M.R.O. 1—48,000—16-10-20.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT

G.O. No. 396 Press Mis.

197-98 Dated 28-3-1820 Mk.

Not to be folded or roughly handled

No. 197. Read the following Proceedings of the Board of Revenue, dated 16th March 1870, No. 1,821 :—

Read the following letter from the Collector of the Godavery District, to the Acting Secretary to the Board of Revenue, dated Cocanada, 1st March 1870, No. 58.

I BEG to forward, for the consideration of the Board of Revenue, public copy of Judgment in Original Suit No. 11 of 1869, Rajahmundry Civil Court's file, in which Mr. L. Gaudolphe is plaintiff and I am defendant. The Board will observe that Judgment is given for the plaintiff and a fresh arbitration ordered; and it appears to me that this Judgment is contrary to the Law in the case, as declared by Mr. Norton in his opinion (forwarded in original), and also to the evidence of which I forward copy. I therefore propose that an appeal against the Civil Judge's decision be at once entered in the High Court, and would suggest that the services of the Advocate-General be retained for its defence.

2. I would beg to make a few remarks on the Judgment.

In paragraph 8 the Civil Judge states that he sees no absolute necessity for including the arbitrators as defendants in the Suit. All I would remark is, the Advocate-General seems to be of opinion that there is, and neither the Municipal Commissioners nor I, in the capacity of their President, had anything to do with the proceedings of the arbitrators or their appointment. Here I acted in my Revenue capacity only, and under Act VI. of 1857.

3. I believe that the land may be considered to have been taken under the provisions of Section 15 of the Towns' Improvement Act of 1865. The plaint as amended is brought under that Act only, which refers solely to the Municipal Commissioners and their proceedings; it was not brought as stated in the 1st paragraph of the Judgment against the Collector under Section 30, Act VI. of 1857. The allusion in Section 15 of the Towns' Improvement Act of 1865 to Act VI. of 1857, or any other Act in force, for acquiring land for public purposes, does not embody the two into one Law, and give power to the Court to quote the Municipal Act for excusing the plaintiff from bringing the Suit against the arbitrators in conjunction with the Collector, as is done in paragraph 8, and then immediately to cite Act VI. of 1857 in paragraph 9 of the Judgment for excusing the plaintiff from giving notice in writing under Section 147, Towns' Improvement Act. The procedure in one Act or the other must surely be strictly followed, and not the two jumbled together.

4. The statement in paragraph 10, that I requested the dismissal of the Suit, because of the change made by the plaintiff in the Act quoted, is erroneous; and to prove this I beg to refer the Board to authenticated copies of the plaintiff's request for amendment and my counter-motion. I argued that such an alteration could not be called an amendment, but really was a bringing of a new Suit on new grounds; and therefore prayed either that the plaintiff be ordered to proceed with the Original Suit, or, if he wished to proceed with a fresh one, that he be first ordered to withdraw this first Suit, paying costs.

5. In paragraph 13 of the Judgment the Judge states that there was mismanagement amounting to misconduct on the part of the arbitrators in two particulars :—

1st,—That a verbal agreement, which the Judge considers proved to have been made by me on 15th May with plaintiff, was not taken into consideration ; and,

2ndly,—That the arbitrators, at their final meeting (on 9th June), were not in a state of mind fitting them to come to a calm and dispassionate decision.

6. I will first remark on the first instance, and here I crave a careful perusal of the evidence. In my deposition I state that I agreed to the line drawn by Mr. Sage, "Mr. Sage and I having previously agreed to the exact quantity of land which was to be taken," also that "the line was not intended to represent accurately with reference to scale, the quantity of land agreed on," that "I clearly told the plaintiff that we would take the above-mentioned quantity of land and no more." "I did not point out the line as the exact boundary of the ground to be taken, because the amount had been already stated in words;" fourth witness says the "arbitrators confined their discussions to the ground marked out by the defendant," (and it is in evidence that the arbitrators visited the ground more than once) that he heard the defendant make an offer to plaintiff of 3,200 Rupees, and does not recollect Mr. Sage making any offer to plaintiff." "Did not hear any statement made that more or less than 12 Acres would be paid for if proved so on measurement, that nothing was said about remuneration at the rate of so much per square-yard, that "when we (*i.e.*, the arbitrators) came to our final decision, we had before us the calculations of a Surveyor who had measured the land showing the exact quantity to be taken." Here Exhibit No. V is referred to, copy of which is sent.

7. The plaintiff in his evidence states that I offered him 3,200 Rupees for the land, and 200 for the road, that he does not know the rate he (Mr. Sage) intended. "That the impression left in his mind was that the line was intended to be the boundary." Plaintiff does not swear positively it was so. Mr. Sage in his evidence makes the extraordinary statement that 3,000 Rupees was the sum offered to plaintiff (an evident and serious error) whereas other witnesses, arbitrators, say it was matter of common notoriety that 3,200 Rupees was the sum offered, that "we (*i.e.*, Mr. Sage and myself) both stated that the ground would be demarcated in accordance with the pencil line drawn by me, and that if more or less than 12 Acres were contained within the boundary thus shown on the plan, more or less compensation would be given, adding or deducting at the rate of one Anna per square yard." Now be it observed that the ground had already been demarcated under Section 4, Act VI. of 1857, as the evidence already quoted shows, and that this witness and plaintiff flatly contradict each other as to the amount* offered in compensation and its rate.

* See heng letters I. and II. of 17th May and 10th June, of which copies are sent.

Plaintiff says he did not know the rate Mr. Sage intended. I contend that the evidence of a witness whose memory is proved to be so incorrect on two such important items as the amount offered and its rate, cannot be depended on, as to anything else he states of the transactions of that day (15th May); and that, therefore, Mr. Sage's evidence is worthless. That therefore there is no reliable

Proceedings of the Madras Government, Revenue Department,
28th March 1870.

evidence that any verbal contract was made by me with plaintiff on 15th May. But, granting for the sake of argument, that such was made, I contend that if it was, it was *ab initio* null and void, because I was not legally competent to do so. Mr. Sage and I were on the 15th May acting only under Section 5 of Act VI. of 1857. We were "inquiring summarily into the value of the land, and the amount of compensation to be awarded." Previously, under Section 4, the land had been marked out, measured, and a plan made of it; and the provisions of this last Section had been strictly complied with.

8. The plaintiff does not charge any irregularity here, therefore all must be assumed to have been correct. Under Section 5, we had no power to do or say anything about quantity of land to be taken, but only to decide the value of the land and the compensation to be awarded. Therefore, any contract to take more land than had been already taken under Section 4 was, if made, "*ab initio*" null and void, for neither I nor we had any legal power so to do.

9. Now as to the second instance of misconduct "an unfit state of mind on "the part of the arbitrators." I do not think I ever read a more extraordinary reason stated for arriving at such a decision. A parallel would be for a Judge, in a case tried by a Jury, to refuse to receive their verdict, because he considered the Jury were in an unfit state of mind to arrive at their decision. I do not think such a judicial opinion would carry much weight with it at home; and what is the evidence on which this "unfit state of mind" is believed to have existed? Apparently that of Mr. Dunlop, the plaintiff's arbitrator only. He says: "I left, "because I did not like the way in which I was treated. Mr. Simson, seized some letters which I produced, and put them in my face." "The evidence of the "other arbitrators shows that before this witness left the room he heard plainly, "and understood the amount of award made by the other two arbitrators, and left the room, because he was dissatisfied with it. In his examination in chief, he states "neither of the other arbitrators gave his award to me either by word of mouth "or in writing." In his cross-examination, the same witness says: "Mr. Simson took a piece of paper out of his pocket and read from it the amount he had agreed to give the plaintiff as compensation. I forget what the exact sum was, but it was less than the sum previously offered by Government. Jagannatham said that he concurred with him." Now when a witness contradicts himself on oath, on such an important point as whether at the final meeting he was or was not made aware by the other two arbitrators of the amount of their award, and does not attempt to explain that contradiction away, I would ask what is the value of such a witness's evidence on anything else that occurred at the meeting. Besides, the evidence of 4th witness proves that it was an insulting expression used by Mr. Dunlop to Mr. Simson, that was the sole cause of the altercation, and that therefore the former solely is responsible for the "unfit state of mind" referred to by the Judge. I think I have demonstrated from the evidence itself that the Civil Judge's judgment is contrary to it; and the Board, with the aid of the Government Solicitor, can best decide, if it be also contrary to law. With the foregoing remarks therefore I conclude. As the case is an important one, I think it best to leave the drawing up of the appeal reasons to the Government Solicitor. I hope that when the record of the case is called for, he will draw special attention to the

present state of Plan E., and how impossible it is with any certainty from such a "faint trace of a line" as appeared on the plan in Court, to lay down any boundary from the plan. The preparer of it, who is now unfortunately dead, was not a Government or regularly passed Surveyor.

Enclosure No. 1.—Copy of Judgment with Decree.

Enclosure No. 2.—Mr. Norton's Opinion.

Enclosure No. 3.—Copy of evidence, with Mr. Dutiny's statement.

Enclosure No. 4.—Authenticated copy of plaintiff's petition.

Enclosure No. 5.—Authenticated copy of Collector's counter-petition, with Court's order thereon.

Enclosure No. 6.—Exhibit No. V, with Translation.

Enclosure No. 7.—Copies of letters I. and II. of 17th May and 10th June 1869.

In December 1866 the Municipal Commissioners of Cocanada applied to Mr. Gaudolphe to purchase certain land from him for a public purpose.

2. Much correspondence on the subject took place, which ended in Mr. Gaudolphe's refusing all the offers of the Municipality, and in the latter applying to Government, through the Collector, for orders to obtain the land for the public purpose required under the provisions of Act VI. of 1857.

3. The Orders of Government having been obtained, the requisite steps for acquiring the land were taken and the matter referred to arbitration under Section 6 on the 16th May 1869. The arbitrators met on 20th May, and the award signed by a majority was delivered to the Collector on 9th June. Against the award of the arbitrators Mr. Gaudolphe appealed to the Civil Court under Section 31 of the Act, on the ground of misconduct on the part of the arbitrators.

Government Order, dated 12th April 1869, No. 477.

4. The Suit, No. 11 of 1869, Civil Court, Rajahmundry, was against Mr. Fraser, both as Collector and as President of the Municipal Commission.

5. In the former capacity he referred the case for the orders of the Board and Government. In his capacity as President of the Municipality he obtained an opinion from the Advocate General at the cost of the Municipality and framed his answer accordingly.

6. The Government sanctioned the defence at the public cost in the first instance. The case came on for hearing on the 20th January 1870, when judgment was given for the plaintiff

Government Order, dated 2nd December 1869, No. 3,025.

under Section 31, Act VI. of 1857, and the matter ordered to be again referred to arbitration.

7. Mr. Fraser in his letter, dated 1st March 1870, now under review, after criticising the judgment of the Court at some length, recommends that an appeal be preferred in the High Court.

8. Although the Suit was brought against Mr. Fraser, in his joint capacity as Collector and President of the Municipal Commission, the matter is one entirely appertaining to the Municipality, and does not come within the cognizance of the Board.

9. The Board therefore resolve to submit the papers for the orders of Government.

10. It will be observed that the Court reversed the award simply on the ground of misconduct on the part of the arbitrators: the question of appeal is, therefore narrowed to the one point as to whether this conduct was proved or not.

11. The Collector has not stated on what date the appeal time will expire.

No. 198. Order thereon, 28th March 1870, No. 396.

Miscellaneous.

The Right Honourable the Governor in Council resolves to forward these papers to the Government Pleader with instructions to lodge an appeal, should he be of opinion that valid grounds exist for adopting this course. The Government would not be disposed to appeal on merely *technical* grounds.

(True Extract.)

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

To the Government Pleader.
„ the Board of Revenue.

Exd. F. R. Bantleman.

Public Record Office
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Chancery Lane
WC2A 1LR

MARK
MOS 197/103

The Lt Governor
from the Council resolves
to grant the pass for
the first Fleet with
instructions to lodge an
Appeal, moved to be
of opinion that should
Council omit the address
then cause. The pass would
not be despatched to afford
an hourly telegram
from the

Lt Governor
then

28 January

