M.R.O. 1—77,006—8-6-37.

(1) Number of pages 10

(2) Date of repair n.A. 11.6.

(3) Initials of the Reference

MADRAS RECORD OFFICE.

Government of Madras.

Public works **DEPARTMENT.**

G.O. No. 2295 Press —Misc.—

325-26

Dated 14. 7 1869.

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department, 14th July 1869.

No. 325. Read the following Proceedings of the Madras Government in the Revenue Department, dated 25th June 1869, No. 1,809:—

Read the following Proceedings of the Board of Revenue, dated 19th June 1868, No. 4,556.

Read the following letters, being replies to Board's Proceedings, dated 4th January 1867, No. 21.

From	Collector of Ganjam,	dated	31st	January	1867,	No. 128.
,,	,, of Vizagapatam,	,,	28th	,,	,,	48.
,,	,, of Godavery District,		16th	,,	,,	8.
,,	,, of Kistna District,	,,	23rd	March	,,	76.
,,	,, of Nellore,	,,	3rd	May	,,	123.
,, Acting	,, of Bellary,	,,	11th	February	,,	25.
,,	,, of Cuddapah,	,,	18th	January	,,	7.
,,	,, of Kurnool,	,,	14th	,,	,,	6.
,,	,, of ,,	,,	8th	March	,,	41.
,,	,, Sub-Collr. in charge of Madras,		28th	May	,,	133.
,,	,, of North Arcot,	,,	29th	,,	,,	131.
,,	,, of South Arcot,	,,	26th	March	,,	70.
,,	,, of Tanjore,	,,	22nd	February	,,	45.
,,	,, of Trichinopoly,	,,	18th	January	,,	16.
,,	,, of Madura,	,,	24th	,,	,,	20.
,,	,, of Tinnevelly,	,,	16th	April	,,	197.
,,	,, of Coimbatore,	,,	9th	February	,,	40.
,,	,, of Salem,	,,	23rd	January	,,	20.
,,	,, of South Canara,	,,	4th	April	,,	59.
,,	,, of Malabar,	,,	30th	January	,,	21.

Resolved that the letters above recorded be submitted to Government, with reference to their Order, under date 18th December 1866, No. 3,412.

2. With their Proceedings, dated 11th October 1866, No. 7,347, the Board submitted to Government a report from the Collector of Tanjore on the operations of the Department of Public Works in that district for the official year 1865-66. This was communicated with Government Order, dated 25th October 1866, No. 3,414, to Captain Oakes, the Superintending Engineer of the 6th Division, whose attention was called specially to the Collector's remarks regarding the state of the Irrigation works on the Cauvery river. Captain Oakes replied to this order in a letter, dated 26th November 1866, No. 1,078.

3. In this letter it was pointed out that great difficulty was experienced, by the Officers of the Public Works Department, in the execution and repair of Irrigation works, owing to the opposition of the ryots, &c., who, whenever they imagined their rights to be invaded, threw all manner of difficulties, legal and other, in the way of the servants of Government; and Captain Oakes proposed that. "An Act "be passed for the protection of Officers (both Revenue and Public Works Depart- "ments) acting in good faith for the improvement of the country, especially pro-

"viding 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.

"*Second.*—In enlarging or reducing the dimensions of existing works; and

"*Third.*—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."

4. Captain Oakes' letter was forwarded to the Board with Order of Government, dated 18th December 1866, No. 3,412, calling upon the Board to obtain the opinions of the Collectors on the subject, and to submit the same with their own remarks. The letters recorded above are the replies to the Board's requisition.

5. The Collectors of Tanjore, Kistna District, Ganjam, Cuddapah, Kurnool, Madras (Acting Sub-Collector in charge,) North Arcot, South Arcot, Trichinopoly, Madura, Tinnevelly, Coimbatore, Salem, and South Canara, are all more or less in favour of the proposed Act. The remaining five, namely, those of Godavery, Vizagapatam, Nellore, Malabar, and Bellary, are either strongly opposed to any such measure, or do not see any necessity for its introduction at present.

6. The Collector of Tanjore refers to his previous letter, and further observes that, after consideration of the subject, he is of opinion that what is required is not merely such an Act as that suggested by Captain Oakes, but a special Legislative Enactment, in which it shall be distinctly laid down that the jurisdiction of the Civil Court is not to extend to suits regarding Irrigation works, of the supply and distribution of water for irrigation purposes.

7. Mr. Morris argues that Government must be considered the proprietor of all the water which is supplied from public rivers, channels, &c., because it charges a rate for its use, and grants remissions in cases where wet crops have failed through an insufficient supply of water; and he maintains that, therefore, Government should decide how such water should be allotted, Government being specially interested in its proper distribution.

8. In illustration of his objection to the decision of irrigation disputes by the Civil Courts, Mr. Morris points out that the Civil Judges are obliged, and properly so, to confine themselves to the point in dispute, and that the general question of irrigation, as affecting lands situated many miles off, is consequently, as a rule, loss sight of, to the prejudice of the general interests of Government and the country.

9. Should it be enacted, as the Collector desires, that all irrigation disputes are to be decided by the Revenue Authorities subject to appeal to the Board, he recommends (as a precaution against the hasty decision of minor disputes on the reports of Tahsildars and other subordinate Officers) that the rules, laid down in Act No. VI. 1857, for referring disputes regarding the amount of compensation to be paid for land taken up for public purposes, should be applied to all disputes regarding irrigation, thus enabling the disputants, if dissatisfied with the decision of the Revenue Authorities, to refer their cases to the determination of arbitrators

10. The late Collector of Ganjam points out that, as the due supply of water to lands classed and leased to ryots as "irrigated," is a recognised condition of the lease, and as the interests of a great multitude of ryots are dependent on the wise and timely distribution of water, it is necessary that the Revenue Officers should equally on behalf of Government and the ryots, exercise an arbitrary control over the details of water-supply.

11. Mr. Forbes observes that liability to legal process hampers unduly the free action of Collectors, and he forwards a memorandum, showing the necessity for a law based on an entirely different principle from that which obtains in England.

Two letters have been received from the Acting Collector of Kurnool, dated 14th January and 8th March 1867, respectively. In the first of these he states that as regards the Godavery, Kistna, and Nellore Districts, he considers the proposed Act most desirable; and he mentions cases where lands which might be irrigated are not so, because the landholders will not allow a passage for water through their fields. In his second letter he observes that in Kurnool District there appears to be no necessity for the Act, the ryots being of a more accommodating disposition.

12. The Collector of South Arcot is strongly in favour of the Act. He dwells much on the fact that in many cases ryots raise objections to the execution or alteration of Irrigation works, not on account of any injury which they can possibly anticipate to themselves, but simply because their neighbours are likely to be benefited thereby, and he draws the Board's attention to a suit instituted against himself and the Superintending Engineer, 5th Division, (recorded in Board's Proceedings, dated 8th February 1867, No. 794,) concerning the supply of water to the village of Paloor, as illustrative of the necessity which exists for some legislative measure for the protection of Government Officers, when acting impartially and "boná fide" for the public good.

13. The Collector of Trichinopoly, in advocating the introduction of the Act, observes that large landholders are frequently led by their desire to secure not merely water on their fields, but running water, to raise objections to works which are likely to deprive them of this advantage; and he points out the waste of water entailed by allowing a constant flow over the fields, and also the fact that by such a system the poorer classes are deprived of what should fall to their share.

14. The Collectors of Salem and South Canara, although not considering that there is any necessity for the Act in their districts, nevertheless recognise the desirableness of some such legislation in such districts as Tanjore and South Arcot.

15. The Collector of Malabar, although doubtful as to the expediency of the Act proposed by Captain Oakes; considers it not undesirable that it should be laid down clearly that Government is the owner of the public water supplies, and has the power through its Officers, to make the best distribution that can be made for the public good. He would not, however, deprive persons who may consider themselves aggrieved of the protection of the Civil Courts.

16. The Collector of Vizagapatam is opposed to the introduction of the Act: he has apparently experienced no difficulty in his district, such as the Collectors of Tanjore and other districts have complained of. He encloses a letter from the Principal Assistant Collector, who also deprecates any further legislation. Mr. Boswell maintains that to exempt Revenue and Public Works Officers from liability of being sued for acts done in carrying out new works, or enlarging or reducing existing ones, would be a serious infringement of the rights of private individuals. With regard to resistance to the constituted authorities in these points, he considers the Section 188 of the Indian Penal Code is sufficient to meet all the wants of the case.

17. The Collector of Bellary does not give a decided opinion either for or against the Act; but he mentions a case, wherein a suit would have been avoided had such an Act as that proposed been in existence.

18. The Acting Sub-Collector in charge of Madras, although not expressing an opinion in favour of the Act as proposed by Captain Oakes, recognises the necessity for some legislation on the point, and offers some suggestions. As an instance of the unsatisfactory state of the law at present, he refers to the case of the Nattapettah channel, near Conjeveram, (recorded in Board's Proceedings, dated 20th July 1865, No. 4218,) and he proposes that Irrigation works should be, as in Holland, in the hands of Local Councils, who should collect and levy cesses, and have powers to keep the works in repair and to improve them. He is in favour of the Act so far that he considers that "as regards single works in districts where a Local Council or Court would be impracticable," persons with grievances against Officers carrying out improvements should be referred to Collectors and the Board.

19. The tenor of the replies from the other District Officers may be gathered from paragraph 5 of these Proceedings; but the letters themselves do not call for special remark.

20. The Board would observe that any actual necessity for a law of the nature proposed by the Superintending Engineer of the 6th Division has scarcely been shown.

21. The Superintending Engineer complains of being opposed by the Merassidars in his schemes for the improvement of irrigation. This opposition seems to consist in threats of Civil actions. No instance is adduced of any such action having been brought to a final issue in the Courts, or of the Courts having decided that the right of dealing with irrigation from *public* sources does not rest in the State.

22. The Board entertain no doubt that, by the common law of the country, the State has this power and right inherent in itself; and until the Courts decide otherwise, it would perhaps be premature to resort to special legislation.

23. Two suits in which this issue is distinctly raised are now pending; and there can be no difficulty in bringing the question before the Courts, in Tanjore, by proceeding at once with some of the works alluded by the Superintending Engineer.

Proceedings of the Madras Government, Public Works Department,
14th July 1869.

24. If, however, Government consider it undesirable to await the result of these suits, the Board would recommend that the proposed Act be merely declaratory of the right of the State to the water of rivers and streams, and of its right to deal with and regulate irrigation from rivers, streams, channels, tanks, and other public sources of irrigation as it deems best for the public interests, all parties injured by any act of the State under this law being entitled to compensation to be determined by the Civil tribunals, if the claims cannot be amicably adjusted otherwise.

25. The Board cannot advocate the Superintending Engineer's proposal that, in respect to acts connected with irrigation, the Officers of Government should be placed beyond the law. Such a measure would be contrary to every principle of justice, and would deprive the people of a proper and necessary safeguard against official misconduct. The limited and guarded protection granted to Judicial Officers, in respect to functions which they are bound to exercise in the discharge of their duty, is founded on a principle which does not apply to the case of Public Works Officers.

26. The law should also, in the Board's opinion, provide that the objections of those whose interests are likely to be affected by any work, shall be heard and considered, *before* the work is commenced, or carried out, so as not to render such objections, if well founded, futile.

27. With reference to the Superintending Engineer's remarks in paragraph 6 of his letter of the 26th November 1866, it is unnecessary for the Board on this occasion to say more than that the land tenure of Tanjore, however peculiar or inconvenient it may seem, cannot now be disturbed.

28. The Board request the attention of Government to the enclosure to their third Member's letter of the 31st January 1867, which touches on a question of great importance.

Irrigation, No. 15.

The Right Honourable the Governor in Council is not of opinion that sufficient has been adduced to support an application to the Legislative Department for aid in passing an Act to exempt Revenue and Public Works Officers from the jurisdiction of the ordinary Courts when carrying out irrigation or other public works having for their object the general benefit of the country. Act VI. of 1857 is held sufficient for the acquisition of any lands which may be required for the purpose of constructing Irrigation works, and this seems to be all that is required at present. As observed by the Board, there is little doubt that by the common law of the country, the State has the power of dealing with irrigation from public sources, and the Government believe that the established Courts will so decide whenever a case arises which admits of the point being formally and judicially determined.

(True Extract.)

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

Proceedings of the Madras Government, Public Works Department,
14th July 1869.

No. 326. ORDER THEREON, 14th July 1869, No. 2,295.

ESTABLISHMENT, No. 31.

COMMUNICATED to the Superintending Engineers in continuation of G. O., No. 4,052, of the 22nd December 1866.

(True Extract.)

Colonel, R. E.,
Secretary to Government.

To the Superintending Engineers.
,, Officer in charge of operation in Wynaad.

Exd. E. C. Shunker.

No 2295 22 [illegible]

Communicated to the Superintending Engineers in continuation of G.O. No 4052 of the 22nd December 1866.

Fort St George
14th July 1869

The Sup[erintendin]g Engineer
" Major P. D. Kennedy
Nilgiris
Dept. 16/7/69.

2680

Govt. of {1869} Madras.

PUBLIC WORKS.

To The Superintending Engineers

&c. &c. &c

Dated

Recd.

G. O. 16 July 1869, No. 2295

Nos. 925-32

Revenue & P. W. Offices

Rev: Rev: Dept. intimating that the introduction of an Act to exempt Rev: & P. W. Offices from the jurisdiction of Civil Courts when carrying out irrigation works &c. is premature, comd to the Supy. Engs.