

(1) Number of pages 14
(2) Date of repair 19.12.12
(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 3092	Press Mis.
419-20	
Dated 19.12.12	1870.

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Public Works Department,
19th December 1870.*

No. 419. Read the following letter from the Superintending Engineer, 6th Division, to the Secretary to Government, Public Works Department, dated Tanjore, 3rd December 1870, No. 745:—

I HAVE the honour to report, for the information of Government, that in July last a contractor in the Combaconum Range, according to the established

custom, removed a quantity of earth from a Merasidar's field for carrying out the repairs to the south bank of the Cauvery; the Merasidar at once filed a suit against the contractor for damaging his property, and the Town Sub-Magistrate, in whose Court the suit was filed, sentenced the contractor to five days' simple imprisonment, and to pay a fine of Rupees 15. Mr. O'Shaughnessy, the Range Officer, took exception to the decision, and regarding the proceedings of the Sub-Magistrate as detrimental to the working of the Department, and as likely to incite other Merasidars to obstruct the progress of works, desired the contractor to appeal against the Town Sub-Magistrate's decision; the contractor did so, and the Assistant Magistrate reversed the sentence of the Lower Court, and ordered the fine to be refunded to the Appellant, as will be seen by the enclosed copy of that Officer's Judgment.

2. In reporting the circumstance to this Office in October last, Mr. O'Shaughnessy submitted a statement of the expenses incurred by the contractor as detailed in the margin, and requested permission to re-imburse the amount to him.

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Total...	54			

3. As the appeal was made at the desire and by the recommendation of the Range Officer, and the result has been that other landowners, who were obstructing the Department, have now withdrawn their opposition, I beg that on this occasion permission may be granted for the re-imbursement to the contractor of the expenses incurred by him on account of his appeal, from the amount provided for sundries in the estimate.

4. Mr. O'Shaughnessy states that the contractor has incurred a loss of Rupees 38-8-0 by the dispersement of his coolies before they had worked out their advances when he was imprisoned, but as he will probably be able to recover this amount by getting his coolies to work out his advances on other works, there seems to be no reason to make good this sum.

No. 420. ORDER THEREON, 19th December 1870, No. 3,092.

ESTABLISHMENT, No. 32.

* Rupees 54.

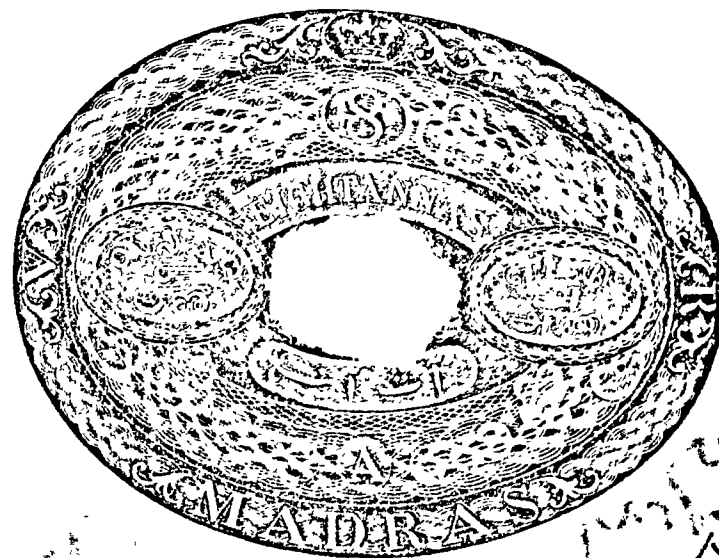
UNDER the circumstances brought to notice in this letter, the Government authorize the re-imbursement to a contractor of the expenses* incurred by him in appealing against the decision of the Sub-Magistrate at Combaconum in the matter of the removal of earth from a Merasidar's field for the repair of the south bank of the Cauvery.

(True Extract.)

Colonel, R.E.,
Secretary to Government.

To the Superintending Engineer, 6th Division.
" Controller of Public Works Accounts.
Exd. E. C. Shunker.

The owner of the back yard the Campaamam says that he objected in vain to the removal of the earth, that



COULDES



16th sheet.

In the Court of the Assistant Magistrate of Tanjore,
Combaconam Division

The 10th day of September 1870.

Petition of appeal No 33 of 1890.
 against the conviction and sentence
 by the 2 class Town Sub Magistrate
 of Cambacanam under Section 426
 of the I. P. C. in case No 812 of the
 Calendar for 1890.

Appellant.
 Meyappan.

Judgment

This appeal is against the decision of the Town Sub Magistrate the 2nd class sentencing the appellant Myappan to 8 days simple imprisonment and to fine of Rs 15 under Section 426. of the Indian Penal Code. The matter is one of some importance as it affects the relation of the Department Public works to the mirashdars. The appellant took a Contract from the range officer to repair a portion of the many miles of line banks which border the rivers as a protection against excessive floods.

2. In carrying out his Contract the appellant following the ordinary practice entered into a certain back yard and by his Coolies dug out and removed the earth he required for the repair of the bank.

3. The owner of the back yard the Complainant says that he objected in vain to the removal of the earth that

Compl^t N. Saminadew.

...and that the pits were dug down near his hamboots
benches that their roots are weakened and they are
liable to be blown down by the wind.
The appellant denies that the Complainant's figs,
Cocoanut trees were destroyed, and that the
benches are weakened.

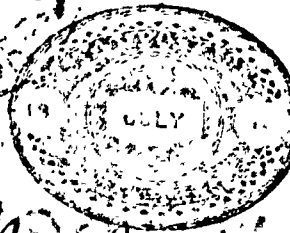
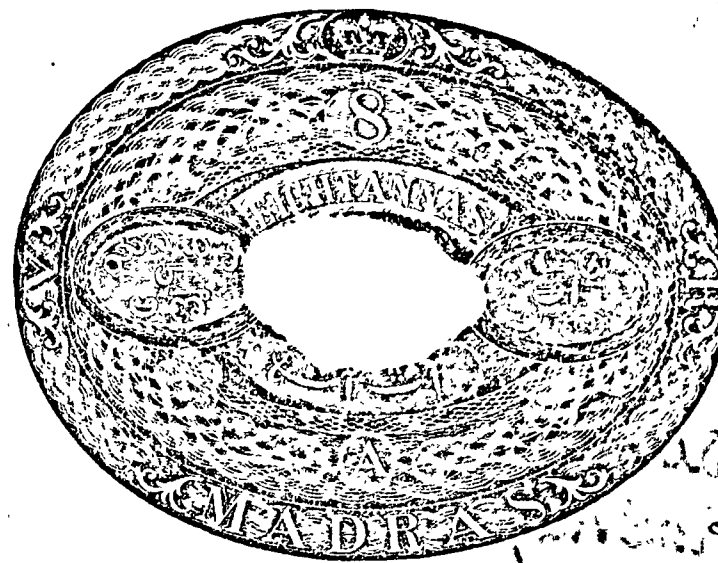
Chambers
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W. D. Chambers
of Mysore

5. The backyard in question has been inspected both by this Court and by the Sub Magistrate. The Sub Magistrate was of opinion that one or two young Coconut trees were missing but this Court is of opinion that there was no destruction of trees and no injury to the bamboos. The evidence now recorded by the Sub Magistrate is conflicting on the matter, but the probability is in favor of the appellant who is entitled to the benefit of the doubt.

6. Now as to the question whether the appellant was guilty of mischief in removing earth from the backyard and employing it for the repair of the line bank. His "intent" undoubtedly was to repair the bank and not to cause wrongful loss to the complainant or to anybody else. Did he know that he was likely to cause wrongful loss? In many places the Mirashdars are glad to have earth removed from their land, because the level is thereby low. In the present case however the backyard is now low and swampy, so that a lowering of the whole level is detrimental to the owner, and as he objected too, the appellant must be supposed to have known that he was likely to cause not only loss, but wrongful loss as if he believed himself justified in his act, it was through a mistake of fact. The most essential to the offence of destruction of property must have ensued or a change in it or its situation which destroyed or diminished its value or utility or affected it injuriously.

K. D.



None of these effects appear to have ensued. The earth was not destroyed, and so far from its value or utility being diminished, it was removed by the appellant at a certain cost that its utility might be increased. The existence of the pits in the backyard was in itself no damage, and the High Court have decided that to constitute mischief the damage must be actual and immediate and not prospective.

8. For these reasons therefore the Court is of opinion that the Conviction cannot stand and it will accordingly be reversed.

9. It must however be remarked that if the owners of land object to the removal of their earth, they are entitled to reasonable compensation if the earth is taken from them. The forcible removal of the earth without any intention to pay its value would expose the persons who so acted to prosecutions under other sections of the Penal Code.

Order

Upon perusing the petition of appeal and the record of the case, I do order that the sentence of the lower court be and it hereby is reversed, and annulled, and that the fine levied from the appellant be repunded. (Signed) A. J. Drummond

Copy applied for 12.9.70
Prepared and given 14.9.70
(True Copy)

Compd. K. Saminadew.
Clerk.

A. J. Drummond
Assistant Magistrate



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Supr Engr Office, b. D.
No 745 Tanjore, 3rd December 1870.
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From
Captain R. F. Oakes R.E.
Superintending Engineer, b. D.
To
Colonel C. A. Orr R.E.
Secretary to Government, P. M. D.

Sir,
I have the honor to report for the
information of Government that in July
last a Contractor in the Combaconum
Range, according to the established custom
removed a quantity of earth from a
Merasidar's field for carrying out the
repairs to the South Bank of the Cauvery,
the Merasidar at once filed a suit against
the Contractor for damaging his property
and the Town Sub Magistrate in whose
Court the suit was filed sentenced the
Contractor to five days simple imprison-
ment and to pay a fine of Rs 15.
Mr. O'Shaughnessy the Range Officer
took exception to the decision and
regarding the proceedings of the Sub-Mag-
istrate as detrimental to the working
of the Department and as likely to
incite other Merasidars to obstruct
the

the progress of works desired the Contractor to appeal against the Town Sub Magistrate's decision, the Contractor did so and the Assistant Magistrate reversed the sentence of the Lower Court and ordered the fine to be refunded to the Appellant as will be seen by the enclosed copy of that Officer's judgment.

In reporting the circumstance to this Office in October last Mr O'Shaughnessy submitted a statement of the expenses incurred by the Contractor as detailed in the margin and requested permission to reimburse the amount to him.

As the Appeal was made at the desire and by the recommendation of the Range Officer and the result has been that other land owners, who were obstructing the Department, have now withdrawn their opposition I beg that on this occasion permission may be granted for the reimbursement to the Contractor of the expenses incurred by him on account of his Appeal, from the amount provided for sundries in the Estimate.

Mr O'Shaughnessy states that the Contractor has incurred a loss of Rs 38-8- by the dispersment of his Coolies before they

they had worked out their advances when he was imprisoned, but as he will probably be able to recover this amount by getting his Coolies to work out his advances on other works there seems to be no reason to make good this sum.

I have the honor to be

Yours Most Obedt Servant

W. F. D. A. Captain R. L.
Superintending Engineer, B. D. W.

Public Works Department
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No. 33092
Proceedings of the Madras Government
Under date the 19th Decr/70
Read the following

From The Super Engineer of the S. E. (H.E. No. 74543rd Decr/70)

Under the circumstances brought to notice in this letter, the Govt authorize the re-imbursment to the Contractor of the expenses incurred by him in appealing against the decision of the Sub Magistrate at Comhaco. in the matter of the removal of earth from a Meerassidari field for the repair of

Rs 54.
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The Super Engineer
of the S. E.
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To the Secretary to Govt
P. W. D.

Dated 3rd Decr 1870
Recd 8th Decr 1870
Serial 1

No. 745

Request sanction to the disbursement of Rs 54 to a P. W. Contractor in the Comhaco Range, for the amount of costs of an appeal against the decision of the Sub Magistrate in the matter of the removal of earth from a Meerassidari field for the repair of

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The Supr Engr. to the
Controller P. Dr. acc'ts
Decr 20/12/70.

of the south bank of the

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Govt. of 1870 Madras.

PUBLIC WORKS.

To the Superintending Engineer
6th Division

Dated

Recd.

G. O. 19 Dec 1870. No. 3092

No. 119-420

Earth. The reimbursement to
a Contractor of the expenses in-
curred by him in appealing against
the decision of the Sub Magistrate
at Tambacorum in the matter
of the removal of earth from
the Meerassidari's field for
the repair of the south bank
of the river, authorized.