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4/11/62**MADRAS RECORD OFFICE****GOVERNMENT OF MADRAS***Revenue* DEPARTMENT

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*Proceedings of the Madras Government, Financial Department,
11th March 1874.*

No. 90. Read the following Proceedings of the Board of Revenue,
4th February 1874, No. 212:—

Read the following letter from E. BARCLAY, Esq., Acting Governor
Solicitor, to J. GROSE, Esq., Secretary to the Board of Revenue,
Madras, 4th December 1873, No. 663:—

With reference to the Proceedings of the Board of Revenue,
September 1873, No. 1798, requesting me to obtain the opinion
General as to whether ancient royalty and right of monopolizing
Canara District can be maintained by process of law, civil or criminal.

2. I submitted the matter for the consideration of
and I now forward, herewith, a copy of his opinion.

OPINION.

THERE is no criminal proceeding by which the Government can assert its claim to
monopoly of a ferry; a temporary order might be passed under Chapter XL. of the Code
Criminal Procedure in the events contemplated by that chapter; but the right must be ultimately
decided in the Civil Court.

2. There are no materials before me which would enable me to form an opinion as to the
probable result of contesting the matter in a suit; if it could be shown that the present Govern-
ment, succeeding to the rights of the previous rulers of the country, had invariably levied a toll
at a particular ferry, and had, as of right, excluded all other persons from ferrying at the spot
it is possible that the monopoly might be regarded as a piece of Crown property and its invasion
by the public to make good for compensation in damages. The Act certainly appears in
Section 20 to contemplate the existence of ferry monopolies other than those created by itself.

3. The result of any such litigation is, however, far from certain. Difficulty might be
experienced in showing the origin of the monopoly; the country, it is known, abounds in illegal
local exactions, which, having no rightful basis, would not be legalized by mere lapse of time
and again, though Government might have levied tolls, it might be contended that other persons
had done the same; and so that no monopoly was made out. Some doubts of this kind appear
to have been entertained, when the original Bill on the subject was introduced.—See Mr. H.
Phillips' statement of Objects and Reasons, 7th December 1865. At any rate an Act dealing with
ferries being now in existence, it would seem a safer and more convenient course to apply it in
any case in which it became necessary to assert the legality of the toll, or to exclude the right
from the right of ferrying. The objection to applying the Act, viz., that the proceeds of
ferry would have to be carried to the "Canal and Ferry Fund," might be got over by
Section 29, after the words "provisions of this Act may be applied" lines from
the words "or of roads, bridges and other means of communication"
a second proviso might be added to the Section, making express provision
now referred, and sanctioning in such instances a special employment of the f

(Signed) H. S. C.

3rd December 1873.

(True Copy.)

(Signed) E. BARCLAY
Acting Governor

SUBMITTED for the orders of Government.

2. Ferries are an anciently established means of raising revenue, and
95,400* of the proceeds are credited

* According to the Local Fund Budgets of 1873-74 the Road Fund of eighteen Local
Circles.

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3. On the Western Coast ferries are of greater importance than anywhere else, and the Road Fund could not meet its obligations without the revenue derived from this source, which is as follows:—

	RS.
Calicut Circle	25,000
Tellicherry...	17,500
South Canara	22,600

no law securing to Government a monopoly of ferrying at special except Madras Act I. of 1870, which provides that ferry-rents levied shall be applied only to maintaining ferries and channels. prevented the Act from being extended to the Circles where rents are absolutely required for maintaining roads, and there is little room for expenditure on ferries and channels, as is the case in Calicut, Tellicherry, and South Canara.

5. In South Canara the Government monopoly has been successfully disputed, and it is a mere question of time when it will cease to exist there, and in Malabar, unless the law is altered.

6. The Board were at first inclined to believe that these ferries having been a royalty of Government from time immemorial, a prescriptive right to monopolize ferrying at specified localities existed, and could be enforced in the Courts, but the Advocate-General shows that the result of litigation in this matter is very doubtful, and the Board have now no hesitation in advising a modification in the law.

7. This can be effected in three ways, either by modifying the Local Fund Act, or by modifying the Ferry Act, or by enacting a law declaratory of the right of Government to monopolize ferrying wherever they may establish a ferry.

8. The Board think it unadvisable to meddle with the Local Fund Act at present, and they see many insuperable objections to a Declaratory Act which would have to apply to so large a portion of the Presidency, and to include many districts where the right of ferrying is less familiar to the people than it is in Malabar and South Canara.

9. It seems to follow that the Ferry Act should be modified. In Section 29, it is enacted that collections under the Act shall be credited either to the Local Fund of the Circle in which they accrue or to the Canal and Ferry Fund by the Governor in Council.

(A true Copy and Extract.)

(Signed) J. GROSE,
Secretary.

ORDER THEREON, 11th March 1874, No. 403.

The Governor in Council concurs with the Board of Revenue in opinion that the Canals and Ferry Act, 1870, should be amended, as proposed in the last paragraph of their Proceedings above recorded; and he resolves accordingly to direct that the necessary steps be taken in the Legislative Department for carrying out the Board's proposal.

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2. The law is defective in other respects, and this opportunity will be taken of entirely remodelling it.

(True Extract.)

Acting Chief S.

To the Board of Revenue.
.. Legislative Department.
.. Revenue Department, } for information.
.. Public Works Department, }

Exd. J. Wright.

11/26/78

Revenue Department

11/26/78

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FINANCIAL

THE BOARD OF REVENUE

Act

Act

Act

11/26/78

11/26/78

G.O. 11/26/78, No. 400

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