

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2221

Press
~~Mis.~~

331.332

Dated

15 — 9 — 1865.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
15th September 1865.*

No. 331. Read the following Proceedings of the Board of Revenue, dated 17th June 1865, No. 3,286.

Read the following letter from P. GRANT, Esq., Collector of Coimbatore, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated Ootacamund, 3rd May 1865, No. 70:—

SIR,

1. I have received Proceedings of Government, and their Order thereon, dated 17th February 1865, No. 479, forwarded by the Board of Revenue on the 4th March, who call on me to report on "the rights urged by Mr. Pestonjee and Lieutenant-General Dowker and Colonel Hadfield, as well as the arrangements they propose for securing to themselves the sole use of the water."

2. In the Government grant to Mr. Crawford, who has transferred his property to Messrs. Framjee & Co., no reservation with regard to water-courses or roads is made. Mr. Pestonjee of the Firm of Framjee & Co., therefore, through whose land the new channel will run, is fairly entitled to the consideration he asks, viz., that he shall be allowed a small supply of water, the amount to be apportioned by the Government Officers. To this arrangement, I do not conceive that Lieutenant-General Dowker and Colonel Hadfield will object, provided they are insured their full supply of water; as to their being an abundance of water for all parties there can be little doubt, I think, judging from the quantity of water which now flows down the Doddabetta mountain.

3. In December 1836, Mr. Norton was allowed to bring a channel to his property by Mr. E. Smith, Sub-Collector and Joint Magistrate of Malabar. I conclude this channel is the one running along Doddabetta, which supplied the water, intercepted by the Coonoor cutting, the restoration of which it is now sought to accomplish by the construction of an aqueduct. No name by which the channel can be identified is given, and a sketch, to which allusion is made in Mr. Smith's Memorandum, is not to be found, still I have no doubt that the Doddabetta channel is the one alluded to, as Mr. Norton's house was supplied by it; a copy of Mr. Smith's Memorandum is annexed. It will be observed that Mr. Norton was allowed to carry a new channel from the nullah, but no mention of any right on his part to land on either side of the channel is made. Lieutenant-General Dowker and Colonel Hadfield now ask that they may be allowed twelve feet on each side of the channel, in view to the preservation of the channel from injury of any kind: so far as Government land is concerned, I think this request may, with advantage, be conceded; but with regard to other lands which were private property when Mr. Norton's channel was in use, I do not see that Government can interfere.

4. Mr. Pestonjee, I should think, would allow them to go through his property along the new channel bank to secure its being kept in proper order, but I doubt his conceding to them twelve feet of ground on each side of it.

5. The last point which Lieutenant-General Dowker and Colonel Hadfield request is, that the Collector of the District "be instructed to have restored to their partly new channel such streams as have been diverted from it."

6. You will observe, that at the time Mr. Smith gave Mr. Norton leave to cut his channel, several channels had been cut above the point from which his channel started from the nullah. The only existing channel of any importance above Mr. Norton's is that which leads to Walthamstow (Mr. Grant's property). In what year this channel was cut I cannot say, but it must have been in existence many years, for it will be observed, by the correspondence which took place in 1850, that it was then in existence. At this period there was a lengthened correspondence between Mr. Norton and the Collector about a proposition to take a channel through the former gentleman's property to supply the south side of Ootacamund. Captain Ouchterlony, in a Memorandum detailing his propositions for the supply of water, wrote as follows under date 22nd August 1850:—

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"The head of the southern main channel would have to be formed near the spot where a water-course belonging to Captain Douglas's house (Walthamstow) commences." Now it is evident that if the existence of this channel was an infringement of Mr. Norton's rights, he would not have sat quiet, and not contested his right, at least the tone of the correspondence which then took place between himself and the Collector, justifies me, I think, in coming to a contrary conclusion. On the 24th of March, I wrote to Lieutenant-General Dowker and Colonel Hadfield, requesting them to supply me with information as to certain claims advanced by them. A copy of my letter, and of their reply is transmitted for your information, but you will observe that their reply throws no light on the subject of the claims. Mr. Etienne has advanced a claim to a share of the water to be supplied by the aqueduct, and certainly the channel leading to his house, and which is marked down in the survey of his property made under Captain Ouchterlony's superintendence, supports his claim. It is also to be observed with regard to Mr. Etienne's property, that it originally formed a portion of Mr. Norton's property, and was sold by him to Mr. Etienne, who was not likely to purchase it unless supplied with water.

Enclosure No. 1.

1. On the 4th instant, I proceeded in company with Mr. Norton, the Tahsildar, &c., to view the spot from which Mr. Norton has turned a water-course from its natural bed, with a view of carrying it round several hills to his own property. A is the nullah, and B. a reservoir which draws up the source of the stream; this water-course as far as C. had been previously made by the supply of the gardens at hand, and has only been deepened by Mr. Norton to the convenience of all parties. The gardeners and cultivators being interrogated, express their perfect willingness to this arrangement, and they are permitted at their own discretion to let off the water, whenever necessary, for the supply of the nullah, or to make another reservoir for the purpose, under the understanding, however, that the channel afterwards be always allowed to revert to its former source.

2. I determined to see this spot myself, having heard it hinted that the proposed arrangement interfered with a mound (but no complaint was preferred to that effect; indeed this same water has been turned off in half a dozen different places higher up some years ago, for the supply of other houses in the Cantonment without any objection being raised to the measure, and the accompanying sketch will shew that it cannot, by any possibility, interfere in any mound, the only one in the neighbourhood marked D. being on another hill, and supplied from quite another source. The site of an old mound, situated in the midst of the gardens, may be presumed to be abandoned, from gardens having been allowed to be made there, and cultivated for many years. I am, therefore, of opinion that no objection whatever exists to Mr. Norton drawing off the water, and incurring the considerable expense attendant on its removal.

Ootacamund,
5th December 1865.

(Signed) E. SMITH;
Sub-Collector and Magistrate.

(True Copy.)

(Signed) P. GRANT, Collector.

Enclosure No. 2.

From P. GRANT, Esq., Collector of Coimbatore, to Lieutenant-General H. DOWKER and Lieutenant-Colonel A. J. HADFIELD, Ootacamund, dated Bowany, 24th March 1865 No. 140.

1. Major Farewell, Executive Engineer on the Hills, in addressing Government on the subject of the proposed Elk Hill aqueduct, submitted with his report a joint letter from you. The matter has now been referred to me for information on certain points.

2. From that part of your letter, commencing with the words, "and that Government may be pleased to guarantee the same right to us over the partly new channel which we have over the old channel," and so on to the end, allusion is made to several rights which you claim appertaining in virtue of the purchase of your respective properties from Mr. G. Norton, in whom these rights (it must be assumed) formerly vested. The records of this office, so far as I have been able to discover, throw no clear light on the subject. I shall, therefore, as I am anxious to reply to the Orders of Government without loss of time, feel obliged if you will let me have the information necessary to enable me to form a correct judgment as to the validity of the rights advanced by you.

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(True Copy.)

(Signed) P. GRANT, Collector.

Enclosure No. 3.

From Lieutenant-General H. DOWKER, and Lieutenant-Colonel A. J. HADFIELD, to P. GRANT, Esq., Collector of Coimbatore, dated Ootacamund, 3rd April 1865.

1. We beg to acknowledge the receipt of your letter No. 140 of the 24th ultimo, requesting us to furnish you with certain information to enable you to form a correct judgment of the validity of our rights to the Elk Hill water-course, that you might reply to the inquiries made by Government on the subject.

2. We would respectfully take leave to bring to your notice, that it is now about (10) ten years since our properties have been deprived of the water supply, which was cut off by the Public Works Department, whereby we have suffered very heavy losses, and the value of our properties has been most materially depreciated.

3. We have repeatedly brought our grievances to the notice of Government, and have as often been assured that orders had been issued for the immediate restoration of the water; this uniform readiness, on the part of the authorities, to meet our representations, has alone prevented us from seeking redress for our wrongs in due course of law. Many attempts have been made to carry out the orders of Government by the Public Works Department.

First.—By means of a Lattice bridge, which when ready, was found too short.

Second.—By a Gutta Percha Pipe, which on being drawn across the cutting by ignorant Budagha coolies, was pulled in two.

Third.—By a Wooden Syphon which failed on account of the defective state of the timber.

Fourth.—By Syphon composed of iron pipes cast at the Madras Mint by the express orders of the then Governor Sir Charles Trevelyan; these pipes, when brought here, were found useless.

Fifth.—By Telegraph wires.

Sixth.—By means of Iron Girders ordered from England.

4. All these plans had the sanction of Government, and, we most respectfully submit, were so many acknowledgments of our right to the water-course.

5. Every attempt to bring the water across the cutting having failed, the Public Works Department proposed to try a channel on a lower level, and although we could have but little faith in this plan, after so many failures and disappointments, and believing, as we did, that the greater portion of the water would be absorbed before reaching our grounds, it appeared so inexpensive, and so easy of execution, that we forbore to object to it, being above all things anxious to have the water restored to us without further delay; we merely meant to stipulate that we should have the same right over the new channel that we had always had over the old one; that we should have the same right over the water-course to see that the water was not diverted by other parties, and was free access to the water-course to remove obstructions which unavoidably occur from the habitual practice of buffaloes to walk to remove obstructions which unavoidably occur from the habitual practice of buffaloes to walk along every water-course which comes in their way; this stipulation, which we took the precaution to make, was clearly not superfluous as we are informed. Mr. Pestonjee, through whose land it was proposed to bring the water-course, has already advanced claims to the same, which before were never heard of.

6. The case having been so often before Government, we cannot suppose that our long suffering would subject us to the disabilities of the Statute of Limitation, but we beg leave to repeat that for about ten years, we have been deprived of our acknowledged rights, and to point out that the sum for compensation due to us on the part of Government is already far above the cost of the proposed aqueduct.

7. We of course derive our rights to this water channel from Mr. G. Norton, late Advocate General, who exercised the same for more than twelve years. We believe we are correct in stating that the said water-course was made over to him by the Collector of Malabar, (in whose District Ootacamund then was,) and confirmed both by the Revenue Board and by Government. We are sorry that we have no document stating the exact date of this grant, but it was, we believe, when Mr. Smith was Collector or Deputy Collector of Malabar, and Mr. Roupell, Assistant Secretary to the Board of Revenue.

8. Will you do us the favor of sending a copy of this letter with your reply to the Government on this subject.

(True Copy.)

(Signed) P. GRANT, Collector.

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1. The disposal of the above letter has been delayed in consequence of the original enclosures, forwarded with the Order of Government, having been retained in the Collector's Office. They have now been received, and the letter will be submitted to Government with reference to the order quoted by Mr. Grant.

2. From the papers submitted, it would appear that Mr. Norton had no exclusive rights in the water-course, as special provision is made in Mr. Smith's Memorandum for the supply of water to the gardens through which the channel was carried.

3. The Board concur with Mr. Grant in considering that General Dowker and Colonel Hadfield might be granted a small quantity of land on each side of the channel where it runs through Government lands, but they would leave them to establish any rights they may have to enter private properties. They also consider that Messrs. Pestonjee and Etienne should be allowed a share in the water, and that the application to cut off the supply from existing channels cannot be conceded. The Board, however, deem it very desirable that Mr. Grant should explain to General Dowker and Colonel Hadfield exactly how the case stands, and should endeavor to determine, in communication with these gentlemen, the rights of all parties in the water-course.

No. 332.

ORDER THEREON, 15th September 1865, No. 2,221.

Miscellaneous.

1. Ordered to be communicated to the Department Public Works, with reference to Proceedings in that Department, dated 17th February 1865, No. 479.

2. The Government have gone through the previous papers, and find nothing whatever rendering it necessary to defer the execution of the present project, which promises fair to remedy a long standing hardship.

3. Funds should, if possible, be provided for carrying out the work without delay, many years having elapsed since the supply was cut off.

4. Mr. Grant has not obtained, as he should have done, any statement from Mr. Pestonjee of his requirements and consent to the channel being taken through his land, and access allowed to it to remove obstructions. He will at once supply this omission.

5. There is no reason whatever to doubt that the source of supply is ample to afford all that is needed for General Dowker, Colonel Hadfield, and Messrs. Pestonjee and Etienne; but the Collector will take care that no new demands are made on the source without his sanction.

6. Where the channel passes through Government land, space will be reserved on either bank for conservancy purposes, but twelve feet appears to be more than necessary for this purpose. It is however to be remembered that the stream and source are public not private property; that the channel where it lies in Government land is Government property; and that the benefit enjoyed by the house-owners concerned is of grace and not of right.

(True Extract.)

(Signed) W. HUDLESTON,

Acting Secretary to Government.

To the Public Works Department.
" the Board of Revenue.
" the Collector of Coimbatore.

Exd. S. T. Augustin.

[Handwritten notes in Tamil script, likely a translation or commentary on the official document.]

Dec 26 1905

The first question seems to me to be that of land.
The water was turned aside from its natural
channel. but turning to the property of Gov. and
that, I suppose, of them. but the case hardly
constitute a right. it is but a riparian privilege.
I do not believe that there is any deed conveying a right
of property in the water course. still less of 12 feet of
land on each side. The Gov. in fact is interested in
utilizing the water course. for the benefit of his estate
and has no objection to allow the Government
to claim a right in the water course.

2704, 44/2-1350-332

Received 1905
Department of
No. 1638

CONFERENCE OF THE BOARD OF REGENTS

1905
No. 3,200

North Order

Submitting with remarks letter from the Col.
of Coimbatore reporting on the rights
of General Dowker, Colonel Hadfield and
to the Elk Hill water course at Ootaca-

No. 2221-15-1905