M.R.O. 1—77,006—3-4-42.

(1) Number of pages 26

(2) Date of repair 28-7-42

(3) Initials of the Reference

MADRAS RECORD OFFICE.

Government of Madras.

PUBLIC DEPARTMENT.

G.O. No. 15 Press Mis.

Dated 16 19

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department, 1st June 1864.

No. 3. Read the following letter from Captain F. J. MOBERLY, R. E., Superintending Engineer, 8th Division, to Colonel C. A. ORR, R. E., Secretary to Government, Department Public Works, dated Madura, 19th May 1864, No. 222 :—

From Collector, Nos. 109 and 178, dated 29th March and 2nd May 1864.
From Superintending Engineer, to do. No. 2,418, dated 10th April 1864.
1 Extract from Proceedings of Deputy Magistrate's, dated 10th March 1864.

ENCLOSURES.
1 Copies of letters.
1 Calendar.

SIR,

1. I have the honor to submit papers as per margin, for the consideration of Government, as it appears to me that there is some misunderstanding as to the powers of the Magistracy in the Tinnevelly District, regarding which I think some definite instructions are necessary.

2. It appears that Overseer Littlewood in the exercise of powers which I understand to be given to him by G. O. No. 3,819 of 24th December 1863, authorized the construction of a dam across a channel to increase the supply to a perishing crop from water, which he considered was passing in a larger quantity than was necessary for the lower cultivation; he is young in the Department, and fearful of his own act he cancelled his permission a few days after.

3. I am not prepared to assert that he was right or not, but I believe that it is a matter in which the Sub-Magistrate had no authority whatever. See Chapter XXII of the Criminal Procedure Code, and Sudder Proceedings 28th January 1862: I am informed that pending a decision by a Civil Court, a Magistrate might give a decision *por tem* to prevent a breach of the peace; of which you will observe there is no mention in this decision.

4. If I understand G. O. No. 3,819 of 24th December 1863 aright, the Officers of the Department Public Works are authorized in cases of emergency to overrule the Revenue Officers in the distribution of water, but if these latter possess jurisdiction as Magistrates (as is claimed in this case) it appears to me that our powers as professional Officers may be constantly invalidated.

5. I enclose all the papers, and trust that the Government will be pleased to issue definite instructions on the subject.

No. 4. ORDER THEREON, 1st June 1864, No. 1,587.

1. In Proceedings of Government under date the 24th December 1863, No. 3,819, it was ruled that the instructions to Revenue Officers contained in the Circular of the Board of Revenue No. 3,794 of the 21st September 1859, were not intended to affect the powers of the Members of the Department of Public Works over the Conservancy and the regulation and distribution of water for irrigation, but no authority was thereby given for interference on any but professional grounds, or for exercising interference beyond legal limits. In the case now referred by the Superintending Engineer, 8th Division, those limits were unquestionably over-stepped by Mr. Overseer Littlewood; but the Government are glad to observe that, soon discovering his error, the Overseer had the good sense and discretion to acknowledge it, and to endeavor to remedy his mistake to the best of his ability.

2. Captain Moberly's attention will be requested to paragraph 2 of G. O. of 20th February 1864, No. 512.

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government.

To the Superintending Engineer, 8th Division.

Exd. S. T. Augustin.

No 109 Tinnevelly 29th March 1864.

Sir,

To,

J. Silver Esqre
Collector of Tinnevelly

Captain F.J. Moberly R.E.
Superintending Engineer 8th Division

Sir,

I have the honor to forward an extract from the Proceedings of the Deputy Magistrate of Ramiah under date the 10th Instant, from which you will observe that the Overseer in charge of the Shenkurray Salug has illegally interfered with the rights of the people by ordering a dam to be thrown across the supply channel of Polugaseil tank therein referred to, and I request that you will take such notice of the same as you deem necessary.

I have the honor to be
Sir,
Your most Obt Servant
(Signed) J Silver
Collector.

Extract from an extract from the Proceedings of the Deputy Magistrate of Ramiah

in

in charge of Sentkarai Taluq 15th March 1864. Camp Palayacoil.

× × ×

The Deputy Magistrate considers it his duty to bring to the notice of the Chief Magistrate a great irregularity on the part of the Sentkarai Taluq Overseer, in connection with this case. In his defence Defendant Ahobala Nadan presented a Tamil Summons in original, dated 31st January last, granted to him by the Overseer authorizing the throwing up of the dam. Complainant Sooriacanoo= =pillay remonstrated with the Overseer on the injustice of such a summons, and on the 10th February the Overseer granted another summons, telling him that the villagers of Thenjanoor coil were not justified in throwing up the dam right across the channel, and that his former summons to them only permitted them to throw up the dam "to a certain extent" only. This qualifying clause is not however to be found in the summons granted to Defendants. The Overseer, in the opinion of the Deputy Magistrate, clearly exceeded his duty, in granting the summons to Defendants, and his granting another summons to the opposite party

Cancelling

cancelling the first summons, within the short period of ten days clearly shews that the Overseer did not understand what he was doing. So early as October last, there was a dispute about the dam, and the Sub Magistrate after personal inspection, caused its removal. The dam was thrown almost the next day, and the Defendants were criminally prosecuted for it.

From that time, both the parties are before the Magistrate. In the mean= =time, the Overseer steps in, and sides with the Defendants, and grants them a written authority to do what they were forbidden to do, by a Magisterial Officer. Such interference on the part of an Overseer is vicious in the extreme.

× × ×

If it were not for the great forbearance of the complainant, and his party, great mischief might have resulted from the injudicious interference of the Overseer, and the Deputy Magistrate in enclosing the two summons, in original,

requests.

requests the Chief Magistrate to take a severe notice of the whole matter—

(True Extract)

/Signed/ J. Silver
Collector.

Suffty Engrs Office
8th Dn Tuticorin
16th April 1864.

No 2,4 18

From,

Captain F.J. Moberly R.E.
Superintending Engineer 8th Dn

To,

J. Silver Esqre
Collector of Tinnevelly

Sir,

In reply to your No 109 of the 29th Ultimo, I have the honor to observe that Mr Littlewood reports that he authorized the construction of a dam to raise the water to a crop in jeopardy while it was passing

passing uselessly down the Channel and that he was not aware that the subject had been submitted to a Magistrate but immediately on this coming to his knowledge he withdrew the order. 15

2. This accounts for his vacillation complained of by the Deputy Magistrate; I would submit that there is nothing in the proceeding even as stated by the Deputy Magistrate authorizing the use of such language as he has employed regarding a man who was not in Court and had had no Opportunity for Explanation. I trust you will see fit therefore to order its withdrawal.

3. But I further submit that under the circumstances Mr Littlewood was actually right. By Government Order No 3819. 24th December 1863 I understand that the members of the D.P.W may overrule those of the Revenue Department in the Conservancy and distribution of water. appeal lying to the Collector or Mr Littlewoods Superior.

4. I cannot see how the Magistrate has any concern in it.

5. Throw the proceedings of the Deputy Magistrate it would appear that certain parties have been criminally punished for doing what in the opinion of a member of the professional Department they were at liberty to do. I do not intend to assert that Mr Littlewood was correct and moreover to save a crop

in

it may be right, at the end of the season, to construct a dam which in October would be highly irregular.

6. Neither Mr. Littlewood nor any other officer of the D.P.W has been called on to give evidence in the matter, & without this I am under the impression that the decisions of the Magistrate is invalid. it seems absurd that we may overrule the Revenue authorities & our proceedings be upset by the same persons as Magistrates.

7. I shall be obliged by your reconsidering the matter, as I see no reason for censuring Mr. Littlewood who whether right or wrong withdrew his permission directly he heard that there was any prospect of clashing with another Department.

I have &c.

(Signed) F. J. Moberly Capt. R.E.
Superintending Engineer 8th Dn.

No. 178.

Tinnevelly Magistrate Court
Cutcherry Tirchendoor 2nd May 1861.

From,

J Silver Esquire
Magistrate.

To,
Captain F. J. Moberly R.E.
Superintending Engineer 8th Dn.

Sir,

I have the honor to acknowledge your letter of the 16th ultimo, and as I can scarcely suppose from your remarks, that you fully understand the subject complained of by the Deputy Magistrate in charge of the Tenkarai Taluq, in respect to the mistaken proceedings of the Overseer, I will briefly recapitulate the case.

2. In October last year, an earthen dam was thrown up by certain individuals who had no right to do so, across a supply channel. A Complaint was lodged before a Magistrate, who on enquiry finding the dam to have been illegally raised by the Defendants, ordered its removal, which was done. A second time a Complaint was preferred of the same offence having been again committed, but the Sub Magistrate finding when he came to enquire into it, that water was then passing freely in the channel, dismissed the case. A third time, the same parties raised the dam which a Magistrate with competent authority had already ordered to be removed, this time pleading the sanction of the Taluq Overseer.

3. It is this proceeding of the Taluq Overseer, regarding which I have requested you to caution him, and from the deposition of the principal Defendants, it appears, that he had communicated all the

Circumstances

Circumstances of the case to the Overseer, before he gave his order, which aggravates the matter. This statement of the Defendant flatly contradicts the account given to you by the Overseer, in explanation of his proceeding, as quoted in the beginning of your letter; and more than this, the Overseer does not assign in his second order, as a reason for withdrawing his first order, that it had then come to his knowledge, that the matter had been submitted to a Magistrate. A totally different reason is assigned.

4. With regard to the expression used by the Deputy Magistrate in respect of this proceeding and to which you take exception, instead of saying the Overseers interference was vicious in the system, it would have been better had the Deputy Magistrate represented it as irregular and illegal, which it was; and I have intimated this to the Deputy Magistrate. I attribute the Overseer's conduct solely to ignorance, and I request you will caution him.

The Ryots of Palayacoil were in want of water for their Crops, and it was not passing uselessly, as reported to you by the Overseer; but even if it had the matter was one considering the previous Magisterial decision, beyond the Overseer's power to interfere in.

5. The Order of Government quoted by you, does not in my opinion bear on the present case, in which

which a Competent Magistrate has passed a decision, but it is I think intended for the guidance of the Members of the D.P.W. in taking measures for the Conservancy regulation and distribution of water, whenever these operations come under their direct supervision; and I Consider that the professional Officers should point out to the Collector, any objections they may see to the orders of Revenue and Village Officers, in taking measures for the protection of works of irrigation. But putting that aside, this is a case that had been adjudicated by a Magistrate, and I cannot at all admit the doctrine implied in the Conclusion of Para 5 of your letter under reply, that as you Consider you can overrule a Revenue Officer, your proceedings should not be subject to the same Officer if brought before him in his Magisterial Capacity.

I have also to observe, that in offering remarks as to the decision of the Deputy Magistrate being valid or invalid, you are travelling altogether beyond your own province. The case was tried by the Deputy Magistrate under a Specific section of the Penal Code, and subject to revision by his Superiors, according to law.

I have the honor to be
Sir,
Your most Obedient Servant.
(signed) J. Silver.
Magistrate.

True

Superintending Engr. Office 8th Div.
Madura 19th May 1864

No. 222.

From

Captain F. J. Moberly R.E.
Superintending Engr. 8th Division.

To

Colonel C. A Orr R.E.
Secretary to Government P.W.D.

Sir.

I have the honor to submit papers as per margin for the Consideration of Government, as it appears to me that there is some misunderstanding as to the powers of the Magistracy in the Tinnevelly District regarding which I think some definite instructions are necessary.

2 It appears that Overseer Littlewood in the exercise of powers which I understand to be given to him by G. O. No. 3817 of 24th December 1863. authorized the Construction of a dam across a Channel to increase the Supply to a perishing Crop, from water which he Considered was passing in a larger quantity than was necessary for the lower Cultivation. he is young in the Dept., and fearful of his own act, he Cancelled his permission a few days after.

3. I am not prepared to assert that he was right or not - but I believe that it is a matter in which the Sub. Magistrate had no authority whatever - see Chapter XXII of the Criminal Procedure Code & Sudder Rec 28th January 1862. I am informed that pending a decision by a Civil Court a Magistrate might give a Decision 'pro tem' to prevent an breach of the peace; of which you will observe there is no mention in this decision.

4. If I understand G.O. No 3819 of 24 December 63 aright, the Officers of the P.W.D. are Authorized in Cases of

Public
From Collector No. 1098
178 dated 29th March
& 2 May 64
From Supt Engr to Dr
No. 248. dated 10th April
1864
1 Extract from Proceds
of D.C. Magistrates dated
10th March 64
1 Calendar

Encls.
1 Copy of letter
1 Calendar

Enclosure in a letter from Supt. Engr. 8th Division to the Secretary to Govt. P.W.D. dated 19th May 1864 No. 222.

P.W.D. 2252/64

Copies of correspondence regarding the alleged illegal interference of Corporal Littlewood with the right of the People to erect a dam across a Channel in Cultivation of Kurray Patty Tinnevelly District.

(True Copies)

F. J. Moberly Capt. R.E.
Supt. Engineer 8th Div.

of Emergency to overrule the Revenue Officers in the distribution of water but if these latter possess jurisdiction as Magistrates (as is claimed in this case) it appears to me that our powers as professional Officers may be constantly invalidated.

5. I inclose all the papers and trust that the Government will be pleased to issue definite instructions on the Subject.

I have &c.

Supdtg Engr's Office
8th Dn Madura
May 19th 1864

J. Caldwell
Captain R.E.
Superintending Engr's 8th Dn

To

Colonel C. A Orr R.E.
Secretary to Government

plainant to the channel and there saw a dam, that on the complainant
-it, that on the date of the charge he saw the 2nd & 3rd Defendants
complainant, and that sometime between October & January he went
saw a dam visible above water level.
the channel on a complaint lodged by complainant, and saw a dam
had been thrown by the Defendants including the 2nd Defendant himself.
to throw a dam in the channel on the 8 October last, and again
the complainant, and that on the latter occasion he did not see the

ence of the Sub Magistrate, he caused the 1st 2nd & 3rd Defendants to
ised the Defendants not to do it again.
was contrary to Manual, and irregular, that the Defendants have a
with whatever quantity of water freely flows into the branch channel,
subsequently removed on the 7th October last by the Sub Magistrate,
of the Taluq Overseer — 1st Defendant though not present on the
having raised the dam on that date. He filed draft copies of several
dated 31st January last from the Taluq Overseer — permitting him to

having caused a diminution of the supply of water used for agricultural
of the Indian Penal Code, but on fuller consideration they are indicted
was still applied for agricultural purposes, and secondly the Defendants
small.
and they are entitled only to such a quantity of water as may freely
loss to complainant, threw up a dam in the main channel, and so
and personally superintended the removal of the obstruction by the
to this, the Defendants raised dams several times. The Sub Magistrate
January last No. 7. it is stated that the earthen dam was visible above
prosecution, places it beyond doubt. That the Defendants did raise dams
on the 7th October last. The Defendant raised a dam the last time
of it, they obtained a Tamil Summons from the Taluq Overseer dated
of no use whatever, as it was given by, and obtained from an Officer
Defendants were ordered not to raise any dam, and they must have been
for redress — if they needed any, and the Collector and not an Overseer,
Magistrate's order raised the dam several times, & when they knew that
was coming there personally to inspect the place and try them, which he
themselves with a document from a wrong quarter, vainly hoping to protect
Magistrate would have subjected them to a very severe punishment.

(Signed) C. Ramiah
Dy. Magistrate

(True copy) (Signed) J. [illegible]
Magistrate

(True Copy) — [illegible] Capt. [illegible]
[illegible] Engr. 8 Division

No. 1581 [illegible]
From
[illegible] No. 228
Superintending Engineer
5th Division.

To
The Secretary to Government
D.P.W.

Dated 19th
[illegible] 23rd May 1864.

82

No. 1587 – 1st June 1864.

Submitting certain papers
connected with the case in which
Taluq Overseer [illegible] is said
to have interfered, for [illegible]
definite instructions of Govt.

No. 3

No. 71, Anu 1864 R. 27th

Magistrate of Tinnevelly

105

7 Grounds of Conviction	8 Finding and sentence.	9 Date of Offence	10 Date of complaint	11 Date of apprehension or appearance	12 Date of summary trial	13 Date of sentence	14. Explanations of delay.
Complainants state that in the channel to Palaya tank, the Defendants have cut such channel, the Defendants did only to a quantity as may flow into the channel the main bund with the taking away the quantity of water flowing into Palaya tank under which he has cultivation the Defendants a dam of earth right across the main channel; that on the 7th October last oval of the dam by the Defendants through the agency of the 8 witnesses the dams the next day; that a complaint was lodged before Sub Magistrate the Defendants having removed the dam against the Sub Magistrate's arrival; ing rain having fallen immediately he (Complainants) did not trouble himself fendants reraised the dam a fresh, under pretence that they had authority es of several orders, and an order in original from the Overseer himself. in question.	The 1st Magistrate finds that the Defendants are guilty of the offence specified in the charge namely that they committed mischief punishable under section 426 of the Indian Penal Code; the 1st Magistrate sentences them the 1st Defendant Ahobalunadan to pay a fine of 25 Rs commutable to one months simple imprisonment; and the 2d & 3d Defendants to a fine of 10 Rs each commutable to 15 days simple imprisonment.	2d February 1884	2d March 1884	9th do	do	11th do	No delay.

He raised a dam right across in the channel on the 2d February last, atened with bad consequences, that he saw earthen dams at the same place ged to having raised the same, that the dam said to have been raised on the me there to inspect it, and that when the Hulasyapatnam Sub Magistrate

Came

Calendar of persons tried before C Ramiah Deputy [illegible]

1	2	3	4	5	6	7
No. of the Case	Names and descriptions of the accused	Copy of the charge or substance of the complaint	Name of complainant	Names of witnesses for the prosecution	Names of witnesses for the defense	Statement of the [illegible]
No. 6 of 1864.	1 Athalanadan 2 Chuttanadakadan 3 Sivananainja= =perumalNadan. — Shanar caste Cultivators by profession	Mischief That they on or about the 2d day of February 1864 committed mischief by throwing an earthen dam right across a water channel, thereby preventing the free flowing of water through the Channel into a Tank, and thereby causing wrongful loss to complainant, and that they have thereby committed an offence punishable under Section 426 of the Indian Penal Code and within my cognizance—	Soonacamoo pillay—	Manthandamunliam - - 1 Veeralutteru chetty - - 2 Chidambara Pillay - - 3 Veerapandiam Pillay - - 4 Annavien - - 5		Comp[illegible] stat[illegible] main[illegible] lead[illegible] Cal t[illegible] Defen[illegible] a bro[illegible] that [illegible] are [illegible] such [illegible] of wa[illegible] freely [illegible] their [illegible] from [illegible] one, [illegible] view [illegible] the wh[illegible] water [illegible] raised [illegible]

the Sub Magistrate inspected the place and caused the immediate rem[illegible]
who was then Village Moonsiff; that the Defendants again threw [illegible]
who again inspected the place and dismissed the case by reason of [illegible]
that some time afterwards the dam was again reraised, that he [illegible]
with the matter, and that again on the date of the charge the D[illegible]
for so doing from the Taluq Overseer. The complainant filed a p[illegible]
forbidding all parties from raising any dam in the channel [illegible]
1st Witness states he saw the 2d Defendant and others actua[illegible]
that on the complainant endeavouring to remove the same he was [illegible]
on previous occasions, and the 2d Defendant at one time acknowl[illegible]
8th October last, was removed a short time before Sub Magistrate [illegible]

No. 1364 D[illegible]
Pro. of Govt. Fort St. George [illegible]
From [illegible] No. 2282
Superintending Engineer
8th Division.

To
The Secretary to Government
[illegible]

Dated 19th } May 1864.
Recd. 23d }

82

No. 1587 – 1st June 1864–

Submitting certain papers connected with the case in which Taluq Overseer Littlewood is said to have interfered, for some definite instructions of Govt.

No. 3

No. 71, [illegible] 164 R. 27th

came there subsequently, the earthen dam was visible above water.

2nd Witness declares that one day in October last he went and ... endeavouring to remove the same, the 1st 2nd & 3rd Defendants objected ... along with others reraised the dam against the remonstrances of the ... with Kulasegrapatinnam Sub Magistrate to the channel and there ...

The 3rd Witness deposes that one day in February he went to ... in it, and that the 2nd Defendant acknowledged to him that it ...

The 4th Witness speaks to having seen the 1st 2nd & 3rd Defendants ... another on the date of the charge against the remonstrances of ... 1st Defendant.

The 5th Witness states that under orders from, and in the presence ... remove the dam in the channel, and there the Sub Magistrate said ...

All the witnesses declare that the raising of the dam was ... branch channel in the main one, and that they must be counter ...

The Defendants admit to having raised the dam which was ... was also another on the date of the charge under the written authority ... date of the charge still takes upon himself the responsibility of ... useless petitions to the Engineering Officers, and an original order ... raise the dam across the channel.

The Dy Magistrate at first thought that the Defendants ... purposes by raising a dam, they are indictable under section 430 ... under section 426: fiatly, that the quantity of water so diminished ... have a right to a portion of water running in the channel however ...

Defendants have a branch channel in the main channel ... run into it. The Defendants with the view of causing a wrongful ... took away the entire water. The Sub Magistrate inspected the place ... Defendants themselves, and this the Defendants admit. Subsequently ... of Kulasegrapatinnam visited the place, and in his order dated 11th ... water level. This Order combined with the evidence adduced for the ... subsequently to and against the warning given them by the Sub Magistrate ... on the 2nd February, and to protect themselves against the consequences ... 31st January authorising them to raise the dam. This document is ... in whose province it did not lie to grant such documents. The ... undoubtedly aware that the authorities to whom they should next look ... in the Public Works Dept. The Defendants in defiance of the Sub ... they were being prosecuted for the same, and that the Dy Magistrate ... subsequently did, & found the dam to exist; they obtained and armed ... themselves against its consequences; & but for this document the Dy M...

Palayancoil
10th November 1875

(Sgd)

Enclosure in a letter from the Supty Engr 8th Division to the Secretary to Govt
D.P.W dated 19th May 1864
No 222

P.W. 2282/64

Calendar of persons tried before C Ramsay Deputy Magistrate of Fermoy

Conservancy and the regulation
and distribution of water
for irrigation, but no
authority was thereby
given for interference
on any but professional
grounds, or for exercising
interference beyond legal
limits. In the case now
referred to by the Superintending
Engineer & Dist., Mr. Wood limits
was unquestionably overstepped by the Overseer.
Gillewood; but the
Govt are glad to observe
that, soon discovering his
error, the Overseer had the
good sense and discretion
to

to acknowledge it, and
135
to endeavour to remedy
his mistake to the
best of his ability.

Captain
Mobuly's attention
will be requested to
para 2 of Govt Order of
20th February 1864 No. 642

Secy

Revd. E. S. Dun

Dest. 2 Lines

(3)

No. 1687

Rec'd 24th June 64

Attention of the Supg. Engr & C. D. & draws to C. O. No. 512 of 1864 stating that a report should be made to the Collector when the Engr & Dept. exercise its powers in connection with the Control over the Conservancy & regulation & distribution of Water.

No. 3 - 4.

Rec'd 24 June / 64 11-27 AM