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MADRAS RECORD OFFICE.

Government of Madras.

P. W. DEPARTMENT.

G.O. No. <u>14052.</u>	Press
<u>484-485.</u>	<u>Mis.</u>
Dated <u>22-12-</u> 18 <u>66.</u>	

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*Proceedings of the Madras Government, Public Works Department,
22nd December 1866.*

No. 484. Read the following Proceedings of the Madras Government in the
Revenue Department:—

Calling on the Board of Revenue to obtain and
submit, with their opinion, the views of the
Collectors on the question raised relative to
the passing of an Act for the protection of
Revenue and Public Works Officers against
legal annoyances in carrying out irrigation
works. (Here enter 18th December 1866, No. 3,412.)

No. 485. ORDER THEREON, 22nd December 1866, No. 4,052.

CIVIL WORKS, No. 96.

Communicated to the Superintend-
ing Engineers.

(True Extract.)

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

To the Superintending Engineers.

Ed. S. T. Augustin.

No. 308. Read the following letter from the Superintending Engineer, 6th Division, to the Secretary to Government, Department Public Works, dated Tanjore, 26th November 1866, No. 1,018:—

1. With reference to G. O. No. 3,414, dated 25th October, I have the honor to inform you that I am well aware of the condition of the first three streams mentioned in paragraph 14 of Mr. Morris's Report, and of the methods by which they may be improved, but in each case existing rights must be interfered with, and the improvements proposed by me are strongly opposed.

2. I may state briefly the chief cause of the bad condition of the streams, and the remedy I would propose in each case.

First.—The Mooliyaur or Mooliyaur and Iyenar, for the streams unite. These streams derive their supply from a dam across the Coriyaur, the head sluices being situated about a quarter of a mile from the dam; the floor of the Mooliyaur sluice is 2 feet 11½ inches, that of the Iyenar 5 feet 5½ inches below the bed of the Coriyaur, at the site of the dam, which is one foot above the river bed, and has dam stones 1½ or 1¾ feet high. How can the beds of the streams be kept clear under such circumstances? Raising the floors is a simple and obvious remedy; this is opposed. Again, about two miles below the head of the Iyenar is a dam for the supply of the Puniyoor, a high level village; the crown of this dam is 1 foot 8¾ inches above the floor of the head sluice, and the dam stones are two and a half feet high. It is useless clearing the head under these circumstances. The dam must be removed. The supply for the Puniyoor village must be obtained by carrying a channel up to the head of the Mulliyaur, and it will cross the Iyenar by a syphon sluice. The Puniyoor Merassidars oppose this, and do not wish their dam to be removed; while the Kundamungalum Merassidars, through whose land the extended channel will pass, object most strongly to the new channel passing through their lands. I estimate the cost of the work required at Rupees 7,500 to Rupees 8,000.

Second.—The Hurrishendranuddy.—This channel takes its head from the Coriyaur from above the dam adverted to above. Here again the floor of the sluice

20 Valies.
12 Valies.

is far below the river bed, at about one and a half and three and a half miles below the head the Kunniyoor and the Pullivirti

channels cross the Hurrishendranuddy by aqueducts; old massive native works, over which the waters of the Hurrishendranuddy pass during floods, and which act as dams, and cause the bed of the river to silt. The former should have been removed some ten or twelve years ago, when the Kunniyoor village was supplied with a head sluice in the Hurrishendranuddy; the aqueduct conveys water from the Atheveraramanar, and when I saw the work the drainage water from the Kunniyoor village was passing over the aqueduct, instead of water for the supply of the village. The villagers objected to the removal of the aqueduct. The villagers of Pullivirti also object to the removal of their aqueduct. Nearly midway between the aqueducts is the Trichitinuttum syphon surplus sluice, the crown of which is about four feet above the bed of the Hurrishendranuddy. Unless these works are removed, clearing the bed is comparatively useless: from Rupees 5,000 to Rupees 7,500 would probably be required for this channel.

Third.—The Adappaur.—Some eighteen or twenty years ago a dam was placed across this river in the Pamani limits, and Rajah voikals were taken from it. About three and a half or four miles below the dam, the Rajah voikals pass through a ridge of sand, and here it is impossible to keep the channels clear, especially the north Rajah voikal, the supply is chiefly required on the north for lands formerly irrigated by the Tulnoyer Cotagum, which was drained and cultivated some years ago. A second dam in the limits of Woombalachary might be built, which would be below, and avoid the sand ridge, and yet which would command the lands requiring a supply of water. To this the Pamani Merassidars object, on the plea that it would interfere with their drainage, and though provision would be made to prevent injury to their drainage, they still oppose the construction of the dam.

3. Though the condition of the three streams, as described above, is such as to tend to diminish the supply which the lands under them receive when the rivers are low, I have no hesitation in asserting that more than fifty per cent. of the remissions were due to the non-regulation of the supply the streams themselves actually received.

4. Before the transfer of the Executive to the Public Works Department in 1858, at times when the supply of water in the rivers partially failed, the members of the Revenue Department were in the habit of closing the upper sluices in a river or channel to admit of a supply of water passing down to the lands dependent on the tail of the river or channel, and so the supply was regulated alternately, and the crops were perhaps just kept alive till a rise of the waters or local rains rendered any interference on the part of the Government servants unnecessary. When the transfer of the executive took place in 1858, the Tahsildars and others ceased to take that interest in the welfare of the district which had hitherto prevailed, especially in connection with the public work, and their results and the custom of attempting to regulate the supply to lands, as described above, gradually fell into desuetude, and any interference now is either opposed and resisted or legal proceedings are threatened; and the Collector, with whom I have discussed the matter, states that there is no law by which he can insist upon a regulation of the supply of water according to the actual requirements of lands in times of scarcity or of partial failure of the water supply.

5. The Collector on a reference from me writes as follows:—

I beg to state that the only law bearing on this point at the present time which I am aware of is Chapter XXII. of the Code of Criminal Procedure.

3. In Section 318 of this chapter, whenever the Magistrate of the district, or other Officer exercising the powers of a Magistrate, shall be satisfied that a dispute likely to induce a breach of the peace exists concerning any water within his jurisdiction, he can, after taking certain proceedings, and after satisfying himself as to which party is in possession of the subject of dispute, declare the party whom he may decide to be in such possession to be entitled to retain possession until ousted by due course of law, at the same time forbidding all disturbance of possession until such time.

4. Again, in Section 320 of the same chapter, if a dispute arise concerning the right of use of any water, the Magistrate or other Officer as aforesaid, within

whose jurisdiction the subject of dispute lies, may enquire into the matter, and order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of any person or class of persons to whom its use has been hitherto open, until the party claiming such possession shall obtain the decision of a competent Court adjudging him to be entitled to such exclusive possession. Provided that the Magistrate or other Officer as aforesaid shall not pass any such order if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of enquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised during the last of such seasons before the complaint.

5. You will therefore, perceive that the law, as it exists at present, does not lay down such rules on this subject as are unquestionably desirable.

6. Some years ago the Revenue Officers of this district were in the habit of interfering in cases like those you mention, and of ordering sluices or temporary dams at or near the head of a channel to be closed or removed for a time, in order to admit of a supply being carried down to lands dependent upon the tail of a channel when the water in the rivers was low; but in consequence of the Department of Public Works having since then taken charge of irrigation works in Tanjore, and Revenue Officers having more than once been included as defendants in Civil Suits by reason of having issued such orders as above-mentioned, they have lately abstained from interfering as they did formerly.

7. It is only of late years that this practice of dragging the Officers of Government into the Civil Courts in these matters has sprung up; and though I am not aware that any authoritative decision has as yet been passed as to how far they are liable to be sued for acts done, or orders given regarding the distribution of water for irrigation, yet I have no hesitation in stating that the number of such suits, unless legislative measures are adopted to check them, will very much increase, and be productive of serious inconvenience to the public service.

8. There is no doubt whatsoever that the regulation of irrigation from river channels is not a matter affecting individual interests only, but that the general welfare of the agricultural population in this district, as well as the interests of the public revenue, are greatly dependent thereon. The closing or removing for a day or two, at a critical period, of some particular sluice or dam by which ten valies in one village are irrigated, may be the means of saving one hundred valies of land in villages lower down, which would otherwise be irrecoverably lost, without at the same time affecting, to any serious extent, the cultivation of those ten valies, and I certainly think that a law should be passed to prevent Government officers from being sued in the Civil Courts when they interfere in such cases.

6. The Government is supposed to be the proprietor of the soil in the District of Tanjore, but the only rights of a landlord, which the Government exercises, is that of receiving the land tax, and of keeping irrigation works in repair. Government is precluded from improving its property under the existing Merassi right, which consists, firstly, in the right of occupancy and ownership in cultivated land, with absolute control over and power of alienation of the same as

long as the Government assessment on such land is paid; and, secondly, in the right to the refusal of the waste land in a village by all the landholders therein in proportion to their several holdings. Not only is Government precluded from improving its property, when by so doing a portion of its property may be more or less injured, but even when the improvement entails no injury, but because it is obstinately or blindly opposed by Merassidars who, as I have stated on a previous occasion, too often regard any benefit to their neighbours as an injury to themselves. Again, as the law now stands, Government officers cannot even make arrangements to save crops on which Government revenue depends, as shewn by Mr. Morris in paragraph 8 of his letter quoted above.

7. It must be borne in mind that the rivers and channels are more or less in their natural state, and that a uniform depth of water throughout a season cannot be maintained; consequently, the sluices provided for irrigation are capable of carrying off a far larger supply than the lands dependent upon them require; and this in a measure cannot be remedied; but, on the other hand, there are large native-built sluices through which even with a few inches of water in the main stream, a far larger supply can be drawn off than the lands under them require, and these sluices are, as a rule, on so low a level, that the channels below them become silted up and require constant clearing.

8. Under the circumstances described above, I would submit, for the consideration of Government, the necessity of passing an Act for the protection of their Officers* acting in good faith for the improvement of the country, especially providing that they shall not be amenable to the Civil Courts for injuries real or imaginary under the following circumstances:—

First.—In carrying out new works under competent authority for the improvement of the country.

Secondly.—In enlarging or reducing the dimensions of existing works; and

Thirdly.—In regulating the supply of water in the channels at all times, and especially in times of temporary scarcity, and power might be given to the Magistrate to punish resistance to the constituted authorities in these points summarily, and without appeal except to Government.

9. With regard to compensation for real injury, I would observe that were it found necessary to cut off the water supply entirely from a few acres of lands for the purpose of bringing a large tract under cultivation, a case which would seldom or never occur, the land thus injured should be purchased, or the difference of its value, when cultivated with dry and wet crops, might be paid to the proprietor, and the land be thereafter assessed as dry land: but in cases in which the excavation of new channels is opposed on the plea of injury to the lands through which the channel would pass, the Magistrate should be empowered to dispose of the matter magisterially, or without appeal except to Government.

10. Were an Act, with the provisions I have suggested, passed, the Public Works Officers, unfettered by considerations of legal penalties and annoyances to which they are now subjected, would be able to improve the district very materially, especially the eastern portions, and the revenue of the Tritrapundi Talook alone

might be increased in a few years by upwards of a lac of Rupees. At present everything in that talook is in a state of stagnation, and sluices built ten or twelve years ago are still unused, owing to captious opposition on the part of certain Merassidars, while the Government Officers are unprotected and helpless.

Transferred to the Revenue Department, with a view to the opinions of Collectors being obtained on the subject referred to.

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

FORT SAINT GEORGE,
8th December 1866.

No. 309. ORDER THEREON, 18th December 1866, No. 3,412.

Miscellaneous.

Forwarded to the Board of Revenue, who will obtain the opinions of the Collectors on the subject, and submit the same with their own opinion as soon as practicable,

(True Extract.)

J. Orr

Secretary to Government.

To the Board of Revenue.
„ the Public Works Department.

Exd. S. T. Augustin.

27 1866 Dec 20
Pro. of Govt. of India

Pro. of the Madras Govt.
in the Revenue Dept.

27 1866 Dec 20
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Calling on
the 13th of Dec. to detain and
submit, with their opinion,
the views of the collectors
on the question raised re-
lative to the passing of
an Act for the protection
of Rev. & P. W. Officers
against legal annoyances
in carrying out irrigation
works.

404-405

With an order
No 4052-22 Dec 1866

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1852 Civil Works

Command &
the Survey Engineers

22 Dec 1866

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Dec 24 1866

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