M.R. O. 1—30,000—18-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 956 Press ~~Mis.~~

176-79
Dated 8-4-1869 ~~19~~

Not to be folded or roughly handled

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

No. 178. Read the following Proceedings of the Board of Revenue, dated 26th December 1868, No. 9,051 :—

Read Proceedings of Government, dated 8th October 1868, No. 2,591, requesting the Board to report on the propriety of the cost of distribution of Irrigation Company's water being paid by Government.

With the foregoing Proceedings Government forwarded to the Board, for their report, a letter from the Secretary to the Government of India, addressed to the Secretary, Madras Government, (Revenue Department,) relative to the terms of the contract between Government and the Madras Irrigation Company, as regards the expense of collecting the water-rate from the ryots. The Secretary to the Government of India also encloses a copy of a Despatch, addressed by him, on the same subject to the Secretary of State for India.

2. The Madras Government, in their Proceedings, dated 11th February 1868, No. 374, and 24th April 1868, No. 1,110, had previously observed that the contract contained no provision for charging the Company with any of the costs of collection of the water-rate from the ryots ; and the Supreme Government have now remarked on the injustice of throwing this expense upon Government.

3. It appears to the Board to be only just and equitable that the Company should pay these expenses.

4. There is, however, in the opinion of the Board, nothing in the contract which recognises or imposes this responsibility on the Company expressly, or in a manner which leaves no room for question ; the terms in which the contract is drawn up are very general, and in some places rather vague.

5. Section 13 provides expressly that the price to be paid to the Company by Government shall be the same as that received by Government from the cultivators, or, in other words, that Government shall simply pay over what they receive ; and, in calculating the price, the element of the cost of collection is excluded ; for the Section determines that the price shall represent as nearly as possible "a fair charge for the water which will be supplied for irrigation to the "parties taking or availing themselves of it." Hence the contract leaves no source whence Government can recoup the cost of collection.

6. The terms of Section 22 are so general that it might certainly be held to refer to a charge for collection by Government ; but unless the Company admit the justice of the claim, they may argue that (keeping Section 13 in view) the charges of collection referred to are charges for collecting the rates on water supplied to other parties than the Government. The Company might also hold that, as Government have only the option of purchasing the water, it was necessary to provide for the contingency of their declining to take it, and they might point to the peculiar phraseology of Section 22, which, while prescribing that on the *credit* side of the Company's Revenue Account shall be entered, among other things, "all receipts from or on account of the said works for water supplied for irrigation, including any sums payable to the Company by the Government of Madras for such water," omits any corresponding charge on the debit side, providing only in a general way for the debit of "all payments made in respect of the manage-

ment of the Company and its affairs, generally, and specially in, about, and relating to the supply of water for irrigation, and the collection of moneys payable for such supply".

7. The omission of any mention of Government in this part of the Section, they might argue, (coupled with the provisions of Section 13,) shows that it was the intention of the contracting parties that Government should make no charge for collection if they elected to become purchasers of the water, and that this was one of the incidental advantages meant as an encouragement to the Company to undertake their enterprise, and to deal with Government as purchasers.

8. The Board make these remarks merely to show by what arguments the Company might endeavour to uphold their non-liability. At the same time, they think it more than probable that a Court of Equity would hold that the charge was so obviously just and necessary as not to need express specification in the contract.

9. The Board do not see that anything more can be done at present than the Government of India have done, and if the Company do not acquiesce in the justice of the Government claim, the question seems worthy of reference to arbitrators by the Government, as provided for in the contract.

10. With reference to paragraph 4 of the Despatch of the Supreme Government to the Secretary of State, wherein it is observed that Government are bound by the contract to pay for all the water received, whether they are able to recover the price from the ryots or not, the Board think it right to call attention to the fact that Government may often lose the ordinary land-rate, and even in many cases be required at the same time to pay the water-rate, simply because the Company undertakes to supply irrigation. For instance, a ryot may apply for water and prepare his land for irrigation, and the Company afterwards fail to supply it; or too much or too little water may be supplied, and the crop ruined in consequence, or the primary effect of irrigation may be, as it not unfrequently is, to turn the land into "Souda" land, and make it altogether uncultivable.

No. 179.

ORDER THEREON, 8th April 1869, No. 956.

Miscellaneous.

ORDERED to be recorded.

(True Extract.)

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

To the Board of Revenue.

Exd. F. R. Bautleman.

Govt. of {1869} Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated April, 8th.

Recd. *Read.*

G. O., 8th April 1869, No. 956.

APRIL.

Nos. 173-179.

Water supplied by Irrigation Company.—Proceedings of the Board of Revenue regarding the expense of collecting the water-rate, recorded.