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MADRAS RECORD OFFICE.

Government of Madras.

Public Works **DEPARTMENT.**

G.O. No. 2836	Press
456-57	Mis.
Dated 24 - 11 - 18 70.	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
24th November 1870.*

No. 456. Read the following Proceedings of the Madras Government in the
Revenue Department:—

Regarding the manner in which earth is to be
obtained for the repair of roads and embank- } (Here enter 11th November 1870, No. 1,750.)
ments.

No. 457. ORDER THEREON, 24th November 1870, No. 2,836.

IRRIGATION, No. 34.

ORDERED to be communicated to
the Superintending Engineer, 6th Divi-
sion, in continuation of G. O., No. 90,
of the 8th January last.

* With G. O. No. 90, dated 8th January 1870.

2. These papers* will likewise be
communicated to all other Superintend-
ing Engineers for guidance under similar circumstances.

(True Extract.)

Colonel, R.E.,
Secretary to Government.

To the Superintending Engineer, 6th Division.
To all other Superintending Engineers.
To the Chief Engineer for Irrigation.

Exd. S. T. Augusta.

34

*Proceedings of the Madras Government, Revenue Department,
11th November 1870.*

No. 145. Read the following Proceedings of the Board of Revenue, dated 19th August 1870, No. 5,380:—

Read the following letters:—

From the Superintendent of Revenue Survey, to the Acting Secretary to the Board of Revenue, dated Chepauk, 28th April 1870, No. 1,120-40.

In their Proceedings, dated 9th June 1869, No. 4,160, the Board communicate the Order of Government, No. 1,451, of the 22nd May 1869, on a letter from the Superintending Engineer, 6th Division, urging the necessity for extending the revenue survey to the Tanjore District. The Board also call for a statement of unassessed areas brought to light by the survey in each district.

2. I have the honour to submit the statement, but regret that it contains information regarding only about half the area as yet completed. I have found it impossible to obtain precise data for the taluqs more recently surveyed, though, I presume, I shall receive them hereafter. The records of a sufficiently large area, however, were available to permit of confidence being placed in the mean percentage of increase arrived at.

3. The reasons adduced by the Superintending Engineer for a revenue survey appear to me forcible. A survey to show roads, rivers, channels, and irrigation works, would probably cost half as much as a detailed survey for revenue purposes, and would not be reproductive.

4. It will be seen that 19.9 per cent. has been added to the assessed area in Trichinopoly, and that the general average of increase is 14 per cent. At

Vide Statement.

this rate the Superintending Engineer's estimate of a gain of 4 lacs resulting from the introduction of the revenue survey would be exceeded, and as the survey itself would probably cost something over 3 lacs, the transaction would appear very favourable to Government in a pecuniary point of view.

5. Taking the average rate of assessment in the Madras Presidency to be Rupees 2, which, I think, will be found near the truth, the value of the credit due to the survey on the 986,819 acres of assessed area, taken note of in the statement, is Rupees 19,73,638. The total area of revenue survey, since the formation of the department, is about 33,000 square-miles; of these probably 25,000 square-miles at least are under assessment. Assuming the equivalent in the Village Accounts for 25,000 square-miles to be 14,000,000 acres, the increase, at 14 per cent., amounts to about 2,000,000 acres, which, at an assessment of Rupees 2 per acre, reaches nearly 40 lacs as the annual credit due to the survey.

6. The total expenditure on revenue survey is also about Rupees 40 lacs, thus Government could, if so disposed, reimburse themselves in one year for the cost of the surveys hitherto effected.

7. In a Memorandum, dated 17th April 1869, on settlement printed by the Collector of Tinnevely, he lays down as an axiom not to be disputed that Government must either sacrifice $1\frac{1}{2}$ lacs of Rupees on each district, or leave settlement alone. With great diffidence, I venture

*50 or 60 times the annual assessment.

to dissent from this dictum, for, although it has been acted up to pretty closely in Trichinopoly, to my mind the value or selling price* of land in that district proves the lavish liberality with which the

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representatives of Government dealt with the settlement question there. Again, in Godavery the settlement resulted in a largely increased assessment.

8. Such being the case, I cannot doubt but that the result of a survey would be an increase to assessed area of 15 per cent., and, unless Mr. Puckle's views are adopted, would also, doubtless, show not only that no necessity for reduction exists, but, on the contrary that in Tanjore, containing as it does perhaps the finest land in the Presidency, held at an average rate for nunjah of Rupees 4-15-0, the fertility of the soil is such as, in many cases, to justify the imposition of a heavier assessment.

9. With regard to the recommendation, that a survey should at once be commenced, I regret to say that, at present, there are neither funds nor establishment available for Tanjore, and I fear that some few years must elapse before any of the Southern (Tamil) Survey Parties will be at liberty.

ENCLOSURE No. 1.

Statement of unassessed areas brought to light by the Survey.

Districts.	ASSESSED AREA.				Remarks.
	By Revenue Accounts.	By Survey Accounts.	Difference.	Per-centage of increase.	
	ACRES.	ACRES.	ACRES.		
Ganjam	29,691	32,821	3,130	10.5	In one taluq.
Godavery	590,088	718,605	128,517	21.7	
Kistna	1,956,945	2,297,438	340,493	17.4	
Nellore	439,670	523,515	83,845	19.0	In six taluqs.
Cuddapah	199,842	205,639	5,797	2.9	
Kurnool	1,128,565	1,205,815	77,250	6.8	In one taluq.
Madras	67,850	77,390	9,540	14.0	
Trichinopoly	726,974	871,772	144,798	19.9	In four taluqs.
Salem	916,847	1,055,961	139,114	15.1	
Coimbatore	597,629	629,844	32,215	5.3	In four taluqs.
Tinnevely... ..	249,339	271,429	22,090	8.9	
Total...	6,903,440	7,890,259	986,819	14.3	In 264 villages in 5 taluqs.

REVENUE SURVEY OFFICE,

Chepauk,
28th April 1870.

(Signed) F. J. B. PRIESTLEY, Colonel,
Superintendent of Revenue Survey.

From the Collector of Tanjore, to the Acting Secretary to the Board of Revenue, dated 2nd February 1870, No. 49.

As directed in Board's Proceedings, dated 9th June 1869, No. 4,160, I have the honour to submit the following report on the Superintending Engineer's proposition that this district should be re-surveyed.

2. Captain Oakes's opinion, as to the necessity of a re-survey of fields in this district, is based on the supposed inaccuracy of the present measurements, and the supposed concealment of "a very considerable area" of cultivation, which a new survey scientifically conducted would disclose; the only ground he has shown for

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this latter supposition being that, according to the present revenue statistics, the irrigated area in Tanjore is less than two-thirds of the entire area of the delta.

3. As it struck me that the fact last indicated did not warrant the conclusion at which Captain Oakes had so readily arrived, I asked him to let me know what the proportion of the irrigated to the total area in other deltaic districts in India was, and he has informed me that he is not aware of it, adding, at the same time, that the proportion given by him with regard to the Tanjore delta was over the work and that it would probably be nearer five-eighths than two-thirds.

4. This latter calculation, however, which agrees pretty nearly with the statistics furnished by the ayacut accounts of the Revenue Department, makes very little difference; and here I would only observe that any deltaic district in which the extent of the irrigated to the total area so far exceeds five-eighths as to come up to what would seem to Captain Oakes's standard of a fair proportion, leaving a margin far short of three-fifths to cover the innumerable rivers, channels, tanks, roads, towns, villages, dry cultivation, waste paddy banks, and all other items of porumboke, must be a wonder.

5. From a statement which I have obtained from the Collector of Trichinopoly, I see that, according to the recent survey, the proportion of irrigated area in the deltaic part of that district is five-twelfths to the entire area, and, if this is the result obtained by an accurate and scientific survey, it is certainly not reasonable to expect that in Tanjore it ought to be more than five-eighths. I do not imagine that that part of the Cauvery delta, which is comprised in the Trichinopoly District, is not as well irrigated as the Tanjore portion.

6. As to the inaccuracy of the present measurements, which Captain Oakes assumes to be a mere estimate of the cultivated area, these, as the Board are aware, were conducted with the greatest care, under the orders of Government, by the then Collectors, Messrs. Campbell and Kindersley, after the plan of the survey conducted in the Ceded Districts, and brought to light an excess of no less than 24 per cent., as shown in the margin, over the previous measurements taken at the commencement of the British administration. This survey, termed "paimash," has always been regarded to be sufficiently accurate for all practical purposes, and it was on this presumption that the Government, so recently as 1859, ordered* that it should form the basis of the Mottam-faisal settlement, lately extended to the remaining portion of the district.

* Vide Government Proceedings of the 22nd July 1859, No. 979.

Captain Oakes states that, supposing even that only a half of the extent of concealed cultivation found in Trichinopoly (that is ten per cent.) is discovered in Tanjore, there would be an annual addition of four lacs of Rupees to the revenue; but there is hardly any analogy between the state of things in Tanjore and Trichinopoly, where there had been nothing like a previous measurement worth the name. Again, thus calculating upon an imaginary increase of revenue, he loses sight of the fact that the prescribed rule with respect to charging excess of measurement is, that it is only the excess above ten per cent. that is to be charged, and that consequently,

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if what Captain Oakes expects to discover by a re-survey in Tanjore does not exceed ten per cent., no result that would contribute to an increase of revenue will have been attained.

7. My own impression, based on an experience of about fifteen years in Tanjore, is that if there is any excess, it is very inconsiderable, and certainly nothing like ten per cent. I do not, for one moment, mean to say that, viewed as a mere question of assessment, *irrespective of area*, the land-revenue of Tanjore is incapable of being raised; but I have no hesitation in stating that the idea of any large increase of revenue being obtained by a re-measurement of land is a myth, and that the only end gained by undertaking a re-survey of the district now would be to unsettle a happy state of agricultural prosperity, and to open up a wide field for demoralization amongst the large body of landed proprietors, in order to propitiate the subordinate staff of the survey agency and thereby to purchase immunity from a supposed evil.

8. My opinion, therefore, is, that in view of the Board's instructions, as conveyed in their Circular Memorandum of the 4th November 1868, No. 1,155, being carried out, a survey of only the roads, as well as rivers and channels which are intimately connected therewith, should be undertaken, and that, as the Superintending Engineer states that the work is more than his department could undertake, a party of the Survey Department should be deputed to do it.

SUBMITTED to Government, with reference to Government Order, dated 22nd May 1869, No. 1,451, forwarding, for the observations of the Board, a letter from the Superintending Engineer, 6th Division, in which he suggests the expediency of extending the revenue survey to the district of Tanjore, in connection with the preparation of the Irrigation Register, and a proposal of the Board regarding the survey of the local roads.

2. The Superintending Engineer's proposal is based on the following grounds:—

I.—That the Register will be of little practical value without a map showing all the rivers, channels, etc., and the sluices and surplus weirs with their dimensions correctly marked.

II.—That surveys of the roads could not be laid down on any existing map.

III.—That a complete survey of all the rivers, channels, and roads, could not be undertaken by the Department Public Works.

IV.—That the work could only be efficiently and economically accomplished by a specially trained department.

V.—That judging from the ascertained results of survey operations in other districts, the work would be highly reproductive.

3. The Board called on the Collector of Tanjore and the Superintendent of Revenue Survey to state their views on the subject, and requested the latter to furnish a statement of the unassessed areas and other credits disclosed by survey in each district hitherto surveyed.

4. The letters above recorded are their replies.

5. Annexed to Colonel Priestley's letter is a statement which includes only half the area, the survey of which has been completed. From this it appears that

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on an area of acres 6,903,440, as per village accounts, the correct area, as ascertained by survey, is acres 7,890,259, so that there is an increase of acres 986,819. The excess ranges from 2.9 per cent. in Cuddapah to 21.7 per cent. in the Godavery District. The mean per-centage is 14.3.

6. The gross area surveyed by the department since its formation is stated by Colonel Priestley to be 33,000 square-miles, of which it is estimated that 25,000 square-miles are assessed. Assuming this to be equivalent to acres 14,000,000, according to Village Accounts, Colonel Priestley calculates that the difference 2,000,000, at an average assessment of Rupees 2 per acre, represents an annual increase of Rupees 40 lacs as the credit due to the survey.

7. The Board observe, however, that these figures are calculated to mislead unless carefully qualified. In the first place, they include unoccupied waste, and

Godavery	16.6	probably unassessed waste also, for the
Kistna	6.5	Board have ascertained, from the office
Trichinopoly	18.5	of the Settlement Department, that the
Kurnool	1.6	per-centage of excess in occupied land
Salem	1.6	is as shown in the margin. In the
Average	7.1	second place, the rate per acre assumed

in the calculation is too high. Even supposing that there were as great errors in the areas of wet cultivation as in the areas of dry cultivation, Rupees 2 an acre is at least a quarter of a Rupee too high. From the figures of the last quinquennial census, it appears that the rate per acre for the whole Presidency is—

	RS.	A.	P.
Land in occupation	1	13	0
Land left waste... ..	0	13	9
The average rate in Tanjore is considerably higher, viz:—	3	13	8
Land in occupation	1	5	8
Land left waste... ..			

8. There is good reason to expect that the excess, brought to light in this district, will be very small, but, taking it at the Salem rate, 1.6 per cent. for occupied land, the increase in revenue will be about Rupees 62,000 per annum.

9. As regards the effect of the survey on revenue up to date, the Board observe that, assuming Colonel Priestley's calculation that acres 2,000,000 have been revealed by it, the part of this excess, which appertains to occupied land, will be about acres 1,360,000, and the annual revenue gained will be about Rupees 2,465,000.

10. Colonel Priestley estimates the cost of the survey of Tanjore at three lacs of Rupees, and anticipates that the result would be an annual increase of over four lacs; but he observes that, owing to the want of funds and establishment, some years must elapse before it can be undertaken.

11. From the Collector's report, it appears that the matter is not of much urgency. Mr. Morris shows, conclusively, by a comparison with the deltaic portion of Trichinopoly, that the irrigated area in Tanjore, as estimated by the Ayacut Accounts, bears a high ratio to the whole superficial area.

12. He describes the care with which the Paimash was conducted, and he considers that the area concealed up to that time was then fully brought to

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account. His own experience of fifteen years leads him to the conclusion that the accepted land-measurements in Tanjore very fairly represent the true condition of the cultivated area.

13. Under these circumstances, the Board are of opinion that there is no reason for incurring the heavy cost (with the incidental inconvenience to the people) of a scientific survey, whilst there are still many districts which stand in much greater need of it.

14. In their Order of the 23rd February 1870, No. 93, the Government forwarded, for the Board's report, a further application from the Engineering Department, pointing out the difficulty that is experienced in obtaining the consent of land-holders alongside rivers and canals to have earth taken from their fields for the repair of embankments, recommending that a margin of Government land be always left for this purpose, and again urging the necessity of a survey.

15. The Board have called upon the Collector of Tanjore for a report on this subject, but they see no reason to delay the expression of their views as to the necessity of a general survey of the district.

No. 146. Proceedings of the Board of Revenue, dated 2nd September 1870,
No. 5,565.

Read the following letter from the Collector of Tanjore, to the Acting Secretary -
to the Board of Revenue, dated Point Calimere, 19th July 1870, No. 238.

WITH reference to the Proceedings of Government, in the Public Works Department, dated 8th January 1870, No. 90, communicated to me by the Board, in their Order, dated 28th June, I have the honour to submit the following report on the Superintending Engineer's letter to Government on the subject of the Mirassidars of this district, objecting to earth being taken from their fields for the repair of adjacent river-embankments and roads.

2. And, firstly, I must give an account of the particular case which forms the immediate occasion for Captain Oakes's complaint, since, in its absence, it might perhaps be supposed that there is a general disposition on the part of the Mirassidars to wantonly oppose and thwart the members of the Department Public Works.

3. In this case, it was proved by the clearest evidence before the Sub-Magistrate, that the contractor, who was engaged by the Department Public Works to carry out the repairs of the river-bank, excavated pits in rice-fields with crops standing on them, not only without the consent of the party in possession of these fields, but in spite of his protests, and though he showed some high ground a little further on from which earth could have been taken. The complainant was throughout conciliatory. He was prepared to withdraw his complaint before the Sub-Magistrate, if some reasonable compensation was made for the injury which had been done to his fields; but the contractor refused to come to any compromise. I know this as a fact, because, whilst the case was pending before him, the Sub-Magistrate made a reference to me as District Magistrate, asking for instructions as to whether he could permit the case to be compromised, and I informed him that he certainly could, if the parties were willing. The contractor, however, having insisted to stand upon his right to excavate earth from wherever he chose,

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the Sub-Magistrate had no alternative but to decide the case on its merits, which he accordingly did, and when the case was appealed to me as District Magistrate, I confirmed the decision, since I could not see the slightest ground for upsetting it. The Sub-Magistrate estimated the damage to the fields at Rupees 35, and fined the offenders (the contractor and another person who aided him) to this extent alone, awarding this sum as a compensation to the complainant.

4. Captain Oakes, in a letter, which he wrote to me while the case was before me in appeal, stated that of the pits which had been excavated, the five, which alone he considered to be really injurious, could be filled either from a high ground 60 to 70 yards off, or from the padugay, 40 yards distant; but he would not allow that the contractor himself could have taken earth from the said high ground, because, its distance from the bank to be repaired was more than 50 yards, which he looked upon as a fair limit beyond which a contractor should not be called upon to procure earth, unless special rates were provided. I need hardly say that I could not appreciate the justice of this reasoning. I submit, for the perusal of the Board and Government, a copy of the correspondence which passed between me and the Superintending Engineer, as also of my magisterial decision on appeal in this case.

5. The tenor of Captain Oakes's letter to Government would lead to the supposition that objections are now, for the first time, taken to the practice of taking earth from the Mirassidar's paddy-fields. Such, however, is not the case; for this question was raised and distinctly set at rest by Major Mullins and myself, when he was District Engineer, and I was Acting Collector, about eight years ago. In a memorandum which, with my concurrence he published in the *District Gazette* of the 28th February 1863 for the guidance of his department, Major Mullins declared his opinion on this point as follows:—"On the other hand, it must be understood distinctly that digging pits in a ryot's fields without his consent, and in opposition to his wishes, is illegal, and that any one so doing is liable to be prosecuted by the land-owner under the Penal Code. Whatever may have been the custom formerly, the law now recognizes no such right, and it may be added that the practice is one which the Government prohibited some time before the Penal Code was enacted."

Vide Chief Engineer's Circular No. LX. of the
21st August 1860.

6. I altogether take exception to Captain Oakes's theory that land is improved by contractors excavating pits thereon. It is not to be supposed that the Mirassidars can always have a field or fields close by, which require to be lowered, and from which, therefore, earth could be taken to fill the pits; and it must be recollected that they have their own paddy-banks to raise annually, and thus consequently are but seldom at a loss as to what to do with the spoil of the more distant fields which they may have to lower.

7. In my opinion, the best remedy for the evil complained of lies in dealing in a considerate and conciliatory manner with the Mirassidars. In the very extreme case set forth in paragraph 6 of his letter to Government, Captain Oakes states that of the 19 proprietors holding land along the 378½ yards of the river-bank, only 8 objected. If this case, in which 11 out of 19 Mirassidars agreed to do what they were asked, can be taken as a fair specimen of the recusancy to be

met with in Tanjore in this respect, it can, I think, be fairly assumed that in more than half the cases, there will generally be no difficulty in obtaining the consent of the Mirassidars to earth being taken from their fields for a moderate compensation. In the remaining cases, moreover, I am of opinion that many recusant individuals will give in when they are firmly but quietly informed that the alternative will be that they will have to part with their land altogether, under the operation of the Land Acquisition Act. In a few instances, at first, it will perhaps be found necessary to have recourse to the coercive process prescribed by the Land Acquisition Act; but in these I do not apprehend that work need be delayed, since possession of the land required can be taken, under Section 17 of the Act referred to, before the question of compensation is settled, and, in cases of emergency, where earth is required for closing a breach, it may be taken under Section 5 of Act I. of 1858 without any preliminary proceeding.

8. I can assure the Board that, since I have been Collector of this district, the Revenue Department has, as a rule, always given any *reasonable* aid that was in its power in this matter when it was asked for. In one case, where a block of land (120 yards long and 40 yards broad) in a richly planted garden on the Vennar padugai, belonging to the late Rajah's estate, was required for a brick-field, I myself, at the request of the Executive Engineer, Captain Montgomerie, so far accommodated the contractor, who had been engaged to supply bricks to the Public Works Department, and who was also the lessee of the garden, as to arrange for his lease being extended on the terms then held for an additional six years, within which period it was expected that the excavations made therein would be filled up by alluvial deposit from floods. On the other hand, to show how little consideration is shown by the officers of the Department Public Works towards owners of property, I must mention another case in which they insisted that the contractor should be allowed to make excavations in certain valuable plantain gardens on the side of a road, because, if he were compelled to take earth from some adjoining dry land, it would have cost him more labour, and his profit would have been less. In this case, of course, I did not comply with the request made.

9. With regard to the question of extending the revenue survey to this district, I have already, in my reply to the Board's order, communicating the Proceedings of Government, in Revenue Department, dated 22nd May 1869, No. 1,451, stated, at full length, my reasons for considering that a re-survey of this district, generally, is both unnecessary and undesirable, and I see nothing in the papers now forwarded to me for report, which induces me to alter the opinion which I have already expressed. Not being acquainted with the particulars of the case, which Captain Oakes mentions in paragraph 6, of his letter to Government, as illustrative of the elastic nature of the present Paimash Account (which case I see was never communicated to me), I am unable to express any decided opinion with regard to the inaccuracy or elasticity which has been discovered in this particular account; but I must add that, whilst I have not the slightest objection to a scientific survey being made of all Government lands belonging to, or connected with, public works in this district, if the Government are willing to pay for such a survey, I still consider a re-survey of the whole district, for revenue purposes or for defining boundaries of private property, is perfectly unnecessary. From my experience in

Tanjore, I can safely state that, though disputes owing to the high value of land regarding the right of possession and succession to holdings, as well as regarding irrigation and drainage, always have been, and still are, both numerous and common, yet those relating to boundaries of properties or holdings are of the rarest occurrence in the Tanjore Delta. In fact, I have never hitherto heard it said that property in land in this district is depreciated from undefined boundaries or areas; and I doubt whether one out of every thousand suits which are daily filed in the Courts in this district can be shown to refer to disputed boundaries.

10. I fully agree in the suggestions made by the Acting Chief Engineer for Irrigation, in paragraphs 5 and 7 of his Note, that the Superintending Engineer should prepare every successive year a list of the embankments and roads which he proposes to take up and thoroughly repair next season; and I shall gladly undertake to have the boundaries of the Government lands belonging thereto laid down by Revenue-officers, and also to do all that lies in the power of the Revenue Department, with regard to arrangements being made for giving possession of such additional land as the Department of Public Works may mark out and survey as being required; but, of course, proper time must be given to the Revenue Department for this purpose, as boundaries cannot be laid down and arrangements made in a day or two.

11. With reference to paragraph 3 of Major Mullins's Note, and the concluding part of the Government Order, I beg to state that padugai lands, not already private property, are never now granted on durkhast without the officers of the Public Works Department being consulted. The case to which Major Mullins alludes is an isolated one, and the only one of the kind which, to my recollection, has occurred within the last ten years. In this case, the grant was made by mistake and was cancelled by my predecessor, Mr. Cadell, when the mistake was brought to his notice.

12. In conclusion, and with reference to paragraph 9 of Major Mullins's Note, I beg to add that effective measures have been adopted to prevent all encroachments on Government lands belonging to public works, and that not a single proved instance of it brought to notice by the officers of the Department of Public Works has, as far as I am aware, been left unpunished.

ENCLOSURE No. 1.

From the Superintending Engineer, 6th Division, to the Collector of Tanjore, dated 12th June 1869, No. 334.

I HAVE the honour to inform you that one Narayan Iyengar* of Tillaystanam lately brought an action against one Mootoochavoo Narangien and his Agent for injuring nunjah lands by

* Agent of Thangamuttu Cholunga Thaver.
digging pits in them, Mootoochavoo Narangien being a contractor, who undertook repairs to the Cauvery bank in the limits of Kaduveli in which the injury was said to have been done. The case was tried by the Firka Sub-Magistrate of Trivadi, and was given against the contractor, who was fined Rupees 35, under Section 426 of the Indian Penal Code. A copy of the decision is enclosed.

2. As this decision is likely to have a very injurious effect on the interests of Government, and would leave the repair of banks and their safety to the caprice of individual Mirassidars, I deem it proper to lay the matter clearly before you, and should your opinion accord with that of

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the Firka Sub-Magistrate of Trivadi, that the contractor was punishable under Section 426 of the Penal Code, it will be necessary to request Government to pass a special Act on the subject, as otherwise all control over the conservation of public works will be taken out of the hands of the Government officers.

3. I will first go into the details of the special case on which the decision has been passed.
4. On the morning of the 5th instant, I examined the pits (6) which

4. On the morning of the 5th instant, I examined the pits (to which exception was taken) in the Kaduveli limits, and would call attention to the remarks opposite to each set of pits in the enclosed memorandum; from these, it will be observed, that pits were only dug in the nunjah land when earth could not be procured for the bank from the padugay south of the bank for reasons stated; and in one case, earth is stated by the contractor to have been taken from the nunjah lands, instead of from the padugay at the particular request of the complainant, * who wished to form his seed-beds within the padugay adjacent to the Kutadi Voikal, from which water could be raised with facility; and the fact of the seed-beds now existing on this strip of padugay goes far to confirm the contractor's statement.

• Thangamuttu Cholunga Thaver.

form his seed-beds within the padugay adjacent to the Kutadi Voikal, from which water could be raised with facility; and the fact of the seed-beds now existing on this strip of padugay goes far to confirm the contractor's statement.

5. The length of bank in Kaduveli limits is about 1,200 yards, and where earth was procurable from the padugay south of the bank, it was procured from the padugay, from which at least $\frac{9}{10}$ ths of the earth required, was procured, and only $\frac{1}{10}$ th from the nunjah land. It is true that to the north of the nunjah lands in which pits were dug there is some dry land, but this dry land is from 72 to 200 yards from the river-bank; with this lead, the cost of the bank-repairs would have been considerably enhanced, and I look upon 50 yards as a fair limit, beyond which a contractor should not be called upon to procure earth unless special rates are provided.

6. In many cases, the excavation of pits in nunjah land is an advantage, as it assists in lowering the land; in other cases, pits may be dug in land which does not require lowering; in either case, the pits have to be filled before the land can be cultivated, and this labour has hitherto been regarded by the Mirassidars as much a part of their duty as levelling their fields or putting up varappoos; objections have been raised to pits being excavated to a greater depth than half a yard, but in the case in point, no transgression on this score was committed, and as the nunjah lands to the north of the third section of pits shown in the memorandum are actually now being lowered, it is well that pits have been made to receive the spoil which would otherwise have to be taken to a greater distance.

7. As far as I could judge, I should say that the first five pits were the only five which were really injurious, and they can be filled from high ground, from 60 to 70 yards from them, or from the padugay, within 40 yards, but even supposing that the whole of the pits were really injurious to the land, they could easily be filled at the rate of 1 Anna per cubic yard, and this for 344 yards would give Rupees 21½, and not 35, as estimated by the Sub-Magistrate.

8. The Sub-Magistrate, I observe, altogether

8. The Sub-Magistrate, I observe, altogether ignores the universal custom of the district from time immemorial, relative to the procural of earth from the neighbouring lands, but lays great stress upon Captain Mullins's memorandum, published in the *District Gazette* of the 28th February 1863. While most anxious not to injure lands in procuring earth for roads or banks, I must point out that if Captain Mullins's order were attempted to be carried out—

1st.—There would be great delay in the execution of the order, and this for 344 yards

1st.—There would be great delay in preparing the estimate, as each Mirassidar would have to be consulted as to whether he would take the contract or not, and at what rates.

2nd.—The neighbouring land-owner would monopolize the right to execute all repairs within his limits, and within certain limits to dictate his terms or fix the rates for taking up land, under Act VI. of 1857, for petty repairs is out of the question, even if it did not entail inevitable delay.

3rd.—The estimates would have to be cut up into many minute portions which would entail considerable labour. The extent to which this might be done is hardly credible, for the other day in inquiring into an objection to the formation of a road to Purthyoor, along the Puttaur north bank, I found that of the first hundred yards from the bridge over the Puttaur on road No. 14, there were some ten or twelve proprietors of land.

*Proceedings of the Madras Government, Revenue Department,
11th November 1870.*

9. If objections may be raised to pits being excavated in nunjah land, they will very shortly be raised to pits being excavated in punjah, for pits, whether in nunjah or punjah, must be filled up before the land can be cultivated, though doubtless, in the latter case, the earth for filling the pits has not probably to be brought from so great a distance as for filling those in the nunjah land.

10. If the immemorial custom of the district of digging pits in the lands adjoining the roads and banks is to be ignored, and the Mirassidars find that they can obtain compensation, as in the case adverted to above, they will naturally make complaints of every pit that is dug, and be only too glad not only to get their lands lowered by the Government, but also to get paid for the improvement thus effected, and they will doubtless withhold their consent to any pit being excavated without payment; thus at once the rates for earth-work will be doubled throughout the district.

11. The nature of the works and the limited period in which they must be executed prohibit the consultation of each individual land-owner, where pits shall be dug, and it cannot be left to him to fix his price, for, under such a system, there could be no surety that any estimate would be sufficient, or that any work could be carried out within a limited period. The members of the Public Works Department would always be haggling about prices, and the repair or maintenance of a bank would depend upon the caprice of individual Mirassidars. Under such a system, the Department Public Works could not possibly maintain the efficiency of the works. If, therefore, the present system of obtaining earth from the lands adjacent to a bank or road is contrary to law, Government must be asked to pass an Act to make it legal, or to take up a margin of 8 or 10 yards from which to procure earth when required along every road, river, and channel-bank, in the district; this would probably entail the purchase of some 30 or 40 square-miles of land, or the throwing out of cultivation of from 3 to 4,000 valies, which would be far more grievously felt than the occasional excavation of pits with the consequent cost and trouble of filling them upon the part of the Mirassidars under the system which has hitherto prevailed.

ENCLOSURE No. 2.

In the Court of the District Magistrate of Tanjore.
The 12th day of July 1869,

The 12th day of July 1869,

Defendants.

Plaintiff *versus* Appellant Muttu Shevu Narangien, 1st
Petition of Appeal, No. 13 of 1869, against the
conviction and sentence by the Sub-Magis-
trate of Trivadi, under Section 426 of the
Penal Code, in Case No. 101 of the Calendar
for 1869. Prisoner in Case No. 101 of 1869.

Order.—In this case, appellant has been punished for having committed mischief, in having dug pits in the nunjah land of Thangamuttu Sholunga Thaven in the village of Kaduvali, Tanjore Taluq, in the month of March 1869, without the consent of the said Thangamuttu Sholunga Thaven; he knowing that he was thereby likely to cause damage to the land in the possession of Thangamuttu Sholunga Thaven. In his appeal petition, and again in his defence deposition before the Sub-Magistrate of Trivadi, appellant states that he dug the said pits with the consent of Thangamuttu Sholunga Thaven. The Lower Court has, however, only examined Thangamuttu Sholunga Thaven on this point, and, though he stoutly denies having given any such consent as appellant says that he did, yet, as the case now stands it is only the evidence of the complainant against that of appellant which forms the record of the case. As the appellate Court is of opinion that the guilt or innocence of appellant turns on the question whether complainant did or did not consent to appellant digging pits in his nunjah land, it directs that further inquiry and additional evidence be taken on this point, and that the result of such further inquiry and the additional evidence be certified to the Appellate Court with the least practicable delay.

(Signed) G. LEE-MORRIS,
District Magistrate.

(Signed) G. LEE-MORRIS,
District Magistrate.

*Proceedings of the Madras Government, Revenue Department,
11th November 1870.*

Proceedings of the Appellate Court of the District Magistrate of Tanjore.

Read again the Proceedings of this Court, dated the 12th July 1869.

Read also the result of the further inquiry and the additional evidence certified to this Court by the Sub-Magistrate of Trivadi in pursuance of the aforesaid Proceedings.

In this further inquiry, eight witnesses have been examined, the first four on behalf of appellant, and the last four for the original complainant, as to the fact of appellant having dug pits in complainant's land only after he had obtained complainant's consent to his doing so.

Of the witnesses called by appellant, the 1st witness states that complainant told appellant that he was not to dig pits at the place where he was digging, or in the low ground, but that he might do so a little further to the north.

The 2nd witness deposes that he heard complainant tell appellant that he was not to dig pits in the fields on a low level, but that he might do so in those on a high level.

The 3rd witness, who was head cooly under appellant, swears that when he was digging pits under the orders of his master at the spot in dispute, complainant came and objected to the digging of the pits, and the work was stopped in consequence. He also deposes to his having subsequently found more pits dug at the spot in question than were there when he left the work.

The 4th witness affirms that when 1st defendant asked complainant's permission to dig pits in the nunjah fields, he was told that such permission would not be granted, but that he might dig pits in the punjah fields.

Of the remaining four witnesses, Nos. 5, 6, 7, and 8, who were cited by complainant.

The 5th witness, the Curnum of the village, states that complainant expressly told 1st defendant that he was not to dig pits at the spot in question, and that he went on digging even after such prohibition.

The 6th witness, the Village Vicharipugar, fully corroborates the 5th witness's statement, both as to objection having been made to the digging of pits and to pits having been dug in spite thereof.

The 7th witness swears to the same effect as the 5th and 6th witnesses.

The 8th witness, the Village Kavalgar (watchman), swears that he first objected to appellant digging pits in the nunjah fields, and that seeing that the defendant persisted, he reported the fact to complainant, his master, who thereupon came to the spot in question, and told appellant to desist, but he still went on digging.

The Appellate Court having perused the original and additional evidence in this case, considers this evidence most fully proves, not only that appellant never obtained complainant's consent to digging pits in his nunjah lands, but that he dug the pits after complainant had expressly told him not to do so, thus most undoubtedly committing the offence of mischief, as defined in Section 426 of Indian Penal Code. The Lower Court has estimated the sum of Rupees 35 as the least amount of damage sustained by complainant in this case, whilst the Superintending Engineer, who has addressed the Appellate Court on the subject, puts it down at 21½ Rupees. The amount of fine imposed by the Lower Court on appellant is 30 Rupees. If appellant, knowing that he was likely to cause damage to complainant, had simply dug these pits without complainant's consent, he would still have been guilty of the offence of mischief, as defined in Section 425 of the Indian Penal Code, though the offence would have been a minor one, for which a slight fine might probably have been a sufficient punishment; but in the present case, the facts are very different, for appellant's own witnesses prove, not only that complainant refused to give his consent to the pits being dug where appellant wanted to dig them, but pointed out another spot where he was at liberty to do so. Under all these circumstances, the Appellate Court is of opinion that, even if the amount of damage done by appellant to complainant's land is 21½ Rupees as estimated by the Superintending Engineer, appellant has escaped with a light punishment in only having been fined 30 Rupees, and accordingly sees no reason for interfering with the sentence passed by the Lower Court.

(A true Copy and Extract.)

NEGAPATAM,
13th August 1869.

(Signed) G. LEE-MORRIS,
District Magistrate.

*Proceedings of the Madras Government, Revenue Department,
11th November 1870.*

ENCLOSURE No. 3.

From the Collector of Tanjore, to the Superintending Engineer, 6th Division, dated Negapatam,
19th August 1869, No. 293.

I HAVE the honour to acknowledge the receipt of your letter, dated 12th June 1869, No. 334. 2. With reference to the particular case specified by you, I forward, herewith, a copy of my order, as Magistrate of the district, on the appeal petition presented by the party punished by the Sub-Magistrate of Trivadi. From this order you will perceive that I have upheld the sentence passed by the Lower Court.

3. With regard to the general question, whether any persons, either public officers or private individuals, knowing that they will cause damage to fields, the private property of Mirassidars, can dig pits therein contrary to the wishes of the owners, for the repair of roads or river-embankments, I have no hesitation in stating that all persons so acting, whether in this or any other district, most undoubtedly commit the offence of mischief, as defined in Section 425 of the Indian Penal Code, and render themselves liable to the punishment specified in Section 426.

4. I fully admit that formerly it was usual in this district for earth to be taken from paddy-fields for the purpose abovementioned, without the wishes of the Mirassidars being in any way consulted; but this was simply because the Mirassidars were too timid or too ignorant to object. Anyhow, the fact of former land-holders of this district at one time having remained passive under the injury they in this way sustained, cannot have taken away the rights of the present Mirassidars, if they choose to assert those rights.

5. In your letter under reply, you complain of the Sub-Magistrate of Trivadi laying great stress upon Captain Mullins's memorandum, published in the *District Gazette* of the 28th February 1863; but considering that this memorandum lays down most clearly the course that is to be pursued when earth is required for irrigation repairs, was issued by Captain Mullins when he was District Engineer, and has never been cancelled from that time to this, I should have been very much astonished if the Sub-Magistrate had not laid great stress on it, when he was trying a case, in which it was proved that the provisions of the memorandum had been totally ignored.

6. The difficulties you specify with regard to carrying out Captain Mullins's order, appear to me to all more or less capable of being met, by ascertaining the distance and situation of waste land from the road or bank to be repaired, and preparing estimates accordingly; for it must be remembered that Government can take earth from waste land in no one's possession without the consent of the Mirassidars, and there are after all but few roads or river-banks in this district, not very far from which there is not waste land of some kind or other to be found.

7. Anyhow, I fully agree with Captain Mullins in thinking that, even in the case of such roads or river-banks, "with a little care and consideration, no practical difficulty will arise in carrying out work, even where nunjah land is alone available for the provision of earth."

8. You are, of course, at perfect liberty to apply to Government for a special Act on this subject, if you consider such a measure necessary; but I must say that I shall be much mistaken in the Government, if they recognize the soundness of the principle that the private landed property of Mirassidars in Tanjore is to be allowed to be damaged with impunity and without compensation, in order that certain rates of earth-work may be maintained; for after all, that is really what the whole question comes to, since but few Mirassidars would ever object to their fields being lowered, if the lowering were done uniformly, or fair compensation offered for damage sustained.

9. Before concluding, I must express my deep regret that the case before the Sub-Magistrate of Trivadi was not allowed to be compromised. When it first came before him, the Sub-Magistrate wrote to me as Magistrate of the district, and asked me if he might allow a compromise, provided the accused paid the complainant the amount of damage he had done him. To this I replied that I knew of no objection to this course being followed, provided both parties were agreed. On the receipt of my reply, the Sub-Magistrate assessed the damages sustained by complainant. For this sum the complainant expressed his willingness to withdraw his complaint; but the accused, put up to it, I am informed, by certain officers of the Department Public Works would not hear,

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of paying complainant anything, and thus the Sub-Magistrate was obliged to try the case and pass sentence.

10. If, therefore, the Mirassidars of this district, in consequence of the publicity of this case in future, "naturally make complaints of every pit that is dug," as you anticipate in your letter under reply, I can only state that such a result will not have arisen from any fault on the part of the Magisterial Department.

SUBMITTED to Government, with reference to Government Order, 22nd February 1870, No. 93.

2. The Collector shows conclusively that the conduct of the contractor mentioned by Captain Oakes, who refused to make a compromise, was illegal and oppressive, and was rightly punished.

3. Durkhasts for padugay lands are never accepted without a previous reference to the Public Works Department.

4. Captain Oakes's fears as to the antagonism of the Mirassidars seem to be greatly exaggerated.

5. The Board have already reported that they do not think an immediate survey of Tanjore necessary.

6. The measures proposed by Major Mullins, with regard to the annual repairs to embankments should be carried out.

No. 147. ORDER THEREON, 11th November 1870, No. 1,750.

Land Revenue.

In his letter, dated 14th May 1869, recorded in the G. O., under date 22nd May 1869, No. 1,451, Captain Oakes, the Superintending Engineer of the 6th Division, strongly urged upon Government the expediency of undertaking the survey of the Tanjore District, being apparently under the impression that the original survey was very incorrectly made, and that a large addition to the revenue would result from an accurate measurement of the land in occupation.

2. In a second letter, dated 15th November 1869, No. 941, recorded in G. O., Public Works Department, 8th January 1870, No. 90, he advocated the same measure, on the ground of the difficulty now experienced in obtaining earth for the repair of irrigation embankments, and the necessity that existed for preventing encroachment on such embankments by defining distinctly their boundaries and the boundaries of Government land in their vicinity, from which earth could be obtained for their repair.

3. It appears from the letter from the Collector of Tanjore, dated 2nd February 1870, No. 49, and the first Proceedings recorded above, that Captain Oakes is mistaken in his estimate of the accuracy of the present land measurements of the district, and that it is highly improbable that any large excess would be discovered on re-survey. It is further to be observed that there are neither sufficient funds nor establishment at the disposal of the Revenue Survey Department for the work, that some years must elapse before any Tamil Survey Party will be at liberty, and that for other reasons it is inexpedient to undertake the re-survey of the district at present. Under these circumstances, the proposal may be abandoned.

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11th November 1870.*

4. It remains to dispose of the question raised by Captain Oakes in his second letter, alluded to in paragraph 2 above, in regard to obtaining earth from private lands for the repair of roads and river-embankments. It is clear, from the correspondence printed with the second Proceedings above recorded, that Captain Oakes holds very erroneous views as to the powers of his department to enter upon private lands for the purpose of taking materials; and if, as stated, the contractor under reference acted on the advice of the department in declining to accede to a reference in a case in which he had clearly altogether exceeded his legal powers, compromise in a case in which he had clearly altogether exceeded his legal powers, such advice was wrong in principle, and most ill-judged, as the inevitable result of the case has necessarily weakened the position of the department in the district.

5. The Government have no doubt that, as a general rule, if fact and caution be exercised by the officers of the Public Works Department, and the co-operation of the Revenue authorities is sought at the proper time, there will be no difficulty in obtaining earth from private lands whenever required; but the rights of property must be respected, and contractors must not be led to believe that they will receive the support of the officers of Government in encroaching on them. It is, however, very desirable that the boundaries of all embankments should be laid down. The measures proposed by the Acting Chief Engineer for Irrigation, in paragraphs 5 and 7 of his Note, recorded in the G. O., dated 8th January 1870, No. 90, for the annual repair of these embankments, etc., should be accordingly adopted, and the list should at once be forwarded to the Collector, who will carry out the arrangements referred to in paragraph 10 of his letter, dated 19th July 1870, No. 238, printed in the second Proceedings above recorded.

6. The Government are glad to learn that it is the invariable practice to consult the officers of the Public Works Department before granting any "padugai" land on durkhast. This rule should continue to be strictly followed.

(True Extract.)

M. A. S.

Acting Secretary to Government.

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

Ed. F. R. Bantleman.

Public Works Department
 No. 2836
 Proceedings of the Madras Government
 Under date the 24th Nov/70
 Read the following

Pro. of the M. Govt. Revenue
 Department H. E. No. 1750 of 11th Novem. 1870

Ordered to be
 communicated to the
 Sup^r Engineer, 6th Division,
 in continuation of G. O.
 No. 90 of the 8th January last.
 2. These papers will
 likewise be commu-
 - nicated to all other
 Sup^r Engineers for gui-
 - dance under similar
 circumstances.

with G. O. No. 90 of 8th Jan'y/70.

The Sup^r Engineer 6th Div.
 All other Sup^r Engineers
 Chief Secy for Insp.
 dtd 25/11/70

by-15/11/70

1870 Madras
 Govt. of 1870
 REVENUE.

THE BOARD OF REVENUE,

Dated November, 11th.

G. O., 11th November, 1870, No. 1,750.

NOVEMBER.
 Nos. 145-147.

Revenue Survey in Tanjore District.—P
 ceedings Board of Revenue regarding the extensi
 of the survey to the district, with orders thereon

12456
 No. 2836-24 Nov 70

12456

2/c

Op 5-88

Govt. of (1870) Madras.

PUBLIC WORKS.

To The Superintending Engineer
to the Division

Dated

Recd.

No.

24 Nov 2836

Nos 456 & 457

Barthorpe. No. in the Revenue
Dept. regarding the manner in
which earth is to be obtained
for the repair of roads and
embankments, Com^d to the
Sd. Eng^r.