Revenue Department

Minutes of Consultations

1st Dec 1857

Back nos 17 & 18

Order no 1223 / 26th Nov 1857

- 1 -

9. Opinions

பாதுகாப்பு பிரிவு - 1. 11 07

சப்பணிபவர் பெயர்

சப்பணிவதற்காக எடுத்துக் கொள்ளப்பட்ட நாள். 7/10/07

சப்பணிட்டு முடித்த நாள் 8/10/07

பரிசீலிக்கும் தல் மு. நி. பா. எ. கையொப்பம்

சரிபார்க்கும் மீ. நி. பா. எ. கையொப்பம்

ஆர் உதவியாளர் கையொப்பம்

1222
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Fort Saint George, Revenue Consultation of 1st December 1857.

Read again letter from Mr. Brooke's Attorney to David McCulloch of Bombay; dated 27th August and recorded in Diary to Consultation 6th October 1857.

No. 17. Read also the following letter from J. B. BOYSON, Esq., Honorable Company's Solicitor; to the Chief Secretary to Government, dated November 10th 1857, No. 657.

SIR,

With reference to the Extract from Minutes of Consultation noted in the margin, I have the honor to advise that Mr. H. Brooke be informed, in reply to his letter to Government of the 27th of August last, that upon his submitting a formal draft of such a conveyance of the Gin House, &c., at Coimbatore, formerly the property of Government, and sold by Government to the late Mr. D. Campbell in the year 1851, as he considers Mr. D. McCulloch entitled to it, will be submitted for the consideration of the Law officers of Government, and if approved of will be duly executed by Government on behalf of the Honorable Company; and that the Administrator of the Estate of the late Mr. D. Campbell *must* be a party to any such conveyance.

M. C. dated 1st October 1857, No. 1011 Revenue Department.

It is the duty of a purchaser (in the absence of any express stipulation to the contrary) to have his conveyance prepared by his own Solicitor and at his (the purchaser's) own expense, and to submit such draft for the perusal and approval of the vender or his solicitor. When approved by or on behalf of the vender the draft is returned to the purchaser or his solicitor, it is then engrossed at the expense of the purchaser, and such engrossment is submitted to the vender or his solicitor for execution by such vender. I do not find from the papers which accompanied the Extract Minutes Consultation above noted, that in the present case the *usual* course was to be departed from. Mr. D. Campbell ought therefore to have taken the steps above pointed out (as the purchaser's duty) at the time he purchased the property, and any inconvenience or loss which may have resulted from his not having done so is attributable entirely to *his* laches and unbusiness like manner of making and completing his purchase, and as Mr. McCulloch (like any other partner or principal) was of course bound by the acts of his co-partner or agent (whichever Mr. D. Campbell in fact was) and all their consequences, whatever they might be; and as Mr. McCulloch himself is open to the observation of not having taken the most ordinary precautions for protecting his own interests by ascertaining that the conveyance of the premises was in fact executed, it seems to me that the position assumed by Mr. Brooke in his letter above mentioned is altogether unsound and untenable and should therefore be repudiated, that this is *not* a case calling for any such interference on the part of Government as Mr. Brooke suggests; that any inconvenience or loss which may have arisen from the circumstance of Mr. D. Campbell's not having obtained a conveyance of the property cannot be imputed in any degree to the proceedings either of Government or its officers, seeing (as I have before stated) that it was *not* the duty of the Government as venders to prepare Mr. D. Campbell's conveyance as purchaser, and that any such inconvenience or loss has been the result of the acts or conduct of Mr. McCulloch's own partner or Agent (as the case was), and which acts or conduct must therefore be looked upon as the acts and conduct of Mr. McCulloch *himself*.

It is to be regretted that the Collector of Coimbatore and the Principal Sudr Ameen at that station in their letters to Mr. Brooke, dated respectively the 23d of May 1856 and 13th of September 1857 did not take up the position which I have advised Government to rely upon, seeing that *no* title deeds of the property in question were ever in existence, the buildings having been built *by Government* and on *public ground*, and that what was needed was a conveyance of the premises from the Honorable Company to the purchaser, which it is quite clear could *not* be executed either by the Collector, Sessions Judge or Principal Sudr Ameen of Coimbatore. I cannot quite understand that part of the Collector's letter to Mr. Brooke which says "at Mr. "Campbell's death the Gin House passed into the charge of the Session Court of Coimbatore, "from which office (the Judge's) and not mine you should seek title deeds;" or of that part of the Principal Sudr Ameen's letter to Mr. Brooke of the 13th September 1857 which says "that "as the Gin House &c. is delivered over to Mr. F. W. DCruz and Mr. P. Abraham Menon "Agents of Mr. McCulloch on the 20th December 1855 as per copy of letter herein enclosed, "*I am unable to make the title deed and send it to you* as therein requested, because I have no

"any control over the property alluded to therein." I think the matter should at once have been submitted for the consideration of Government, who alone could dispose of it by executing the proper conveyance.

Apart from the general rule and practice I consider it very unadvisable for many reasons that the Honorable Company or their Solicitor should prepare conveyances of property sold by the Honorable Company to third parties.

I would beg to suggest that the local officers of Coimbatore be directed not to communicate further with Mr. Brooke on the subject in question without previous reference to Government, and not to take any further steps with respect to the purchase of the buildings on behalf of Government until Mr. McCulloch's title has been perfected.

I return all the papers which accompanied the Extract Minutes of Consultation above noted.

No. 18. ORDER THEREON, No. 1223; dated 26th November 1857.

Resolved that Mr. H. Brooke be informed, in reply to his letter of the 27th August last, that upon his submitting a draft of such a conveyance of the Gin House, &c., at Coimbatore, formerly the property of Government, and sold by Government to the late Mr. D. Campbell in the year 1851, as he considers Mr. D. McCulloch entitled to, it will be submitted for the consideration of the Law officers of Government, and if approved of, will be duly executed by Government on behalf of the Honorable Company; and further, that the Administrator of the estate of the late Mr. D. Campbell must be a party to such conveyance.

From Mr. H. Brooke 27th August 1857.
Ext. Mins. Cons. 1st *Oct.* 1857, *No.* 1011.
From Com.'s Solicitor 4th Nov. 1857.

2. Ordered that a copy of the correspondence noted in the margin be forwarded to the Collector of Coimbatore, and that his attention be directed to the last para. but one of the Solicitor's letter.

(Signed) H. FORBES,
Acting Secretary to Government.

Sir 1223/3

No 657

From The Honorable Company's Solicitor

To The Chief Secretary to Government, Fort St George

November 10th 1857.

Sir

With reference to the Extract from Minutes of Consultation noted in the margin I have the honor to advise that Mr H. Brooke has informed me, in reply to his letter to Government of the 27th of August last, that upon his submitting a draft of such a Conveyance of the Gin House at Coimbatore, formerly the property of Government and sold by Government to the late Mr D. Campbell in the year 1851, as he considers Mr D. McCulloch entitled to, it will be submitted for the consideration of the Law officers of Government and if approved of will be duly executed by Government on behalf of the Honorable Company; and that the Administrator of the late Mr D Campbell must be a party to any such Conveyance.

m/c dated 1st October 1857 No 1011 Revenue Department

It is the duty of a purchaser (in the absence of any express stipulation to the contrary) to have his Conveyance prepared by his own Solicitor and at his (the purchaser's) own

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own expense and to submit such draft for the perusal and approval of the Vendor or his Solicitor. When approved by or on behalf of the Vendor the draft is returned to the purchaser or his Solicitor: it is then engrossed at the expense of the purchaser and such engrossment is submitted to the Vendor or his Solicitor for execution by such Vendor. I do not find from the papers which accompanied the Extract Minutes of Consultation above noted that in the present case the actual course was to be departed from. Mr D. Campbell ought therefore to have taken the steps above pointed out (as the purchaser's duty) at the time he purchased the property and any inconvenience or loss which may have resulted from this not having been done so is attributable entirely to his laches and unbusinesslike manner of making and completing his purchase, and as Mr McCulloch (like any other partner or principal) was bound and by the acts of his Co partner or agent and all the consequences whatever they might be, and as Mr McCulloch himself is open to the observation of not having taken the most ordinary precautions for protecting his own interests by ascertaining that the Conveyance of the premises made in fact executed it seems to me that the position assumed by Mr Brooke in his letter above mentioned is altogether unsound and

1223
4

and untenable and should therefore be repudiated, that this is not a case calling for any such interference on the part of Government as Mr Brooke suggests, that any inconvenience or loss which may have arisen from the circumstance of Mr D. Campbell's not having obtained a Conveyance of the property can not be imputed in any degree to the proceedings either of Government or its Officers (seeing as I have before stated) that it was not the duty of the Government as Vendors to prepare Mr D. Campbell's Conveyance as purchaser and that any such inconvenience or loss has been the result of the acts or conduct of Mr McCulloch's own partner or agent (as the case was) and which acts or conduct must therefore be looked upon as the acts and conduct of Mr McCulloch himself.

It is to be regretted that the Collector of Combatore and the Principal Sub Assistant at that station in their letters to Mr Brooke dated respectively the 23rd of May 1856 and 13 of September 1857 did not take up the position which I have advised Government to rely upon seeing that no Title Deeds of the property in question were ever in existence, the buildings having been built by Government and on public ground, and that what was needed was a Conveyance of the premises from the Honorable Company to the purchaser, which it is quite clear could not be executed either by the Collector, Sessions Judge or Principal

the

Principal Sub Ameen of Coimbatore, I cannot quite understand that part of the Collectors letter to Mr Brooke which says "At Mr Campbells death the Sin House passed into "the charge of the Session Court of Coimbatore "from which office (the Judge's) and not mine "you should see 12 Title deeds." or to that part of the Principal Sub Ameens letter to Mr Brooke of the 13th September 1857 which says "that as the Sin House &c is delivered "over to Mr F W de Cruz and Mr P Abraham "Menon Agents of Mr McCulloch on the "20th December 1855 as per Copy of letter herein "enclosed I am unable to make the Title "Deed and send it to you as the Property "because I have no any control over the "property alluded to therein". I think the matter should at once have been submitted for the consideration of Government who alone could dispose of it by executing the proper Conveyance.

Apart from the general rule and practice I consider it very unadvisable for many reasons that the Honorable Company or their Solicitor should prepare Conveyances of property sold by the Honorable Company to third parties.

I would beg to suggest that the Local Officers of Coimbatore be directed not to communicate further with Mr Brooke on the subject in question without previous reference

reference to Government and not to take any further steps with respect to the purchase of the buildings on behalf of Government until Mr McCulloch's Title shall been perfected.

I return all the papers which accompanied the Extract minutes of Consultation above noted.

I have the honor to be
Sir
Your most obedient Servant

J Boyson

Hon Col Sec

Comm 6th Oct. 57. No. 11-12.

Revenue 1857 Dept.
Wt. to Comr. 1st. Dect.

No. 1351

From the Honble Com.
Jangs Solicitor.

Dated 4th
I. E. No. 1223. 29th Nov.
Rec.d 10. Nov.

Suggesting that the Canal Officers of Coimbatore be directed not to communicate further with Mr Brooke on the subject of the Gun Boats &c. in that Dist. until a reply shall be received to the Govt. communication of the 17th inst.

Copy to Collr of Coimbatore
26 Nov 57.
No 17.

Recd 18th Nov. No 2

1223/7

No. R.D.

No 1223

Extract from the Minutes of Consultation

Under date the 24th November 1857.

Read again letter from Mr. Brooks Attorney to David McCulloch of Bombay dated 29th August and recorded in Diary to Cons: 6th October 1857.

Read also the following letter from the Honble Company's Solicitor.

(Here enter 10th November 1857.)

Resolved that Mr. Brooks be informed in reply to his letter of the 27th August last, that upon his submitting a draft of such a Conveyance of the Gin House &c at Coimbatore formerly the

the property of Govern-
=ment, and sold by Govt.
to the late Mr. D. Campbell
in the year 1851, as he
considers Mr. D. M'Culloch
entitled to, it will be
submitted for the consider-
=ation of the Law Officers
of Government, and if
approved of, will be
duly executed by Govt.
on behalf of the Lionite
Company; and further,
that the Administrator
of the Estate of the late
Mr. D. Campbell must
be a party to such
Conveyance.

Ordered that a
Copy of the Correspondence
noted in the Margin
be forwarded to the Collector
of

From Mr. F. Brooke 27th Augt 1857
Exp: Mins: Coun: 1st Octr 1857 No 1011
From Govt Solicitor 4th Novr 1857.

1223
8

of Coimbatore, and that
his attention be directed to
the last para but one of
the Solicitor's letter.

Dispy 27th

Copy to Clln of Coimbatore
with Copies of the Corrce
P. 1 to Mr Brooke.

Revenue 1857 Dept.
Do. to Cons: 1st Decr.

No. 1223.

Extract Mins. of Consn.
Dated 26th Novr./57.

From the Attorney for Mr. D. McCulloch of Bombay Dd. 21st Augt./58 C No. 1379 vide Mr. Sept. 51-52.

Informing Mr. G. Brooke that upon his submitting a draft of such a conveyance of the Gin House &ca. at Coimbatore as he considers Mr. D. McCulloch entitled to, it will be submitted for the consideration of the Law Officers of Government and if approved of will be duly executed by Government on behalf of the Honorable Company.

No. 17418.

19 Novr. 1823.