M.R.O. 1—88,000—16-10-1

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 624 Press Mis.

223-225

Dated 8th March ~~10~~ 1869

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 8th March 1869.

Read the following:—

No. 223. Proceedings of the Board of Revenue, dated 16th April 1868, No. 2,777.

Read the following letters:—

From the Officiating Conservator of Forests, to the Secretary to the Board of Revenue, dated Camp at Coimbatore, 24th October 1866, No. 2,053.

With reference to Government Order, No. 2,799, of the 15th October, forwards remarks on the subject of a Forest Act.

From the Conservator of Forests, to the Secretary to the Board of Revenue, dated Madras, 22nd October 1867, No. 331,

As I understand the question of introducing the Forest Act No. VII. of 1865, is now under the consideration of the Board, I beg to send, for their information, copy of a letter which I have addressed to the Inspector General of Police in regard to trespass in reserves, and Forest legislation generally.

Enclosure No. 1.

From the Conservator of Forests, to the Inspector General of Police, dated Madras, 19th October 1867, No. 323.

* No. 1,458, dated 20th August 1867.
Enclosures herewith returned.
Letter from Lieutenant Walker, No. 77, dated 2nd August 1867.
Letter from Captain Balmer, dated 15th August 1867.

1. I have delayed answering your reference* regarding the procedure in cases of trespass in Railway reserves at Salem, as the general question of Forest legislation is now before Government; and if the Forest Act be made applicable to these reserves, the Rules passed under the Act would have the force of law, and dispose of the point under reference.

2. I agree with you that trespass is not a grave offence, and that there may be nothing criminal in the intention of the persons entering these reserves, and that very light punishments would be sufficient.

3. On the other hand, the special object in forming these reserves was to exclude men and cattle, (see Honorable† D. Arbuthnott's letter). Much mischief may be done in a young plantation in trampling down seedlings, or barking the trees, (without any cutting instruments.) I have not unfrequently found a clump of trees barked round and round within an enclosed plantation, which represented damage amounting to 8 or 10 Rupees in each case.

† Recorded in G. O., No. 2,171, dated 22nd August 1866, paragraph 9.

4. Without a much larger staff of watchers it is most difficult to stop this kind of mischief, particularly near Railway Stations, where ropes are wanted for tying up sacks, bamboos, and other purposes, and the Government reserve is resorted to for the necessary material. Again, the cooking of rice in a plantation is attended with serious risk of fire.‡

‡ This has occurred twice in one year.

5. To prevent this, much expense has been incurred by Government in forming enclosures; a hedge and embankment have been constructed, and the boundaries have been proclaimed in the District Gazette, and there are boards with Vernacular Notices warning the people that entrance is not permitted. It appears to me that, after complying with these legal requirements, any persons caught *flagrante delicto* might be taken before the nearest Magistrate without a warrant.

6. My experience is that, the discovery of forest offences is very rare in proportion to the number committed, and if delay is permitted, and if the offender is not seized at the time, there is very often a successful attempt to prove an *alibi*, and the Magistrate being perplexed at the discordant evidence, the case is dismissed.

7. On the general question, I believe that if a knowledge of what is expected of the people was diffused among them, they would yield a contented obedience. The people know the privileges they possess, and though extensive damage is committed at present, it is generally by unemployed laborers in a small way, or by roguish Curnums, and Village Moonsiff's who defraud the Government on the large scale by selling what is not their own.

8. The report of the working of the Forest Act in seven Provinces has been most favorable —Vide the Administration Reports of Central Provinces, Burmah, Oudh, Mysore, &c., 1865-66 and 1866-67. The publication (Act No. VII. of 1865) appears to have been sufficient to check the evil in these Provinces; the number of offences brought before the Magistrates has been small, and the punishments light.

9. I strongly maintain that all Forest Officers of the higher grade, of proved temper and judgment should have the powers of a Subordinate Magistrate for the punishment of Forest offences, and especially giving them control of their own establishments in remote places. The Anamallay and North Canara Forests were never so well conserved, nor so free of depredation, as when Major Michael and Mr. Muller were invested with the powers of a Sub-Magistrate, and all the loss of time of highly-paid officers, and the harassing work of dragging the accused parties to a distant Magistrate, is saved to both parties.

10. I have diverged from the point under reference, but as I am leaving Madras, I have taken the opportunity of expressing my opinion on the general question. I can well understand your scruples, looking at the matter judicially; on the other hand, I have stated my experience of the difficulty of obtaining a verdict. You can aid materially by reporting the information received from your subordinates, tending to the protection of this, as well as other kinds of property.

(A True Copy.)

(Signed) H. F. C. CLEGHORN, M. D.,
Conservator of Forests.

From the Collector of Ganjam, dated 21st November 1866, No. 3,223.
Do. do. Vizagapatam, dated 13th November 1866, No. 169.
Do. do. Cuddapah, dated 10th December 1866, No. 172.
Do. do. Kurnool, dated 10th November 1866, No. 235.
Do. do. North Arcot, dated 14th November 1866, No. 334.
Do. do. South Arcot, dated 31st January 1867, No. 26.
Do. do. Madura, dated 12th November 1866, No. 377.
Do. do. Tinnevelly, dated 13th November 1866, No 501.
Do. do. Salem, dated 5th November 1866, No. 212.
Do. do. Coimbatore, dated 2nd February 1867, No. 38.
Do. do. South Canara, dated 28th January 1867, No. 20.
Do. do. Malabar, dated 5th November 1866, No. 300.

RESOLVED that the foregoing letters be submitted to Government, with reference to their Order, dated 15th October 1866, No. 2,709.

2. In his letter, dated 24th October 1866, No 2,053, Captain Beddome observes that the Forest rules cannot, under the present system, legally be enforced, and he advocates the extension of Act No. VII. of 1865 to this Presidency, in order that these rules may be strictly carried out in future, and the penalties attached to their infringement enforced.

3. He observes, that the rules may be framed so as not to interfere with the prescriptive rights of the people, but he would strictly enforce the conservation

of reserved tracts of forest, and also of the more valuable kinds of timber, such as Teak, Blackwood, Sandal, Acha, &c.

4. With regard to jungle products, he observes that, until lately, all that was collected by the hill tribes, both on the Shevaroys and Anamallays, was purchased by the Forest Department, who gave a good price for what they bought; but that, this having been put a stop to by order of the Board, the hill-men are obliged to deal with traders who beat down their prices; and in the case of the Anamallay Hills, Captain Beddome attributes several jungle fires which have occurred there to the Chetties who were in the habit of going up to make purchases of timber.

5. He urges a return to the former system, under which the hill-men were more under control, and the danger of fire averted, as no necessity would exist for traders from the low country to enter the forests at all.

6. The Collector of Ganjam is averse to the introduction of the Act. He points out that Section 4, which prohibits the removal of leaves, grass, &c., the grazing of cattle, and even free ingress except on certain lines, could not possibly be carried into effect, many villages and clearings for cultivation being situated within the forest limits, and their inhabitants dependent almost for their existence on the exercise of the very privileges which would thus be denied them.

7. The Collector also states, that, in his opinion, the most urgent requirements of the existing establishments, are thoroughly qualified Overseers, and the provision of proper means of carriage for conveying the larger timbers out of the forests.

8. The Collector of Cuddapah also objects to the introduction of the Act, and considers that the seigniorage now collected on timber is quite sufficient.

9. The Collector of North Arcot agrees substantially with those of Ganjam and Cuddapah, and is quite satisfied with the working of the Forest Department in his district. He considers, moreover, that no Act could be framed which would be equally applicable to all districts.

10. The Collector of Madura objects on the ground that he considers the extension of the Act would trench on the prescriptive rights of the villagers.

11. The Collector of Coimbatore also objects to the extension of the Act, and grounds his objection on much the same points as those stated by the Collector of Ganjam. He considers that the Act [illegible]dently drawn up with reference to large uninhabited forests, such as those of [illegible] and Burmah, and points out the hardship of applying the same rules to the wants of his district which are comparatively limited, traversed in all directions by roads, and in the vicinity of populous villages.

12. He thinks, however, that the Act might be brought into operation in the case of forests planted by Government.

13. The Collector of South Canara agrees with the preceding in deprecating the extension of the Act, and in expressing himself satisfied with the present arrangements, as does also the Collector of Malabar, whose opinion, however, is given only as regards his own district.

14. The following Collectors are more or less in favor of the Act.

15. The Collector of Vizagapatam considers its extension to this Presidency desirable, on the ground that it simply will enable Government to do legally, that which has hitherto been done probably illegally, and he observes that it is not likely

to trench on the rights of the people, as, in Section 3, it is provided that the notification extending the Act "shall not abridge or effect any existing rights of individuals or communities."

16. The Collectors of South Arcot and Salem advance the same argument as the foregoing, and the Collector of Salem mentions a case, in which a conviction *for theft under the Forest rules* was quashed by the Session Judge of Salem, as confirmatory of his opinion, that the Act is desirable in order to give legal force to the existing rules.

17. The Collector of Tinnevelly suggests, that the Act might be advantageously applied to the tracts of forest at the head of the river on which the prosperity of his district depends. He observes that the destruction of forests in that and similar localities diminishes the water supply, and, although averse to the revival of Jungle taxes, he would protect the sources of irrigation.

18. It will thus be seen, that, in the opinion of the majority of the Collectors to whom the question has been referred, the introduction of the Act is inexpedient, and in this opinion the Board entirely concur.

19. The application of the Act is quite unnecessary, inasmuch as the Penal Code already provides for offences of every description, under the heads of Mischief, Trespass, and Theft; and it is highly inexpedient to multiply legislation of a special nature, and especially so, to create offences, by "rules" which may be varied at the will of the executive.

20. The Act will not in any way facilitate conservancy, and no forest land can be placed within the scope of it, which is not absolutely the property of Government, free from private rights of every kind, for Section 2 specially enacts that its application "shall not abridge or effect any existing rights."

21. All the jungles and forests of this Presidency are within village boundaries, and the people residing in or near them, have, from time immemorial, had the right to take leaves for manure, firewood for their own use, and timber for agricultural purposes, to graze their cattle at certain periods.

22. These rights have been repeatedly recognised by Government, and are now scrupulously respected.

23. When, therefore, these and dated similar existing privileges, as well as the rights of way which necessarily exist, datgh forest tracts, are taken into consideration, the operation of the Act in ed 5th Presidency will be very limited, and every prosecution under it may be met by the allegation (which the Forest Officers must disprove) that a right previously existed which vitiates the application of the Act.

24. When the forest is the absolute property of Government, no special Act is necessary to declare it such.

25. The great difficulty which the Forest Department has to overcome is, that of proving the offences which they bring forward; as the Magistracy of course refuse to convict without good evidence of the offence having been committed.

26. In this respect the Act affords no aid, as the Forest Officer will still have to *prove* his charges to the satisfaction of the Magistrate, by exactly the same evidence as would be required without the Act.

27. But while thus useless for good the Act, in the opinion of the Board, opens a wide and dangerous field for oppression and extortion.

28. By Section 8, *any* Forest Officer, even a Peon on Rupees 5 per mensem, may arrest, without warrant, any person infringing rules under the Act.

It is true that any person so arrested must, under Section 9, be "forthwith" taken before a Magistrate, but this will in this Presidency involve very great hardship; as Magistrates are at considerable distances apart, and it is obvious this provision is of itself sufficiently dangerous to condemn the Act.

29. It will be in the power of the pettiest Peon in the department to harass the people at his own pleasure, and the Board would request the attention of Government specially to the letters of the Collectors of Ganjam, Coimbatore, and South Canara, which well illustrate the manner in which the people, in the exercise of their prescriptive rights, would be placed at the mercy of ill-paid and almost uncontrolled officials.

30. The Forest Officers naturally desire to have ample powers, but the Board would observe that there are other things to be considered besides the value and preservation of timber. The grazing of cattle in forest tracts is one of the chief grievances, but it is not too much to say that this was the saving of a very large proportion of the cattle of the country, and the preservation of a large amount of Land Revenue in 1866.

31. The encroachment of cultivation is another grievance, but in many cases the reclamation of land from a state of nature to that of producing food is an unquestionable advantage.

32. The fact is that a very large proportion of the so-called "Forests" of this Presidency are, in truth, me jungles with villages scattered through them; rights of way in all directions, a es existing of various kinds, and it is impossible to introduce into such stringent system of conservancy practicable in countries like Burma e framers of the Act doubtless had in view,) without exciting much ontent, and incurring serious risk of oppression.

33. It appears to the Board th present system, considering the short period that has elapsed since Governm began to exercise its forest rights, has worked very fairly; and what is now wanted is the demarcation of forest reserves, and the maintenance of suitable establishments.

34. On the first point, it must be remembered, that until quite recently, except in the Annamalays and a few other localities, the people were free to cut what wood they pleased, to graze their cattle, and to exercise common rights without let or hinderance. It is but just, therefore, that the fact of these rights being withdrawn should be made known by proper notification, by demarcation, and by some effectual means of fencing where the forest surrounds a village and its cultivation.

35. So far as the Board are aware, the Forest Department have not yet done this in any case, and it cannot be expected that the Magistracy will convict for mischief and trespass, when there is nothing whatever to shew that the forest or jungle is preserved.

36. With regard to the second point, noted above, the establishments are so weak as almost to tempt spoliation of the forests; one or two Peons at what is called the outlet of a forest, but is in reality the outlet of a large tract of country cultivated, and populated, is the usual protective force, which can easily be avoided by those who wish to do so, seeing that there is no fencing, and that outlets exist in every direction.

37. It is not surprising that offences are committed under such circumstances, but the remedy is certainly not to be sought by making arbitrary additions to the Statute Book.

38. It is said that some Judges have refused to recognize offences against the property of Government in forests; but this has no doubt arisen from the offence being laid, as breaches of the Forest rules, which, like the Revenue Hukumnamah, are merely administrative orders.

39. It cannot be that such property is beyond the pale of the law, but if the doubt be as to Government being really the proprietor of any forest, the Act will not solve the difficulty, for Government cannot declare that to be their property which is not clearly their own.

40. In the opinion of the Board, this should be definitely settled, and it is highly desirable that where any forest land is reserved, the system of conservancy should be sufficient to meet the end in view, and not, as in so many cases at present, utterly inadequate for the purpose; and specially should the sources of springs and rivers be protected by a careful and complete system of conservancy, which can be done without any necessity for introducing the Act.

41. The Inspector General of Police, Mr. W. Robinson, entirely concurs in the Board's views as above expressed, and deprecates the extension of the Act to Madras.

No. 224. Proceedings of the Board dated 22nd April 1868, No. 2,965.

Read the following Proceedings of the Government, dated 20th May 1867, No. 1,133, Revenue, dated similar extent:—

ABSTRACT.—Calling for the Board's, dated 5th the Government Order, dated 15th October 1866, No. 2,799, regarding extension of Act No. VII. of 1865 to this Presidency.

ORDERED to be recorded, with reference to the Board's Proceedings, dated 16th April 1868, No. 2,777.

No. 225. ORDER THEREON, 8th March 1869, No. 624.

Forests, No. 9.

In paragraph 184 of his Report on the Forest operations of 1867-68, the Acting Conservator of Forests expressed opinions in regard to the introduction of the Forest Act into this Presidency somewhat different from those which were apparently held by him when his letter under date 24th October 1866, No. 2,953, which forms an enclosure of the Board's

Proceedings of the Madras Government, Revenue Department,
8th March 1869.

Proceedings above recorded, was written. In paragraph 12 of the G.O., dated 13th August 1868, No. 2,155, Major Beddome was requested to address to Government a special report on the introduction of the Act. The disposal of the foregoing papers will accordingly be deferred until this report is received.

(True Extract.)

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

To the Board of Revenue.
,, the Officiating Conservator of Forests.

Exd. G. A. Turton.

Govt. of [illegible] Military Department.

REVENUE.

To

THE BOARD OF REVENUE,

&c., &c., &c.

Dated March, 5th.

Read.

Ind.

G. O., 5th March 1868, No. 624.

MARCH.

Nos. 223-225.

Trespass in Forest Reserves.—Disposal of

the letter from the Conservator of Forests on this

subject deferred, pending the submission of his re-

port on the introduction of the Forest Act in the

Madras Presidency.

From Captain R. H. BEDDOME, Officiating Conservator of Forests, to the Secretary to the Board of Revenue, dated Camp Coimbatore, 24th October 1866, No. 2,053.

1. Adverting to the Government Order, No. 2,799, of the 15th October, I have the honor to bring the following points to the notice of the Board of Revenue.

2. In several of our districts, the Civil authorities have given their opinion that our forest rules, as sanctioned by Government, are not law, and cannot be upheld unless supported by an Act. This is becoming generally known, and my Assistants complain that, although they are able to bring forward clear proof that parties have been felling without a license, or upon time-expired licenses, they are not able to get them punished on account of the want of a law. When it becomes generally known throughout the Presidency that the only punishment for clandestine felling, when detected, is the confiscation of the wood, smuggling will become very general.

3. The extension of Act VII. of 1865 to this Presidency will enable Government to make their forest rules law, and these rules may be so framed as not to restrict the privileges and prescriptive rights of the inhabitants in any way; very great concessions are made by Government to the inhabitants, and the amount of timber felled by them annually, free of any taxation, is enormous; this, however, need not interfere with the strict conservation of reserved tracts of forests, and of the more valuable timbers (such as teak, blackwood, sandal, acha, red sanders, &c.); and if Government intend their forests to be properly conserved, and to yield a small revenue, besides increasing annually in value, or at least not deteriorating, forest rules must be strict, and they must be supported by the Civil authorities; and all cases of illicit felling and attempts to evade the payment of seigniorage must, when detected, be promptly punished by imprisonment or fine; if this was the case, theft in Government forests would soon become of rare occurrence; but when it is generally known that timber robberies and attempts to evade seigniorage, by felling in excess of the license, or with time-expired licenses, are only followed, when detected, by simple confiscation of the timber, our rules will be of little use, and the Forest Department will not be able to show such results as it ought to.

4. *Grazing dues.*—The grazing dues in all reserved forests in Bengal are credited to the Forest Department, and parties entering the forests for this purpose have to report to the forest officers, and are watched by their establishments, and have to conform to the forest rules; the same must be done in our Presidency if conservancy is to be carried out with proper results; we cannot otherwise have any check against forest fires, or stop the wholesale distriction of saplings by the bill-hook. The Nallay Mallays are a reserved tract of forest, but my Assistant in that district reports that the grazing dues (which amount to several thousand Rupees annually) are credited to Land Revenue, although his establishment is employed in checking the depredations of the cattle drivers. No one but forest officers probably have any idea of the destruction done to our forests by fire and cattle and cattle drivers. Lieutenant Walker, the Deputy Conservator of Salem, reports that the latter enter his Acha forests with bill-hooks, axes, and pruning-forks on long poles, and that thousands of young saplings are deliberately cut down, and young trees much damaged. Mr. Yarde, my Assistant at Cuddapah, has lately reported similar occurrences in his Red Sanders' forests. Major Morgan reports much wilful damage in the forests of Bhowani.

5. *Jungle products.*—The circumstances attending the collection of these differ in every district, and I think it desirable that all rules regarding their collection should be left to the Collector of a district, who might arrange with the forest officer that while no tax was put on that would be oppressive to any of the hill tribes or jungle races, still due care should be taken that our forests were not needlessly exposed to injury. In some tracts certain jungle products could not be collected at all, except through the agency of the Forest Department; and it is desirable that in all reserved forests, parties collecting these products should, to a certain extent, be under the control of the Forest Department. Until very lately all the jungle products collected by the Poojaries or hill tribes in the sandal wood tracts of the Salem district were purchased by the Forest Department, and then sold by us at periodical auctions; the hill tribes always got the price they contracted for, and we sold the produce at a considerable profit; this was put a stop to by

the orders of the Board; the hill men have now no certain market for their produce, as the merchants and traders beat down their price; they get much less for their collections than they formerly did. Lieutenant Walker, the Deputy Conservator, reports that they are very anxious that we should again become purchasers, and he advocates a return to the former system, on the grounds that the hill men, (who alone are employed in our sandal wood felling operations,) were much more in our control under it than they now are, and that they themselves prefer it, and that the fact of merchants and traders entering the sandal wood tracts to trade for hill produce is a great loop-hole for smuggling. In the Anamallays, a strictly reserved tract, the Kaders collect the hill produce, and the Chetties come up to trade for it, and the price they pay is very small; to these Chetties I have traced some of the fires which occur annually, and which do immense damage, and I believe almost all the fires may be set down to these men; if it could be arranged that all the produce should be purchased regularly by the Forest Department, and sold by them periodically by auction, both the Kaders and Government would be benefited, the Chetties would not then enter these forests, and the Kaders would be more under our control, and would render assistance to putting a stop to the fires. These and similar arrangements could be best settled by the Collector of a district in communication with the officers of the Forest Department.

6. I have given the above subjects much thought, and I feel sure that without any restriction of the prescriptive rights of the people, much can still be done to render our forest system more perfect.

Exd. T. Cartledge.

No. 7,712.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 25th October 1866.

Read the following Proceedings of the Madras Government, dated 15th October 1866, No. 2,799, Revenue Department:—

Read the following Proceedings of the Board of Revenue, dated 28th September 1866, No. 6,988.

Read the following letter from the Collector of South Arcot, to the Officiating Secretary to the Board of Revenue, dated Cuddalore, 20th June 1866, No. 125:—

1. In reference to the Proceedings of the Board, dated 1st instant, giving cover to the Proceedings of Government of the 25th ultimo, calling for a report on the present operations of the Porto Novo Iron Company, with reference to Government Orders of the 24th December 1860 and 5th September 1865, I have the honor to submit a Statement, compiled from the Returns furnished to me by the Company's Agents at Porto Novo and Tirunamalay, showing the quantity of fuel cut from the Jungles of this District since 1861, the quantity expended, and that in store up to the present date.

	Quantity cut in.			Quantity expended.			Quantity in store.		
	T.	C.	Q.	T.	C.	Q.	T.	C.	Q.
Porto Novo...	521	6	2	474	0	0	47	6	1
Tirunamalay.	2,315	7	0	2,210	16	2	104	10	2

The privilege of cutting fuel free of charge, granted in 1860, was not availed of by the Agents of the Porto Novo Factory before February 1865, and at Tirunamalay, not before November of the same year.

2. Without some sort of survey by a competent officer, it is difficult to ascertain the condition of the jungles affected by the concession; but, at all events, if the present returns be accepted as correct, it is clear that the concession can as yet have had little perceptible effect on the jungles.

———

1. Resolved that the foregoing letter be submitted for the information of Government, with reference to paragraph 4 of the Order quoted by the Collector.

2. With reference to paragraph 3 of the same Order, the Board observe that, when the Village Conservancy Rules were promulgated, special instructions were given that they were not to be put in force in any jungles under the control of the Forest Department.

3. The Board are averse to anything like a revival of the obnoxious system of jungle rents, which, after the deliberate consideration of Government, was definitively abandoned two years back. It is true that the collection of certain articles of forest produce was then transferred to the Forest Department, and, possibly, as observed by Dr. Cleghorn, gall-nuts may be a legitimate source of revenue; but the Board doubt whether the collections from such a source, which would probably be insignificant, would counterbalance the disadvantages of again placing the semi-savage jungle tribes who collect such products at the mercy of a contractor; or of an inferior public servant, if the products were collected under the Amani system.

4. Dr. Cleghorn professes himself to be in favor of upholding the prescriptive rights of villagers within their village boundaries, though he advocates the extension, to this Presidency, of Act VII. of 1865, which certainly is calculated, in the Board's opinion, to restrict these privileges.

5. The Board are not disposed to support this proposal, until they have before them the opinions of the Collectors of those Districts in which the Forest Department is at work, as to its necessity. Should the Government desire it, the Board will call for this information.

ORDER THEREON, 15th October 1866, No. 2,799.

The Board will call for the opinions of the Collectors of those Districts in which the Forest Department is working on the suggestion of the Conservator of Forests to extend Act VII. of 1865 to this Presidency, and submit them to Government with their remarks.

(True Extract.)

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Ganjam.
Vizagapatam.
Cuddapah.
Kurnool
North Arcot.
South Arcot.
Madura.
Tinnevelly.
Coimbatore.
Salem
South Canara.
Malabar.

Communicated to the Collectors marginally named, for early report.

(True Extracts.)

(Signed) W. HUDLESTON,
Secretary.

True Copy.)

(Signed) J. T. MAYNE,
Acting First Assistant.

To the Collector of Ganjam.
„ the Collector Vizagapatam.
„ the Collector of Cuddapah.
„ the Acting Collector of Kurnool
„ the Collector of North Arcot.
„ the Collector of South Arcot.
„ the Collector of Madura.
„ the Collector of Tinnevelly.
„ the Collector of Coimbatore.
„ the Collector of Salem.
„ the Collector of South Canara.
„ the Collector of Malabar.

Exd. T. Cartledge.

PROCEEDINGS OF THE BOARD OF REVENUE.
To certain Collectors.

Dated 25th October 1866.
Received

No. 7,712.

Forwarding, for early report, Proceedings o
Government, requesting Board to obtain an
submit opinions of Collectors of Forest District
on suggestion of Conservator of Forests to exten
Act VII. of 1865 to Madras Presidency.

1866. Departmen

No.

From the Honorable D. ARBUTHNOTT, Collector of Salem, to the Secretary to the Board of Revenue, dated 5th November 1866, No. 212.

1. With reference to the Board's Proceedings of the 25th October 1866, No. 7,712, communicating order of Government, dated 15th idem, No. 2,799, I have the honor to submit my opinion on the suggestion of the Conservator of Forests to extend Act VII. of 1865 to this Presidency.

2. I am of opinion that Act VII. of 1865 should be extended to this Presidency for the following reasons.

3. Prior to 1856, there were but few forests in which there was any Government tax on timber, and still fewer in which there was any tax collected on firewood. In the majority of forests no tax of any kind had ever been collected, and the people had from ancient times cut and used timber and fuel at their pleasure. Whether Government had the legal right to take away this privilege by an order, without any legislative enactment, is a question that ought to be settled by their legal advisers; but be this as it may, I cannot conceive that a Government order can convert an action which had previously been considered prefectly innocent and legal into a crime, and moreover I submit that the avoidance of the payment of a seigniorage on timber cannot be punished by a Magistrate without a special law. It may even be questioned whether the present practice of the Forest Department of confiscating the *whole* of a man's timber when a portion of it is protected by a license, is legal.

4. At present, I believe, it is not uncommon for Magistrates to treat a breach of the Forest rules as "theft"; but a conviction of this nature has lately been quashed by the Session Judge of Salem.

5. Under every view, therefore, of the question, I think it advisable that Act VII. of 1865 should be introduced.

6. With regard to paragraph 4 of the Board's Proceedings, I beg to observe that the restriction or extension of any privileges to villagers or others will depend on the rules framed under the Act, and not on the introduction of the Act itself, which only gives such rules the force of law.

Exd. T. Cartledge.

From G. A. BALLARD, Esq., Collector of Malabar, to the Secretary to the Board of Revenue, dated on Circuit Vytri, 5th November 1866, No. 300.

1. With reference to the Board's Proceedings, dated 25th October 1866, No. 7,712, I have the honor to state that the mass of the forest lands being private property, and the extents taken up on lease by Government being under sufficient control, I do not see any necessity for the extension of Act VII. of 1865 in Malabar.

2. I presume my opinion is only called for as regards my own district.

Exd. T. Cartledge.

From C. N. POCHIN, Esq., Acting Collector of Kurnool, to the Secretary to the Board of Revenue, dated 10th November 1866, No. 235.

1. In compliance with the order of the Board, contained in their Proceedings, No. 7,712, dated 25th October 1866, calling upon me to give my opinion on the extension of Act VII. of 1865 to this Presidency, I have to report—

1st.—By Section 3, Act VII. of 1865, the Local Government may make rules for management and preservation of forests, and for regulating the conduct of persons employed on them, and Section 4 goes on to mention on what points rules may be made. It would appear that there are Forest Rules now in force, for I have a copy before me signed by Captain Beddome, Officiating Conservator of Forests, and the Forest matters connected with its conservancy have been ruled accordingly in this district since 1862. I know that Forest Rules were in force in other districts for years past, for I remember having to draw up some in North Canara, which were forwarded through the Collector for Mr. Fisher, and sanctioned by the Board some time in 1857 or 1858, but I am unable to furnish the date, as I only speak from memory. The chief points referred to in Section 4 of the Act appear to be embodied in Captain Beddome's rules. By Section 6 all rules framed were to have the force of law after confirmation by the Governor General in Council. I am altogether unaware whether these rules have had such sanction; but I presume not, from the fact of being asked as to the expediency or otherwise of introducing Act VII. of 1865. I have read over this Act, and consider that its introduction into this Presidency might be advantageous. It is not compulsory that every matter mentioned in Section 4 should be included in the rules that might be framed. I do think that the rules should be stringent, so that the lawless may meet with their deserts for ruining and plundering Government Forests. Though the forests in this district have earned Government a very good revenue, as will be seen from the following Statement,

1st Rules.
Circular No. 5,497, dated 27th November 1860.

Ranges.	Charges—Expenditure.		Receipts—Seigniorage and sale of timber.	
	1863-64.	1864-65.	1863-64.	1864-65.
Kurnool...	3,421	4,903	37,288	39,482
Salem.....	14,250	8,820	31,424	40,322
Madura....	4,442	3,478	3,188	6,383
South Canara...	9,606	15,984	20,319	21,183
Wynaad...	24,827	15,924	18,655	10,254

yet the depredations are extremely great, and the Assistant Conservator, who is both a willing and an active man, complains bitterly. I think the chief fault has been in this district in giving over large tracts of forest land on the alleged grounds of want of cultivation, and the following will show how injuriously such grants have effected the forests.

2. Two men in particular are regular thorns in the side of the Forest Department. Their names are Achaya, of Nundial, and Kala Khan. The former applied for a tract in Nundial, to Mr. Minchin. The estimated extent was about 550 acres, but the Assistant Conservator has, within the last week, informed me that it is upwards of 1,500 acres. Of this, only 60 are cultivated, and I have no doubt but that the original Durkast and the cultivating of the above small patch was for no other purpose but to acquire a very round income at the expense of Government: and in this way—

Strings of bandies with timber and firewood came into towns, and on the drivers being asked to show their licenses or permits, they invariably state that all has been procured from the Durkhast land of Achaya, Kala Khan, or some other. That there is cheating and trickery going on is manifest. The Assistant Conservator reports that the timber does not decrease upon such

lands, and that with the exception of the few cultivated patches, they are pretty nearly in the same state as they were when the Durkhastdars first had them. It makes it quite apparent that the Government jungles are encroached upon. These proceedings have been going on for some years, and it becomes now imperative that something should be done to remedy the evil. What I would recommend is that fixed time should be given to the present possessors to bring all under cultivation, failing which the uncultivated portion should be resumed by Government.

3. In Nundial taluk alone 2,530 acres of forest land has been granted on Durkhast, and yet only 210 acres and 38 cents have been cultivated.

4. In Nandikotkoor taluk only 55 acres has been cultivated, against 680 granted.

5. There are no Hill tribes in these parts that carry on cultivation; and as Clause 1 of Section 4 of Act VII. of 1865 gives power to frame rules prohibiting cultivation, I think that this point, as well as several others mentioned in the sundry Clauses of the same Section, could be introduced into rules to have the force of law greatly to the protection of the forests generally.

6. The forests in this district are 70 miles in length, by from 15 to 25 broad, and the establishment to look after this is, in my opinion, insufficient to prevent the constant depredations that are going on. It is well known that the Government Forests in many of the districts have suffered from want of proper protection, and the more stringent the rules may be, I think, the better. I am, therefore, greatly in favor of the Act (VII. of 1865) being introduced.

P. S.—Whilst writing the above remarks on forest matters, I have kept in mind the spirit of the orders contained in the Board's Standing Circular Order, No. 8,207, communicating letter from the Secretary to the Government of India, under date the 26th September 1863, No. 5,334, in which it is stated that "great caution will be exercised in regard to the disposal of Forest "land," and "that, as a rule, such lands should be reserved until it can be more clearly seen what "may be required from them in the interests of the general public, &c., &c."

Exd. T. Cartledge.

From V. H. LEVINGE, Esq., Collector of Madura, to the Secretary to the Board of Revenue, dated 12th November 1866, No. 377.

In reply to the Proceedings of the Board of Revenue, dated the 25th October last, No. 7,712, I have the honor to report that, as far as my experience goes of the operation of the Jungle Conservancy system in the district, I am opposed to the extension of Act VII. of 1865, which I agree with the Board will trench on the prescriptive rights of the villagers.

Exd. T. Cartledge.

Exd. T. Cartledge.

From J. A. C. BOSWELL, Esq., Principal Assistant Collector, to the Collector of Vizagapatam, dated Camp at Ankapelli, 13th November 1866, No. 169.

1. You have, with reference to Proceedings of the Board of Revenue, No. 7,712, dated the 25th October 1866, requested me to submit my opinion as to the desirability, or otherwise, of extending Act VII. of 1865 to this Presidency.

2. The Board are of opinion that the extension of this Act would restrict the prescriptive rights of villagers within their village boundaries, as to the cutting firewood &c. I am unable to see hows uch would be the effect, when, in Section 3, it is expressly provided that the Notification which extends this Act, "shall not abridge or affect any existing rights of individuals or communities."

3. The Act appears, simply, to empower the Government to make rules for the conservancy and working of Government forests, and authorizes penalties for the infraction of these rules, so that there would be no necessity even to alter any of the existing rules—"Rules made in pursuance of this Act may provide for the following matters." It seems that our Government have all along been doing what this Act legally authorizes them hereafter to do. I cannot, therefore, see any objection to its extension, unless it is that it may lead to doubts as to the legality of past Acts of public servants under the existing rules for the conservancy of the forests in the Madras Presidency.

Forwarded, in original, to the Board of Revenue, with reference to their Proceedings, dated 25th October ultimo, No. 7,712, as the Collector concurs with the Principal Assistant, who is in immediate charge of the Golconda Forests.

VIZAGAPATAM,
14th November 1866.

(Signed) D. F. CARMICHAEL,
Collector.

Exd. J. Wright.

From R. K. PUCKLE, Esq., Collector of Tinnevelly, to the Secretary to the Board of Revenue, dated Trichendur, Tenkerai taluk, 13th November 1866, No. 501.

With reference to the Board's Proceedings, No. 7,712, dated 25th ultimo, I have the honor to inform you that such part of Act VII. of 1865, as provides for the preservation of forest by prohibiting cultivation, and burning, grazing of cattle, &c, might be advantageously applied to those tracts of forest at the head of the river on which the prosperity of this district mainly depends. The ryots of the plains complain bitterly of the wanton destruction of forest, and the consequent diminution of water supply, and it would pay most handsomely, if 100 square miles or so of forest were as strictly watched as a game preserve in England, and both men and cattle were prohibited from entry. I am quite of opinion that it would be impolitic to revive the jungle taxes, but the heads of the sources of irrigation might well be protected by law.

Exd. J. Wright.

From J. D. ROBINSON, Esq., Collector of North Arcot, to the Secretary to the Board of Revenue, dated Chittoor, 14th November 1866, No. 334.

1. In their Proceedings, dated 25th ultimo, No. 7,712, the Board call on me to submit my opinion on the suggestion of the Conservator of Forests, to extend Act VII. (Government Forest Act) of 1865, to this Presidency. Local usage and prescriptive right in the jungles, vary in different districts, and there may, therefore, be some conflict of opinion as to the propriety, or otherwise, of bringing such jungle tracts under the closer control of the legislature. Speaking from personal observation in this and the other districts, with which I am acquainted, I have no hesitation in giving my voice against any more definite legislation in this direction. My reasons are:

I. That no general Act could be framed, which would be equally applicable to all districts.

II. That any special Act would come into constant conflict with local usage, and would be regarded with jealousy and distrust.

III. That beyond provoking a mischievous antagonism, and opening the door to a vexatious interference with local privileges, such legislation would not, even in the interests of Forest conservancy, be more effective than existing bye-laws, which have arisen gradually and naturally out of the peculiar circumstances of the country in which they are observed.

IV. That the law is already strong enough, and definite enough to reach all violations of Government property of this nature.

2. The system of Forest Conservancy, under revenue management in this district, works smoothly, and is, in its practical application, sufficiently protective to prevent any wholesale devastation. The system will, I believe, admit of being quietly extended to any hill slopes or jungle tracts which Government may hereafter desire to appropriate as Forest plantations for Railway and general purposes.

Exd. J. Wright.

From G. S. FORBES, Esq., Collector of Ganjam, to the Secretary to the Board of Revenue, dated Chetterpore, 21st November 1866, No. 3,223.

1. In reply to the Board's Proceedings, No. 7,712, dated 25th October 1866, calling for an opinion on the expediency of extending Act VII. of 1865 to the Madras Presidency, I have the honor to observe, that, of the prohibitions contained in Section 4 of the Act, those which specially relate to injuries done to trees of the various species reserved under the Forest Conservancy, are already in practical operation, and on the whole they are efficient. But Section 4 goes on to forbid the removal of leaves and grass, wood-oil, and resin, hides, horns, and ivory, wax, and honey, to forbid the grazing of cattle in the forest, to forbid the burning of lime and charcoal, and to prohibit free ingress except on certain lines.

2. I do not know what may be the character of the forests in the North West Provinces; but I have seen something of the forests of the Western Ghauts from Cape Comorin to the Goa frontier, and I am necessarily pretty well acquainted with those of Ganjam, which again are of the same character as the forests of Orissa and Sumbulpore, and I believe Assam also. Throughout these extensive tracts of country, are to be found numerous villages and clearings for cultivation, situated in the forest limits, and a still more numerous and important class of cultivators reside on the outskirts. Supposing it would be possible to debar people so situated from the use of grass, leaves, fagots, gums and resins, lime and charcoal, &c., how would existence be possible to them and to their cattle? The most ordinary wants of life would be unsatisfied, to say nothing of the immense inconveniences arising from diminishing the supply of charcoal and lime; the trade in horns, wood-oils, and resin, which it is so desirable to stimulate, and which should naturally be conducted by the resident forest population, would be discouraged, and a most useless and wanton injustice would be inflicted on a class who are now most useful as the pioneers of cultivation. The climate of forest tracts is unfavorable to health, the residents therein are isolated and debarred from many conveniences of life, and their crops and cattle suffer from their neighbours, the wild beasts.

3. Forest Conservancy can be carried on without this sort of vexatious meddling with the natural rights of a class, which should rather be favored than oppressed; the most urgent requirements of the existing local establishments are a class of Overseers thoroughly qualified for their work, and the provision of a proper carriage establishment for carrying the larger timber out of the forests; at present, nothing but small inferior timber is brought out of the Gumsoor forest owing to this deficiency. I have not thought it necessary to remark on the prohibition of free ingress into the forest; as regards the inhabitants of the forest villages, it is, of course, an absurdity; as regards those who live on the borders, restriction would be unjust and equally impossible; besides, where else are the cattle to graze? and how are wild beasts to be followed and destroyed? I think, therefore, that Act VII. of 1865 is applicable only to isolated forests, situated like those few still existing in Great Britain, but not to the vast continuous tracts of the Indian Peninsula; certainly not to Ganjam, where it would affect only Gumsoor, and could not be applied to the Zemindary tracts, which are half in, and half out, of the forest line.

Exd. J. Wright.

From H. G. SMITH, Esq., Collector of Cuddapah, to the Secretary to the Board of Revenue. dated 10th December 1866, No. 172.

With reference to the Proceedings of the Board of Revenue, dated 25th October 1866, No. 7,712, calling for a report on the suggestions of the Conservator of Forests, to extend Act VII. of 1865 to the Madras Presidency, I have the honor to state that it is not advisable to extend that Act to this district, as the seigniorage which is now being collected on timber, &c., is, in my opinion, quite sufficient, and that I believe that there is no material profit which the people obtain from the forest-produce of this district.

Exd. J. Wright.

From W. M. CADELL, Esq., Collector of South Canara, to the Secretary to the Board of Revenue, dated Mangalore, 28th January 1867, No. 20.

1. With reference to the Board's Proceedings, under date the 25th October last, No. 7,712, calling upon me to submit my opinion with regard to the suggestion of the Conservator of Forests, that Act VII. of 1865 may be extended to this Presidency, I have the honour to state that I have carefully considered this proposal, but am unable to concur with Dr. Cleghorn as to the expediency of this measure.

2. So far as this district is concerned, the introduction of the above enactment is not only inexpedient, but will, I apprehend, if carried out, needlessly complicate the working of the Forest Department, while I can anticipate no material advantage to Government from the measure.

3. I perfectly agree with the Board in their opinion that the extension of the Act is calculated to restrict the privileges and prescriptive rights of the ryots, unless perhaps these rights are clearly and unmistakeably defined by Government on the one hand, and scrupulously and liberally protected by the Local authorities on the other.

4. The Board are aware that the Kumaki system, as it exists in this district, is yet imperfectly defined, and frequent disputes and quarrels arise in consequence. As an instance of this, I may mention that the existing Rule, that the Kumaki rights of a Wurgadar should be restricted to the usufruct of the adjoining waste and jungle to the distance of 100 yards from his holding, cannot in practice be uniformly enforced in all cases. A large number of the ryots have no such waste or jungle bordering on their lands, from which they can obtain the requisite supply of leaves, firewood &c., for their agricultural purposes, and the wants of such ryots have to be supplied from the common waste in the village; and again, where there is no common jungle within the village boundary, the ryots resort to the larger Government forests in the neighbourhood, without reference to whether such jungles are situated within or without the village boundaries. Thus the wants of the ryots generally are supplied. I do not mean to say that these privileges will be done away with, or will not be respected, after the above Act is enforced, since Section 2 expressly provides that the Notification which the Local Government is authorized to issue rendering subject to the provisions of the Act any tract of land to be specified therein, shall *not* abridge or affect the existing rights of individuals or communities, but I doubt very much whether even with all the precautions which Government might take to prevent abuses on the part of its servants, there would not still be ample room to them to oppress the poorer and more ignorant portion of the inhabitants under the ostensible object of protecting the interests of Government punishable though such acts may be under Section 12.

5. The revenue formerly derived from the jungles in this district in the shape of rents from jungle products is also, as noticed by the Board in paragraph 3 of their Proceedings, too insignificant to warrant the revival of those rents, which would, in my opinion, certainly be a retrogade step after the said rents had been definitively abandoned by Government in 1864.

6. I take this opportunity to state, and from my own experience, that the existing Rules of the Forest Department, if faithfully and systematically carried out, appear to me sufficient for all purposes, and especially since the passing of the Indian Penal Code. Under this enactment, the powers of Magistrates in regard to the offences of mischief and trespass are so clearly defined, as to remove all doubts as to the competency of these officers to deal with the offences, the prevention or punishment of which is contemplated by Act VII of 1865, above alluded to. The chief and the real want of the district is, and has long been, a better and more trustworthy agency in carrying out the conservancy of the forests, and this I trust is now in course of being attained.

Exd. T, Cartledge.

From C. W. READE, Esq., Collector of South Arcot, to the Secretary to the Board of Revenue, dated Trinomalay, 31st January 1867, No. 26.

1. I have the honour to reply to the Proceedings of the Board, dated 25th October last, No. 7,712, requesting the opinion of Collectors as to the desirability of extending Act VII. of 1865 to the Madras Presidency.

2. I observe that by Section 3, only such Rules as the local Government, with the sanction of the Governor General, may frame for the preservation of all trees, shrubs, and plants within Government forests, can be legalized under the Act, and further that the said Rules, unlike the present ones, will have the force of law, infractions of the same being legally punishable; and by Section 2, the necessary provision is expressly made to secure all existing rights of individuals, as well as communities, which it is declared are in no way to be abridged or affected by the operation of the Act. I am, therefore, of opinion that the Act may, with advantage, be introduced into the Madras Presidency districts, provided the restrictions laid down are carefully recognized in the Rules, so that these may not in any way press on the people by interfering with their hitherto acknowledged rights and existing usage.

3. I am further induced to favour the introduction of the Act in reference to the Despatch of the Secretary of State for India, recorded in the Board's Proceedings of the 5th July 1866, No. 4,558, and to my belief that the Executive need to be armed with legal powers on emergency, for the due and proper conservancy of jungles and forest tracts, and the Act now reported on seems to me well suited to supply what is wanted, without infringing or curtailing the legitimate privileges hitherto enjoyed by the ryots.

Exd. T. Cartledge.

From P. GRANT, Esq., Collector of Coimbatore, to the Secretary to the Board of Revenue, dated 2nd February 1867, No. 38.

1. In reply to Proceedings of the Board, dated 25th October 1866, No. 7,712, calling for my opinion regarding the suggestion of the Conservator of Forests to introduce Act VII. of 1865 into this district, I beg to offer the following remarks: —

2. One has only to read the Forest Act most cursorily, to see what immense power it throws into the hands of the Executives.

3. Ingress even and passage through the forests except along authorized paths is prohibited. All the powers of the Act are in fact of the same stringent character. The Act was evidently drawn up by some one accustomed to deal with large forests, such as those which exist in Burmah and Bengal, extensive uninhabited tracts of country. There are no such forests in this district, those that do exist, are comparatively limited in extent, and traversed in all directions by paths or roads, and in some of them villages are situated. During the hot and dry season, the cattle not only from the neighbouring villages, but from those 50, 60, and 70 miles distant in the interior of the district are sent to graze in them for three and four months. Were it not for the forests, or, more properly speaking, the jungles, numbers of cattle in Coimbatore district would die yearly; in fact the large herds would soon disappear.

This state of things was prominently brought to notice this past season when, from the long continued drought, the water in many wells failed, and the people were obliged to send their herds and many of their milk cattle to the jungles, where alone grass and water were to be had.

4. The chief difficulties the Forest Department has to contend against, arise in cases in which there are disputes about boundaries, or where the country under the charge of the Department is far too extensive to be protected by the small establishments sanctioned for the purpose.

5. For instance, a poor man lives near a jungle; for several months of the year, in order to subsist, he is obliged to cut, carry, and sell firewood in some town ten miles off. In order to do this, he has to go to the Tahsildar and get a license on payment. The Tahsildar lives ten miles off; the man takes a day to go to the Tahsildar, ditto to return, time to him is money, he must live, and therefore if he can get his firewood without all this trouble, he will do so, and do it he can in many instances; for, he knows that there is but a Duffadar and perhaps a Peon to check him in a country of many miles extent. The village authorities do at times check such irregularities, but doubtless they often shut their eyes to what is going on; for, there is implanted in their breasts the feeling that he who steals to satisfy the pangs and cravings of an empty-stomach, is not to be dealt with harshly.

6. I believe that if Government raised plantations, native public opinion would be in their favour, and that a man who would help himself to a load of firewood, or a tree out of a natural jungle, would hesitate to enter the planted forest. In the one case he would consider that Government was entitled to the use of that on which it had bestowed money and care, whereas in the other case he would look on the jungle as the gift of God, meant for the benefit of all alike. With the exception of the forests on the Annamallay Hills, all the other forests in this district are so intermixed with plantations, Government assessed land, and village rights more or less recognised, that the introduction of Act VII. of 1865 would lead to much trouble, hardship, and irritation even in the simple item of firewood, and I doubt after all whether the Railway and the annual jungle-fires in this district do not consume more wood than the population.

7. It is only in the towns and in the villages near the jungles that firewood from the jungles is used to any great extent. The inhabitants of the villages, eight or ten miles from the jungles, obtain all necessary firewood from their hedges, or else use cowdung and the refuse of their threshing-floors.

8. The means of conveying timber from the jungles are few; large trees must be carried on bandies, and the roads are "few and far between." They can be watched easily, and the parties caught stealing be punished under the ordinary laws of the country.

9. Under existing circumstances I do not advocate the extension of Act VII. of 1865 to this district. If Government had large plantations raised by the Forest Department, no one should be permitted to enter them without leave, and the most stringent laws might be put in force for their protection, but for the present, the existing laws will, I believe, meet any case that may arise.

Exd. J. Wright.

Enclosure the Proc of the Bd of Revenue to the Secretary to Government R D dated 16th April 1868. No 2777.

Rev - 1342/68
From 8th March 68 Ld 223
2 Encls
Ack No 624

File of Collectors' replies on the subject of introducing Forest Act No 7 of 1865.

No. 2,965.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 22nd April 1868.

Read the following Proceedings of the Madras Government, dated 20th May 1867, No. 1,133, Revenue Department:—

ABSTRACT.—Calling for the Board's reply to the Government Order, dated 15th October 1866, No. 2,799, regarding extension of Act No. VII. of 1865 to this Presidency.

Ordered to be recorded, with reference to the Board's Proceedings, dated 16th April 1868, No. 2,777.

(A true Extract.)

J Grote
Sub-Secretary.

To the Secretary to Government, Revenue Department,
with two original enclosures.

xd. J. Wright.

C 2134 2/8

Pen. 1868. Department.

No. 1413.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 22nd April 1868.

Dep 27
Rec 28
E 20 v

No. 2,965.

Secy to Govt 624 & Revenue 69

Recording Proceedings of Government requesting reply to G. O. regarding extension of Forest Act VII of 1865 to this Presidency.

No 224

prisoner was found guilty of the offence of theft; the Head Assistant Magistrate remarking that he "did not see why this should not be punished as any ordinary theft".

The Dy. Conservator, Salem Forests having expressed a desire to be heard in support of the conviction, the case has been fully argued by this officer for the prosecution, and by the pleader for the defence; and it now becomes my duty carefully to weigh all the considerations which have thus been urged in support of, and against the conviction respectively. It is to be regretted that the question is one that is never likely to come before the High Court for authoritative ruling, the sentences in such cases being passed by the Magistracy, and an appeal lying only to the Court of Session. There is no provision in the Code of Criminal Procedure for questions of law being reserved for the decision of the High Court. I approach the subject with much diffidence because I am assured by the Deputy Conservator that the felling and conversion of forest under without or in excess of a license, is treated in every district as theft; and that the sentences

of the Magistracy are invariably upheld by the Courts of Session. My attention has also been drawn to the first item of the rules for the Conservancy of the Forests in the Madras Presidency, in which the felling, removing or burning of trees and shrubs are declared to be acts which render the persons committing them liable to a criminal prosecution for theft, mischief, or trespass, under the Indian Penal Code. The prisoner however being entitled to a judgment from me upon his appeal, I must proceed to dispose of the case to the best of my ability.

It is argued for the defence that the license not specifying the particular tree which was to be felled, and the portion of it which was to be worked up, it was open to the prisoner to cut down any tree or any number of trees he pleased, in order to obtain the quantity of wood which he was authorized to work up; and that, as regards any wood worked up in excess of his license, it was sufficient if he merely paid the assessment upon it at the time of removing it from the jungle; that no dishonest intention can be inferred from the prisoner's act in working up more wood than

that his license authorized the felling of the tree was perfectly legal; and that none of the timber having been removed, the offence of theft can not have been committed.

On the prosecution it is argued that the right acquired by the prisoner under the license was confined to one handy load of wrought timber; that, though he was authorized to cut down a tree of his own selection for this purpose, he had no authority to work up more than one handy load of wood; that the property and possession as to the rest of the timber continued in the Government; and that the prisoner's act in causing the rest of the timber to be worked up amounted to theft, that as he was well aware of the forest rules his intention must be presumed to have been dishonest, and that the offence was complete when the wood was cut up; though it was never removed from the forest.

There is wanting in this case, in my judgment, every ingredient necessary to constitute the offence of theft. The allegation of an intention dishonestly to take the timber out of the possession of another without his consent, is negatived by the fact of the prisoner having applied for a license. It is argued that the prisoner in working up more wood than his license covered must have intended to convert the timber to his own use without paying for the enjoyment. But we know what circumstances this imputation is inferred. The fact of the prisoner having taken out three successive licenses rather leads to the inference that his intention was to obtain further licenses before removing the timber. When the tree was felled possession had been transferred to the prisoner under the license. It is not disputed that he had full authority to cut down this tree, notwithstanding its large size. The only restriction laid upon him by the license was, that the tree to be felled was not to be "less than three feet in circumference at three feet from the base". It is quite clear to my mind that possession of the whole tree was transferred, for there is nothing to show, nor is it contended that the prisoner was engaged to work up his own

load

load of timber from any particular part of the tree. Being, therefore, in possession, nothing that he afterwards did with the timber would render him guilty of the offence of theft. Another circumstance which renders the conviction erroneous in this case is that the prisoner, though there is no proof that he either cut down the tree himself, or was present and aiding when it was cut down, has been treated as a principal. The sawyers are regarded as innocent agents. But not being children or lunatics, or otherwise irresponsible for their acts, it is clear that if any criminal offence had been committed they would have been the principals and the prisoner an abettor.

The fact of the real actors in the transaction not having been prosecuted, shows how the felling of forest trees without a license, or the working up of wood in excess of a license, is felt to differ from a crime. In an ordinary case of theft the actual thieves would certainly not have been exonerated from blame; whereas in the present instance the persons who committed the act, which is called a theft, have been entirely relieved from criminal responsibility, and been examined as ordinary witnesses, without even the offer of a pardon. Even

if the prisoner had been present and aiding, the conviction would still have been irregular, for if it were not theft in the actual perpetrators of the act, it could not be so in any person present and aiding. Another test may be applied to this subject. Suppose five persons were discovered by a forest peon cutting up a tree without a license, and, upon his endeavouring to prevent them, they were to chastise him. Theft accompanied by hurt is robbery, and robbery committed by five persons is dacoity. Could the taking of timber under such circumstances be held to be dacoity? I do not think any Magistrate or Court of Sessions could take such a view of the case; and yet it is only by extreme cases that the soundness of a principle can be tested.

Act VII of 1865 throws much light upon this matter. The very passing of a Special Act for the purpose of preventing the unauthorized destruction of forest timber is clearly a proof that the criminal law is inapplicable to such cases. Several inferences may be drawn from the provisions of this act, which tend to show that the acts of persons dangerous to forest

forest-laws are regarded as of a peculiar nature, requiring exceptional legislation. The punishments which may; and those which may not be inflicted for infringements of the forest rules may also be learnt from its provisions. The title of the act is worthy of notice. It is entitled "an act to give effect to rules for the management and preservation of Government Forests". It may be inferred from the title and preamble that Forest rules, not made and confirmed in accordance with the provisions of the act, have not the force of law. Secondly, that no forests are deemed to be Government Forests for the purposes of conservancy, unless they are rendered subject to the provisions of the act (Sections 1 and 2). Thirdly, that individuals and communities may possess rights over pri-forests declared to be Government Forests (Section 2). Fourthly, that where the act is not in operation, no offence whatever is committed by the felling or conversion of forest timber (clause third, Section 4). Fifthly, that where the act is in operation, no criminal offence is committed by the felling of timber in Government Forests contrary to the rules, but merely an offence against the act

act (Section 3). Sixthly, that the offence of felling timber contrary to rules framed under the act is not punishable in any other way than by confiscation of the timber and of the implements used in cutting it up (Section 6 and 7). Seventhly that even the punishment of confiscation can not be inflicted without legislative authority (Preamble and Section 4). It is worthy of remark that the act (Section 10) holds the persons actually employed in over-working up timber contrary to the rules, responsible for their acts, and provides (Section 7) for the confiscation of their implements. No doubt this should be so, and in criminal cases it would be no excuse that a man had been hired by another to commit the act. The manner in which the present case has been dealt with shows that practically it has not been treated on the same principles as a criminal offence. I think it can not be doubted that if confiscation were not the only punishment legally awardable for the felling of forest timber, it would have been stated in the act, that this was in addition to any punishment to which the offender might be liable under the Indian Penal Code.

Section 5 of the act however provides that in

such cases not even a fine shall be imposed under the forest rules, in addition to confiscation. I abstain from expressing any opinion as to the principles upon which the forest law may be supposed to be based, because it is not necessary for the purposes of the present decision.

After having given the subject the consideration which its importance demands, and endeavoured to ascertain the views of the legislature upon it, I proceed to dispose of the Appeal in accordance with the opinion that I have formed. I am strongly impressed with the conviction, that a person is not liable to a criminal prosecution for felling forest timber without a license, or for any other infringement of the forest rules; and I think that in the present case the finding is contrary to law, because the possession of the whole tree, as well as the property in one bundle load of the timber, had been transferred to the prisoner under the license, and no circumstances have been proved from which a dishonest intention can be inferred; and further because the prisoner has been convicted of theft as a principal, without any proof that he committed the act, or was present at the commission; or that the act of the offenders amounted to theft. On these grounds I reverse the finding, and acquit the prisoner.

Finding and Sentence — The Appellate Court, after perusing the proceedings of the Lower Court, and after hearing Mr. H. L. Jones, pleader for the prisoner, and Capt. Campbell Walker, for the prosecution, finds that Seshagherry Pillay is not guilty of the offence specified in the charge, namely, that he has committed theft, and that he has thereby committed an offence punishable under Section 379 of the Indian Penal Code; and the Appellate Court, therefore reverses the finding and sentence appealed against, and directs that the said Seshagherry Pillay be discharged

1/2 Pt. C. F. Clavier

Sessions Judge

(true copy)

Pd. 1/2 Appl. 1 Rd.

(Campbell Walker) Capt.

Asst. Conservator of Forests

Salem and District

No 181

17th November 1866

Dy. Conservr Office
Camp Salem—

From

Lieutt G. J. Walker.
Dy. Conservator of Forests
Salem and South Arcot—

To

Capt G. H. Beddome
Ffs. Conservator of Forests
Ootacamund—

Sir

I in forwarding a copy of a decision of the Civil and Sessions Judge of Salem for your information I have the honor to request your attention to the matter which is of great importance and to subjoin a few remarks—

2— —I personally prosecuted this case before the Head Assistant Magistrate as I have already reported in my Progress Report for September— I can offer no opinion on the main point at ipsue, namely, whether taking Government timber without acquiring any right to do so, or paying for it, is theft or not. As in the face of the opinion now laid down by the Sessions Judge and the Magistrate (Mr Arbuthnott) it would be presumption in me to do so, and I have only to request that the point may be settled.

Since

1866-67
Salem
Rec. 8th Jan 67.
Rec. 14/13/67

Forwarded
Offg Conservator

Encl "Mail Dy C 21

Some points noted in the Sessions Judges precis and finding require consider explanation.

1st It is stated by the Defendant that he had previously obtained 3 Licenses which expired before the wood was brought. The number and date of these is not stated, nor is the matter of much moment; the Defendants intention being evidently to show that he was so honest that he actually paid for what he did not get, and would not attempt to take timber on a time expired license or even desire to request a new license or extension of the time without a further payment! I have not considered it necessary to ascertain from the accounts kept in the Range Office how many licenses were taken out by the Defendant during the whole year, but I find from the Registers sent to this Office that Sesha Gheroy Pillay had a license No 1944 for 1 Bandy load which expired on 29th June and on which wood was brought, and the license checked and recovered on the 28th of that month. In July another license in the Defendants name No 1959 of which the time expired on 11th July is entered as "not seen up"; and I believe that this license together with the license No 2000 was only recovered when the present action was brought.

The statement with regard to the two licenses is thus either false or has reference to a period so far back as to have no bearing on the case.

2nd It is true that a license obtained under our Rules does not specify the exact tree or even the size of tree to be cut down; only mentioning the description and quantity for which Spijmorage has been paid. I think that this is certainly a great flaw in the license and voucher system but do not see how it can be avoided. The intention of course originally was to mark a certain No of trees and allow those marked only to be felled, but apart from the expense and labour which this would involve in Forests scattered so much as is the case in these Districts. I am convinced that the people would consider it an uncalled for hardship to have to go at times some distance for timber as we could not possibly keep trees always marked near each village, and would not at first disregarding the rule, raise the usual complaints with regard to the "Oppression of the Department and the loss and inconvenience caused to all by its working."

It is however generally understood that the size of the tree to be felled should bear some proportion to the number of bandy loads on which Spijmorage has been paid, and I consider that the Defendant felling a tree so utterly disproportionate to the quantity for which he had obtained a permit

does

goes far to prove his dishonest intention for as the ... brother of the Revenue he was well acquainted with the Forest Rules; Rule 17 of which distinctly states, that "Parties wishing to fell timber in Government Forests should pay the Seigniorage for the number of bandy loads required in advance into one of the Taluq Treasuries and shall receive &c."

Since assuming charge of these Forests I have repeatedly called the attention of parties cutting timber to this Rule and have invariably punished by confiscation all infringements thereof—

When we find them as in this case a man not ——6
only felling but preparing (by which act he also "removes") a quantity of timber largely in excess of that for which he had obtained a pass. I cannot see on what grounds the Sessions Judge ... pronounces that the "allegation of a dishonest intention is negatived" &c. —

I have already brought to your notice that this very plan of taking a license for a small quantity of timber and felling, preparing and, if possible, removing from the Jungle a quantity largely in excess of that quantity, is most frequently adopted by parties wishing to defraud Government with impunity. If possible they remove the wood unobserved or bribe the Peons who, on the pay of Rupees 5 per mensem, cannot be ... subdued

suppressed to be immaculate and, if challenged by myself or one of the Peons, produce the license and in this manner take large quantities of Government timber without payment of Seigniorage—

7— ——3rd Neither can I see in what way possession of the whole tree was transferred to the ... Defendant when the license distinctly gave him possession of one bandy load only leaving removed which he had no right to prepare for ... until he was provided with a further license—

If a man pays for and removes a bandy load of timber from any stack of say 10 bandy loads it surely does not create the remaining 9 bandy loads his also without further payment?

8— ——4th The Sessions Judge goes on to remark that the Complainant and not the Defendant were the proper parties to be prosecuted at least in the first instance, and from this not having been done arrives at the conclusion that taking Government trees is not theft at least not ... "ordinary theft"!

I would submit that the essence of theft is dishonest intention and as the complainant has fully stated to the contrary "there is a tree for which I have a license fell and convert it", it was but natural that they should believe their

owned

and I cannot see how they acted dishonestly at all -

No pardon was granted to the Sawyers because — 9
as above stated, it was not considered that they had committed any offence for which a pardon was required, and even if a pardon ought to have been granted (as the Sessions Judge infers) before evidence could be taken - I do not see how this invalidates the finding as no Sentence of a competent court is reversible on account of error in procedure (Vide Section 426 C. C. P.) -

I leave the question regarding Jacoity to be decided — 10
by those well versed in the technicalities of the Indian Penal Code -

The Sessions Judge is, I think, in error when — 11
he states that "the Question (theft or no theft) is one never likely to come before the High Court for an authoritative ruling" for I find that so lately as the 27th March 1865 one Boreah Gounden was tried before the Sessions Judge of Coimbatore (Mr. J. Davies), on a charge of "Theft punishable under Section 379 of the I. P. C." viz that he sold 50 black wood trees the property of Government (the trees having been sold as they stood in the Sholacurry Forest).

The Sessions Judge found the Prisoner guilty and sentenced him to 3 years Rigorous — " imprisonment and to pay a fine of Rupees 1000

An appeal was made to the High Court which however on the 31st July 1865 confirmed the sentence of the lower Court and dismissed the appeal - 12
Referring to Act VII of 1865 the Sessions Judge — Minutes that the very introduction of that Act in Bengal, proves that the Criminal Law is inapplicable to Forest cases, but I find that Mr. Maine in introducing the bill most emphatically and clearly states the contrary (Vide Statement of objects and reasons published in the Gazette of India Extraordinary of 21st September 1864 - also proceedings of the Government of India published in supplement to Gazette of India dated December 31st 1862) but argues on behalf of introducing the bill not that the Penal Code is inapplicable for he states that it is so in many cases, but from the difficulty of detection, identification and proof of criminal intention in all these cases, inadequate to stop Forest depredations and that therefore it was expedient to — introduce "Special Penal Laws"

It is also clearly stated that on information being before Government whether the Act would prove acceptable to the Governments of Madras and Bombay it was therefore not made Law in those Presidencies under these

affects this Presidency at all nor that by its provisions acts which as Mr Thorne says are clearly punishable if proved under the Penal Code should be allowed to pass as "exceptional".

I have in this letter adverted only to the features of this case, which seem to me to have reference to the working of the Department in the Districts under my charge and to those alluded to by the Sessions Judge as operating the Defendant from dishonest intention &c leaving the broad question to be argued and settled by better authorities.

I need scarcely state that the little question as to whether theft of Government timber &c can be punished either under the Penal Code or by special legislation, as theft or not is definitely and authoritatively settled the working of the Department will be seriously impeded.

I have the honor to be

Sir

Your most obedient Servant

Campbell Walker Lieut

Dy. Conservator of Forests

Salem and South Arcot

No 1342 & 1413.

No 624.

8th March/69.

In para 184 of his report on the Forest operations of 1867-68, the Acting Commissioner of Forests expressed opinions in regard to the introduction of the Forest Act into this Presidency somewhat dissonant from those which were apparently held by him when his letter under date 24th Oct. 66 No 2053, which forms an enclosure of the Board's Proceedings above recorded, was written. ~~The changes in Bengal Revenue Circle~~ ~~is probably the result~~

List

1866-67
Salem

Forest Officer
Rec. 8th Feb. 67.

From Capt. R. H. Beddome
Dy. Conservator of Forests
Salem Circle

To
The Secretary to Government
Public Works Department
Fort St. George

Rec: 14th/68.

Sir

I have the honor to report for the information of Government that I proceeded to Coimbatore on the 13th January last and returned to Salem on the 18th idem.

2. I submit herewith a Statement of the Expenditure incurred during the month of January last.

Salem 8th March 67

I have &c.
R. H. Beddome
Dy. Conservator of Forests
Salem Circle

Encl: 1 Statement.

Rec: 8th March 67 & Regd 224.

of for in para 11 of the
G.O dated 13 Aug 60 No
2155, Major Baddeley
was requested to address
to post a Special report
on the introduction of
the Act. The despatch
of the foregoing papers
will accordingly be
deferred until this
report is received.

11 Copies Follow By Overland Despatch
13 " " Office Copy of Inclosure

qe