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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No.	347	Press
		Mis.
Dated	3-2	18 69

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
3rd February 1869.*

No. 96. Read the following letter from the Superintending Engineer, 6th Division, to the Secretary to Government, Public Works Department, dated Tanjore, 8th January 1869, No. 1,055 :—

With reference to G. O., No. 2,286, dated the 18th July last, I have the honour to enclose a copy of the decision passed by the Civil Court at Trichinopoly on the suit therein referred to.

To be returned.

The suit, it will be observed, has been decided in favor of the Defendants, with costs.

JUDGMENT.

Original Suit No. 10 of 1868.

In the Civil Court of Trichinopoly, present W. M. CADELL, Esquire, Acting Civil Judge.

1. This was an action for an order restraining the Defendants from interfering with the Plaintiffs in the restoration and repair of a certain earthen bank or dam, and also for the recovery of damages stated to have been incurred by the Plaintiffs by the interference of the said Defendants with the repairs of such bank.

2. In the Complaint it is set forth, that between the channel known as the Iyen Vaykal and the Coleroon there are some Nunjah lands belonging to the village of Perea Valuchair on the west, and to that of Yedyattamangalum on the east; that the lands in the latter village being on a much lower level than those lying to the west, it was customary, for a long time past, to erect a cross bank in order to prevent the lands in Yedyattamangalum being damaged by the surplus waters of Perea Valuchair, &c.; and that such bank was frequently repaired under the orders of the Department Public Works, at the expense of Government; that there are surplus sluices in each bank for draining the excess water; that on the night of the 21st October of 1860, when there was a very high flood in the Coleroon and also in the Iyen Vaykal, the Defendants, one to eight, cut the bank in question, by which houses, lands, and crops were injured; that on an enquiry made into the matter by the Deputy Magistrate, these Defendants were directed to pay a fine of 1,000 Rupees and also the sum of Rupees 500, on account of damages; that this order was upheld, on appeal, by the Sessions Court; that the sum of Rupees 1,000 was to be appropriated for closing the breach, but that the 9th Defendant interfered with this being done; that owing to the breach not having been closed, eighty acres of land were submerged for a week; that the produce of thirteen acres of this land was entirely lost, and that on the remaining land only half or quarter crop was reaped; and that in the succeeding year the same lands were not cultivated, owing to the excess of water; and that this suit is therefore brought to recover the damages incurred by such losses, and for an order to compel the Defendants to permit the bank to be restored as formerly.

3. The Defendants, one to eight, answered that no loss, as stated by the Plaintiffs, was ever incurred by them, and that there was no excess of water in the year adverted to; that if there had been any loss, the same would have been brought to the notice of Government, but that this was not done; that whatever may have been the utility of these cross banks in a former state of things and before the main bunds parallel with the river were constructed, they are not only now useless, but positively injurious and dangerous both to life and property; that similar cross bunds which existed in other villages have been removed on account of the injuries they caused, and that the bank in question ought not to be re-erected; that the removal of the bunds in the villages to the west of the Plaintiffs' village has exposed their village to the full force of the flood water which used formerly to stagnate between them, and that the very existence of the bank which is sought now to be re-made by the Plaintiffs is in itself a cause of serious loss to the Plaintiffs themselves; that the keeping up or removing such banks is within the province and control of the Government and its Officers, and that the Defendants, one to eight, are therefore in no way responsible for the

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damages caused either by their renewal or entire removal; and Defendants therefore pray that the bank may not be renewed, and that they may be absolved from the damages claimed by the Plaintiffs.

4. The 9th Defendant, Captain Vertue, Executive Engineer, (but who was, under the orders of Government, represented by his official superior, Captain Oakes, Superintending Engineer of the Division,) in his answer states:—

5. That the bank said to have been cut by the Ryots of Parea Valuchairy is marked Z. Y., as set forth in a sketch which accompanies the answer, and that it is not customary for the Department Public Works to undertake the repairs of limit banks, although in some cases it may have done so.

6. That, in former days, before the Coleroon was embanked, and before any proper provision was made for the general drainage of surplus water, these village banks were erected in order that if a breach was made in one, the villages lower down the river might be protected; that since the formation of the Coleroon bank the drainage of the lands has been properly provided for (as admitted in paragraph 3 of the Plaint); that these cross banks are now no longer required; and that their very existence is likely to cause greater damage by obstructing the natural drainage of the country and by retaining a large quantity of water, which, when suddenly relieved either by the bank being over-topped or by its giving way, would carry destruction and ruin to the villages lower down; that in excessive floods, and where these banks do not exist, the villages would probably only be submerged as many inches as they would be as many feet by these banks being retained; that the submersion of the lands in the village of Yedyattamangalum by the drainage of S. Y. Z. to about one-sixth of a square mile, was capable of being discharged through the sluice marked X.; and that its effects on the Yedyattamangalum limits would, therefore, be inappreciable, &c. &c., and that, therefore, no sum as damages can be claimed.

7. The first hearing was held before Mr. Davidson, the Civil Judge, on the 13th and 14th August, when the following issues were recorded:—

1st Issue.—Whether, as affirmed by Plaintiffs and denied by the Defendants one to nine, the Plaintiffs suffered a loss of crop to the value of Rupees 300 in consequence of the Defendants having cut the cross bund referred to, in 1866, and in consequence of its not having been repaired.

2nd Issue.—Whether, as affirmed by Plaintiffs and denied by the Defendants one to nine, the Plaintiffs are entitled to have the said cross bund repaired and the costs of the construction defrayed from the amount of fine (Rupees 1,000) levied from the Defendants in 1866.

The exhibits specified below were also put in by the several parties:—

Exhibits A., B., C., D., and E. by Plaintiffs.

Do. I. and II. by Defendants one to eight.

Do. III., IV., and V. by the 9th Defendant.

8. The Plaintiffs gave in a list of six witnesses, of whom five were examined and one dispensed with. The Defendants, one to eight, cited nine witnesses, and the 9th Defendant ten witnesses, but for reasons to be given hereafter, in a later part of this Decree, their examination was dispensed with as unnecessary.

9. The 1st witness for the Plaintiffs is an Overseer of the Department Public Works, and is acquainted with the place in question; he states, that the bank which the Plaintiffs wish to have renewed was once repaired by Government in the year 1861, but not since; witness also swears to the correctness of the place, and the level set forth in them as put in by the 9th Defendant and which were prepared by witness himself. Witness is not aware of any of the cross banks to the westward of the bank Z. Y. being repaired by the Government.

10. The 2nd witness for the Plaintiffs is one of the villagers of Yedyattamangalum, and knows of the breach in the bank cut by the Defendants; states that fifteen cawnies of land were destroyed by its not being repaired, and that from the same cause 100 to 150 cawnies only produced quarter. Witness has, however, no lands in these places; was not present at the Candomodul harvest, and speaks only from hearsay.

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The 3rd witness, also an inhabitant of Yedyattamangalum, and speaks in the same general way as the preceding witness. Witness states that he himself sustained no loss, and his statement regarding the loss of the Plaintiffs are the merest hearsay.

11. The 4th witness is an inferior revenue servant (a Cuttalay Sibbundi), and his evidence amounts to this, that he was told by the Plaintiffs themselves their loss was Rupees 300. He, however, states that the produce of acres of land was completely destroyed, and that on thirty-five or forty acres only three-quarter, or quarter of a full crop; he adds that he saw the lands when submerged only for fifteen minutes, and that he has no concern whatever in the lands, and belongs to a different village.

12. The 5th witness is the son of a Curnam, and his statements are equally vague and unsatisfactory.

13. The remaining witness was dispensed with.

14. Such is the case for the prosecution, and the nature of the evidence being such as it is, it would be simply a waste of time to call upon the Defendants to proceed with the examination of their witnesses. Their evidence was, therefore, dispensed with.

15. The final hearing of the case was held on the 24th October, when the Vakeels for the Plaintiffs and Defendants were respectively heard.

16. The Court having duly considered all the evidence brought forward in the case, finds that there is no adequate or satisfactory proof of any loss having been incurred by the Plaintiffs, and, with regard to this issue, it may be observed that there is no evidence whatever of any unusual flood or accumulation of water which could have caused such loss, and that even if any loss had been incurred it must have taken place very early in the season, when the lands could easily have been replanted and at a very trifling expense. It is also a well known fact that this early crop, the Kadapoo Kar, will bear immersion for some time and without any injury whatever.

17. On the 1st issue, therefore, the finding of the Court is for the Defendants.

18. On the 2nd issue no oral evidence whatever has been adduced, and with regard to the written evidence, much stress has been laid by the Vakeel for the Plaintiffs on Exhibits A. and B., the one the decision of the Deputy Magistrate on a complaint made by the Plaintiffs that the bank referred to in the Plaint had been cut, the 2nd being the extract from the Proceedings of the Session's Court, confirming the decision of the Deputy Magistrate.

19. The Court, however, cannot admit that the decision of the Deputy Magistrate is an authoritative settlement of the matter, that the bank should again be raised, and this the more especially as the opinion of the professional department, viz., the Department Public Works, had neither been sought nor obtained.

20. It is a well known fact that the Government have charged itself with the construction and maintenance of large works of conservancy, for the due irrigation and security from inundation of the villages lying contiguous to the Cauvery, Coleroon, and other large rivers, and this more especially in the Districts of Tanjore and Trichinopoly, and where the prosperity of the country is so entirely dependant on such works. In the case which forms the subject of this suit, it appears to the Court that the Plaintiffs have failed entirely to show either the necessity for such a bank, or that they themselves would any way benefit by such bank; and the Superintending Engineer, who has been charged by Government with the construction and maintenance of all such works, has, in the opinion of the Court, shown conclusively that in the altered circumstances of the country, and owing to the great improvements which have taken place in the works of irrigation and conservancy, the existence of such banks is not only injurious to the public interests generally, but would absolutely be deleterious to the Plaintiffs themselves. It is in evidence, and the fact does not admit of question, that the natural slope of the country in which the villages both of the Plaintiffs and Defendants lie, is towards the east and south, and that, in ordinary years, ample provision exists for the discharge of all surplus water through the sluices in the northern bank of the Coleroon. In extraordinary seasons, when the inundations are excessive and the ordinary means of discharge insufficient, it is also beyond question, that the waters can only be drained towards the east. This, therefore, being the

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case, it is obviously (and that for the interests of all parties) desirable that nothing should be permitted to interfere with the free discharge of the flood waters in the natural direction, and that the existence of such banks (and which the Plaintiffs would seek to re-establish) would only be an aggravation of the evils which are perhaps inseparable from such occasions.

21. The finding on the 2nd issue must, therefore, likewise be for the Defendants.
22. The Plaintiffs to bear all costs.

TRICHINOPOLY,
27th November 1868.

(Signed) W. M. CADELL,
Acting Civil Judge.

(True Copy.)

(Signed) R. F. OAKES, Captain, R. E.,
Superintending Engineer, 6th Division.

No. 97.

ORDER THEREON, 3rd February 1869, No. 347.

ESTABLISHMENT, No. 17.

Ordered to be recorded,

(True Extract.)

Colonel, R. E.,
Secretary to Government.

To the Superintending Engineer, 6th Division.
,, Judicial Department, with Note by the Honorable H. D. Phillips.

Exd. S. T. Augustin.

*Enclosure in a letter
from the Supy Engineer
6th Div. No 1055, dated
8th January 1869.*

P. W. 1055/69.

*Copy of Decision passed
by the Civil Court at
Trichinopoly in the
Yediathammampalam
Suit.*

No 1055

Supr Engrs. Office b^d D^d
Tanjore 8th January/69

From, Captain R. L. Baker R.E.
Supr Engineer b^d D^d

To, Colonel C. A. Orr R.E.
Secretary to Govt. D. P. W.

Sir, With reference to G.O. No 2286,
dated the 18th July last, I have
the honor to enclose a copy of the
decision passed by the Civil Court
at Trichinopoly on the suit therein
referred to. —

The suit, it will be observed,
has been decided in favor of the
Defendants with costs. —

I have the honor to be

Sir,
Your most obed^t Serv^t

R. L. Baker Capt. R.E.
Supr Engineer b^d D^d

Cas 100
Govt. of 1869 Madras.

PUBLIC WORKS.

To The Superintending Engineer
6th Division
&c. &c. &c.

Dated
Recd.
3rd Feb 1869, No 347

Nos. 96 & 97

Suit Taken from the Supp
Copy of the 6th Div forwarding
a copy of the decision of
papers by the Civil Court.
at Trichinopoly on the
suit relative to the rights
of the 6th Div by a certain
Murray bank. recorded.

Further Pro. passed 11/11
Feb 11

11/11/1869
22/11/1869
The Sup Engineer

To
The Secy to Govt.

Dated 8th January 1869.

No 347-3-7-1869
No 1055.

Wm. 1

Forwarding copy of deci-
sion passed by the Civil
Court at Trichinopoly
in the 6th Division
suit.

Not on order

Printed

For the Secy
3-7-1869

Wm

Ordered to be recorded.

No 347

The judgment in this
original suit determines
that the limit shall
not be entered. For as the
original suit was
from 1868 to 1869. If the money is paid up to the
the hands of the Secretary the 1000 Rs should be
to the Secy from whom it was collected. turned
order has been given after the period for an appeal
in the High Court against the Civil Court's decision,
to submit.

The copy has been
sent to the Secy to the Govt.
No 347-3-7-1869
14.11.69
No 1055.