

MADRAS RECORD OFFICE.

Government of Madras.

Revenue . DEPARTMENT.

G.O. No.	2704.	Press
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<u>8-9.</u>		
Dated	2 nd . October.	1869..

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
2nd October 1869.*

No. 8. Read the following Proceedings of the Board of Revenue, dated 14th August 1869, No. 6,049:—

Read the following letter from J. W. BREEKS, Esq., Commissioner of the Neilgherry Hills, to the Acting Secretary to the Board of Revenue, dated Ootacamund, 16th July 1869, No. 104.

Messrs. Arbuthnot & Co., Secretaries and Treasurers for the Carnatic Coffee Company, wrote to me, enclosed letter A., requesting permission to relinquish a portion of the 522.63 acres, found on survey to be the area of the block which the Special Assistant-Collector demarcated for the Company in 1865, and estimated to be about 260 acres as per Demarcation Sketch B.

2. On the grounds, (1), that the excess clause in the Conditions of Sale could only have been meant to apply to slight variations between the real and estimated areas; (2), that it was never the intention of the Company to take up more land than 260 acres; and (3), that Tea and Cinchona cultivation are still altogether experimental on the Hills, and that the importation of good tea-seed is attended with difficulty. Messrs. Arbuthnot & Co. further request that the Company may be relieved not only from the payment of assessment in arrears upon the acreage in excess of 260 acres, but from assessment altogether, until such time as the plantation shall be in bearing.

3. After seeing the Estate myself, I requested my Assistant to take the survey plan, and meet on the ground Mr. Gordon, through whose agency the Company acquired the land, and, having learnt from him how the excess came about, to report to me accordingly. Mr. Roupell's Report (C.) is herewith forwarded.

4. Messrs. Arbuthnot & Co.'s request to be relieved of all assessment cannot be entertained. Certain rules have been sanctioned by the Government for the assessment of land on these Hills, and the Carnatic Company having purchased with that knowledge, must, like other people, abide by the Rules.

5. The intention of the excess clause may have been, as suggested by Messrs. Arbuthnot & Co., to provide for small discrepancies; but, from the nature of the ground on these Hills, eye-estimates are necessarily inaccurate, and some one representing the Company should have accompanied the Special Assistant-Collector when demarcating the ground and judged for himself whether the area was greater than the Company wanted, or the Company should have elected to wait till the survey had been completed.

6. It is just here, however, that the action of the Special Assistant-Collector gives just cause for complaint to the Company. What he did, he did for the best, no doubt; but he should have sent due notice to Mr. Gordon to meet him on the ground when he was demarcating, and should not, in place of a portion of the original application, which he found to be private property, have included a large area in the opposite direction without consulting Mr. Gordon.

7. Afterwards, when Mr. Gordon was furnished with the Sketch Plan B., stating the area to be 260 acres as estimated by the Special Assistant-Collector, I think the former was justified in assuming the estimate to be tolerably correct. At any rate, he could hardly have supposed that it would eventually prove to be 522 acres, more than double what he applied for.

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8. For the above reasons, I would recommend that all to the east of the red line in the Plan D., herewith forwarded, be struck out of the purchase, and that the Company be furnished with plan and title-deed for the remainder, on which only the purchase-money should be calculated, and the arrears of assessment should be paid.

ENCLOSURE No. 1.

From Messrs. ARBUTHNOT & Co., Secretaries and Treasurers, Carnatic Coffee Company, (Limited,) to the Commissioner of the Neilgherry Hills, dated Madras, 16th January 1869.

We have the honour to acknowledge the receipt of your letter of the 19th ultimo, and we should have replied to it before, had it not been for the interruption of Christmas week.

2. We are desired by our Directors to express to you their thanks for your kindness in offering to go out and look at the land near Pykarra with a view to arriving at a decision upon their application to be permitted to relinquish a portion of it rather than pay assessment on land which they have never purposed to cultivate. Your proposal, however, seems to involve with it the payment of arrears of assessment for three years on an area of 522 acres, and we are requested (without calling in question the strict legal right which the Government may have) to point out to you some circumstances which, it is hoped, may induce you to withdraw your demand for arrears of rent, at any rate upon such land as may be in excess of the originally estimated 260 acres.

3. Mr. James Gordon of Ootacamund, through whose agency the land was acquired, and who has only now been made acquainted with the excess of acreage, writes as follows, namely:—
“When I applied for the land, I applied for the Toda Shola afterwards purchased from the Todas for Denison: the large shola we have now opened, and the small one is also felled; but Hannington knowing the Toda Shola to be private property extended the demarcation on the other side, taking in a large amount of grass-land; but he estimated the whole of what he demarcated at only 260 acres, and that estimate I have kept to in my reports; indeed, without a plan I would not be able to point out the eastern boundary. It would be well if Mr. Brecks would permit our abandoning all to the east of the newly-felled shola, which would leave us, say, 120 to 130 acres of shola-land, and 120 acres, say, of grass i.e., originally shola and grass, part being now cultivated.

“I certainly think, under the circumstances, the Commissioner ought to permit our abandoning all over 260 acres of the Prospect. I think I have Hannington's original sketch of the land, estimating it at that extent; and, if so, I will send it you: it will show that we bought, believing, in good faith, that there was only that amount, and, if it is only now they have discovered it to be more, we ought not to be compelled to take the extra quantity, unless we like.”

4. Since the receipt of the foregoing letter we have received from Mr. James Gordon, under a blank cover, Mr. Hannington's plan and estimate of the acreage, and we forward it to you herein enclosed.

5. With reference to the memorandum attached to the Conditions of Sale, an extract from which was furnished to us with Mr. Huntley Gordon's letter of 19th January 1867, we would submit the following for your consideration:—

1st.—“The purchaser is required to abide by the decision of Government as to any excess which may be found in the lot upon survey, etc.”

6. It can scarcely, however, have been the intention to stipulate for more than that any slight excess of acreage should be paid for by the purchaser to the Government and *vice versa* in the event of a deficiency being found after survey. In the present case, it was Mr. Hannington's estimate which was in fault, just one hundred per cent.; and, from Mr. James Gordon's letter, Mr. Hannington would appear also to have mapped out the land, deviating (no doubt under

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the belief that what he was doing would be acceptable to the purchasers) from the original application, inasmuch as a portion of the lot applied for turned out to be private property belonging to Todas.

2nd.—The extract of memorandum above referred to makes mention of purchase-money only, not of after-assessment. As, however, it seems fair to assume that the assessment was in effect a component part of the purchase-money, we do not desire to push this argument further than you yourself may consider to be right.

3rd.—It was never the intention of the Directors and Managers of the Company to acquire more land than the sholas, amounting, it was thought, to 120 acres or thereabouts; but, upon its being represented that the intervening grass-land should be included with the sholas, they consented, but at no time was it believed or understood by them that a larger quantity than 260 acres should be taken. The cultivation both of Tea and Cinchona was altogether experimental on the Neilgherry Hills, and may be said to be so still, no returns worth mentioning having yet been obtained from either: and the delays and disappointments in respect of the introduction of Tea having been very great owing to the difficulty of importing good seed and to the circumstance that seed turning out bad necessitates the loss of a whole year before the misfortune can be remedied, if even then, for the same thing may recur, and has recurred year after year.

7. We trust that the foregoing may be accepted as affording sufficient ground for our application on behalf of this Company to be relieved from the payment of assessment in arrears upon the acreage in excess of 260 acres; but we would go further, and, in consideration of the extremely backward state of the cultivation, it having been in last season only that any real commencement was made in consequence of the difficulties in regard to tea-seed and other drawbacks, we are desired to request that you will be so good as to apply to the Board of Revenue or to the Government for a remission of the tax altogether, until such time as the plantation shall be in bearing. The effect of this would be to assimilate the conditions of tenure to those under which land is held in the Wynaad, a cultivation tax leviable in the instance of Coffee, and, it is to be presumed, of other produce also, after four years from date of planting.

8. As the cultivation of Tea and Cinchona by private enterprise is believed to be as yet upon a very small scale, it is hoped that the indulgence herein solicited may be accorded without its giving rise to what you have described as possibly an inconvenient precedent—an indulgence which this Company has no desire should be confined to itself, but which it would have pleasure and satisfaction in seeing extended to all neighbouring pioneers and cultivators.

ENCLOSURE No. 2.

From N. A. ROUPELLI, Esq., Acting Assistant-Commissioner of the Neilgherry Hills, to the Commissioner of the Neilgherry Hills, dated Ootacamund, 13th July 1869, No. 58.

In returning the accompanying enclosures, I have the honour to state that I have personally inspected the land therein referred to in company with Mr. James Gordon of Ootacamund.

Letter from Messrs. Arbuthnot & Co., Madras, to the Commissioner of the Neilgherry Hills.
Rough sketch of the “Prospect” Estimate.

2. The history of this case is briefly as follows:—

In April 1864 application was made by Messrs. Arbuthnot & Co., on behalf of the Carnatic Coffee Company for a block of land, partly forest and partly grass, about three miles to the north-east of the Pykarra bungalow. In June 1865 Mr. Hannington went out to demarcate this land, and, as one of the sholas therein could not be put up to auction, being already the private property of Todas, he excluded this shola, and, in lieu thereof, added to the remaining portion of the application a large extent of ground, about fifty acres of which are forest, thinking doubtless that such substitution would meet the wishes of the applicants. The entire area, as shown in the enclosed rough sketch, was estimated at 260 acres, but was proved upon survey to be 522.68 acres.

3. The Company, through their Secretaries and Treasurers, represent that they never wished for more than 260 acres, and would not have taken so much had it not been pointed out to them that

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2nd October 1869.*

the grass-land in the immediate vicinity of the required forest should be included in their holding. They trust, therefore, that all excess over 200 acres may be severed from the block demarcated, and that they may be relieved from any claims upon such excess. This is a course of procedure not contemplated by the Rules, which, on the contrary, provide that the purchaser shall be bound by any excess over the estimate found in the lot upon survey. Under ordinary circumstances, therefore, the Company would have to abide by the result of their application. The present case, however, exhibits some peculiar features which deserve consideration.

4. Mr. Gordon, who acts for the Company on the Neilgherries, states that he received no intimation when the demarcation would take place, and, therefore, was not present at such time; that the portion added by the Special Assistant was never applied for, and is of no value to the Company; and that he (Mr. Gordon) remonstrated against its inclusion as soon as he learnt of it, which, it appears, was some months later. He requests, therefore, that the available forest portion of the original application, together with so much adjoining grass-land only as will suffice to render the block regular in shape, may be handed over to the Company, who, he submits, should be chargeable with nothing more than the purchase-money due upon the land within such amended boundaries and the usual assessment thereon. The extent of such land, you will observe from the second page of Messrs. Arbuthnot & Co.'s letter, is estimated, by Mr. Gordon, at from 210 to 250 acres.

5. I apprehend that the actual extent will be found upon survey to be about that above estimated; but, whether less or more, it seems to me that Mr. Gordon's request is a reasonable one, and deserves the favourable consideration of the Government. The Rules, it is true, prescribe that the applicant should satisfy himself that the boundaries of the land which he requires have been correctly fixed, and that the Government do not hold themselves responsible for any errors discovered subsequently to the sale. I should mention that the land in question was sold in July 1865, or a few days after the demarcation was completed, but a long time before it was surveyed and measured. The boundary error, in the present instance, is one which would operate to the serious prejudice of the purchaser of the land, and of a character which he could not well have foreseen and guarded against, as he was not asked to be present at the demarcation. At the same time, the Rules are so precise and clear that the applicants cannot be held entirely free of blame; and I think, therefore, that it will be a sufficient concession if Mr. Gordon's request on behalf of the Company is granted conditionally upon the Company paying the entire cost of survey and demarcation of the land represented in the present plan, as well as of the block to be represented in the new plan which will have to be prepared.

6. The consideration money for the amended block will, of course, have to be calculated proportionately upon the bid for the originally estimated 200 acres. The boundaries of such amended block are indicated in pencil on the plan.

ENCLOSURES Nos. 3. and 1.—Plans.

SUBMITTED for the orders of Government.

2. The Board concur generally in the Commissioner's remarks, and support his recommendation that the Carnatic Coffee Company be furnished with a plan and title-deed for only so much of the land in question as is situated to the west of the red line in the plan marked D., and that the purchase-money as well as the arrears of assessment be also calculated on this extent.

3. All the land to the east of the red line will thus revert to Government.

4. With regard to para. 4, the Board resolve to call the attention of Government to their Proceedings of the 19th July 1869, No. 5,139, which apply to the case which forms the subject of the Commissioner's letter.

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2nd October 1869.*

No. 9. ORDER THEREON, 2nd October 1869, No. 2,704.

Land Revenue.

IN these Proceedings the Commissioner of the Neilgherry Hills submits an application from Messrs. Arbuthnot

& Co., who request on behalf of the Carnatic Coffee Company:

(1.) Permission to relinquish 262.68 out of 522.68 acres which were demarcated for and purchased by them, under the belief that the lot only included acres 260.

(2.) Remission of arrears of assessment on the same 262.68 acres.

(3.) Remission of assessment on the remaining 260 acres (which will now be retained by them), until such time as the plantation shall be in bearing.

2. Act XXIII. of 1863 prescribes: "That all persons desirous of becoming purchasers, are to satisfy themselves as to the identity and correct description of the property, and the measurement and boundaries of the premises, previous to the sale; as by having the premises knocked down to him, the purchaser thereof shall be held to have waived all objections to any mistakes that may afterwards appear to have been made in the description of the premises, as well as to any other error whatever in the particulars of the property."

3. With reference to the first and second points, it appears that the Agents of the Company accepted the estimate of the Special Assistant-Collector as correct, and did not take any steps to satisfy themselves as to the accurate description of the property when they purchased it. On the other hand, it is urged, on behalf of the Company, that due notice of the demarcation was not given to them, and that part of the land sold to them was not included in their application. It is also argued that the law above quoted was only intended to apply to trifling inaccuracies, and not to saddle intending purchasers with so large a proportion as 100 per cent. above the amount applied for.

4. The Government are not disposed to admit the soundness of the latter argument. The greater the discrepancy the easier should be its detection, and the maxim *caveat emptor* clearly holds in such a case.

5. But on a consideration of all the circumstances of the case, the Government resolve to carry out the recommendation of the Board. Paras. 2 and 3 of their Proceedings are therefore approved, but the cost of demarcation and survey of the whole 522.68 acres, as well as of that portion of it which will henceforth form the holding of the Company, must be defrayed by the latter.

6. Before deciding on the third request preferred by Messrs. Arbuthnot & Co., the Government desire to receive the Board's reply to G O under date the 7th instant, No. 2,526.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.

Ed. F. R. Bantleman.

No. 2704

(7.)

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 29th September 1869.

Read the following
Proc. of the Board of Revenue.

Recommending that certain
portion of land on Nallgherries pur-
chased by Messrs. Arbutnot & Co.
on behalf of Carnatic Coffee Company
be excluded from purchase &c. &c.

(A. & M. Aug. 1869 N. 6049.)

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(2) Remission of arrears of
assessment

The preparation of
the order has been
delayed until the 1st
of October 1869
and the Nallgherries
Commissioner has
been directed to
prepare the order
by the 1st of October
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REVENUE
DEPARTMENT
MADRAS
GOVERNMENT
OFFICE
29th SEPTEMBER 1869
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