

Your most obed^t servant,
Wigram
Acting Registrar,
Appellate Side.

Handlauer.

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measure, is of opinion that it is framed on equitable principles, and that its provisions appear calculated to secure to persons whose property may be required by Government adequate compensation for the same as well as for such incidental damages sustained, as can reasonably be taken into consideration; and at the same time will have the effect of checking extravagant demands, and of enabling Government to acquire land needed for the public benefit on fair and equitable terms.

The Chamber would therefore see with satisfaction the proposed Bill brought into operation. I am desired however to add that the insertion of another clause between 5 and 6 in Section 47 to the effect that "any increase to the value of the other property of the person interested accruing or likely to accrue from the proposed work" should not be taken into consideration in estimating compensation, as suggested in para 13 of the "Vote" attached to "Statement of objects and reasons" would in the opinion of the Chamber be a desirable addition to the Bill, it being evident that

the value of the possible incidental advantages in question, would in all cases be very difficult, and in many impossible to arrive at satisfactorily or with any degree of accuracy.

I have the honor to be,

Sir,

Your most obedient servant,

A. P. Pryor
Chairman

Opinion of J. K. Ramen Nair, Principal Sadr
Amin of Calicut on the Bill to amend the
law for the acquisition of land needed for public
purposes.

Sections 29 & 30 - I entertain a strong objection
to the provisions of these sections. When a
man's private right is sacrificed for public
good, his neighbours who aid a public
servant in determining the amount of Com-
pensation to be paid to him should not
in my opinion receive any remuneration for
rendering their services. The effect of granting
remuneration will be to compel the sufferer
to purchase his compensation at a dear
rate. If a heavy charge is to be imposed
as a restraint on claimants, I think it would
be better to make the claimants understand
that they will not receive a pie more than
the amount which the Collector offers as
a reasonable compensation. If such is
not the object of the Bill let all parties
have the benefit of Section 30, which how-
ever cannot be taken advantage of in
its present form. For, if the difference

between

Public Bill
No. 14 of 1891
Chairman, Chamber
of Commerce.

102128
No 1714

Report made of the
Chairman on the
Legislation Bill

between the sum offered by the Collector and the sum demanded by the sufferer be only, say Rupees 50 and the total amount demanded is Rupees 250 and the parties be willing for sufficient reasons to have a peshors to aid the judge, and the fee of each a peshor is Rupees 50 per diem, it is easy to see that in case the decision of the Court is in favor of the Collector, the claimant, who is already a sufferer, would only be entitled to receive the amount offered by the Collector minus Rupees 150 the fees of the three a peshors for one day. But if the a peshors sit upon his case for two days, the claimant will not only forfeit the whole amount offered by the Collector but will also have to pay an additional sum of Rupees 50. This I think is unjust and unreasonable.

I have no remarks to make on the remaining provisions of the Bill which appear to me to be very reasonable.

Calicut.
16th July 1869. *M. Armentani*

N^o 134

Calicut 16th July 1869
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From,

The Principal Sadr Amin of
Calicut

To,

The Honorable R. L. Ellis C. B.

Chief Secretary to Government.
in the Judicial Department
Fort St. George.

Sir,

With reference to your letter dated the 2nd June last N^o 741, I have the honor to submit my opinion on the Bill to amend the law for the acquisition of land needed for public purposes.

I have the honor to be
Sir

Your most obedient servant.

M. Armentani
Principal Sadr Amin

Madras 29th July 1869.

The Chief Secretary
to Government
Fort St. George

Sir,

With reference to the Order of Government dated the 23rd ultimo, I have the honor to offer a few remarks on the provisions of the Expropriation Bill now pending before the Legislative Council of the Government of India.

2. In the first place, Section 47 declares that certain matters shall not be taken into account in adjudging compensation under the Bill, and one of those matters is the disinclination of the person interested to part with the property needed for public purposes; and adverting to this subject the framer of the Bill in his Statement of Objects and Reasons refers to the principle laid down by Chief Justice Lord Truro in connexion with Statute 8 & 9 Vic. Chap. 18 to the effect that the value is to be ascertained in relation to the situation of the property generally and its applicability

L.O. 1288

Recd 16th July 1869

No 134

From the Chief Secretary to Govt.
in the Judicial Dept.
Fort St. George

No 1713

Submitting receipt
on the Bill to ensure
time for the acquisition
of land needed for
public purposes.

to ordinary purposes discharged of any prescribed appropriation." Now I doubt whether it is good policy to extend this principle to India which is essentially an agricultural country and where the attachment of the numerous small landed proprietors to their property is uncommonly tenacious and strong. It may be intelli-

fible to an Englishman, living under a Christian Government, that a church yard should be paid for like any other piece of arable land, and his sense of the importance of works of public utility may induce him to look upon the difference between its ordinary and peculiar value as a sacrifice which he ought to make for the benefit of the public. But a native landholder in the Deccan will at once consider it to be an outrage upon his rights of property and sacred associations if he is told by the Government that a portion of a Pagoda site will be paid for at so many annas per square foot, like an ordinary arable land. Considering therefore the tone of thought and strong religious feelings that prevail in the rural parts of the country, I venture to submit that the principle of estimating the amount of compensation for a piece of land without any reference to

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its prescribed appropriation is altogether inapplicable, and that wherever land is taken up for public purposes, compensation should be made on a liberal scale, and should have reference to its peculiar value to the owner instead of the ordinary market value for so many acres of land. If it should be however, decided that a compulsory price may be paid in addition to the ordinary value by way of compensation for the difference between it and the peculiar value, I am respectfully of opinion that to avoid misconception the payment of such extra price should be made ^{not} merely an implied act of grace on the part of Government, but a matter of right enforceable by the landholder in a court of law.

3. Again, the Bill declares that any damage which after the time of awarding compensation is likely to be caused by the execution of the proposed work shall not be considered in awarding compensation, and in the Statement of Objects & Reasons, it is stated that this provision is designed not for denying compensation after the damage may accrue, but for preventing prospective damages being awarded on a conjectural estimate. To avoid, however, misconception

misconception and abuse and needless discontent, I think it must be distinctly stated in the body of the Bill that the landholder shall be at liberty to seek compensation after the damage shall have actually accrued.

4. The next important change sought to be introduced by the Bill has reference to procedure. The result of the working of the present procedure is not known, so far as the Madras Presidency is concerned to have led to inequitable awards, but if any change is considered necessary, I would venture to submit for consideration that the procedure ought not to be one which would surround the landowner with a network of losses for every mistake which he may bona fide commit in estimating the value of his own property. It should be simple and free of expensiveness and costly litigation. It must not seem to be the characteristic of the procedure proposed in the Bill. Under this procedure the landholder is to be told that he should give up his land and accept the price offered by the Collector, but that if he does not do so, he will be exposed to all the loss and inconvenience attending a law suit. Although it may be

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he said by the supporters of the Bill in answer to this objection that if the landholder chooses to overvalue his property, it is only right that he should pay a penalty for his mistake, yet it is natural for every person to form his own estimate of the value of his property and it will be felt to be a great hardship indeed if he is told that because the judge forms a lower estimate, therefore he should lose in the shape of cost a portion of the value he is justly entitled to. The procedure should be conceived in my humble judgment on more liberal principles which will admit of allowances being made for mistakes which almost every landholder is liable to commit. It would therefore be more equitable I think to substitute something like the following procedure for the one proposed:-

Keep the existing procedure which is simple and cheap. Whenever the award made under it is considered by the Government exorbitant, the Collector should be empowered to refer the matter for the decision of a court, each party naming three arbitrators to assist the judge. The decision of the majority including

Yours most Obedt. Servant

J. Matheson Esq
Magistrate of Police

No. 1420.

MADRAS RAILWAY.

AGENT AND MANAGERS OFFICE.

Madras, 14th June 1869.

From

C. B. Allen Esq.

Agent and Manager of the

To

The Honble C. S. Ellis, C. B.

Chief Secretary to Government.
Fort St. George.

Sir,

I have the honor to acknowledge the receipt of your letter of the 2nd instant No 741, enclosing a copy of the "Bill to amend the law for the acquisition of land needed for public purposes" &c, &c, and requesting me to offer any remarks, which may appear to me to be necessary.

In reply I beg to state that inasmuch as all land needed permanently by this Company for the purposes of the Railway, is, under the Contract between the Honble the East India Company and the Railway, provided free of cost, the provisions of the proposed Bill so far as my official capacity is concerned are immaterial, but in my private capacity, I can but view the powers proposed to be conferred, as unreasonable and impolitic.

3.

I am inclined to think that
as

After observations
on the Appropriation
Bill

10th June 1869
C. B. Allen

Ambley Wright
Esq. Secy to Govt
of Madras

223 1869
1869

as a rule, Act ~~to~~ ^{of} 1857 has worked
well in this Presidency, and I doubt very
much whether the proposed Bill would
work as well as the Act, which it is designed
to amend. Sections ~~XLVI~~ and ~~XLVII~~ of
Part V would I consider operate most
successfully, and viewing the Bill as a whole,
I shall be glad to hear that it has not
become law.

I have the honor to be,
Sir,

Yr most obedient servant.

W. F. Butler
Agent and Manager.

From the Honble.
John M. McKim
Advocate General

To
Honble R. S. Ellis, C. S.
Secretary to Government

Sir,
In reply to your letter of the
2nd June 1869, I do myself the
honour of stating that I see
no objection to the principles
laid down in the Expropriation
Bill for determining the price
to be paid for lands required
for public purposes.

2 Persons who sell to Government
not infrequently expect to
get a higher price than
they would from a private
individual; but it appears

1000 1869 Sept
From
Honble R. S. Ellis
Secretary to Government
Dec 14 20

1000 1869
From

Dec 14 59

Expropriation Bill
will to amend the law
for the acquisition of
land needed for public
purposes

225 1869
1869

to me, that in one case as in the other
a fair and not a fancy price
is the proper standard of value.

3. The several rules laid down
for determining value in the
Bill appear to me to be fair
and equitable, while they
only exclude the elements
of fancy price.

4. I may add that Act VI
of 1857 has not, so far as I
am aware, been found to work
detrimentally in this
Presidency.

Sir,

Sir

Yours most obedt Servt

John Macpherson

Adv. Genl

18th June
1859

No 505 ³⁸ Tanjore Collector's Office
Point Calimere 22 June 1869

From G. Lee Morris Esq
Collector of Tanjore

To R. A. Dalryell Esq
Secy to Government
Madras

Sir In reply to the Chief
Secretary's letter of the 2^d Instant
No 741, I have the honor to state
that I have no remarks to offer
on the proposed "Bill to amend the
law for the acquisition of land needed
for public purposes", as the provisions
embodied in it appear to me suffi-
-ciently well calculated to protect
- interests as well as those of
- individuals -

I have the honor to be
Sir
Your most Obedt. Servant

G. Lee Morris
Collector

Received 27/6/69
Secy to Govt

From the Advocate
General.

L. O 21285
27/6 June 1869

No 1493

States that he sees no
objection to the principles
laid down in the 3^d
proposition with
determining the price
to be paid for lands
required for public pur-
- poses -

23 Aug 69
29-12

No. 732.

Collector's Office,
Mangalore, 26th June 1869.

From

H. S. Thomas Esq^r

Ag. Collector of South Canara,
Mangalore.

To

The Honble R. S. Ellis Esq. B.

Chief Secretary to Government,
Public Department.

Fort St. George.

Sir,

As desired in your letter No. 741 dated 2nd June 1869, I have the honor to submit remarks on the Expropriation Bill, taking the Sections serially.

2. No provision is made for the determination Section 5. of damage in the event of the offer being declined, and the property also not being required. This is apparently an omission by which the parties would be driven to a Civil Suit, & that seems undesirable. The machinery proposed under Sec. 57 might be made applicable to these cases.

3. I cannot recognize any object in declaring Section 7. that works of public utility shall be those particularized & no others. It is impossible that any declaration can be exhaustive for all time. Fifty years ago railways, tramways & electric telegraphs would have found no place in such a declaration. Moreover while works for a public purpose are left unparticularized, it seems redundant to define those of public utility. I think the local Government of the day will be the best judges of these matters and that it may well be left to them, as in the old act, to declare under the signature of a Secretary when the case is a fit one for action under this Act.

4. The proviso attached to Section 8 should stand alone and for "a reference" &c. there might be substit.

228 8747
18.9.69

L. O. 1285

Recd 22nd 3 June 1869

No. 505

The Chief Secretary
to Government
Madras

From
The Collr of Canara
26

Public Department
26th June 1869

No. 1532

Noting that no remarks
to offer on the proposed
Bill to amend the law
for the acquisition of
land needed for public
purposes.

lacked the words "possession taken."

5. No provision seems to be made for failure Section 11 to comply with the requirement.

6. "Or the parties might be substituted for" and Section 23 "the parties" in conformity with Section 22. Otherwise there is no provision in the event of their not being desirous that the nomination shall be made by the Collector.

7. This is contrary to the general principle Section 44 on which it is usual to allow an appeal on a question of law even where none is allowed on a question of fact.

8. I think the Government interests are Sections 44 & 45 overpoweringly represented. Beyond being duly represented among the three assessors, their officer is altogether paramount in questions of law; and practically very little short of it in questions of fact too. It is a Government officer again that is altogether paramount in the event of an appeal. I think the following arrangement would be fairer. One assessor to be named by each party, and in the event of either party desiring it & the other consenting thereto, two assessors to be named by each. The 3^d or 5th assessor, as the case may be, to be appointed by the other assessors, or the Judge as proposed in Section 37. The assessors alone to decide questions of fact. On the Judge recording concurrence no appeal to be. On his recording dissent an appeal to be allowed. In questions of law the Judge's opinion to prevail, but to be subject to appeal. By this arrangement any abuse will be checked by the Judge & on appeal Government interests will be duly weighed by its own

own officers only. Only where there is no abuse, will finality of decision be given.

9. It is not clear whether the price to be Section 46. considered in determining the amount of compensation, when only a portion of an estate is required by Government, is what that portion alone would realize if sold separately, or what would fall to its share, if the estate were disposed of as a whole by public auction. If the former, it would be unfair to the proprietor, for the small strip of land generally required by Government for a road, is, as a separate piece, of little use for any other purpose and would fetch much less if sold alone than with the whole estate.

10. It is not quite clear that in any of the three clauses in this section provision is meant to be made for cases in which the damage is not strictly speaking sustained at the time of awarding compensation. Cases are not, however, unfrequent in which roads are taken through or by the side of single-cropped rice lands which are thereby thrown open to the incursions of cattle, or have their supply of water from the adjoining hill or reservoir cut off, but which are thus affected only while they are under cultivation. In such cases, if the road were opened and the compensation determined within a period of 6 or 8 months during which such lands are usually left fallow, no damage would appear to have been actually sustained by the person interested at the time of awarding compensation, though it will be admitted that the Government are not

therefore is less liable to build a drain for the
passage of water to his land, or to reimburse him
the expenses of fencing it on both sides of the road
as a protection for the future. I would therefore
suggest the introduction between the words
"compensation" and "by reason" in the 2^d clause
of the words "and the cost of measures imme-
diately necessary to protect such land from damage."
This is a different case from prospective damage
inappreciable at the time of awarding compensation.

11. Though much may be said on both sides
Section 47 Clause 2. of the question of considering
the "disinclination of the person interested to part
with the property acquired," I would lean to its
being as far as possible fairly weighed, and as
it would be desirable to keep it distinct from the
compensation proper to which the party might
be held entitled as of right, and as the awarders
would be generally in a better position than the
Executive Government to appreciate the value of
such an item, I would suggest that it should
be the duty of the arbiters to make at the
close of their award a recommendation on this
head to the Local Government in the shape of
a percentage on the purchase price, such recom-
mendation being supported by the grounds for
making the same. The Local Government would
then have the matter before them in such a shape
as would admit of the satisfactory exercise of
discretion on uniform principles.

On

41
12. On the recognized principle of obliging
Section 47 one man to pay for what is given
gratis to others, I would also advocate the
addition of another clause to this section so as
to exclude from consideration any prospective ad-
vantage to the proprietor from the proposed
work.

13. The powers of this Act should also extend
Section 57 to placing restrictions on such use
of private property as may be injurious to public
interests. I would instance growing trees on
land intervening between a flag staff or lighthouse
and the sea, so as to obstruct the view. There is
a case of such a nature in this Station.

14. A single arbitrator selected by the Govt.
Sec. 57 is not calculated, I think, to give
satisfaction as altogether above the suspicion
of impartiality. I would suggest the same
machinery being used in these cases as in
other cases under this Act, with the exception that
there be only three arbitrators sitting by themselves
and that an appeal from their decision do lie
to the Civil Judge.

15. In conclusion I would suggest the advisa-
bility of making special provision to allow parties
to compound the question of compensation by mutual
agreement at any stage of the proceedings before an
award is made.

I have the honor to be,
Sir,
Your most obliged servant

Mr. Munat.
As. Collector.

comp. J. J. J.

to be left to be naturally evolved
from the facts of each case
coming under judicial investi-
gation and where the principles
so evolved would be carefully
weighed, and allowed their due
weight by the presiding judge.
The bill is thus calculated to
fetter and unduly interfere with
the free action and independence
of the established courts, and
is, so far, wholly opposed to
the spirit of modern legisla-
tion. That the framers of
the bill must have themselves
felt this is shown by the
fact that they have thought
it necessary to uphold it by
superadding to the statement
of objects and reasons an elab-
orate note which seeks to
justify

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justify its provisions by a refer-
-ence to the English and French
Laws and to the decisions of
English Judges

3. The provisions I refer
to are those contained in Sec-
tions 46, 47 & 48. They are the
most important portions of
the bill, because the most
obnoxious to criticism. Sub-
ject to their insertion at all
in a legal enactment for the
reasons already stated; but
apart from this general ob-
-jection, I question the sound-
-ness of some of the principles
enunciated in Sections 47 & 48.
The first clause of section 47
seems to me to be somewhat
at variance with the first
clause of section 46. By the
latter, the Judge is required to
take

26th June 1869.

From

The Honorable T. Ramiengar
Madras.

To

R. A. Dalryell Esq.
Ag. Secretary to Government
Revenue Department
Fort St. George.

Sir,
I have the honor to reply to
your letter of the 2nd Instant
No. 441 forwarding for my re-
marks which I might desire to offer
the "Bill to amend the Law
"for the acquisition of land
"needed for public purposes."

2. I have carefully read the
bill, and cannot but con-
sider some of its chief provi-
sions as at once novel and
unjust. It lays down princi-
ples for the guidance of Judges
where such principles ought
to

5, 7, 11, 23, 44, 45, 47
57-

S. C. D. 1285

Date 24th June 1869

1869

No. 15533

Submitting - Remarks
on the Bill as
requested in his letter No. 441
dated 22 June 1869

22859475
1022

take into consideration "the price
"which the property would be
"likely to fetch if sold then
"and there by public auction".
In the same breath, the Judge
is told to discard from con-
sideration "the degree of urgency
"which has led to the acquisi-
"tion." Would an intending pur-
chaser at a public auction who
had an urgent need for the
property not be influenced
in making his bids by the
urgency which prompted him
to buy? Would he not under
that influence naturally go
further than other bidders?
Would not that raise the
price at which the property
was eventually knocked down?
Would a Judge, left to himself
without

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without such instructions in the
Act for his guidance, really, in
all cases and without reference
to the merits of each case,
refuse to be influenced by
the question of urgency in
awarding compensation?

4. Then under clause 2, the
Judge is to take care that he
puts out of consideration "any
"disinclination of the person
"interested to part with the
"property acquired". I deny that
this is fair or just. The prop-
erty of which the owner is
to be deprived may be ances-
tral property, handed down
to him by generations of his
forefathers as an heirloom ren-
dered dear to the family by all
the most cherished associations,
and to which the owner clings
with

with all the tenacity and attachment which Warren Hastings showed to Daylesford from infancy upwards and throughout a singularly chequered and troublous career. Private interest I most fully admit must yield to the public good, and the land, if wanted for a public purpose, must be resigned in spite of all the owner's tenacity and attachment. But in such a case, should the Judge, I ask, be precluded by an inflexible rule from awarding a higher compensation to the owner than in the case of a piece of land which the present holder had bought at an auction or taken up on Whitkist i.e. got it for the mere asking from

from Government only the year before?

5. The 3rd clause I do not clearly understand.

6. The 4th Sec. is justified on the ground that it does not forbid future suits against the Government for subsequent damage, as soon as such damage has been actually inflicted. Why not then say in the Act that it will be open — to the parties to bring separate suits for such damage?

7. The principle enunciated in the 5th clause, I most strongly dispute. Take the case of a man who owns a large extent of unirrigated land. Say that by his own enterprise, or by the operations of a private company,

company, the owner is certain
of having an important irri-
gation work in progress com-
pleted in twelve months, -
which, by turning his uniri-
gated into irrigated land,
is certain of raising the value
of his property to 5 times its
present market value within
the next two years. At this
time, Government want the
land for a Railway or for
a public purpose. so they step
in and take it up under
the Act. Is it equitable, I
ask, when thus compulsorily
depriving the man of such
land and awarding compen-
sation, to take no account of
the certain prospect of his pro-
perty becoming valuable in

a short time? Would a judge,
left to himself, not feel called
upon to take the circumstances
into account in settling the
price of the land? and would
he be wrong if he did so? There
is a note appended to the Bill
which says that the value should
not be decided by the light
of subsequent events which,
perhaps, may never occur. But
can we not conceive cases
in which they may ^{certainly} occur? And
how then will the Judge act
if tied down to an inflexible
rule?

8. The 6th and last clause
is intended to be directed, it
appears, "against a fraud not
unlikely to be attempted in
"India." That is, that a man
is likely to expend money on
the

the improvement of a property which he saw was about to be taken away from him, with the view of getting a higher compensation from Government by such expenditure. I confess such a thing appears to me to be extremely improbable, but supposing such a trick was attempted, it is still more improbable that any Judge worthy of the name would pass it over. The injunction in the 6th clause is therefore at best simply superfluous.

9. Then as to Section 48. This likewise lays down rules which may prove inconvenient and embarrassing to the Judge and be productive of hardship and loss to either party in practice.

The

48
The first clause of this section enjoin that "where the person interested has made a claim to compensation pursuant to the notice mentioned in Section 10, the amount awarded, shall not in his case exceed the amount so claimed, or be less than the amount tendered by the collector. Suppose the owner had claimed from the collector 1000 Rs. and that the collector had tendered 800 Rs. The owner is dissatisfied and appeals. The Court, in the course of the investigation become aware of what the collector was not cognizant viz that the whole of the land of which the piece taken up is only a portion

portions had been purchased by the owner at an auction held by the Court only in the previous year for 600 Rs. Under these circumstances, 500 Rs. for the portion taken up is considered ample compensation; and on being reminded of the Court sale and of what he himself had paid, the owner accepts 500 Rs. Why in such circumstances must 800 Rs. be forced upon him? Such a case may not often arise, but it is quite within the bounds of probability.

10. Again, by the next clause, where the person interested has omitted in the first instance to prefer a claim before the collector, the amount eventually awarded

41
awarded by the Court may be less than, but shall in no case exceed, the amount offered by the collector. Why should the party appealing be so mulcted for a mere fault of omission, and where is the advantage, I would ask, of the appeal allowed to the Judge and Assessors, if circumstances which may come out during their investigation are not allowed to weigh with them in arriving at a decision, and they are merely required to uphold the collector's award?

11. Such are the principles laid down in the Act. But in the Note appended to the Bill, and which I have already

already referred to, it is stated
that these principles are but
"a statement, in a clear and
"compendious form, of the Law
"prescribed by the English
"Legislature or laid down
"by the English Judges." But
on going through the Note,
I find that the 5th and 6th
Clauses of Section 47 which
have already been noticed,
have no foundation either
in the English Statute Law
or in the decisions of English
Courts, but are borrowed
from the French Law. Why,
if the principles embodied
in those clauses are so equi-
table as the writer of the
Note insists, we find no
counterparts

counterparts in any of the Eng-
lish Statutes or in the whole
mass of English decisions,
it is difficult to conceive.
So also, the principles enun-
ciated in the first clause
has not, it appears, been
affirmed either by the
English Parliament or
English Judges, nor even by
the Code Napoleon, but the
writer of the Note considers
"it so obviously consistent
"with common sense" that
its enunciation has not been
found necessary by Parlia-
ment or Judge, but that it is
still desirable that it should
be expressly laid down by the
Indian Legislature in an In-
dian enactment for the benefit
of

of Indian Judges, including those of the High Courts to whom the Bill allows an eventual appeal.

12. The 2nd 3rd and 4th clauses are grounded, it seems, on the decisions of English Courts but this circumstance only shows what I contend for viz. that such matters ought to be left to the judgment and discretion of the established courts, and not to be laid down for their guidance in a legislative enactment.

13. But even admitting the principles embodied in Sections 47 & 48 were sound and equitable in themselves

and

and that it is desirable to lay them down in the manner proposed, I fail to understand how they could possibly apply to every case that might arise. They might be found to be of very just application in some cases, and very inequitable in others. No human legislature can possibly foresee the different variety of circumstances which may arise in each case falling under the proposed Act, and yet the principles laid down where a great deal ought to be necessarily left to the discretion and judgment of the presiding Judicial Officers, are intended to be of universal application

application - to be procrastinate
and inflexible.

14. Altogether, I consider
the tendency of the Bill to
be the reverse of fair and
just, to be retrogressive, and
to be such as to create dis-
satisfaction if passed into
Law and strictly enforced.

It is but rigid necessity a-
rising from a regard for the
public good that justifies the
Government in taking up pri-
vate property at all without
the owner's consent, and it
behoves them under such
circumstances to err rather on
the side of liberality - to have
a considerate regard for the
proprietor's feelings and for the
value

value of his property as defined
out on a host of circumstances
which can be properly ascer-
tained and duly weighed
only in each individual case,
and to which no set of rules,
however carefully framed, can
possibly apply with fairness.
It is true that as the guardians
of the public purse, the Go-
vernment are in duty bound
to prevent abuse and waste-
ful expenditure of the public
money in awarding compen-
sation, but I conceive that this
is best fulfilled by the pro-
cedure laid down in the
Bill. I mean by the resort
to the Civil Courts and
assessors and by the ultimate
appeal to the High Court
which

which the Bill allows. If the Bill goes further than this, and retains the instructions contained in Sections 46, 47 & 48, — the measure will be regarded, I fear, in the light of Government successfully invading private rights and dictating its own terms to the weaker party whom it first deprives of his property and then gives him what it chooses, and the intervention of the Courts under the circumstances will be looked upon only as a blind and a cloak for this arbitrary exercise of authority.

15. In section 6 of the bill the nature of the imprisonment should be specified.

16. I may add that in this Presidency, Act VI of 1857 has not been productive of the evils which have led the Government of India to propose the present measure.

17. I have given my opinion unreservedly, and trust that in doing so I have not shown any want of respect to the high authority from which the Bill emanates.

I have the honor to be

Sir

Your most obt. servant,

J. P. R. R. R.

Public 1869 Dept

From ^{Trans. 14} Sept 1869
Honble. V. Ramengar

Department of
Assurances

of 26
by 28 June

S.O. 1285

No 1536

Submits remarks on the
Bill to amend the Law
for the acquisition of
land for public purposes

10381

Madras Navigation and C. Co.
Chief Engineer's Office
Munnool 26th June 1869.

Y
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H. H. Huslow Esquire
Agent and Manager
Madras.

Sir

Your 232 of 11th instant,
Expropriation Bill

Para 11. After "to probe or bore"
I would add "or to dig trial pits". The
fact is that probing is rarely suffi-
cient, boring tools are seldom at hand,
and both probing and boring are very
open to the practice of deception.

The valuation of land. It is a
very important improvement on the
present method.

I. For valuable land near towns
(a) hypocrisy under the name of per-
sonal feelings attached to tombs, gar-
dens and even trees has been allowed
to cause great expense, while the

Madras Navigation and C. Co.

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Mahomedan Gentlemen on the
Municipal Commission here express
no objection to our roads being carried
over their tombs (Para 1, 6, 2 and 3)
(6). On the other hand an enthusiastic
Deputy Collector or Collector (fortu-
nately such a wish) will be guarded
from undervaluing such property
in his zeal for public good, by know-
ing that an Appeal lies to the Judicial
Department.

II. For the Nagasputta holder
paying under Rule 10 a year's tax
bill it seems to me, operates beneficially
by slightly counterpoising the in-
fluence of this Deputy Collector. So
far as a satisfactory Appeal from him
to the Judicial Department is known
to exist, so far as the moral weight
of his decisions increased, and so
far we find it easier to get free spoken
evidence.

The Appeal to the Appeal
Judge it is almost beyond my province
to

to comment upon. I do not see the use
of the 3^d Appeal (Para 37) The Court would
to my mind appear more satisfactory
(a matter of some importance) with-
out him. He seems to have no weight
in the decision. The Judge's opinion
on facts Para 4, 5 would then be final
if he agreed with either Appeal. As
is, the Ryots Appeal may be expected
to be more yielding than the Collec-
tors Appeal, in the Appointment of
the 3^d, and this reputation, if it exists,
would (so far lower confidence in
the Court. Still the Court would be
a favourable one for poor Ryots;
and its practice would probably
soon create confidence.

In para 7, I do not see why
works for the storage or supply
of gas should not be mentioned.

I have &c
Signed John H. Nathan
Chief Engineer

Note

by the Honorable A. J. Arbutnot on
Proceedings of the Board of Revenue
dated 6th July 1869, No 4805, submitting
their opinion on the question as to whether
the provisions in the "Madras Salt Excise
Bill," regarding compensation for closing
salt pans, should not correspond with
the compensation clauses in the "Expropri-
ation Bill."

"When we report on the
"Expropriation Act, we ought, I think,
"to protest against clauses 4, 5, and 6,
"as well as against clause 2 of section 4."

Signed / A. J. A.

(True copy)

Wm D Mayne
Assistant Secy to Govt.
Legislative Dept.

To The Public Department

W. F.

Bill No 1082/69
Sum 12, 1869/70
Public Department
Legislative Dept.
Madras
1869

58
Extract from a Note by the Hon^{ble} A. J.
Arbutnot, on the Memo, submitting the
Proceedings of the Board of Revenue, reporting
on the question, as to whether the provisions
in the Salt Excise Bill, regarding compen-
sation for closing salt pans, should not
correspond with the compensation clauses
contained in the Expropriation Bill.

"When we report on the Expropria-
tion Act, we ought, I think, to protest against
clauses 4, 5 and 6, as well as against clause 2
of section 47"

(Signed) A. J. A.

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(True Extract.)

Wm A. Maple

Assistant Secretary to Govt.
Legislative Dept.

To The Public Dept, for information.

W. H.

To

No. 1285.

The Secretary to the Council of the
Governor General for making Laws
and Regulations.

Sir,

I am directed to acknow-
ledge the receipt of your letter
No. 122, dated Simla 1st May
1864, requesting an expression
of the opinion of His Excellency
the Governor of Madras in
Council on the provisions of
the "Indian Expropriation
Bill."

2. In reply I am directed
to state that, though His
Excellency in Council is not
aware that the existing law
as contained in Act VI of 1857
has been found inefficient

for most purposes
N^o

or inconvenient in practice in this Presidency, he is in favour of the enactment of the proposed law the provisions of which appear to him generally equitable and well considered.

3. I am also instructed to forward the accompanying prices of the remarks and suggestions made by certain persons in this Presidency who have been consulted by the Governor in Council, and to make the following observations on points of detail.

Sec 5. With reference to the remarks of the Board of Revenue this Government are of opinion that notice to the occupier will suffice; and observe that in the case put by Mr. Thomas the parties will always be at liberty to demand what they at first refused, and no legislative provision is necessary.

Sec: 6.

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Sec 6. The punishment should be reduced one half, and the nature of the improvement specified.

Sec: 7. It is presumed that it is intended to vest in the local Government the power of deciding what are waters for public purposes.

After the words "for the supply of water" should be added, "for the purpose of irrigation and for moving machinery and for all other purposes connected with agricultural or manufacturing industry and commerce."

It is desirable to affirm in unambiguous language the right of Government to take, occupy and ^{have} land for the purpose of extending common agricultural irrigation.

Sec: 8 There is no necessity for any changes in this section such as are proposed by Messrs. Thomas and Hindersay.

Secs: 11, 23. - The Government concur with the Board of Revenue and Mr. Thomas that these sections are incomplete in the points specified by them.

Sec: 29. - "The arbitrators should not be entitled to fees in all cases, but only where the collector considers the grant of fees desirable."

Sec: 45. - It would be best to provide that there should be only two assessors, and that the opinion of the Judges concurring with either should be final.

Sec: 47. cl. 4. The Government concur in the suggestion of Messrs Ramayangar & Muttu Swami Ayyar that an express provision declaratory of the right of landowners to bring suits against Government for subversive damage on its occurrence, should be inserted.

M

20/9/69

For 8th Group
14th Sep/69.

1874

5

June 1869
North August 1869
No 1285

1874