

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 3832	Press Mis.
<u>280-282</u>	
Dated 24 th November 1869	

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Revenue Department,
24th November 1869.*

Read the following papers :—

No. 280. From the Officiating Conservator of Forests, to the Acting Secretary to Government, Revenue Department, dated Camp at Ootacamund, 21st August 1869, No. 1,628.

I HAVE the honour to forward herewith copy of an appeal case,* No. 44-69, on the file of the Joint Magistrate in the Tinnevely district, and request that the same may be laid before Government.

* Dated 29th June 1869.

2. The defendant set fire to the hill forests against the orders of our department and special orders of the Collector on the subject, and was sentenced to imprisonment for *mischief* under the Penal Code. The finding of the Magistrate on the appeal is that the defendant was only exercising a right in firing the jungle, and he reverses the decision and releases the defendant.

3. The firing of the jungle and surrounding grass causes the destruction of thousands and thousands of saplings, and the fires spread for miles over the forests. The practice has been put a stop to under our rules in most hill tracts where we have conservancy establishments. If the Magistrate is correct in his decision, the subject is one that calls for special legislation, as no measures of conservancy with regard to trespass, grazing, and firing in our hill tracts and reserves can be enforced, and conservancy in our Presidency at its best must be a very poor thing compared to what it is in other countries.

No. 281. From the Acting District Magistrate, to the Chief Secretary to Government, Fort Saint George, dated Courtallum, 27th August 1869, No. 336.

I HAVE the honour to forward copies of a decision passed by the Acting Joint Magistrate of this district and of a letter addressed me on the same subject by Mr. Walker, Deputy Conservator of Forests for Madura and Tinnevely.

2. Mr. Stuart having (unwisely I think) brought the matter of Government right to prohibit the people grazing cattle and firing the forest in reserves to an issue, it only remains for me to ask the Government to take such measures as may prevent any recurrence of what has now taken place.

3. I am strongly in favour of a short Jungle Conservancy Act making all grazing and firing in forest reserves punishable under the Act.

No. 282. ORDER THEREON, 24th November 1869, No. 3,032.

Forests, No. 16.

THE Government do not deem it necessary to pass any orders on these papers as the expediency of taking special powers under a Forest Act is now under consideration.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

To the Officiating Conservator of Forests.

„ the Collector of Tinnevely.

„ the Board of Revenue.

Exd. A. S. Rodgers.

N^o 87. Office of Deputy Conservator of Forests
Camp Courtallam 14th August 1869

To Mr. Lieutenant C. J. Walker
Deputy Conservator of Forests
Madura & Tinnevely
To the Dy. Collector & Magistrate
of Tinnevely

Sir, I have the honour to call your attention to the decision of the Acting Joint Magistrate in Appeal Case No. 42 which appears to me to necessitate a reference to Government.

2. It does not appear necessary to recapitulate the arguments for and against the firing of Forests and jungles, or the grazing of Cattle within Reserves, nor to consider whether, and in what degree these should be restricted, as, if the Joint Magistrate's views are correct no such restrictions can in any case be made without special legislation and all existing arrangements in this and other Districts are null and void.

3. I shall forward a copy of this letter and copy of the appeal case furnished to me by the Acting Joint Magistrate to the Dy. Conservator for his information.

I have &c
(Signed) C. J. Walker
Deputy Conservator of Forests

GOVT. 118693 21000

REVENUE.

THE OFFICATING CONSERVATOR

OF FORESTS.

Ac. No. 42

Dated November, 24th.

Recd.

Enc.

G. O. 24th November 1869, No. 3,032.

NOVEMBER

1869-282.

Right of Government in jungles in Tinnevely.—Letter from the Conservator of Forests on this subject with order thereon.

34
Appeal Case No. 44 on the
file of Joint Magistrate.

This is an appeal against the
decision of the Sub Magistrate of Ambasamudram
sentencing the Defendant to 2 months
simple imprisonment for mischief.

The Charge is that the Defendant
fired the grass on the hills west of the
Ambasamudram Taluk against the order of
the Collector.

It is notorious that the people
living in the neighbourhood of these hills
have from time immemorial been in the
habit of firing these hills for the purpose
of securing green fresh grass for their Cattle
and I cannot think that the order of
the Collector alone is sufficient in the
absence of special legislation to
constitute the continuance of the practice
illegal.

If the continuance of a practice
of this kind from time immemorial does
not constitute a servitude upon the
land it is impossible to imagine
what a servitude can be.

Right of Common, right of way,
rights to flow of water, right to block

Enclosure No 2 in a letter from
Hon. Ag. District Magistrate of
Tinnevely dated 27th Aug.
1869 No 336

No. 3082/6

Looking up at hills

from the surrounding lands

notion of Tinnai nipa

to see the same better.

See also No. 119 & 291.

1869 No 336-44

from one neighbour windows by high walls and buildings or to pour off the rain water from the roof of one house into one neighbour premises are all servitudes which have over and over again been acquired by mere lapse of time, and it appears to me that although no instance of the particular act of forming Grafs has been brought before the Courts the principle still applies, and that the Government as Landlord is bound to respect a servitude of this nature upon their hill Country in the same way as any other Landlord would unless they apply the remedy of special legislation. And that the Magistrate in dealing with charges under a Criminal Code should be careful not to convict where the rights of the party to do the act complained of are at all doubtful.

It might be urged that the Collector being the agent of the Government might legally issue an order forbidding the above practice and that such order if within his authority would unless disowned by Government carry the authority of Government and so override rights claimed by Government as an ordinary Landowner

but as the Government have constantly allowed the decisions of the Courts in matter regarding Land as against their agents the Collectors to be carried out they must be considered to have consented to place themselves in the position of an ordinary Landlord subject to the jurisdiction of the Civil Courts and to have allowed all rights proved in the Civil Courts to stand against them. Finding therefore that the appellant was exercising a right of which the public have been long in possession I conclude that he was wrongly convicted of a Criminal offence and reversing the decision of the Sub-Magistrate direct that he be released.

29 June 1869

(True Copy)

Signed A. J. Stuart
Off District Magistrate

(True Copy)

C. J. Lousley
Off District Magistrate

No 2853.

In order

It is only after a long and
 weary it has been ascertained
 that no right or interest
 exists. But have not they
 that should be a great deal to be
 said. The thing of things and
 before they are done must all
 be left to settle the opinion of
 the Court of Justice and the
 in the Court. W.H.

The remedy for the
 state of matters brought
 forward by Major Biddens
 seems to the undersigned
 to be the demarcation
 of the reserved tracts.

Once demarcated and
 declared to be lost

First it is not likely that
 the Magistrate would
 make any further difficulty

Until the reserved Forests
 are properly defined
 such inconvenience will
 constantly arise

W.H.

Demarcation of the
 reserved tracts will assist
 the matter, but no rule
 that the Govt. can pass
 a law, against firing
 jungle will serve to secure
 acquiescence for mischief.
 The prohibition must be
 in the law, and as a Forest
 Law is, I believe, under
 consideration by the Govt.
 I might submit a
 suggestion that such prohibition
 should be embodied in the
 Law, to be applicable to all
 such forests as the Govt.
 may select. With the
 power of the King the
 Govt. would exercise all

Enclosure in a letter from
 Mr. H. D. M. Magistrate
 of Timoruly dated 27th
 August 1869. No 336

Rev. 3082/69

Domestication of
 the man the animal, to the

the 2853 No 2853

No demarcation by govt
authority will be of any
use here. The people
have in many parts of the
country, a prescriptive
right to drive their cattle
into govt waste in
mountains, & jungles. The govt has the right to give the govt
govt people that waste to procure fresh pasture
under that servitude.

The collector has in many
places forced this usage
which is highly detrimental
to forest conservation and
the people have submitted.
But if the people resist
the courts will recognize
these prescriptive rights.
The only remedy is to
pass an act empowering
the collector to declare
a reservation in the
certain specified limits
where pasturage or
firing or both are
forbidden. R.

I must like to see
the forest act
proposed by the govt
of India. R.A.

Minutes

Forest Appeal Committee
in General Meeting

Council

C. 25. Aug 1892 27/2 R.C. 8. 10/10 27/2

No 20537 3002 No 3032

21. 10. 1892

As the question of Forest
legislation is again under
the consideration of the
it is submitted that no
rules need be passed on
these papers at present. The
right of foot in Jungles was
discussed in 1840 between
the Board & foot and so
far as I can gather from
the correspondence, the rights
of the people were then con-
sidered to be permissive
only.

Proposed rules

No 3032

The foot do not deem
it necessary to pass any
rules on these papers as the
expediency of taking special
powers under a Forest Act is
now under consideration.
order of the

with a view to
the Forest Act
14 - 1892