

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	644	Press ~~Mis.~~
⁵⁰⁻⁵¹ Dated	5-5-1870	N

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*Proceedings of the Madras Government, Revenue Department,
5th May 1870.*

No. 50. Read the following Proceedings of the Board of Revenue, dated 29th April 1870 :—

Read the following letter from the Government Solicitor, Madras, to the Acting Secretary to the Board of Revenue, dated 27th April 1870, No. 194.

I HAVE the honour to inform you that on Thursday last, the 21st instant, the Deputy-Collector, Mr. Herbert Richardson, called upon me for the purpose of ascertaining what evidence would have to be adduced on behalf of Government in the Suit noted in the margin, and as it appeared to me very desirable that there should be a conference with Mr.

• O. S. No. 10 of 1868.
Thacharakovil Mambikaruner Tirumalpad of
Neelambur.

versus
The Collector of Malabar and another.

Mayne, who has been, as you are aware, retained on behalf of Government to appear at the final hearing of the above Suit, I arranged for a conference with him on Saturday last, at which Mr. Richardson was to be present. I also conferred with the Advocate-General on the subject, and finding from him that he had been instructed to give his opinion with reference to the 2nd paragraph of the Order of Government, dated 12th April 1870, No. 517, Revenue Department, I arranged with him to be also present at the proposed conference. The conference was held as proposed, at which the Advocate-General, Mr. Mayne, Mr. Richardson, and myself, were present, and I have now the honour to forward herewith a copy of the Advocate-General's opinion.

2. It will be observed from the Advocate-General's opinion that he has advised me fully as to the evidence which it will be necessary to produce on the part of Government at the final hearing of the Suit; and as it appears to me very desirable that the Board of Revenue should be made acquainted with the nature of the evidence required, I will now proceed to state briefly the Advocate-General's opinion on this point.

3. At the hearing of the Suit held on the 23th March 1870, six issues were settled by the Judge for decision at the final hearing of the Suit on the 8th of August 1870; the first issue is on the question of the Suit being barred by the Statute of Limitation, and is as follows :—" Whether previous to July 10, 1856, the Government had possession of the land in dispute, or any part of it, and if only of a part, of what part." This issue appears to the Advocate-General to be incorrectly framed; for even if the issue, as it now stands, were decided in favour of Government, it would only show that Government had possession of the land at a period antecedent to twelve years before the commencement of the Suit, and would not therefore decide whether the plaintiff's cause of action was barred by limitation of Law. Under these circumstances, the Government Pleader at Calicut should be instructed to apply to the Court, immediately on its re-opening after the present Recess, to have this issue amended. The issue as amended should simply be whether the plaintiff's Suit is barred by the Statute of Limitations. The second issue is as follows :—" Whether in the year 1837, and previous to that time, the land in dispute was the property of the Vayocoonawar of Numbalacode." Upon this issue the Government must be prepared to show that the land in question has been in their posses-

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sion for upwards of twenty years, and this will be chiefly proved by production of the Land-revenue Accounts of the Collectorates of Coimbatore and Malabar, showing the payment of the Land-revenue in the shape of Grazing Tax by the Todas dwelling on the land; by the evidence of the Tahsildar, Collecting Peons, or other officials who have been in the habit of receiving the rents on behalf of Government, in respect of lands west of the Pycara River, within the period abovementioned, and from whom such rents have been received; by oral and documentary evidence of the building by Government of the Pycara Travellers' bungalow in 1830 and of the Neddiwuttum bungalow in 1831; and, further, the original records of the Waluvanad Talook, showing that the Hills called Malekoontee and Keelekoontes are in that talook, and the collection of Land-revenue in respect of them, must be produced, and some official must be called who can speak to such records. The third issue is "whether Exhibit A. was executed as asserted by the plaintiff, and whether the lands in dispute are comprised in such Exhibit." No evidence need be adduced in respect of this issue, as it will be a sufficient answer to it, to show that it is written in a language not understood by the Todas, by whom it purports to have been signed; and, moreover, that the deed itself, even if it is a valid one, is one which can give no title to the plaintiff. The fourth issue is "whether possession of the lands in dispute was obtained by plaintiff's uncle shortly after the date of the execution of Exhibit A." It will be entirely for the plaintiff to prove this issue. The fifth issue is "whether Exhibit B. was executed in the manner asserted by plaintiff." Upon this issue Major Hesse's Map, Report, and Depositions, will have to be relied on. Mr. Herbert Richardson must also be called to give evidence as to his examination of the land in dispute in the year 1862, and the making of his Report and Map showing the result of his examination. Some two or three of the inhabitants examined by him at the time of his making his Report should also be called. It is understood that no sufficient evidence can be adduced on the part of Government to show the insanity of Subadra in May and June 1853. No evidence need therefore be produced with reference to the sixth issue.

4. I may mention that Mr. H. Richardson has had fully explained to him the nature of the evidence to be got up by him, and I would suggest that so soon as he returns to Madras another conference should be had with the Advocate-General and Mr. Mayne, at which Mr. Richardson should be present with the view to their being satisfied that all the evidence they require will be forthcoming at the final hearing.

5. I shall be glad to receive as soon as possible true copies of the written statement put in on behalf of Government, of the Order appointing Major Hesse as Commissioner, of his Map, Report, and of the depositions of the witnesses examined by him, to enable me to complete Counsel's Brief.

6. As Mr. Advocate-General has, in consequence of the Order of Government of the 12th of April 1870, No. 517, above referred to, had to give his opinion on the points referred to him, I have the honour to inform you that I marked on his Brief the usual fee of Rupees 140, and request sanction of Government for its disbursement out of the funds in my hands.

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OPINION.

I HAVE gone through the case with Mr. Mayne, and advised the Government Solicitor as to the evidence which it will be necessary to produce at the final hearing on the part of the Government.

2. I think it most desirable that Mr. Richardson, who attended at the Meeting, should not at present proceed to Vizagapatam. His evidence is indispensable at the final hearing, and, from his familiarity with the plaintiff's claim, he is the one person who can best get up the evidence which we require. This should be done at once. And instead of Mr. Richardson's proceeding forthwith to Vizagapatam, I suggest that he should be detailed for the special purpose of completing the evidence, after which, if there is time, he should proceed to his substantive appointment.

(Signed) J. B. NORTON,
Advocate-General.

23rd April 1870.

SUBMITTED for the orders of Government.

2. The Advocate-General is of opinion that it is necessary that Mr. Richardson should not proceed to Vizagapatam at present, but that he should return to Coimbatore, the Neilgherries, and Malabar, to collect the evidence that will be required at the final hearing of the Nellambur Suit; and that when he has done so, he should be present at a conference with the Advocate-General and Mr. Mayne. The Board have gone over the matter carefully with Mr. Prichard and Mr. Richardson, and given careful instruction to the latter. They now recommend that Mr. Richardson continue to be employed on this special duty. He has been detained at Madras till the orders of Government are received.

3. The Collector of Malabar will instruct the Government Pleader to make the application referred to in paragraph 3 of the letter of the Government Solicitor. Of course, he and the Collector of Coimbatore and the Commissioner of the Neilgherries will assist Mr. Richardson in his inquiries by every means in their power.

4. The Collector of Malabar will also obtain five copies of the documents referred to in paragraph 5 which have been filed in the Court, and forward them direct to the Government Solicitor.

No. 51.

ORDER THEREON, 5th May 1870, No. 644.

Miscellaneous.

12th April 1870, No. 517.

with the Nellambur Suit until further orders.

ORDERED accordingly that in supersession of the orders given in the Proceedings of Government noted in the margin, Mr. Herbert Richardson be continued on special duty in connection

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2. During his employment on this special duty, Mr. Richardson will be at liberty to draw the rates of Travelling Allowance for officers in the Wynaud*.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

To the Board of Revenue.
.. the Accountant-General.

draw a special deputation
allowance of Rs
per mensem while
so employed

2. *AMS*
During his employment
on this special duty
Mr Richardson will
be at liberty to draw
the rates of travelling
allowance for officers
in the Wynaud^t

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AMS

By John O'Donoghue (Revenue)
to the Accountant-General
4/5

See

W. Blair

5th May 1870.

Ordered accordingly
that in succession
of the orders given in
the Proceedings of last
noted in the margin,
Mr Herbert Richardson
be continued in special
duty in connection with
the Hellesbourne Smith
until further order.

Mr Richardson
will be permitted to

12 Apr 1870 No 507

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B. D.

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W. Blair