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MADRAS RECORD OFFICE

Government of Madras

Revenue DEPARTMENT

G.O. No. 270-71. Press / ~~Mis.~~ N. C.

~~B.P. No.~~

Dated 7. 4. 1871. ~~195~~ .

Not to be folded or roughly handled

7TH APRIL 1891, No. 270, REVENUE.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—letter from H. S. THOMAS, Esq., F.L.S., F.Z.S., First Member, Board of Revenue, dated Madras, 11th July 1888.

ABSTRACT.—Submitting a Fishery Bill for Madras Presidency together with a statement of objects and reasons.

READ—Proceedings of the Board of Revenue (Land Revenue), dated 24th September 1888, No. 821, Mis.

ABSTRACT.—Submitting for the information of Government, with remarks, demi-official from Mr. W. S. Symons, Ootacamund, bringing to notice that the Bhavâni river is denuded of fish by the Moplahs.

READ—letter from the Chief Engineer for Irrigation, dated Chepâk, 9th October 1888, No. 33-W.

ABSTRACT.—Forwarding copy of memorandum No. 205-M., dated 8th August 1833, from the Chief Engineer for Irrigation, regarding fish lock to be constructed in the North Branch of the Lower Coleroon anicut.

READ—Proceedings of the Board of Revenue (Land Revenue), dated 3rd December 1888, No. 7109, Mis.

ABSTRACT.—Submitting to Government, with remarks, letter from the Collector of Nilgiris informing that certain places of the Bhavâni river which are denuded of fish as reported by Mr. Symons in his letter to Mr. H. S. Thomas do not belong to his district.

ORDER—dated 7th April 1891, No. 270, Revenue.

Miscellaneous.

The draft Fishery Bill for the Madras Presidency submitted by Mr. Thomas, late First Member of the Board of Revenue, in the first of the above papers, has been allowed to lie over pending the decision of the Government of India upon the draft India Fishery Bill which was forwarded to it with letter, No. 5223, dated 3rd September 1888. No intimation having as yet been received from the Supreme Government as regards the manner in which this Bill has been dealt with, His Excellency the Governor in Council resolves to address the Government of India upon the subject.

2. The following letter will be despatched to the Government of India :—

(Here enter No. 271 R., dated 7th April 1891.)

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Commissioners of Land Revenue.
,, the Public Works Department.
Copy to the Legislative Department.

Exd. A. Aubert,

65 Copies.

Govt. of {1891} Madras.

REVENUE.

Issued

Recd. *Encl.*

G.O., 7th April 1891, No. 270.

APRIL.

Fishery Bill.

Resolving to address the Government of India enquiring whether any action has been taken by that Government on the draft of an India Fishery Bill drawn up by Mr. H. S. Thomas.

7TH APRIL 1891, No. 271, REVENUE.

REVENUE DEPARTMENT.

From

C. A. GALTON, ESQ., M.A., C.S.,
Secretary to the Government of Fort St. George,

To THE SECRETARY TO THE GOVERNMENT OF INDIA,
REVENUE AND AGRICULTURAL DEPARTMENT,

Dated Ootacamund, the 7th April 1891.

SIR,

Miscellaneous.

I am directed to invite your attention to my letter, No. 5223, dated 3rd September 1888, forwarding the draft of an India Fishery Bill drawn up by Mr. H. S. Thomas, late First Member of the Board of Revenue, and to enquire whether any action has been taken in the matter by the Government of India. I am to say that a draft Fishery Bill for the Madras Presidency has been under the consideration of this Government since the date of my letter above quoted, and that His Excellency the Governor in Council has deferred further steps pending the decision of the Government of India on the Bill for the whole of India.

2. I am further to enquire whether, in the opinion of the Government of India, it is within the powers of the Local Government to legislate for fisheries in the sea, and if so, within what limit from the shore.

I have the honor to be,
Sir,
Your most obedient servant,

(Signed) C. A. GALTON,
Secretary to Government.

Exd. A. Aubert.

60 Copies.

1891.

REVENUE AND AGRICULTURAL DEPARTMENT.

From the Government of Fort St. George.

Issued

Recd. *Encl.*

Letter, dated 7th April 1891, No. 271.

APRIL.

ENQUIRING whether any action has been taken regarding the India Fishery Bill and whether, in the opinion of the Government of India, it is within the powers of the Local Government to legislate for fisheries in the sea, and if so, within what limit from the sea.

REVENUE DEPARTMENT.

NOTES CONNECTED WITH G.O. Nos. 270–71, REVENUE, DATED 7TH APRIL 1891.

From H. S. Thomas, Esq., F.L.S., F.Z.S., First Member, Board of Revenue, dated 11th July 1888.

[SUBJECT.—*Draft Fisheries Bill.*]

Mr. Thomas forwards the draft Fisheries Bill for the Madras Presidency which he was directed to draw up in G.O. No. 175, dated 23th February 1888. It is submitted at once as it is thought that the Honourable Member may like to discuss the matter with Sir Edward Buck. It is not known whether the Government of India propose to legislate for the whole country: if they do, it is obviously unnecessary to proceed with a local Bill.

There is no spare copy of the draft so a detailed note on it cannot be drawn up until the copy sent herewith is returned. It would, it is thought, be well to inform Collectors and others of the opinion of Government on the Bill before forwarding it to them for an expression of their views.

H. A. STUART—24-7-88.
C. A. GALTON—24-7-88.

I have read these papers but wish a note to be prepared showing the present state of question, the scope of Mr. Thomas' R[illegible] how far it carries out or can be mad[illegible] carry out the proposals of the Delhi Conference, and how far it goes beyond them. The Bill itself does not seem to contain very much. The string of the papers is in Mr. Thomas' letter and his wonderful objects and reasons.

H. E. S[TOKES].

The first paper in the file on this subject is dated 11th September 1867 and is an order of Government directing the Collectors of Gōdāvari, Kistna and Tanjore to report on the stoppage of the hilsa or sable fish at the large anicuts, and its capture there. Very shortly after this a despatch was received from the Secretary of State for India enclosing copies of letters on the same subject from Colonel Haly and Sir Arthur Cotton, and these papers were also communicated to the above Collectors, to the Collectors of South Arcot and Nellore and to Dr. Day. The replies showed that in all the great rivers which flow out on the east coast there are one or more kinds of valuable fish which, entering the rivers from the sea for the purpose of spawning, are stopped by the anicuts, and there caught in vast numbers with the roe in them. This diminution of the food supply of the people was deemed worthy of the attention of Government and they accordingly deputed Dr. Day to enquire and make a comprehensive report on it (G.O. No. 1468, dated 27th May 1868). On hearing of Dr. Day's deputation, the Government of India asked that he might be allowed to visit the rivers on the Orissa coast also and that he might be instructed to direct his attention to the practical aspect of the question, i.e., how far the food supply of the people was being affected by the injury to fish which, it was alleged, was being caused by anicuts and other irrigational works. Instructions in this sense were issued to Dr. Day (G.O. No. 2151, dated 12th August 1868), and he submitted three reports—one on the southern and one on the northern districts, and the third a comprehensive report on the whole result of his enquiries (G.Os. No. 306, dated 4th February 1869 and No. 1185, dated 30th April 1869). The general conclusions at which Dr. Day arrived were—

G.O. 2140, 11th September 1867.

G.O. 2348, 7th October 1867.

(1) that the demand for fish was generally in excess of the supply;

(2) that the supply had decreased of late years, partly owing to the construction of anicuts which prevented anadromous fish reaching their spawning grounds, and partly owing to the smallness of the mesh of the nets used and consequent destruction of fry.

The remedies he recommended were—

(1) that all fisheries should be let out;

(2) that in the contracts or leases provision should be made for regulating the size of mesh, the periods and localities for fishing, the draining off of water in tanks and the poisoning of rivers;

(3) that "fish passes" should be constructed at anicuts;

(4) that rewards should be given for the destruction of vermin known to be injurious to fish;

(5) that fishing should be prohibited in certain months in the irrigation channels through which the young fish pass down towards the sea; and

(6) that a complete inquiry into the whole of the fisheries of the Madras Presidency both sea and inland should be undertaken.

The Government approved of these proposals and directed the Board to take immediate steps for giving effect to them from the 1st July 1869; the plan of fish-ladder submitted by Dr. Day was to be considered in the Public Works Department and, if approved, introduced at each anicut; and the Board were directed to make further inquiries on the lines suggested by Dr. Day (G.O. No. 1185, dated 30th April 1869). On receipt of these orders the Board represented that it seemed necessary to place salt-water fisheries on a footing distinct from those of waters above tidal reach, as [the sea and] estuaries are fished by a class who have no other support and they would suffer if these fisheries were leased by outsiders; they also pointed out that the minimum mesh recommended by Dr. Day (4 inches circumference) was too large, as whiting and all the smaller mullet, to say nothing of prawns, would pass through it. Finally the Board asked that time might be allowed them to consult district officers. The Government saw no reason, however, to defer the introduction of the protective measures suggested by Dr. Day, but they did not object to the details being modified as proposed by the Board. The latter were directed to communicate with Collectors and submit definite proposals for dealing with salt-water fisheries (G.O. No. 1812, dated 25th June 1869). No definite action was at first taken by the Board but after another Government Order (No. 2899, dated 19th November 1869), they submitted a draft of instructions which they proposed to issue to Collectors in order that effect might be given to Dr. Day's suggestions. This was in December 1869, but no orders were passed by Government until October 1872. Meanwhile much information was collected and a special report on pisciculture in Canara was received from Mr. Thomas who was then Collector of that district. The Board reviewed this at length and their resolution, together with a number of other papers on the subject, was disposed of in G.O. No. 1478, dated 25th October 1872, which is based on a minute by the Hon'ble Mr. Sim. The Government considered that there could not be a doubt that there was and had been for years a very wasteful destruction of fish in inland waters, that irrigation weirs prevented at least one valuable species from ascending to the spawning lands and that although it was impossible to ascertain with certainty how far the stock of fish had been affected, yet in the very nature of things the absence of protection must, if suffered to continue, lead sooner or later to the ruin of the fisheries. It was stated, however, that the measures to be taken to preserve the fisheries from the ruin which was "practically impending over them" must be tentative and limited at first, and only be extended as practical experience was gained. Operations were, therefore, in the first instance to be restricted to particular localities, and it was decided that all rivers, tanks and channels which dry up every year should be left out of consideration. Only the more valuable kinds of fish were to be dealt with at the beginning and the sable fish was mentioned as that which claimed first attention. The size of the mesh of nets was to be limited only in the case of waters rented out to the highest bidder, and which had thus become the subject of a purely commercial transaction. Nothing very definite was said on the subject of fence-mouths but it was stated that some such protection must be afforded to sea-fish on

In the original of G.O. 1657, 25th October 1872.

their way to their spawning grounds and to the fry on their way down to the sea. It was pointed out that when, as in the case of the Gōdāvari, the sable fish get above the anicut by means of the irrigation canals the object in view could be effected by forbidding fishing on certain days while the fish was on its way up, and altogether while the fry was coming down. With regard to purely fresh water fish a selection of the more valuable kind, such as the mahseer, was to be made and protective measures enforced during the spawning season.

All poisoning of waters was to be prohibited and punished under the Penal Code.

Fishing within 100 yards of an anicut was to be forbidden.

It was added that, having regard to the facts that the privilege of fishing had hitherto almost universally been unrestricted, and that large numbers of the poorer classes had no other occupation or mode of subsistence, the Government were not prepared to sanction any general extension of the system of fishery leases or the imposition of additional taxation on the pursuit in any form.

It was considered that legislative action was necessary and the Board were requested to submit a draft Act enabling Government.

(1) to prohibit the capture of certain fish at certain times or at certain places, either absolutely or with reference to size;

(2) to forbid the use of nets of certain descriptions;

(3) to forbid the use of fixed engines;

(4) to employ the staff necessary for carrying out protective measures.

General action was to be deferred until this Bill was passed, but Mr. Thomas was allowed to continue his experiments in Canara. Nothing was done by the Board for nearly a year and then (Proceedings No. 1384, dated 24th July 1873) said that they had been given to understand that it was the wish of Government that all draft Bills should be prepared in the Legislative Department and they therefore confined themselves to indicating what should, in their opinion, be the main principles and scope of the proposed Fishery Act. They considered that it must be drawn in very general terms and must give considerable power to the executive; that it should be left with Government to extend all or any of the provisions of the Act to any waters or system of waters, fresh or salt, except tanks, streams, or other waters which are not perennial and waters outside the coast-line; and that the administration of the Act should be left to the local fund boards, supervised by one or more inspectors of fisheries. The matters on which Government were to be empowered to frame rules were:—

In G.O. 792, Revenue, 24th May 1875.

(1) close times and seasons;

(2) the size of the mesh of nets:

(3) the implements for fishing which may or may not be used;

(4) the preservation of breeding fish and young fry;

(5) the pollution of waters in a manner detrimental to fish-life;

(6) fish ladders and other means of promoting the breeding and safety of fish.

The cost of administration would be met from the income raised by taxes on nets, licenses to fishermen, etc.

The consideration of these papers seems to have been deferred until 1875 when His Excellency Lord Hobart minuted against the proposed law which he considered would produce more of evil in the manner of vexatious interference with popular rights and the scope given for arbitrary official proceedings, than of good in the protection of a branch of food supply. The Government decided,* however, to entrust the preparation of a draft fishery Bill on the lines indicated to the Board who were instructed to consult Mr. Thomas or other competent judges. It was added that provision should be made for the admission of municipalities to a share in the administration of fisheries within their limits, but nothing was said about the objection to a tax on nets which had been urged by the Secretary of State (the Duke of Argyll) in a despatch recorded in G.O. No. 768, Revenue, dated 22nd July 1873.

* G.O. 792, 24th May 1875.

Nothing had been done by the Board up to 1879, when in connection with certain papers regarding the powerlessness of Government to prevent any person fishing in a Government public tank, it was suggested that arrangement should be

made to allow of the Third Member of the Board (Mr. Thomas) giving his undivided attention for about a month to the preparation of the draft Bill. The Government declined to sanction such arrangements but asked Mr. Thomas to indicate through the Board the points on which he considered legislation advisable (G.O. No. 1730, dated 20th August 1879). This Mr. Thomas did in a very lengthy paper, and he very naturally pointed out that the Government had had all the requisite information before them for a long time. Mr. Thomas's letter was left undisposed of for two years but then Government requested him to put his Bill into shape and resubmit it to Government (G.O. No. 1646, dated 7th November 1881). Again there was an interval of two years, and then Mr. Thomas submitted a draft Bill, draft rules, and a very elaborate essay which he styled a fuller explanation of objects and reasons." These were circulated among district officers and to the Board with the result that the Bill, in the particular form it took, was condemned by all the officers consulted with one exception, Mr. Glenny, who admitted that he had not studied the subject. The Board's opinion will be found recorded in G.O. No. 143, dated 29th January 1884, and Mr. Thomas's remarks on it in G.O. No. 468, dated 5th April 1884. Mr. Thomas agreed that the intervention of local fund boards and municipalities was undesirable and he accepted some of the other modifications suggested by the Board. The order of Government on this was as follows: "Mr. Thomas "will be requested to recast the Bill in the manner proposed. The Govern- "ment reserve consideration of the other points raised until the matter comes before "them in a more complete shape." Presumably the first sentence refers only to the elimination of local fund boards and municipalities but it is not clear. The opinions of certain selected Collectors referred to above were submitted to Government with Board's Proceedings, dated 30th April 1884, but no orders were passed on them by Government until 28th February 1888 (G.O. No. 175). Mr. Thomas was then placed on special duty for the purpose of drawing up a shorter and less elaborate Bill. It was stated that G.O. No. 468, dated 5th April 1884, would to a considerable extent guide him in the preparation of the measure and he was directed to also avail himself of the "coming conference at Delhi." It was added that the preparation of the Bill itself should require but a comparatively short time and that the greater portion of the period of special duty (three months) should be devoted to drawing up a list of rivers to which those provisions of the proposed measure which relate to nets and the erection of fixed engines should be applied.

He also forwarded a draft Bill which he had drawn up in 1870.

G.O. 175, 28th February 1888.

This is not very definite but it will be seen from the letter to the Government of India, No. 202, Revenue, dated 9th March 1888, that the Government intended to limit the Bill to provisions for prohibiting the use of dynamite, poison and fixed engines and regulating the meshes of nets, and that they did not contemplate the entertainment of any expensive special establishments for the purpose of administering the proposed measure. A copy of this letter was sent to Mr. Thomas.

The Bill prepared by Mr. Thomas in obedience to these instructions is now submitted for orders. It is very badly drafted but that is a minor defect which can easily be remedied. There are other defects which present much more difficulty.

The Bill applies to the whole of the Madras Presidency and to every piece of water in it for a "Fishery" is described as any collection of water, running or still, tidal or non-tidal in which fish may be found, including the sea. The following are the principal provisions of the Bill:—

1. Anglers with rod and line excepted, no person may fish in a fishery unless he has acquired the right to do so under this Act.

2. This right may be disposed of by the Collector, subject to rules by the Governor in Council, in any of the following ways:—

(*a*) It may be given without payment to the public generally or to any section of it; or

(*b*) the exclusive right may be leased; or

(*c*) licenses may be granted at rates and on conditions to be prescribed by the Governor in Council to any number of persons to use nets, traps or other implements; or

(*d*) the right to issue such licenses may be granted (i.e., farmed) to any person.

3. No weir or fixed engine may be erected in any fishery without the special permission of the Collector, and the Governor in Council may make rules for regulating the terms and conditions on which such permission may be granted.

4. No person may bale out any fishery for the purpose of catching fish.

5. No person may put in, or cause or knowingly permit to flow into any fishery any matter that will stupefy, sicken or kill fish, and any person who has poisonous substances in his possession under such circumstances as satisfy a Court that he intended to use them for stupefying, sickening or killing fish may also be punished.

6. There are similar provisions against the use or possession of dynamite.

7. No person may fish, otherwise than with a rod and line, or "strokehaul" or "snatch" within 100 yards of any weir.

8. The Governor in Council may make rules regulating the mesh of nets to be used in any fishery and no person may fish with a net having less dimensions.

9. The Collector may order the erection, repair alteration or maintenance of a fish-ladder, or pass for fish or for navigation.

10. The Governor in Council may make rules for fixing close times.

The above provisions apply in full only to non-private fisheries. Private fisheries are divided into two classes—

(1) exclusive private fisheries,

(2) ordinary private fisheries,

the former being those which are not connected with any other fishery and the latter those which are so connected. The definition of private fisheries is not satisfactory but this will be examined later on. The owners of exclusive private fisheries have much the same rights against the public as the Government have but they can do what they like with regard to their own fisheries. Owners of the other class of private fisheries have similar rights but they are subject to the provisions specified above, with the exception, of course, of the first two.

It will be seen that Mr. Thomas has exceeded the instructions of Government in some particulars, e.g., Nos. 4, 7, 9 and 10 of the above abstract. To 4, however, there seems no objection; 9 and 10 are permissive and may be allowed to stand and as regards 7 it will be remembered that the Hon'ble Mr. Sim was opposed to netting within 100 yards of a weir. In section 20 Mr. Thomas has also exceeded his instructions in prohibiting the erection or maintenance without permission of any *weir* tending to hinder the movements of fish or to interfere with the flow of water. This section would make every little irrigation bund in the country an illegal construction and the Collectors would be overwhelmed with the work of giving permission for their erection or maintenance. This indicates another flaw in the Bill. It comes into force all over the Presidency at the same time; but if Government decide to legislate at all they would surely wish to restrict operations in the first instance to a very limited area. It is suggested therefore that power should be taken to extend all or any of the provisions to any area and that section 15 and the following sections should apply only to such areas to which they have been thus specially extended. This would be a much simpler way than that contemplated by Mr. Thomas, who is apparently prepared to make the Act generally applicable.

Nos. 4, 7 and 10 were included in Dr. Day's recommendations which received the approval of Government—vide the summary in paragraph 2, Board's Proceedings printed in Government Order dated 25th June 1869. The provision of fish passes though not enunciated in this summary was the question which originally led to the investigation and this means of preservation has been regarded as essential throughout.

C.A.G.—7-12-88.

There are some special provisions relating to the Tuticorin Pearl Fisheries that have yet to be noticed. These are contained in clauses (*i*), (*k*) and (*l*) of section 21 and also in the last paragraph of that section. They are taken from the Ceylon Regulations. The Ceylon law is—

(1) that any vessel which is found between the 10th January and the end of April within the limits of the pearl banks "anchoring or hovering or not proceeding to her proper destination as wind and weather may permit" shall be liable to seizure and on sentence of any competent Revenue Court to forfeiture (Reg. No. 3 of 1811).

(2) the possession *on land* of any net not being such as are used by men walking in the sea, or of any dredge or similar instrument, at any place within 12 miles of Tallaville or Talaimannar, or at any place within 12 miles of any part of the shore at low water-mark between Tallaville and Talaimannar is declared to be unlawful and every person who has had at any time any such net, etc., in his possession or moved or concealed or abetted the movement or concealment of any such net, etc., is liable to a fine not exceeding £10 or to imprisonment for a term not exceeding six months

(3) Peace officers and officers of Customs may make search for such nets, etc.

It is not quite clear whether the *possession on land* refers to the whole of (2) or whether possession on sea within 12 miles of low water-mark is also unlawful. Mr. Thomas has assumed that it is.

It is submitted that some enactment is necessary to protect our pearl fisheries which are now open to the incursions of any person who likes to go and rake about among them, and the only thing Government could do would be to apply for an injunction of a Civil Court, which it is not certain they would get. Something more simple than Mr. Thomas' proposals could, however, be devised without difficulty; perhaps indeed clause (*j*) alone might be retained.

As regards the form of the Bill there are, as already stated, a number of defects which require remedying.

In the *Preamble* it is stated that "the exclusive right of the fishing in the Madras Presidency in all fisheries not hereinafter excepted belongs by the custom of the country to Government", and the term "fishery" is defined as including the sea. It can hardly be contended that the Government possesses the exclusive right of fishing in the sea, and it may be doubted whether "the custom of the country" gives the Government the exclusive right of fishing in inland waters throughout the Presidency though it may have done so in parts. It is obvious that the levy of the moturpha tax on fishermen is no more evidence of the State's exclusive right to fisheries than is the collection of the same tax from weavers evidence of an exclusive right to the weaving industry.

This part of the preamble follows the Burma Act, but the circumstances of Burma in this respect may be different from those of Madras.

Section 4 is a curious specimen of drafting.

Section 6.—"Fishery" includes the sea. How much of the Bay of Bengal or of the Indian Ocean is in "the territories for the time being under the administration of the Governor of Fort St. George"? Twelve miles from low water mark?

Section 10.—This definition is taken from the English statute but it will be necessary in this country to substitute some more intelligible expression for "foul hooking", or it must be defined.

Section 11.—In clause (1), the words "not belonging to the same person" should be added and a similar modification should be made in clause II. For the purposes for which this classification is introduced, all that is required is that the exclusive private fisheries should be cut off from the fisheries of Government or of other persons. Where there are two or more connected pieces of water belonging to the same person the object aimed at by the proposed alteration might be attained by declaring the whole one fishery under the rules to be made under clause (*a*) of section 23, but it is thought that this would be a clumsy way of dealing with, for instance, a chain of zamindari tanks connected only by the surplus channels which are of course generally dry.

Section 14.—This is badly drafted. Clause (*c*) is really a proviso to clause (*b*), and clause (*d*) is obscure, and insufficient, for it would not include any zamindari tanks, nor even rivers flowing through zamindaris when no rents had been collected for the right of fishing in such rivers.

Section 15.—Under section 18, clause (*f*) the Collector may prohibit angling and this should be referred to in the proviso to this section.

Section 16.—The Honourable Member has already noticed the second clause of this section so it is unnecessary to expatiate upon the obvious injustice of imposing a tax upon exclusive private fisheries upon which absolutely no expenditure direct or indirect will be made by the State. The injustice is nearly but not quite as great in the case of ordinary private fisheries (section 17); these may possibly derive some infinitesimal benefit from the expenditure on the Government fisheries with which they are connected.

Section 18.—Clauses (*h*) and (*i*) should, it is thought, be struck out. The acquisition referred to will probably never be necessary, or at any rate, advisable, and in any case the provisions of the Land Acquisition Act are not suitable for acquiring rights.

Clause (*e*) requires the addition of some such words as "and he may in like manner cancel such declaration." A similar addition is required to clause (*a*).

Section 20.—This has already been referred to. It is far too wide as it stands.

Section 21.—Much of this of course depends upon other sections but some of the clauses create offences which are not mentioned anywhere. It is submitted that that portion of clause (*e*) relating to possession should be omitted and a similar modification made in clause (*f*). It is also thought that "*injure*" should be substituted for "*stupefy, sicken*" in clause (*e*). The penalties prescribed are the same as in the Burma Act. If the proposals already made regarding Pearl Fisheries are approved, the last paragraph of this section will not be required. It would in any case, it is thought, need amendment.

Section 22.—Submitted that the two provisos are unnecessary. There will be very few cases in this Presidency of poisoning rivers by the refuse of mills or other works and if the owner takes all reasonable means to render the liquid harmless nothing more is required.

Section 23 is permissive and unobjectionable. In clause (*g*) "excepted private fisheries" is a mistake for "exclusive private fisheries", for in ordinary private fisheries the mesh of the net must not be less than the prescribed limit—vide section 17 and section 21 clause (*h*). That clause and clause (*g*) of this section are made applicable to ordinary private fisheries by section 17. *

* I see that Mr. Thomas has pointed out the error in his demi-official to me dated 24th July 1888.

Power to cancel or modify rules made should be expressly provided.

Section 26.—It is submitted that this section which ousts the jurisdiction of the ordinary civil courts is most illadvised and unnecessary. If any person feels himself aggrieved by anything done under this Act he should be at liberty to seek redress in the ordinary way. There are no special circumstances at all which warrant a departure from the usual procedure and the officers of Government should have no cause to fear the interference of the civil courts, which, moreover, besides giving confidence to the public, act as a useful check upon departmental vagaries.

Section 28 is indefinite but it would probably give jurisdiction to a village magistrate which cannot have been intended. It is observed, however, that the District Board's Act contains a provision (section 166) identical with this.

It is presumed that the general question whether legislation is or is not advisable has been definitely decided by Government in the affirmative and that a measure to prohibit poisoning and dynamiting rivers, and the use of fixed engines (in particular rivers) and to regulate the size of the mesh of nets will be proceeded with. If this assumption is correct it is submitted that an entirely new Bill should be prepared, dealing with these matters and perhaps with a close time and fishing

within 100 yards of a weir (vide Hon'ble Mr. Sim's minute). Such a Bill should be permissive in character and should, it is thought, be brought into force very gradually and very cautiously.

It may be that the present uncontrolled fishing is doing much harm, or it may be that the result of preserving and regulating would be to increase the food supply not of the people but of the otter and the cormorant. Until, therefore, some more definite knowledge is obtained it would be most unsafe to take up every streamlet and pond in the Presidency and to forbid fishing in it without a license. Moreover the extensive operations contemplated by Mr. Thomas would almost certainly require special establishments and funds could not be found for these, and all additions to the number of special departments with the inevitable exactions and petty tyranny that follow in their wake are much to be deprecated.

Provision might also be made in the Bill to secure the Pearl Oyster Banks from disturbance.

This subject of fishery legislation sprang from an inquiry about the necessity for fish ladders but so far as can be ascertained no fish-ladder has yet been constructed at any of the Madras anicuts (Please see the accompanying letter from Col. Mead to Mr. Thomas. The latter has not answered it). It is submitted that the Public Works Department should be asked to make further inquiries, for the erection of such passes would possibly do something towards preventing the destruction of anadromous fish while in roe.

P.S.—The Burma Fishery Act and Rules, the Ceylon Ordinances and the English Statute will be found in G.O. No. 216, Legislative, dated 27th November 1883.

H. A. STUART—26-11-88.

Mr. Stuart has very fully summarised all the correspondence which has taken place on this subject and has pointed out numerous defects in the Bill. It seems unnecessary to examine its provisions in detail until it has been decided whether Mr. Thomas' draft should be taken as the basis of legislation or whether some simple and less comprehensive measure should be devised. For the last twenty years the subject of legislation to protect fish has been under discussion and successsive Governments have decided that something must be done. But apparently they have been unable to decide what measures of protection should be included within the scope of the enactment. The Bill which Mr. Thomas has now submitted embraces all the methods of protection which have been suggested by those conversant with the subject but does not go beyond the recommendations which Dr. Day made just twenty years ago and which the Government of the day accepted (vide the summary in Board's Proceedings, dated 25th May 1869, printed in G.O. No. 1512, dated 25th June 1869) and ordered to be carried out at once. The Burma Act is less comprehensive; it does not include the regulation of the size of the mesh or of the seasons for fishing, the prohibition of draining tanks or of fishing within 100 yards of an anicut and the compulsory provision of fish passes. The conditions of Burma are, however, so different that no argument as to the necessity for the provisions referred to in Madras can be based on this circumstance; it seems obvious that they were omitted simply because, owing to the characteristics of the country, they were not deemed requisite. It seems equally obvious that if protection is to be effectual in this province power will have to be taken in respect of each of the above measures which do not find a place in the Burma Fisheries Act. If legislation is to be undertaken at all it will be well to provide for all measures of protection which can reasonably be applied, but the Act should be so drawn that only such of its provisions as from time to time may be deemed requisite can be applied to any particular locality. A recent letter bringing to notice the manner in which the Bhavani river is being denuded of fish (·6628) appears to show that it is time that something should be done to check wanton destruction, and the decision of the courts that Government possess no exclusive right of fishing in public waters affords another strong ground for legislation. It is possible by means of ordinary revenue establishments to do something for the preservation of fish (to check for instance such wholesale destruction as is reported to be going on in the Bhavani) and if there are no special establishments to harass the people and no attempt is made to raise a revenue from fisheries except by the ordinary method of cutting out the exclusive right of fishing there is no reason to fear that any hardship will be inflicted on the poorer classes which is the main ground of objection taken to the schemes hitherto put forward. Mr Thomas' idea of imposing a quit-rent on private fisheries as being "cultivable areas" is of course preposterous and his scheme would involve the maintenance of a large establishment and the expenditure of a considerable sum of money, which is out of the question. The draft Bill now sent up will have to be modified considerably but so far as inland waters are concerned it does not appear to go too far. It, however, includes the sea and I question whether the local Legislative Council has any power to make laws and regulations affecting the sea. Its powers are stated to be "to make laws and regulations for the peace and good government of the Presidency" and the sea is not part of the Presidency. Mr. Thomas quotes the Territorial Waters Jurisdiction Act and seems to think that under it the courts would have jurisdiction in respect of infringements of any enactment but he is quite mistaken in this. Attention is requested to Board's Proceedings No. 215, dated 10th April 1888 which embodies an opinion of the Government Pleader on the question of the operation of this statute as regards the abkari laws of this Presidency. It seems quite certain that even if the statute did operate to extend the jurisdiction of the courts to breaches of any enactment committed within a marine league of the coast they would have no jurisdiction as regards acts committed further out at sea except in respect of those grave offences for which the statute was intended specially to provide. It seems questionable whether the powers of even the Governor-General's Council extend to legislation in respect of the sea, at any rate beyond the three-mile limit, which may perhaps be taken as a portion of the "Indian territories under the dominion of Her Majesty". The Ceylon Regulation 18 of 1843 does not apply to the sea at all—licenses for possession *on land* of instruments for pearl fishing within certain specified limits. Regulation 3 of 1811 applies to the sea but it seems doubtful whether it is valid. I presume it could not be held applicable to foreigners. It would no doubt be desirable be take the opportunity afforded by the proposed legislation to insert provisions which would protect the pearl fisheries but it seems to me that the Legislative Council would have no power to deal with the matter. The risk of interference with the banks however does not appear to be serious and that portion of the Bill may be omitted without such danger.

G.O. 1453, 6th September 1878.
G.O. 1730, 20th August 1879.

Another question which presents considerable difficulty is the right of private proprietors This is a very complicated question; there is no statute law in this Province relating to the rights of riparian owners in rivers adjoining their properties nor is there a single reported decision of the Madras High Court bearing on the question, as far as I know. It is, therefore, quite uncertain what the courts will hold on this question and it is desirable to avoid any definition of private fisheries. Mr. Thomas' idea that the exclusive right of fishery belongs by the custom of the country to Government and that unless an express grant of the right can be shown or its exercise for a long period is evidenced by the receipt of rents therefor private proprietors have no valid claims to the fish contained in the waters comprised within the limits of their property is, I believe, altogether erroneous. His section 14 is, however, very vague and it is impossible to conjecture what he means by the concluding sentence of clause (*d*). Apparently his intention is to make provision to enable Government to redeem rights of fishery which have lapsed through the exercise of rights by private owners but the meaning is quite unintelligible.

There does not appear to be any necessity for any definition in the Act. This was the view taken by the Board in paragraphs 4 and 5 of their Proceedings embodied in Government Order dated 24th May 1875. At the time they wrote, however, the decision of the court's ruling that no exclusive right in fisheries exists had not been passed: the position is therefore altered and it will not be possible to avoid all reference in the Act to the proprietary right of Government; but there seems to be no necessity to define that right. It will suffice to give Government power to prevent fishing without their license in all waters which are not shown to be private property and claims to the right of fishing can be dealt with as they arise. If the Government on enquiry does not see fit to recognise then the waters can be treated as State property leaving those who have any grievances to obtain redress in the courts.

C. A. GALTON—7-12-88.

The draft Fishery Bill is circulated herewith. It was first sent to the Hon'ble Mr. Master who was unable to deal with it before he left. It was sent to the Hon'ble Mr. Stokes who has recorded no remark. I understood from him and before he left that he thought the papers had better be lodged. Orders are solicited.

C. A. GALTON—30-6-89.

In 1868 Government deputed Dr. Day to report about fisheries. When it received his reports it directed the Board to give effect to his recommendations from the 1st July 1869. The Board represented that there were some doubtful points and Government allowed it to make further inquiries before taking action. Subsequently the Board reported the result of these inquiries, and in 1872 Government ordered legislation to be undertaken. Some further discussion took place and ultimately in 1875 Government directed the *Board* to prepare a Bill. Then there was a long delay during which Mr. Thomas became a Member of the Board. Mr. Thomas submitted a huge Bill, providing for working the fisheries through local boards and municipalities, in 1883. In 1884 Government told Mr. Thomas to recast the Bill leaving out local boards and municipalities. On the 11th July 1888 Mr. Thomas submitted the Bill which is before Government now.

G.O. 2151, Revenue, 12th August 1868.

G.O. 1478, Revenue, 25th October 1872.

G.O. 792, Revenue, 24th May 1875.

G.O. 216, Revenue, 27th November 1883.

G.O. 468, Revenue, 5th April 1884.

In the meantime the Government of India had considered the desirability of legislating about fisheries and asked the Government of Madras to get information. The Government of Madras replied on the 9th March 1888 to the effect that evidence already recorded showed that legislation about fisheries was desirable, that Mr. Thomas had been placed on special duty to attend a conference at Delhi (where this subject amongst others) was to be discussed, and draft a Bill, and that if the Government of India desired to legislate for the whole country this Government would stay further action. The members of the conference at Delhi decided that a short Act should be passed for all India and that Mr. Thomas should be asked to draft one. Mr. Thomas accordingly submitted an India Bill which is almost identical with the Madras Bill, submitted on the same date, which is now before us. I *presume* that this India Bill has been sent on to the Government of India (though I can find no papers to that effect in the bundle). We seem to have heard nothing from the Government of India either in reply to our letter of the 9th March 1888 or as to what has been determined with reference to the decision of the Delhi conference and Mr. Thomas' India Bill.

G.Os. 201–2, Revenue, 9th March 1888.

Yes. G.Os. 5222–3, Revenue, 3rd September 1888.

Please see G.O. 3803, Revenue, 29th June 1888, and letter from India thereunder.

R.C.C.C.

This being the state of things, I think we should ask the Government of India what it proposes to do as regards the India Fishery Bill, etc., before we take further action. We should ask it, too, as to what powers the local legislature has to deal with fisheries in the *sea*.

Mr. Thomas' Bill was submitted (not volunteered but requisitioned by Government) in July 1888, 2½ years ago, but we can account for the delay by stating that we have awaited action by the Government of India. Under the circumstances I think Mr. Thomas' Bill should be disposed of somehow.

As for the Bill itself (apart from the essay which purports to be a Statement of Objects and Reasons) I think that as shown in Mr. Stuart's note it is badly drafted, it ought to be made more tentative and permissive, providing that rules consistent with the Act or any of the provisions of the Act may be extended to particular places. and it goes further than necessity justifies us in going now, necessitating the establishment of a Conservator of Fisheries and Assistant Conservators as set forth in paragraphs 13–15 of the Statement of Objects and Reasons. It is clearly made out in the papers that fisheries require protection and Government has admitted this again and again. Power seems to me to be absolutely necessary to prohibit poisoning and dynamiting tanks and rivers, to limit the use of fixed engines to regulate the size

of the mesh of nets, to prevent fishing within 100 yards of the great anicuts and to secure to Government the fisheries in Government tanks and rivers. Further than this there is no need to go at present. The full measures of protection and culture which experience in other countries has shown to have the effect of vastly increasing the supply of food have only been recently introduced in those countries and are far in advance of the circumstances of India, where they could not be introduced without an establishment which would be almost useless for many years to come, which would harass the people unmercifully and which could not be paid without raising new taxation. After centuries of education, etc., have enabled the people to neutralize such efforts to oppress them and after the population has increased so that the provision of more food is *necessary*, a special fishery establishment will not do much harm, but that is a question for the future.

The information now before Government is sufficient to enable it to prepare a new bill in the Legislative Department and I think this should be done—if there is to be no India Act on the subject. I don't think any provision need be made in the Bill as regards pearl oyster banks and chank fisheries. This is a special subject. No immediate action is necessary In papers recently circulated it was decided to ascertain what is done in Ceylon and Australia before resorting to the legislature. Private fishery rights should be recognized wherever there is a private right to the water. In consequence of the "migratory habits of Indian fish" this will prevent the exercise of full protection over public waters in cases where private waters are connected with them, but this is a matter of very little consequence.

J. GROSE—23-1-91.

Our most crying want is for fish ladders at the great anicuts. Orders were issued about it twenty years ago, and it does us no credit that those orders have not been carried out yet. This matter can be attended to at once without waiting for legislation and it should be considered in the Department of Public Works. The report "on the fish ladders and canals visited which was submitted to the Government of India by Mr. Thomas" throws some light on the subject.

J.G.

PUBLIC WORKS DEPARTMENT
(IRRIGATION BRANCH).

I cannot counter-initial the draft order about Fishery Bill because paragraph 2 is not correct. The records of this office *do* show that the fish lock at the lower Coleroon anicut was constructed and that the result was unsatisfactory. I send my file on the subject and would direct attention specially to No. 139 T.J., dated 17th April 1889 and No. 2423 T.J., dated 5th February 1890, from Superintending Engineer, VI Circle.

2. I would also invite attention to my note for orders on "Fish Ladders," dated 13th March 1890, with the Honourable Member's rescript thereon 16th March 1890, on which the matter was allowed to drop in this department.

3. I would represent that it is quite useless ordering this department to deal with the subject, except of course, to the extent of building any work which, on the recommendation of a specialist, Government may decide to try; Public Works Department men know no more about fishes and their requirements than do men of any other department and specialists like Dr. Day and Mr. H. S. Thomas have not arrived at any satisfactory conclusion. See letter, dated 7th January 1889, from Mr. Thomas.

J.M.—13-3-91.