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# MADRAS RECORD OFFICE.

Government of Madras.

*Public works* DEPARTMENT.

|               |                          |
|---------------|--------------------------|
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| 404-05        |                          |
| Dated 19. 11  | 1869.                    |

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Public Works Department,  
19th November 1869.*

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No. 404. Read the following letter from the Government Pleader, Madras, to the Secretary to Government, Public Works Department, dated Madras, 15th November 1869 :—

WITH reference to the order of Government, Public Works Department, noted in the margin, I have the honour to forward, for the information of Government, copy of the Proceedings of the High Court on the hearing of the Appeal (Regular Appeal No. 19 of 1869) from the Decree of the Civil Court of Trichinopoly in Original Suit No. 10 of 1868. I applied for a copy immediately after the hearing, but owing to some delay in the Registrar's office have only just been furnished with one.

2. It will be seen that the Court holds that the only part of the plaintiffs' claim in which they can succeed in this suit, is that relating to the application of the Rupees 1,000 levied, under the Magistrate's decision, from the first eight defendants for the repair of the bund, the subject of the suit, and that this part of the plaintiffs' claim depends upon two questions, upon which at present there is no satisfactory evidence:—(1) whether the continuance of the cross bund is prejudicial or otherwise to the surrounding lands; (2) whether there is any obligation on the Government to repair it. The Court accordingly directs these two issues to be tried by the Civil Court, either party to be at liberty to adduce fresh evidence.

3. As to the first issue it will only be necessary for the Executive Engineer, or some other competent person, to give oral evidence to the same effect as the written statement filed on his behalf in the suit. On the second issue, evidence should be adduced to show (if such be the fact) that the bund in question has been usually, if not always, kept in repair by the villagers themselves; and that if it ever has been repaired at the public expense, such repairing was an entirely gratuitous and voluntary act on the part of Government.

4. I presume the Rupees 1,000 have not yet been returned to the persons from whom that sum was collected, in accordance with the order of Government in the Judicial Department, dated 11th February 1869, No. 80; care should be taken that this is not done before the final decision of the appeal.

*In the High Court of Judicature at Madras, Wednesday, the twenty-seventh day of  
October one thousand eight hundred and sixty-nine.*

PRESENT :

The Honourable Sir C. H. SCOTLAND, Knight, Chief Justice.  
The Honourable Mr. Justice COLLETT.

*Regular Appeal No. 19 of 1869.*

Subbuvaiyan and eight others, Appellants, (1st to 7th, 9th and 10th,  
Plaintiffs.)

Sami Muttu and eight others, Respondents, (Defendants.)

Regular Appeal against the Decree of the Civil Court of Trichinopoly in Original Suit No. 10  
of 1868.

This Regular Appeal coming on for hearing; upon perusing the grounds of Appeal, the Judgment and Decree of the Lower Court, and the material papers in the suit; and upon hearing the arguments of Sunjiva Row, Vakil for the Appellants, and of Mr. Government Pleader for the

*running*

*Proceedings of the Madras Government, Public Works Department,  
19th November 1869.*

9th Respondent, and Mr. Sloan, Counsel for all the other Respondents, the Court delivered the following:—

JUDGMENT.—The relief sought in this suit is three-fold: first, damages for loss of crops in 1867; secondly, for an injunction to restrain the defendants from interfering with the restoration of the bund by the plaintiffs; and, thirdly, for the application of the Rupees 1,000 in the Government Treasury to the repairing of the bund. As to the damages, there is no satisfactory evidence in proof of them, and even if proved, they were attributable to the breach made in 1866, for which the plaintiffs were awarded compensation by the Magistrate beyond the Rupees 1,000. As to the injunction there is no evidence of interference on the part of any of the defendants, and the suit must fail in that respect also. As to the third head of relief the 9th defendant was not the proper party to be sued, but the Government Pleader having admitted that he has been treated by the Government as their representative in the suit, we can allow the suit to go on against him as such. But the mode in which the case has been dealt with prevents our deciding it at present. The relief sought depends upon whether the continuance of the cross bund in question is beneficial or prejudicial to the lands of the parties and of those occupying adjacent lands, and upon whether the Government are under any obligation to repair such cross bund. A finding therefore upon the following issue is necessary. Whether the continuance of the cross bund in question is prejudicial or otherwise to the surrounding lands, and whether there is any obligation in the Government to repair it.

The parties will be at liberty to go into further evidence.

It is accordingly hereby ordered that the foregoing issues be, and the same hereby are, referred to the Lower Court for trial; and the said Court is hereby authorized to receive any additional evidence which may be produced by the parties relating to the said issues, and is directed to return its finding, together with the evidence to this Court, within six weeks from the date of receiving this order.

(A True Copy.)

(Signed) H. WIGRAM,  
Acting Registrar, Appellate Side.

No. 403.

ORDER THEREON, 19th November 1869, No. 3,700.

ESTABLISHMENT, No. 45

COMMUNICATED to the Superintending Engineer of the 6th Division, with reference to G. O., No. 1,125, of the 6th April 1869.

2. Captain Oakes will adopt the course suggested by the Government Pleader in paragraph 3.
3. The subject of paragraph 4 will be considered in the Judicial Department, with reference to the order in that department, No. 195, of the 11th February 1869.

(True Extract.)

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

To the Superintending Engineer, 6th Division, with copy of Enclosure.  
Judicial Department.

Ed. E. C. Shunker.

No. Madras 1  
15th November 1869

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From

J. W. Handley Esq.  
Govt Pleader, Madras

To

Colonel C. A. Orr R. E.  
Secretary to Government  
Public Works Department

Sir

With reference to the Order of Government Public Works Dept. dated 6th April 1869 noted in the margin I have the honor to forward for the information of Government copy of the Proceedings of the High Court on the hearing of the Appeal (R. A. No. 19 of 1869) from the decree of the Civil Court of Erichur. I applied early in A. S. No. 10 of 1869 for a copy immediately after the hearing but owing to some delay in the Registrar's office have only just been furnished with one.

It will be seen that the Court holds that the only part of the plaintiffs' claim in which they can succeed in this suit, is that relating to the application of the

Rs 1000 levied, under the Magistrate's decision, from the 1st eight defendants for the repair of the bund the subject of the suit & that this part of the plaintiff's claim depends upon two questions, upon which at present there is no satisfactory evidence: (1) whether the continuance of the cross bund is prejudicial or otherwise to the surrounding lands; (2) whether there is any obligation on the Government to repair it. The Court accordingly directs these two issues to be tried by the Civil Court, either party to be at liberty to adduce fresh evidence

3. As to the 1st issue it will only be necessary for the Executive Engineer or some other competent person to give oral evidence to the same effect as the written statement filed on his behalf in the suit. On the 2nd issue evidence should be adduced to show (if such be the fact) that the bund in question has been usually if not always kept in repair by the villagers themselves & that if it ever has been

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repaired at the public expense such repairing was ~~was~~ an entirely gratuitous & voluntary act on the part of Government

4. I presume the Rs 1000 have not yet been returned to the persons from whom that sum was collected, in accordance with the Order of Govt in the Judicial Department dated 11<sup>th</sup> February 1869 No 80. Care should be taken that this is not done before the final decision of the appeal

I have the honor to be

Sir

Your most Obedt Servt

J. W. Hamilton

Govt Pleader

In the High Court of Judicature at Madras.  
Wednesday, the twentyseventh  
day of October, One thousand  
eight hundred and sixty  
nine.

Present:

The Honorable Sir C. F. Scottland, Knight,  
Chief Justice.

The Honorable Mr. Justice Collett.

Regular Appeal No. 19 of 1869.

Subbuvaiyan and 8 others.

Appellants.

(1<sup>st</sup> to 4<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Plaintiffs)

Sami Muttu and 8 others.

Respondents.

(Defendants)

Regular Appeal against the Decree of  
the Civil Court of Trichinopoly in Original Suit  
No. 10 of 1868.

This Regular Appeal coming on  
for hearing: Upon perusing the grounds of  
Appeal, the judgment and decree of the Lower  
Court and the material papers in the Suit,  
and upon hearing the arguments of Sanyal Row,  
Vakil for the Appellants, and of Mr. Government  
Vakil for the 9<sup>th</sup> Respondent, and Mr. Sloan,  
Bleader for the 9<sup>th</sup> Respondent, and Mr. Sloan,  
Counsel for all the other Respondents, the Court  
delivered the following

Judgment: The relief sought in this  
suit is threefold, first damages for loss of  
crops in 1867, secondly for an injunction to  
restrain the defendants from interfering with  
the restoration of the bund by the plaintiffs  
and thirdly for the application of the Rupees  
1000 in the Government Treasury to the repairing  
of the bund. As to the damages, there is no  
satisfactory evidence in proof of them, and

view

At 11.15.1869  
The Court is adjourned  
to the 17<sup>th</sup> of 1869.

The Court is adjourned

to the 17<sup>th</sup> of 1869  
at 11.15.1869

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The Court is adjourned  
to the 17<sup>th</sup> of 1869.

even if proved, they were attributable to the breach made in 1866 for which the plaintiffs were awarded compensation by the Magistrate beyond the Rupees 1000. As to the injunction there is no evidence of interference on the part of any of the defendants and the suit must fail in that respect also. As to the third head of relief the 9th defendant was not the proper party to be sued, but the Government Pleader having admitted that he has been treated by the Government as their representative in the suit, we can allow the suit to go on against him as such. But the mode in which the case has been dealt with prevents our deciding it at present. The relief sought depends upon whether the continuance of the crop bund in question is beneficial or prejudicial to the lands of the parties and of those occupying adjacent lands, and upon whether the Government is under any obligation to repair such crop bund. Affording therefore upon the following issues is necessary. Whether the continuance of the crop bund in question is prejudicial or otherwise to the surrounding lands, and whether there is any obligation in the Government to repair it.

The parties will be at liberty to go into further evidence.

It is accordingly hereby ordered, that the foregoing issues be, with the same, hereby referred to the Lower Court for trial, and the said Court is hereby authorized to receive any additional evidence which may be produced by the parties relating to the said issues, and is directed to return its finding together with the evidence to this Court.

within

R. H. W. L.

within six weeks from the date of receiving this order.

(A true copy)

(Signed) J. C. Megraw,  
Acting Registrar,  
Appellate Side.

even if proved, they were attributable to the breach

Public Works Department  
No. 3700  
Proceedings of the Madras Government  
Under date the 19<sup>th</sup> Novr/89.  
Read the following

From The Government Pleader/H. E. No. 366. of 16<sup>th</sup> Novr/89

Communicated to the  
Superintendent of the 1<sup>st</sup> Division  
with reference to G.O. No. 1125 of the  
6<sup>th</sup> April 1889.

Capt. Baker will adopt the  
course suggested by the Govern-  
ment Pleader in para 3.

The subject of para 4 will be  
considered in the Judicial Dept.  
with reference to the order in  
that Department No. 195 of the  
11<sup>th</sup> February 1889.

To Superintd. 6<sup>th</sup> Div. with Cpy of enclosure  
Judicial Dept. ✓

W. S. de Silva 19/11/89  
P. C. 3/12/89

Cue 4799.  
Govt. of 1869 Madras.

PUBLIC WORKS.

To The Superintending Engineer,  
6th Division

Dated

Recd

Encl. 1

G. O. B. No. 1869, No. 3700

Nos. 404-405

Appeal Papering orders on  
the letter from the J. B. Pleader  
forwarding with remarks copy  
of the Decree of the High Court on  
the hearing of the Appeal which  
was made from the decree  
of the Civil Court of Firdaus of  
in Original Suit No 10 of 1868.