

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2293

Press
~~Mis.~~

47s. 476

Dated

23. 9. 1868.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
23rd September 1865.*

No. 475. Read the following Proceedings of the Madras Government in the
Public Works Department —

Passing orders on a letter from the Govern-
ment Pleader, forwarding a written state-
ment, to be filed in defence, in connection } (Here enter 19th September 1865, No. 2,759.)
with the Fort Citadel stone case in the
Civil Court at Trichinopoly.

No. 476. ORDER THEREON, 23rd September 1865, No. 2,293.

Miscellaneous.

Ordered to be recorded.

(True Extract.)

(Signed) J. GROSE,
Acting Under Secretary to Government.

Exd. S. T. Augustin.

*Proceedings of the Madras Government, Public Works Department,
19th September 1865.*

Read the following papers:—

No. 438. From Captain R. F. OAKES, R. E., Superintending Engineer, 6th Division, to Colonel C. A. ORR, R. E., Secretary to Government, Public Works Department, dated Tanjore, 23rd June 1865, No. 385.

SIR,

1. With reference to the Orders of Government noted marginally, I have the honor to inform you that the Executive Officer at Trichinopoly has reported that the Fort Citadel stone case is to come on for hearing on the 2nd proximo, in the Civil Court at Trichinopoly, and that I have requested him to move the Court to postpone the hearing for a month, on the plea of final orders on the subject not having been received from Government.

2. I beg to enclose a Draft answer for approval.

1. Referred, with the previous correspondence, to the Government Pleader for his opinion, on the proposed draft answer.

2. The enclosure to the letter from the Superintending Engineer, 6th Division, No. 2,381, dated 11th January 1865, have been returned; but it is hoped that the absence of those documents will not

Enclosures 9.

prevent the Government Pleader offering an opinion upon the subject.

FORT SAINT GEORGE,
4th July 1865.

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government P.W.D.

No. 439. From C. DALE, Esq., Government Pleader, Madras, to Colonel C. A. ORR, R. E., Secretary to Government, Public Works Department, dated Madras, 5th July 1865, No. 113.

SIR,

1. I have the honor to acknowledge the receipt of the Proceedings of Government under the date noted in the margin, and to state, as my opinion, that the draft of the proposed answer is objectionable and should not be put in.

2. If it be wished that I should prepare a written statement I must have before me a translation of the plaint.

3. I ought also to have before me some information regarding "the Rock Citadel;" the sole question at issue must be, I imagine, to whom does the soil in which the wall or citadel stands belong; I say imagine because I have not seen the plaint. As a general rule the owner of the soil is entitled to all that is permanently attached to, and standing on the soil.

4. To enable me to raise the proper issue, I ought to know who are the parties that claim the stones, and in respect of what Pagoda they claim them as "Church property." Also whether they hold any sunnud or grant of the soil on which the wall stands or in respect of their Pagoda; or on what grounds they found their title to the soil or stones.

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5. If issues are properly raised, it will be for the Plaintiffs to establish their title in the first instance.

6. It will, however, be necessary that the Defendant should show in his written statement the grounds on which he supports his claim to the soil and stones.

7. Probably there may not now be evidence to show when or by whom the citadel wall was built; though doubtless the latter fact would be known by tradition; if there is any evidence it would be of great importance, its character should be communicated to me. If there be none, then I ought to know the nature of the wall, being styled a citadel one is led to infer that the wall was built for the purposes of defence. I apprehend it was not built under European design, and probably it was not adapted for ordnance; if, however, it is constructed on principles constituting a means of defence, I think that fact should be stated, and if it can be shewn by aged persons or public records that the wall was kept up by any Government, Native or European for those purposes, I am of opinion the defence would be complete; probably, however, evidence of that character may not be available; if so then I ought to be informed whether the Government has exercised acts of ownership over the wall other than the removals before alluded to; also whether any body else has exercised any such acts, and particularly whether the Plaintiffs or their predecessors have done so; it ought also to be ascertained whether the shrubs, to which Mr. McDonell refers, grew on the wall in question, or on the rock on which the Pagoda stands; he is convinced that the documents he mentions "refer to the walls of the Pagoda itself," but I imagine it can readily be ascertained whether the servant of the Pagoda did in fact ever clear away a single shrub from the citadel wall, and if he did, whether it was done habitually.

8. In forwarding the information I have pointed out, it will be desirable that the party preparing the statement should bear in mind that I, who have to act upon it, have a very slight knowledge of the locality, and that every thing depends on my having a correct view of the facts conveyed to my mind. In preparing such statements we are too apt to forget that matter of detail with which we are ourselves familiar is not known to the party before whom the statement is to be laid, and who is to act upon the information so imparted; as a general rule it is better in these cases to err on the side of detail than by dealing in generalities.

9. It would be also desirable that the evidence on which the case can be supported should be now taken down by the Officer having the conduct of the case. It must be done before the trial, and it is highly desirable it should be done before the written statement is prepared.

10. I retain the papers pending a further communication from you.

MEMORANDUM.

1. Letter from the Government Pleader, No. 113, dated 5th July 1865, forwarded to the Superintending Engineer 6th Division, with a request that he will furnish a translation of the plaint, as required in paragraph 2, and submit information, in the fullest detail, on the several points noticed in paragraphs 3, 4, and 7.

2. Captain Oakes' special attention is drawn to paragraph 8, and he is requested with reference to paragraph 9, to communicate with the Collector, and arrange for the whole of the evidence on which the case can be supported being taken down by

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the Officer having the conduct of the suit, and transmitted to this Office for communication to the Government Pleader.

FORT SAINT GEORGE, (Signed) CHARLES A. ORR, Colonel, R. E.,
6th July 1865. Secretary to Government, P.W.D.

To the Superintending Engineer of the 6th Division. Memorandum and letter to be returned with reply.

No. 440. From Captain R. F. OAKES, R. E., Acting Superintending Engineer, 6th Division, to Colonel C. A. ORR, R. E., Secretary to Government, Public Works Department, dated Tanjore, 3rd August 1865, No. 687.

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with reference to the Rock Citadel Suit in the Court at Trichinopoly, though I observe a translation has already been forwarded on the 11th January 1865.

No. 2,381.

29th July.

No. 113, 5th July.

3. In personal communication with the Collector, I have ascertained that he can give no further information on the subject of the proprietorship of the disputed wall than that afforded in his letter to your address, dated 8th March 1865.

No. 9.

4. Forwarded to the Government Pleader, with reference to his letter No. 113, dated 5th July 1865.

FORT SAINT GEORGE, (Signed) CHARLES A. ORR, Colonel, R. E.,
7th August 1865. Secretary to Government D.P.W.

No. 441. From C. DALE, Esq., Government Pleader, Madras, to Colonel C. A. ORR, R. E., Secretary to Government, Department Public Works, dated Madras, 11th September 1865, No. 140.

SIR, 1. I do myself the honor of acknowledging the receipt of the Order of Government of the date noted in the margin.

7th August 1865.

2. I have prepared a written statement, forwarded herewith. The information afforded is not very satisfactory, but believing I have gathered the facts correctly, I think the statement will raise the issue necessary for the due adjudication of the case. I have inserted a few notes in the margin which should be attended to before the statement is filed, and particular care should be taken to see that the statement is strictly in accordance with the facts, and that no admissions are made at variance with the facts.

3. In the 2nd paragraph of the Plaint it is averred that the 2nd Defendant has removed the walls "situated to the south of the tank and garden." I do not

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understand whether the walls so removed constitute the boundary of the tank and garden, which (as I gather) it is not disputed are the property of the Pagoda. I draw attention to it, in order that the real facts may be ascertained.

4. It will rest with the Plaintiff to prove his case as averred in his plaint; and to prove that he is the proper party to sue; that the land on which the walls were built belonged to and formed and still belong and form part of the property of the Pagoda. That the walls were built with Pagoda funds, or that the parties interested in or managing the affairs of the Pagoda have exercised uninterrupted acts of ownership over the wall for such a number of years as will authorize the Court in finding ownership by length of possession.

5. The Defendant should be prepared with evidence to contradict or explain the Plaintiff's evidence where it may not be consistent with the facts, and to prove the facts averred in their own written statement.

6. As I understand the matter, no evidence can be adduced on either side to prove the erection of the walls, and by whom they were erected. Probably, however, at the time the East India Company assumed the government of the Carnatic, returns or reports were made to Government showing what fortifications and Military buildings were taken under the charge of the Military authorities; as also that from that time there have been periodical returns made of all Military Fortifications, buildings, &c., as also accounts or reports of repairs, &c., effected from time to time, I advise that search be made with the view of ascertaining whether this citadel is mentioned in those returns or reports. If it is, I should wish to see them when I will advise whether they should be tendered in evidence.

7. I advise that an accurate plan of the *locus in quo* should be made and proved at the trial; it should show accurately the walls in dispute, the different buildings, &c., within the citadel, with the distances from the rock, &c. The witness who may be called to prove the plan should be prepared to show to the Court the height of the walls, their thickness; the fact of their being flanking projections and a bastion, &c., with all other particulars necessary to convince the Judge that the walls really did form a fortification, as mentioned in the written statement.

8. The Defendants should also be prepared with evidence of the nature stated in the 2nd paragraph of Mr. Fraser's letter of the 8th March 1864, and in the 5th paragraph of Mr. McDonell's letter of the 8th of March 1865; likewise that careful search has been made amongst the records of the Collector's Office, and that no trace can be found of any grant, sunnud, &c., having been made to or in favor of the Pagoda or any person on its behalf, of the soil whereon the walls stand, or of the ground within those walls. As also of all acts of ownership on the part of Government.

9. I would request the particular attention of the Officer, to whom the conduct of the defence may be entrusted, that the bare production of official papers and records are not sufficient to make them evidence. If they are more than thirty years old, as a general rule, it will be sufficient to prove that they come from the proper custody; if they are not thirty years old they must be proved in the usual manner; but where they are adduced as proof of acts done, they will not be sufficient by themselves, but if there be witnesses now alive who can speak to the performance of those acts, such witnesses must be examined.

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10. I return the papers noted at foot:—
1845, December 23rd, No. 5,826. Extract from the Minutes Consultation, Military Department.
1846, January 2nd. Extract from the Minutes Consultation, Military Department, No. 9.
1861, February 17th, No. 488. Proceedings of Madras Government, Public Works Department.
Do. do. do. No. 836.
" March 18th. Letter from Collector of Trichinopoly.
" March 8th, No. 25. Proceedings of Madras Government, Public Works Department.
" August 30th, No. 2,506. Do. do. do.
1865, January 25th, No. 240. Do. do. do.
" February 15th, No. 453. Do. do. do.
" March 28th, No. 845. Do. do. do.
1864, November 28th. Plaintiff in the case.
1865, June 21st. Draft answer.
" July 4th. Order of Government, Public Works Department.
" July 29th, No. 532. Letter from Executive Engineer, Trichinopoly, to Superintending Engineer, 6th Division.
August 1st, No. 2,929. Government, Public Works Department.

ORDER THEREON, 19th September 1865, No. 2,759.
No. 442.

CIVIL WORKS, No. 52.

1. The foregoing letter from the Government Pleader will be communicated to the Superintending Engineer of the 6th Division, and to the Collector of Trichinopoly. The attention of the former Officer will be drawn to the notes in the margin of the written statement, in reference to which he will be careful in following the course pointed out in paragraph 2. Captain Oakes' attention will also be drawn to paragraphs 3, 7, 8, and 9, and he will cause the immediate preparation of the plan referred to in paragraph 7.
2. The Collector of Trichinopoly will be requested to make the most careful search amongst the records of his Office for any documents that may be extant of the kind noticed in paragraphs 6 and 8, and should he succeed in discovering any, he will make an immediate report to Government, and furnish the fullest particulars regarding them.

(True Extract.)

Major, R. E.,

Under Secretary to Government

To the Superintending Engineer, 6th Division with original Draft of answer and 3 other Enclosures.
" Board of Revenue.
" Collector of Trichinopoly.
" Revenue Department;
Ed. S. T. Augustin.

Nov-1865 Dec 1st
City of Jackson, Miss.
172-2544

Proceedings of the
Grand Court in the
J. W. DeForest

Dated 19th 3rd 4th
Revised 20th 3rd 1865.

1865-257.

Containing

one or better from the

last volume for 1865.

and a written statement

to be filed in defense

in connection with it

that is dated about 1865

in the civil court of

Richmond - 1865-257.

RECORDED.

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