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(1) Number of pages 17 sheets
(2) Date of repair 14.9.84
(3) Initials of the Referencer SJS

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

G.O. No.
B.P. No.

1797

Press.
Mis.

Dated

6.11.1878

197

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1292
GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

6th November 1878, No. 1,797.

Read the following paper:—

No. 100. Proceedings of the Board of Revenue, dated 19th October 1878, No. 2,839.

Read the following letters:—

From J. B. PENNINGTON, Esq., Collector of Tinnevely, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Courtallam, 8th October 1878, No. 731.

I HAVE the honor to acknowledge the receipt of G.O., No. 1,598, dated 2nd October 1878, approving of the answer prepared by the Government Pleader in the case of Cocq *versus* Collector of Tinnevely; but before filing it, I beg to be allowed the opportunity of pointing out what appears to me to be a serious flaw in the argument on which the defence is apparently based.

2. In his covering letter (paragraph 4) Mr. Handley says, "Neither can he (Mr. Cocq) succeed on the ground that there was an implied covenant for title and quiet enjoyment, the breach of which is the cause of action and occurred when the Travancore Government put another person in possession. The answer to this is that there is no such implied covenant. The putta is really nothing more than a lease, although

* (Assigners in the copy.) as a rule Government never oust the puttadar or his assignees* as long as the assessment is paid. Still in law it is a lease, and as such implies no covenant for title or for quiet enjoyment except so far as the lessor's acts are concerned." Now I am not quite clear as to the effect of the last proviso, and it is even possible that the case might be fairly defended on the ground that the title is only good against the Government; but I take exception to the line of argument indicated above, and especially to the allegations as to the estate conveyed (or evidenced) by a putta which I have taken the liberty of italicising.

3. I am quite aware that the present High Court have ruled that a ryot holding under a putta is a mere tenant-at-will, or something to that effect; but I have never understood that the Government of Madras concurred in that ruling, and I was not therefore prepared to find the doctrine asserted in the defence to a suit. I am not aware of any law which declares a ryotwari putta to be merely a lease except the case-made law of the High Court; and certainly by the common law of the country it confers an absolute title to the land, in fee simple only in the event of a failure to pay the assessment or land-tax. This position appears to me to be so thoroughly well established that I cannot believe it necessary to refer to the authorities in proof of it. They have however been discussed in the "Revenue Register" for July and September 1874 and January 1875. It has always, I believe, been accepted as an axiom by Revenue officials in this Presidency that a "ryot is the true proprietor" of the land contained in his putta; and I should look upon it as nothing less than a public calamity if the defence of this suit succeeded on the ground that he is nothing but a leaseholder after all. Even if the Courts, following the dictum of the High Court, should be inclined to decide the point in favor of Government, I cannot believe it would be right or politic to raise such a plea.

From the same Officer, dated Tinnevelly, 11th October 1878, No. 747.

I HAVE the honor to inform you that the Tinnevelly Sub-Court has granted an extension of time till the 5th November next for filing the written statement in Original Suit No. 14 of 1878 (Mr. Cocq's case) on an application put in by the Government Vakil as instructed by Government in their telegram, dated 30th ultimo.

2. I have therefore the honor to request early orders on my letter, No. 731, dated 8th October 1878.

THE Board consider this reference unnecessary. In his letter forwarding draft of the written statement to be filed Mr. Handley apparently alludes to the interpretation put by the High Court on the existing law as to the rights conveyed by a putta, but a reference to the statement shows that the point is not put forward or relied upon for the defence in the suit in question. Whatever opinion may be held as to the correctness of the ruling adverted to, until the matter is put beyond doubt by fresh legislation the authority of the High Court is binding on the Lower Courts, and the Board see no reason why the plea should not be advanced, if necessary, when the suit comes on for hearing.

(True Copies and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

No. 101. ORDER THEREON, 6th November 1878, No. 1,797.

Miscellaneous.

No change is needed in draft answer. The Government do not indicate thereby that a Government Ryot is a tenant-at-will; nor have the Courts ever made so sweeping an assertion; the *dictum* quoted does not go beyond this, viz., that the pottah is not *per se* a muniment of title to the proprietorship of the land.

(True Extract.)

(Signed) L. A. CAMPBELL,
Under-Secretary to Government.

To the Board of Revenue.
„ the Collector of Tinnevelly.

Exd. W. H. French.

1288
2

REVENUE DEPARTMENT.

No. 4834.

From Board of Revenue

Dated 19 October 1878.

FOR ORDERS.

Lay

No 1797 of 1878

to Govt. Agent

No change is needed in
draft answer. The Govt do
not indicate thereby that
a ~~particular~~ is a tenant at
will; nor have we found
ever made so sweeping an
assertion: the dictum quoted
does not go beyond this, viz. that
he ~~particular~~ is not per se a

And as to the Board of Revenue, the
Collector has no authority of his own
as to the Collector's responsibility of the land.

6/11/8

1752
4

the Collector of Tinnevely.
Copy to the Secretary to Government, Revenue Department.
" " Government Pleader.
d. A. Grubert.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 19th October 1878.

Read the following letters:—

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as a rule Government never oust the puttadar or his assignees* as long as the assessment is paid. Still in law it is a lease, and as such implies no covenant for title or for quiet enjoyment except so far as the lessor's acts are concerned." Now I am not quite clear as to the effect of the last proviso, and it is even possible that the case might be fairly defended on the ground that the title is only good against the Government; but I take exception to the line of argument indicated above, and especially to the allegations as to the estate conveyed (or evidenced) by a putta which I have taken the liberty of italicising.

3. I am quite aware that the present High Court have ruled that a ryot holding under a putta is a mere tenant-at-will, or something to that effect; but I have never understood that the Government of Madras concurred in that ruling, and I was not therefore prepared to find the doctrine asserted in the defence to a suit. I am not aware of any law which declares a ryotwari putta to be merely a lease except the case-made law of the High Court; and certainly by the common law of the country it confers an absolute title to the land, defeasible only in the event of a failure to pay the assessment or land-tax. This position appears to me to be so thoroughly well established that I cannot believe it necessary to refer to the authorities in proof of it. They have however been discussed in the "Revenue Register" for July and September 1874 and January 1875. It has always, I believe, been accepted as an axiom by Revenue officials in this Presidency that a "ryot is the true proprietor" of the land contained in his putta; and I should look upon it as nothing less than a public calamity if the defence of this suit succeeded on the ground that he is nothing but a leaseholder after all. Even if the Courts, following the dictum of the High Court, should be inclined to decide the point in favor of Government, I cannot believe it would be right or politic to raise such a plea.

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(True Copies and Extract.)

Acting Secretary

To the Collector of Tinnevely.

Copy to the Secretary to Government, Revenue Department.

" " Government Pleader.

Ed. A. Grubert.

FOR ORDERS.

GA 6 Krambly 78 No 1797

in info
copy to Collector

2.5-11-78 R. 6-11-78

My dear Madam
 I send this by your
 for perusal & return to
 Carni char in case there
 is official communication by
 the Gov. of this Govt.
 I don't think the
 Draft answers need
 change. But I agree

2. 10. 78 and 13-14.
 10-8-78 - 367. 68.

No. 4834

Revenue 1878. Sept

Board of Revenue.

MADRAS.

The COLLECTOR OF TINNEVELLY.

Dated October 19th.

Printed 30th.

Received 4th

PROCEEDINGS, 19TH OCTOBER 1878, No. 2,839.

Copy 1/17

OCTOBER 21
 No. 2,839.

Subj. — No. 14 of 1878 in Tinnevely Sub-
 Court regarding certain land granted to M.
 Coog on dachhat in Pasi 1364 and since dis-
 covered to belong to Travancore. — Passing
 orders on letter from Collector submitting
 remarks with reference to answer prepared by
 Government Pleader to be filed in —

25-11-78

Gal. Murugappa
 19-10-78

by Mr. Coog's letter to the Collector 13 July 1878

with Sumner & Co.
as regards the last
edition of the 18th.
Ed. & generally on the
printed issues.

In my opinion a
dyot is a proprietor
in a higher sense
than a zemindar.

but his "putter" is
merely "evidence" of
holding. & is immaterial
to the "title".

But however on no
account recognise
any plea of tender
to fingers his right
of property. He will avail
himself of any opportunity

I accept the right for
him - as recognized
by Govt
Thine 3/11

No anything
 is to be done
 there is no
 suggestion
 The case is
 2500
 5000
 10000
 15000
 20000
 25000
 30000
 35000
 40000
 45000
 50000
 55000
 60000
 65000
 70000
 75000
 80000
 85000
 90000
 95000
 100000

I wish you would
kindly read the enclosed if you
have a spare five minutes.

I have marked the passages
I think important - will the
Case will be decided, by the
meaning of a putback - and if the
Suit is defensible on the merits
at all, it will be on the plea which
the Board say is not relied upon

In the defence viz: that a
patent does not confer any title
to the land contained in it.

That is the view of the High Court:
at least I suppose so; but it is not
the view of the Government, I believe,
and therefore I think it is immaral
of them to put ~~it~~ forward such
a plea, and I don't see that the
Honble Progs dispose of my
objection to the plea. The fact that
the ruling of the High Court is binding

on the Lower Courts does not
justify the Government in putting
forward the dictum of the High
Court when they are behind it. To me
an entirely erroneous view of the Law

I have filed the defence as
ordered but if I was examined as
a witness I should be obliged to
say that I didn't believe what is
alleged in it! - and the Spectator
would be disagreeable to me
at any rate - I should be compelled

to admit that the Govt had
never looked upon a ryot as a
leaseholder before, & that I
didn't believe they do so even
now! - The conclusion used to
be that they were prepared to
adopt any plea in order to
get out of a difficulty with a
poor broken down old man

(his own description of himself)
I hope it is all right, but I don't
like the case at all
Yours sincerely
J. H. Kemmington

Revenue Depart.
ment 30^a
August 1878
No 1392

No 105
17/10
From, J. H. Maudslayi Esq
Government Pleader Madras
To C. A. Galton Esq
Secy to the Board of Revenue

Sir, With reference to the Proceedings of
Government noted in the margin, I have
the honor to submit draft of a written
statement to be filed by the Collector in
Suit No 14 of 1878 on the file of the
Sudra Subordinate Court.

2. The suit is clearly defective & cannot
be entertained in its present shape. The
Collector is not personally liable for any of the
acts complained of & if the suit is aimed at
the Government the New Civil Procedure Code
requires it to be brought against the Secretary
of State for India. Perhaps the Court might
allow the plaint to be amended in this respect,
but there is another fatal objection to the
suit viz that no such 2 months notice as is
required by the Code in suits against Govern-
ment or public officers has been given.
I assume that no such notice has been
given. The papers before me contain no
trace of any further notice than that given
by Mr Green's letter to the Collector of 3 July 1878.

of course
it will

20 June

which was less than 2 months before said, & besides is not a sufficient notice under the Code. The plaint must therefore I think be rejected at or before the 1st hearing, but of course it will be open to the plaintiff to bring another suit in proper form after giving due notice.

3. Strictly speaking perhaps the proper course would be to raise the above objections to the frame of the suit without going into the merits, but to enable Government to dispose of the whole matter at once. I have drawn up a defence on the merits which can be either detached from the first three paragraphs or not as may seem most convenient. There can be no harm in filing the whole statement at once and then if the suit is rejected on the preliminary objections and filed again in proper form the statement will do as a defence to the new suit by withdrawing the 3rd three paras.

4. Upon the merits I do not think the plaintiff has any case. If the suit is regarded as one for damages for non-completion of a contract to put him in possession of so much land, then the cause of action arose at the date of the putta in 1851 and the suit is barred. Neither can he succeed I think on the ground that there was an implied covenant for title and

The argument in support of the plea that a putta does not confer a title

quiet enjoyment, the breach of which is the cause of action & occurred when the Travancore Government put another person in possession. The answer to this is that there is no such implied covenant. The putta is really nothing more than a lease although as a rule Government never evict the puttee. The puttee does not starve or his assignees as long as the offer of purchase is paid. Still in law it is a lease and as such implies no covenant for title or for quiet enjoyment except so far as the lessor's acts are concerned. Possibly Mr. Coey might be legally entitled to the return of the amount actually paid in respect of the lands of which he has been deprived, though this is by no means clear, but as he has been offered and declined, this he cannot recover it by suit.

5. I forward the two enclosures to the Collector's letter of 3rd August 1878

Mudras.
12th September 1878

Shave &c
Signed J. H. Handley
Government Pleader

In

In the Court of the Subordinate
Judge at Tinnevely
Suit No. 11 of 1878.
Charles Henry Rossmaloo Esq. - Plaintiff
Against
J. B. Permington Esq. } Defendant
Collector of Tinnevely }
Defendants' Statement

The undersigned Defendant state
as follows.

1. I am not liable to be sued in respect
of the acts of my predecessor or the Board of
Revenue or Government and the plaintiff
discloses no cause of action against me.
If the suit is intended to be against the
Government it should have been brought
against the Secretary of State for India
in Council under Chapter XXVIII of the
Code of Civil Procedure.
2. No such notice of this suit as is required
by Section 424 of the Code of Civil Procedure has
been given.
3. For the above reasons the suit cannot be
entertained.
4. On behalf of the Government I state as
follows to the best of my information
and belief. The suit is barred by the
Law of Limitation.

Gu. Is this so.
J. B. P. M.

5. In 1858 Plaintiff applied to the then
Collector of Tinnevely on behalf of a
puttha for a tract of forest land for coffee
cultivation the boundaries of which were
specified by him and in 1858 puttha was
given to him for the same by order of the
Board of Revenue. No measurement was
made of the lands for which puttha was
so granted but their extent was estimated
at 427 acres 20 cents the boundaries being
pointed out by the plaintiff's servants.
The plaintiff's coffee estate called the
Hope Estate does, I believe, form portion
of the land for which puttha was so issued
but I do not know exactly what is the
area of that estate, and if it is necessary
to determine such area a survey must be
made of the said estate and also of the
rest of the land for which puttha was
so issued as aforesaid.

6. A part of the land for which the
plaintiff obtained puttha as aforesaid
was situate to the east and part to the
west of the watershed which lies between
the Tinnevely District and the territory
of the Travancore Government. The
Plaintiff's Hope Estate and all the land
brought into cultivation by him lies to the

east of the said watershed and he has never taken possession of or attempted to cultivate any land to the west of the same. He has paid assessment road cess and village cess on the whole land included in the putta but otherwise he exercised no act of ownership over any part of the same west of the said watershed.

Gⁿ 18/10/74
3/0

7. The exact boundary between the Travancore State and the Trivelly District has for a long time been uncertain and a survey is now being made for the purpose of settling the same; the general principle agreed upon between the two Governments being to take the watershed as the boundary up to a certain point. At the time when the said putta was granted it was believed that the lands comprised in it were all within the Trivelly District but no covenant express or implied was entered into on behalf of Government that they were so. The plaintiff or his servants pointed out the boundaries of the lands for which the plaintiff sought putta and he well knew that the boundary between Trivelly & Travancore was not then settled.

8. In October 1874 a part of the land

comprised in the plaintiff's putta the exact measurement of which I do not know, was sold by public auction on account of the Travancore Government and was purchased by a Mr Miller. The sale was advertised for 3 months before it took place and all persons having any claims upon the land were called upon to come forward. The Plaintiff well knew of such sale and advertisement but he never came forward or in any way made known his claim to the Travancore Government. It is not true as stated in para 5 of the plaint that in 1876 or at any other time the forest land for which putta had been granted to plaintiff was appropriated by the Travancore State under the sanction of the Government of Madras or that the plaintiff protested against such appropriation. The Plaintiff did not protest against the sale by the Travancore Government. Some time afterwards he brought the matter to the notice of the Government of Madras who attempted to induce the Travancore Government to cancel the sale, but that

Government objecting to do so nothing further could be done.

9 On behalf of the Government of Madras an offer has been made to the plaintiff to return the whole amount of assessment road cess and village cess paid by him in respect of the lands in question with interest at 6 per cent amounting to about Rs 7,000, but the plaintiff has declined to accept the same.

10 I do not admit the area of the land for which compensation is claimed or the value of the same to be correctly stated in the plaint. The latter is altogether excessive.

11 I submit that the plaintiff has no cause of action against the Government and that the suit should be dismissed with costs.

12 Even if the plaintiff has any claim for damages the measure of damages would not be the value of the lands in question.

I declare that what is herein stated is true to my knowledge except as to matters stated on information and belief as to which I believe it to be true.

No 731. Tinnevely Collectors Circuit
Tutcheri, Comtatam 8th October 1878
From The Collector of
Tinnevely
To The Secretary to the Board of Revenue
Madras

Sir,
I have the honor to acknowledge the receipt of Government Order No 1598 dated 2nd October 1878 approving of the answer prepared by the Government Pleader in the case of Coeg v Collector of Tinnevely, but before filing it I beg to be allowed the opportunity of pointing out what appears to me to be a serious flaw in the argument on which the defence is apparently based.

2 In his covering letter (para 4) Mr Handley says "neither can he (Mr Coeg) succeed on the ground that there was an implied Covenant for title and quiet enjoyment, the breach of which is the cause of action and occurred when the Travancore Government put another person in possession. The answer to this is that there is no such implied Covenant."

"The putta is really nothing more than
"a lease, although as a rule Government
"never oust the puttadar or his assignees
"as long as the assessment is paid,
"still in law it is a lease and as such
"implies no covenant for title or for
"quiet enjoyment, except so far as the
"lessor's acts are concerned." Now I am
not quite clear as to the effect of the
last proviso, and it is even possible that
the case might be fairly defended on the
ground that the title is only good against
the Government; but I take exception
to the line of argument indicated above,
and especially to the allegations as to the
estate conveyed (or evidenced) by a putta
which I have taken the liberty of
underlining.

3. I am quite aware that the present
High Court have ruled that a ryot holding
under a putta is a mere tenant at
will or something to that effect; but I
have never understood that the Govern-
ment of Madras concurred in that ruling,
and I was not therefore prepared to
find the doctrine asserted in the defence
to a suit. I am not aware of any Law

which declares a ryotwari putta to
be merely a lease except the case-
made law of the High Court, and certainly
by the Common Law of the country
it confers an absolute title to the land,
defeasible only in the event of a failure
to pay the assessment or land tax.
This position appears to me to be as
thoroughly well established that I
cannot believe it necessary to refer
to the authorities in proof of it. They
have however been discussed in the
"Revenue Register" for July & September
1874 and January 1875. It has always,
I believe, been accepted as axiomatic
by Revenue Officials in this Presidency
that a "ryot is the true proprietor"
of the land contained in his putta, and
I should look upon it as nothing less
than a public calamity if the defence
of this suit succeeded on the ground
that he is nothing but a lease-holder
after all. Even if the Courts following
the doctrine of the High Court should
be inclined to decide the point in favour
of Government, I cannot believe it would

be right or politic to raise such a plea.

Have &c
Signed J. B. Partridge
Collector

No. 2839. Revenue Department
Proceedings of the Board of Revenue
dated 19th October 1878.

Read letters from the Collector of
Tinnivelly dated 8th & 11th October 1878
nos 731 and 747 respectively.

The Board consider this reference
unnecessary. In his letter forwarding
draft of the written statement to be
filed, Mr Handley apparently alludes
to the interpretation put by the High
Court on the existing law as to the
rights conveyed by a puttee, but a
reference to this statement shows that
the point is not put forward or
relied upon for the defence in the
suit in question. Whatever opinion
may be held as to the correctness
of the ruling adverted to until the
matter is put beyond doubt by fresh
legislation the authority of the High
Court is binding on the lower courts, and

The Board see no reason why the plea
should not be advanced, if necessary,
when the suit comes on for hearing.

(True Extract)

Signed C. A. Galton
As Secretary

J.P.

Corrected
1/6

PROCEEDINGS OF THE BOARD OF REVENUE, dated 5th October 1878.

Read the following letter from H. W. BLISS, Esq., Commissioner of Salt Revenue, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Madras, 14th September 1878, No. 1,265:—

I HAVE the honor to request permission to refund Rupees 617-8-0 to Mr. L. Kühn of Tuticorin under the following circumstances.

2. Mr. Kühn on the 25th March last bought at Tuticorin and paid for 235 garces of salt for export at the old rate of Rupees 13 per garce. Of this quantity 170 garces were supplied on different dates in May and are not now in dispute. The balance was supplied in July. Before its delivery, however, G.O., dated 7th June 1878, No. 867, Revenue Department, requiring the duty on exported salt to be paid at the time of its supply and raising its cost price to the full monopoly rate, had reached the Salt Deputy Collector who required Mr. Kühn to make up the full value of Rupees 2-11-0 per maund before giving him the salt. Mr. Kühn paid under protest and now claims refund of Rupees 617-8-0, being the difference at Rupees 9-8-0 per garce on sixty-five garces, between the old export rate of Rupees 13 per garce and the new (full monopoly cost price) rate of Rupees 22-8-0 per garce (3 Annas per maund).

3. I am fully of opinion that Mr. Kühn is entitled to this refund. He paid cash down for the salt in March when he bought it at the rate then current, and the salt therefore then and there became his property, though it remained on the Government platform. He ought not therefore to have been surcharged because of a change of price before he was able to remove it.

4. On the other hand, the Salt Deputy Collector was right, in my opinion, in requiring the prepayment of duty on the quantity removed after the receipt of the Government Order above quoted; and of this Mr. Kühn does not complain. He considers, however, that he is entitled to a refund of the duty on the wastage (70 maunds) which was found on in weighment at Calcutta of the July shipment (65 garces = 7,800 ~~which he has sent me a copy, and which allow a drawback of 5 per cent. on the duty at the port of shipment subject to the condition that if the wastage in transit is less than 5 per cent. full Bengal duty has to be paid on the excess found on weighment in Calcutta over the 95 per cent. of the consignment the duty on which is retained at the port of export.~~

5. I enclose a copy of these rules, dated June 1875, and have informed Mr. Kühn that as rules of the sort are incompatible with the provisions of Act XVIII of 1877 his claim cannot be admitted.

ENCLOSURE No. 1.

NOTICE TO SHIPPERS OF SALT FOR CALCUTTA.

UNDER the orders of Government, and subject to the under-mentioned conditions, a wastage allowance at the rate of 5 per cent. will be granted on shipments of salt from salt works in the Bombay Presidency for exportation to Calcutta in square-rigged vessels.

2. Full duty must be prepaid as usual on the gross quantities of salt to be removed from the works, and the salt will be treated in all respects as salt taken by country craft for ports in the Bombay Presidency, until transhipped into the exporting square-rigged vessels.

3. The salt will be weighed as it passes over the exporting vessel's side, and on completion of each shipment the Commissioner of Customs, Bombay, will grant a certificate showing the quantity of salt actually put on board.

4. On presentation of this certificate at the office of the undersigned, drawback at the rate of 5 per cent. on the gross amount of duty paid will be refunded to the shipper after deducting the duty leviable (at the Bombay rate) on any difference that may be apparent between the quantity of salt removed from the works and the quantity shipped.

5. On arrival of the cargo at Calcutta, differential duty only will be levied on 95 per centum of the quantity of salt removed from the works, and duty at the full Bengal rate will be levied on any salt landed in excess of that quantity.

6. Orders permitting the removal of salt for exportation to Calcutta under the foregoing rules will be issued only at the head-quarter office of the undersigned.

POONA,
14th June 1875.

(Signed) C. B. PRITCHARD,
Collector of Salt Revenue.

(True Copy.)

(Signed) H. W. BLISS,
Commissioner of Salt Revenue.

THE Board concur with the Commissioner in thinking that Mr. Kühn is entitled to the refund claimed Rupees 617-8-0, he having bought and paid for the salt before the price was raised; it is sanctioned accordingly. No allowance is admissible on account of wastage in transit to port of destination.

(True Copies and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

To the Commissioner of Salt Revenue.

Exd. A. Grubert.

1878.

BOARD of Revenue,
MADRAS.

To

THE COMM. OF SALT REVENUE.

Dated October 5th.

Printed 12th.

Received

511 9012-12-18-1878

PROCEEDINGS, 5TH OCTOBER 1878, No. 2,723.

OCTOBER.

No. 2,723.

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5793/28

Refund — of Rupees 617-8-0 claimed by Mr. L. Kühn of Punticorin on account of difference paid by him between the old export rate and the new monopoly price of salt. — Sanctioning the —, he having bought and paid for the salt before the price was raised; and stating that no allowance is admissible on account of wastage in transit to port of destination.