M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 900 Press
~~Mis.~~

356-357

Dated 20-4-1869.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 20th April 1861.

No. 356. Read the following letter from J. D. SIM, Esq., Acting Secretary to the Board of Revenue, to H. FORBES, Esq., Acting Secretary to Government, Revenue Departmnet, dated Fort Saint George, 5th June 1857, No. 1,907 :—

SIR,

1. With reference to paragraph 5 of the Minutes of Consultation, under dates the 16th September 1856, No. 991, and 1st April 1857, No. 312, Revenue Department. I am directed to submit a draft prepared by the Government Pleader in emendation of one proposed by the Board, of Sections to be added to the Draft "Act* to "facilitate the construction and repair of "certain Public Works in the Presidency of "Fort Saint George," for the purpose of rendering the same applicable to the construction and repair of second class roads in lands permanently settled.

7th May, in Cons. 5th June 1857.

* NOTE.—*The title of this Act was erroneously given in the Board's letter of the 28th April 1856, and in the Extract Minutes of Consultation of Government of 14th June 1856, No. 612, Revenue Department.*

2. The Government Pleader has suggested that a definition of a trunk or first class road may be given in the interpretation clause at the end of the Act. As the Board are not aware what are the distinctive features of a trunk road as determined by Government in the Department of Public Works, they have left the definition to be inserted in the Government Office.

3. The Government from the Minutes of Consultation, under date the 9th August 1856, No. 1,392, Public Works Department, directed that the declaration of the right of Government to levy a tax for the use of water should be omitted in the Act for the preservation of works of irrigation and inserted in the Act now under consideration. It does not seem to be very relevant to the enacting clauses of the latter Statute, but should Government adhere to their resolution, the place at which it may be best introduced would seem to be at the commencement as a preamble. That portion which assents the right of Government to levy a reasonable tax for the use of rivers, &c., should at all events, the Board think, be omitted as having no connection with what follows. If this suggestion be adopted the beginning of the Act will be as follows :—

1. Whereas all springs of water in land unoccupied or belonging to Government, and all rivers and natural streams are the property of Government.

2. It is hereby enacted that whenever, &c., as in the draft.

4. The Government will observe that this addition at the commencement will necessitate the alteration of the number of the Sections.

5. It was decided by paragraph 2, Extract Minutes of Consultation of Government under date the 16th September 1856, No. 991, Revenue Department, that Section XXIII of the draft under consideration should stand. The introduction of a preamble will make it Section XXIV.

No. 357. ORDER THEREON, 20th April 1861, No. 900.

Ordered to lie over for consideration at a future time.

(Signed) J. D. BOURDILLON,

Secretary to Government.

Govt Pleader

No. 44

From Clement Dale Esquire Government Pleader Sudr Udalut
To J D Sim Esquire Acting Secretary to The Board of Revenue

Madras 7th May 1857

Sir,

Para 1 I have the honor to acknowledge the receipt of your Letter to my address of date and Number noted in the 15th January 1857 No. 170 the margin, and to return herewith the draft of the Act, and of proposed additional Sections, which accompanied.

2 - Before altering the proposed additions, I was desirous of perusing the whole of the Correspondence which had passed on the subject, Mr. Norton had not however handed over to Mr. Boyson the Records of the Department and I was not able to get them till Friday last -

3. I am of opinion that as originally framed the additional Clauses would not have been found Sufficient in the event of parties having recourse to Courts of law and I have made such alterations as have occurred to my mind to be desirable, for the consideration of the Board.

4 - I have not altered the Draft Act, but if it is considered, that Pollams would not be included under the definition contained in Section III, I would advise that the word should be introduced into that Section, that is, if it be not intended to exclude Pollams from the Effect of the General Provisions of the Act.

I have the honor to be
Sir
Your most Obedient Servant

Clement Dale -

A

An Act to facilitate the construction and repair of Public Works in the Presidency of Fort St. George.

Government Pleaders emendations are written in red ink.

I Whenever it shall appear advisable to the Governor of Fort St. George in Council to construct any work or works for the drainage or irrigation of lands, or for their protection from inundation, it shall be competent to him to make a declaration to that effect in a Minute of Consultation, and to order that such works be constructed and that the cost of their construction and subsequent repair be borne jointly by Government and by the holders of any permanently settled or Enam lands which benefit by them, in proportion to the benefit which each landholder concerned receives.

II The works alluded to in this Act are river embankments, tanks, channels whether of supply or for drainage, with their bridges, locks

proprietors

locks and dependent works. Weirs of every description and generally all works for the prevention of inundation, or the improvement of drainage or irrigation.

III. The lands to which the present act is applicable are Zemindaries or Mootahs, Shotriems, Jaghires, Enams, and Villages or Estates under rent. that is to say, all lands permanently settled or under rent, or on which the public assessment has been alienated wholly or in part.

IV. It shall be competent to the Governor in Council when the construction of any work is ordered under this Act, to direct that the execution of the work be undertaken entirely by the Officers of Government. But in this case no money shall be demanded from any landholder under this Act on account of the work (unless in pursuance of a voluntary engagement) until the work is so far completed as to benefit the lands affected by them, and then only in the proportion of the benefit obtained. The Certificate of

of the Civil Engineer, or Executive Officer and Collector shall be conclusive evidence that the work is thus useful.

V. When a work has been constructed and its cost apportioned under this Act, the local Officers of Government may afterwards undertake its ordinary repair and, with the orders of the Governor in Council, collect from each party concerned, on an order from the Governor in Council, his share of the cost of such repairs which is to be apportioned in the same ratio as the original outlay.

VI. On the completion of a work the Collector of the District, or such Officer as the Governor in Council sees fit to appoint, shall issue a notice calling on the parties interested in the lands affected by the works, and more especially the registered Proprietors of such lands to attend his office, either in person or by an authorised agent, within a period of 15 days to hear the details of the expenditure, and his apportionment of its amount among the parties interested. This whereupon

* Mr Bourdillon's suggestion

+ Note. Mr Bourdillon's suggestion

proprietary

notice shall be written in the language of the District and be published in the Collectors Office and in the Villages where the lands are situated..

VII If none of the parties interested shall attend, the Collector shall publish in a similar manner a second notice, notifying the portion of the expense of the work awarded by him against each party interested; and if all the parties still abstain from attending either in person or by an authorised Agent,

the Collector shall proceed on the expiration of (20) days from the date of this second Notice to collect the sums under the force of this Act..

VIII. If all or any of the parties interested shall attend at the Collector's Office and shall dispute his award, the points in dispute shall be referred to the determination of arbitrators to be appointed in the manner hereinafter provided.

Two

IX. Two persons shall be chosen to act as arbitrators on the part of Government, by the Collector or other Officer duly appointed as aforesaid, and the party or parties interested in the land shall be called upon by the said Collector or Officer to elect, within fifteen days, two persons to act as arbitrators on his or their part. If there be several parties interested as aforesaid, and they cannot agree within the required period in the election of persons to act as arbitrators on their behalf, then and in that case each of them shall nominate one person whom he may desire to act on his behalf, and the said Collector or Officer shall choose by lot, out of the persons so nominated by the parties aforesaid, or by any of them, two persons to act as Arbitrators on behalf of the parties interested in the land. If only two persons shall be so nominated by the parties interested in the land, they shall be the arbitrators on behalf of such parties, whether the whole of the parties interested as aforesaid may

transcribed from Regulation XX of 1852 Section 7.

may or may not have been concerned in their nomination. If only one person shall be so nominated, then only one of the persons selected to act as Arbitrators on the part of Government, shall be employed on the duty. If the parties interested in the land shall refuse or neglect, or if, by reason of minority, lunacy or absence from the Presidency, they shall be unable, to make any nomination within the required period, then the said Collector or Officer shall and may select two impartial persons to arbitrate the matter between Government and the parties interested in the land.

X Before the Arbitrators proceed to arbitrate, they shall be required by the said Collector or Officer, to appoint an umpire for the decision of any points whereon they may differ in opinion, when the voices on each side shall be equal. If the Arbitrators cannot agree in the selection of an umpire, the said Collector or Officer shall be authorized to choose some person to act as such.

Section VIII Act of Regulation 20 1827.

In

Section IX
Regulation 20. 1852.

XI. In cases wherein the arbitrators may differ in opinion, if the voices on each side shall be equal, the decision of the um: pire on the point of difference shall be con: clusive; in all other cases, the opinion of the majority of arbitrators shall determine the award.:

Do.

Section X
Act
Regulation 20. 1852

XII. The arbitrators shall hold their inquiry under the general superintendence of the Collector or other Officer appointed as aforesaid, who shall be competent to ex: ercise towards them such powers and

Do authority for the purpose of securing their attendance and the due completion of their award, as the Courts of judicature may legally exercise towards persons sum: moned as witnesses before them, for the purpose of compelling such witnesses to attend and give evidence. It shall fur: ther be competent to the Officer presiding, in the event of any unnecessary delay on the part of arbitrators, in determining any question referred to them, to call upon them to make their award within a

specified

specified time, and in default thereof, to refer such question to the umpire for his decision.

XIII. The said Collector or other Officer appointed as aforesaid shall, on the application of the arbitrators, summon any witnesses whom the arbitrators may call for, and whom the parties may not be able to produce before them without such process. He shall also cause the proper forms of affirmation to be executed by any witnesses whom the arbitrators may desire to examine upon affirmation, or he may empower the arbitrators to administer or cause the execution of such affirmation, if the witnesses cannot with convenience attend before him. Any witness who shall refuse or omit to appear when duly summoned by such Collector or Officer, or who shall appear but shall refuse to execute the affirmation to be administered as aforesaid, or who shall refuse to give evidence, shall be liable to the same punishment which would be incurred under the law by a witness refusing to appear or give evidence before a Court of Justice. Any person giving intentionally and

Act
Section XI Regulation
20 of 1832.

Do

and deliberately a false deposition, under a solemn affirmation in any case referred to arbitration as above, and upon a point material to the issue thereof, shall be held to be guilty of perjury and shall be liable to the penalties prescribed for that offence by law; and any person causing or procuring another person to commit the offence of perjury, as above described, shall be guilty of subornation of perjury and punishable according to law.

XIV. It shall also be competent to the Collector, or other Officer appointed as aforesaid, to demand from the parties interested in the lands affected by the work, the production of any accounts, title-deeds, or other documents which may be required by the arbitrators for the purposes of their inquiry, and in the event of such accounts, title-deeds or documents being withheld, and the fact of their existence being proved by information given upon solemn affirmation, to order the seizure of such accounts, titledeeds, and documents wherever they may have been deposited, in the manner prescribed by Section IX

Section XII Act Regulation VII of 1852.

Regulation

Regulation IX of 1822 of the Madras Code, and to exercise for that purpose the powers thereby vested in Collectors.

XV. The Arbitrators shall take into consideration the statements of the parties interested in the said lands, and of the Collector or other Officer aforesaid on behalf of Government, and after examining the evidence offered on both sides and making any further enquiry that may appear to them necessary shall pass their award. In fixing the portion of the cost of the work to be borne by Government and each party interested, the Arbitrators shall consider the degree of injury prevented, or the gain obtained, as well as the extent of the lands affected.

XVI. On the close of the enquiry the Arbitrators or Umpire shall deliver to the Collector or other Officer appointed as aforesaid, a full and complete report and award upon the questions submitted to their arbitration under their respective signatures, specifying the portion of the cost to be borne by each party interested respectively, with a solemn declaration subscribed thereto,

thereto, that the award so given is to the best of their judgment true and impartial and according to the evidence adduced before them, and they shall at the same time deposit with the said Collector or Officer the whole of their proceedings.

XVII. The decision of the Arbitrators or Umpire shall be forwarded to the Board of Revenue for submission to Government, and on being confirmed by the Governor in Council shall be forthwith carried into execution in the manner hereinafter mentioned.

XVIII. The decision of the Arbitrators or Umpire shall not be altered by the Governor in Council in favor of Government but on proof of partiality or unfairness

the portions of the cost awarded against ~~the different~~ landholders may be corrected

XIX. If the Arbitrators and Umpire fail to pass a decision within 3 Months from

proposed

from the date of the question being referred to arbitration, it shall be competent to the Governor in Council to carry the award of the Collector into effect under the provisions of this act..

XX. In cases referred to arbitration under the provisions of this act, any necessary expenses which may attend the enquiry of the arbitration whether for the diet of witnesses or otherwise, shall be apportioned among all the parties interested in the same manner as the cost of the work..

XXI. The portion of the cost of a work awarded against the landholder under this act shall be recoverable by the attachment and sale of his real and personal property in the same manner as an arrear of Land Revenue.

XXII. It shall be optional with landholders to pay the amount awarded against them 1st in money either at once or by such instalments with interest as the Governor in Council may sanction.

sanction - or 2ndly by an addition to the Assess
-ment of their lands - in which case the
additional assessment is to be fixed
so as to give annually per cent on the
sums awarded, with an allowance for the
expenses of annual repairs, and its details
are to be arranged by the Collector
with the approval of the Board of Re:
venue and Government. In this
case Government is
to be bound to keep the work in repair,
or remit this extra assessment..

XXIII. It is hereby enacted that here
Government shall erect new works
of irrigation at its own charge, it shall
be empowered to fix an equitable rate
for water thus supplied to perma:
-nently settled, Enam and other lands,
and to collect it under the same rules
as an arrear of land revenue..

XXIV. Existing works of irrigation partly
used by Government and partly by Ze:
-mindars, Enamdars, Renters of Villages
or Estates, or the holders of Shotrium
Jaghire

Joghire and Mocassah lands are to
be repaired at the joint expense
of all parties interested,
and the Governor in Council is hereby au-
thorized to order their repair and the
Collection of the portion of the cost due
by the different landholders interested
under the provisions of this Act.

The following words and expres-
sions in this Act shall have the several
meanings hereby assigned to them, unless
there be something either in the subject
or context repugnant to such construction.
(that is to say,)

Words importing the singular number
only shall include the plural, and words
importing the plural number only shall
include the singular.

Words importing the masculine gender
only shall include females.

The word "land" shall extend to
tenements and hereditaments of any te-
nure, and all houses, buildings, walls,
or appurtenants thereupon as well as land.

The

Put this in
red ink as it
was entered at
the suggestion of
Mr. Norton.

The expression "party or parties inter-
=ested in the land" shall be understood
to mean all parties interested in the land
either for life or for years, or in remainder,
reversion, or succession, and all trustees,
cestui que trusts, mortgagees, incumbrancers,
leaseholders or tenants, not being tenants
by the month or at will of such land.

Enclosure A -

In A°. 1260 of 1856.

To Genl. 28 April 1856

R 654/57

1/2 01

P 356 357

2

In No 1660/57.

H 5 June 11

Section XXV.

Whenever Government may deem it necessary for the sake of public utility that a certain Road, not being a Lunds or 1st class Road, shall be constructed and maintained on any Estate paying a fixed assessment to Government, whether held under a Lunmud Pattkeet Sebundar or otherwise or in any Jaghire, it shall be lawful for the Governor in Council, to make a declaration to that effect in a Minute of Consultation, and to cause Statements and a Sketch describing the direction and length and breadth of

proposed

Road, the materials of which it is to be constructed, and the Masonry works, embank: ments, ditches, fences and other works which it is to comprize, to be furnished to the Proprietor of the said Estate or Saglire with direc: tions to commence and Com: plete the works within certain fixed dates. In case the said Proprietor shall refuse to declaration conform to such directions or shall neglect to commence and other works and complete the Road within the prescribed dates, it shall times which in such respe: for thereon be lawful to the Governor in Council to cause the execution of the works under the super: intendence of Officers of its own nomination; and to re: quire the Proprietor to repay any

Minute of Consultation &c. prescribed for those several

Governor in Council.

Crent of any such

~~Sums~~ sums it may ~~expend~~ thereon within such period or by such instalments as it may deem equitable - and in default of payment aforesaid; rightly to recover the amount in the same manner as an arrear of Land Revenue - Provided always that it shall be at the option of the Proprietor ~~or Lessee &c.~~ to pay the amount so expended by Government in the manner prescribed by Section XXII of this Act.

Section XXVI

XXII In like manner it shall be lawful for the Government to cause Roads not being Roads of 1st class Roads in Estates or Jaghires permanently assessed to be from time to time inspected and to pursue the course prescribed in the preceding Section for the purpose of securing the execution of such repairs thereto as it may deem neces-

proprietors

vided also for the recovery of any sums it may advance for the purpose the Proprietor or Jaghiredar having as provided in the preceding Section the option of payment in the manner laid down in Section XXII of the Act

J. L. Aplin

R 652/57

In No 1660/57
In Cons. 5 June 57

Orders to go off

Memorandum

In 1855 and 1856 two proposed enactments relating to Public Works were brought forwards, and were fully discussed and the drafts finally settled; but neither has yet become law (except a small part of one) and I therefore bring the subject before Government for orders. I circulate only the essential and final papers in each case, omitting the great bulk of the correspondence.

2 The first of these draft acts was principally for the purpose of enabling Government to execute public works affecting both Government-Villages and lands, and Proprietory and inam villages and lands, and to oblige the parties thus benefitting to pay a proportion

proportionate share of the cost. The subject came first before Government in connection with that of embanking the Nishnah. Full discussion took place upon it, between the Government the Board of Revenue, and the Chief Engineer, a draft act was at last agreed to by Government, and Proceedings and letters were prepared for sending the Bill to the Legislative Council. This was in the latter part of 1857, and the matter was then ordered to lie over, on the suggestion of Lord Harris, who thought that its agitation at that time might cause disquiet.

3. The Bill as finally agreed to contained the following main provisions.

1st Empowering Government to execute, and afterwards to repair, works of embankment, irrigation, and drainage, affecting Government lands or villages jointly with private lands or villages, and to recover a proportionate share

share of the cost from the private parties benefitted. Clauses 2 to 23.

Note.- A large number of these clauses are taken up with a detail of the means of fixing the share of the cost to be borne by the private party.

2nd Empowering Government to levy a fair water rate from the owners of private land, for water supplied by a Government-work. Clause 24.

Note. This clause as it now stands seems to apply to future works only; it needs amendment in this particular.

3rd Empowering Government to repair works used jointly for Govt. and for private lands, and to recover a rateable share of the cost. Clause 25.

4th Empowering Government to compel Zamindars &c to make second class roads in their Estates or useful lines, Government making

the

Note. See Para 12 of the accompanying Esq. C. May 27/56.

Re first class roads. Clause 26 to 29.

5th And also to compel them to repair such roads. Clause 30.

4. All these seem to me to be useful provisions, and necessary to an efficient administration. The absence of some of them has made it, and continues to make it, difficult to enforce the rights of Government against Zamindars and inámdárs in the Godavery and Kistnah Deltas, in respect to water supplied to them; and the same with respect to the em-bankments and drainage works. I think it may be well to bring forward the Bill now; but probably the Governor would wish first to make enquiries in Rajahmundry and Masulipatam Districts, where its provisions are most needed.

5. The other Draft Act was mainly for the protection of Govt. works from injury. That which first led to its being proposed was the experienced necessity of protecting works of irrigation from wilful injury, whether wanton or malicious; and the draft first submitted provided for punishing such acts. To this was added a provision for punishing waste of water, also an evil of great magnitude; and another for enforcing the performance of certain customary work, and of emergent work in certain cases.

6. A draft Act containing these three main provisions was sent to the Madras Member of the Legislative Council on the 9th Augt 56. Afterwards it was resolved to include roads and public buildings among the works to be protected by the Act; but the letter to this effect to the Member of Council was not despatched.

In

7. — In reply to the letter sending up the draft Act, Mr. D. Elliott the Member of Council said that the Criminal Code would sufficiently provide for the protection of public works &c. And on that ground that part of the Bill was dropped. The part which related to customary and compulsory labour, was ultimately passed by itself, with some enlargement and modification, as Act I. of 1838.—

8. — The Criminal Code is to all appearance as far from becoming law now as it was three years ago. Meanwhile all the evils which the Bill was designed to cure have gone on unchecked. These evils are no longer brought before Govt., because the local officers believe it to be of no use; but I have no doubt that every Engr. in the country and most Collectors

feel

feel strongly the need of such an enactment as I have described, for the protection of public works and more particularly those of irrigation, and for preventing the theft and waste of water — The Canals in the N.W.T. have such protection, and it is equally necessary here — I beg for orders whether the matter shall again be pressed on the Legislative Council.

D. Aug. 24/87.

P.T.O

Draft acts about Public Parks

R 654/57

Read — Sir Ch. Trevelyan
was of opinion that
legislation on the subject
was unnecessary; &
the matter therefore
was again dropped —

J. L.

To be seen April 17/61.

That portion which asserts the right of Government to levy a reasonable tax for the use of Rivers &c. should at all events the Board thinks, be omitted as having no connexion with what follows. If this suggestion is adopted the beginning of the Act will be as follows.

1. Whereas all Springs of Water in land unoccupied or belonging to Government and all Rivers and natural Streams are the property of Government.

2. It is hereby enacted that whenever &c as in the Draft.

4. The Government will observe that this addition at the commencement will necessitate the alteration of the Nos of the Sections.

5. It was decided by Para 2 Extract Minutes Executive Council of Government under date the 16 September 1856 No 991 Revenue Depart that Sect. XXIII of the draft under consideration should stand. The introduction of a Preamble will make it Sect. XXIV.

Rev Board Office,
Fort St George,
5 June, 1857

To, H. Forbes Esq
ag Secretary to Government
Revenue Department.

I have the honor to be,
Sir,
Your most obed Servant,

ag Secretary

Bills.

Revenue 1861 Depos
Rec'd of Govt for April 1861.
No 654

From
The Ag Secretary
to the Board of Rev
The Ag Secretary
to Government
Rev Dept

Dated 5th June 1861
Rec'd 10th June 1861

No 1907

No 900. 20th April 1861.

Submitting a draft prepared by the Govt Pleader in consultation with one from the Board of Revenue to be added to the Draft Act to facilitate the construction & repair of certain Public Works in the Presidency of Fort St George for the purpose of rendering the same applicable to the construction and repair of Second Class Roads and Roads permanently settled

William Edens

16.3.61

No 900.

Ordered to lie over for consideration at a future time

Fort St Geo
20th April 1861

Lisk

See P.W. Orders No 796 dated 19th April 1861 on this subject