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(2) Date of repair 1-5-41
(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. <u>484</u>	Press <u>Mis.</u>
<u>381-82</u>	
Dated <u>17-2-</u>	18 <u>7/</u> .

Not to be folded or roughly handled

3/11/41

113

*Proceedings of the Madras Government, Public Works Department,
17th February 1871.*

No. 381. Read the following letter from the Government Pleader, to the Secretary to Government, Public Works Department, dated Madras, 6th February 1871, No 25 —

WITH reference to the Proceedings of Government noted in the margin, and in continuation of my letter of 25th February 1870, No. 17, I have the honour to forward copies of the Decree and Judgment of the High Court in Regular Appeal No 19 of 1869

2. It will be seen that the Court has decided in favour of the plaintiffs' claim, to have the cross-bund in dispute repaired out of the Rupees 1,000 which came to the hands of the Government officials, under the Magisterial decision, for that purpose. The decree directs this sum of money, or so much of it as is required for the repair of the bund, to be made over to the plaintiffs, or else that the bund be repaired by Government Officers out of the same funds. The costs of the plaintiffs appellants on appeal and in the Lower Court are to be paid by the defendants.

3. Much stress is laid in the judgment upon the injury to the plaintiffs from the continuance of the Kukur bund to the east of their village, while all the bunds higher up to the west have been removed. It will be for the local officers of the department to consider whether any alteration of the works in this respect is necessary or desirable. It would seem to be very desirable in the interests of the villages above the plaintiffs' village that the bund in dispute should not remain, and no doubt the plaintiffs themselves will not object to its removal if they are once satisfied that no loss or injury will be caused to them. In the present state of the works it does seem tolerably clear that the bund is a protection to them against inundation in times of unusually high flood, and it having been decided that they have a legal right to this protection, they cannot be expected to forego it as long as they require it.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Wednesday, the eighteenth day of January, one thousand eight hundred and seventy-one

PRESENT

The Honourable Sir C H SCOTLAND, *Kt.*, Chief Justice.

The Honourable Mr. Justice INNES.

Regular Appeal No 19 of 1869

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

Samimuttu 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 final hearing, the Court delivered the following —

Judgment — The former judgment in this appeal reduced the case to the question whether the plaintiffs are entitled to have the cross-bund in dispute repaired out of the sum, Rupees 1,000, which had been paid into the Government Treasury for that purpose, and referred for trial the issue whether the continuance of the bund was prejudicial or otherwise to the surrounding lands, and whether there was an obligation on the Government to repair it. We have now to determine the above question upon the findings returned to that issue.

*Proceedings of the Madras Government, Public Works Department,
17th February 1871.*

The finding against the existence of any obligation on the part of the Government to repair the bund has hardly been questioned, and we have no doubt that it is right. With respect to the other finding returned, we think the Civil Judge is in part right. We concur in the conclusion that in ordinary years the embankment along the north bank of the Coleroon river, and the discharge of the water through the modern improved sluices in the embankment, afford every reasonable protection to the plaintiffs' lands, and render the cross bund in dispute unimportant; that is if by ordinary years the Civil Judge means seasons in which the Coleroon does not rise to such a height as to prevent the flow of the water from the neighbouring lands through the sluices. But beyond this we think the finding unsupported by the evidence. We do not see how the Civil Judge could have come to the conclusion that the plaintiffs' cross-bund, like the others formerly existing to the west of it, had been rendered useless for any of the purposes for which it was originally constructed. There has been an embankment along the river for several years. The present sluices are really the improvements recently made, and we think the clear conclusion from the evidence is, that at the times of floods when the river rises so high as to resist the flow of any large body of water through the sluices, the plaintiffs' bund is needed for its original purposes, even more than formerly, because of the bunds to the west of it at the higher level having been removed and the Kukur bund immediately below it (marked on the Plan V W) effectually preserved, the latter having, it appears, been strongly repaired at the expense of the Government so lately as 1865. Mr Vertue, the Executive Engineer, in his letter of the 29th June 1867 (Exhibit II), says, when the river is in flood, the surplus sluices are useless, but that even then the minimum of damage would be attained by the removal of all the cross-bunds and allowing the water to flow freely. And Captain Oakes, in his evidence on the trial of the issues, after stating that cross bunds caused the lands above them to be submerged to a much greater extent than they would be if the water were allowed to flow freely over an extended area, says, "and provided the state of the Coleroon is such as to admit of drainage into it, the surplus water will find its way into it through the sluices. But the Coleroon can't receive drainage in very high floods, in which case there is no help for the land until the river falls."

It is clear therefore that at all events while the Kukur bund exists the bund in dispute is a matter of real importance to the plaintiffs as a protection from damage in times of flood, and if they had acquired the right to its continuance, they cannot be coerced to give up the benefits of the protection, and share whatever damage might happen after its removal, because the defendants and other villagers holding the lands at the higher level have thought proper to do away with their cross-bunds as no longer necessary.

Then, as to the plaintiffs' right to the bund. It appears from the order of the Collector in 1829, which the Lower Court improperly refused to receive in evidence, that it was constructed about forty years ago under an express agreement between the Collector and villagers in order to obtain the mutual benefits accruing from two crops in the year, which the villagers undertook to raise, and there is nothing in the circumstances of the case to make us doubt that the bund has been ever since preserved, and the crops raised without objection until the occurrence which has led to the present suit. In effect therefore it has been made a term of the plaintiffs' holdings that they should be allowed to continue the bund so long as it is of any material use for the purpose for which it was constructed, and the 1st to the 8th defendant and the other tenants of the neighbouring Government villages hold their lands subject to its continuance, as they held them subject also to the continuance of the other cross-bunds, which it was necessary to continue them. The doing away with the higher cross-bunds has naturally exposed those defendants to greater risk of injury from the obstruction by the plaintiffs' bund of the water which cannot pass off through the sluices, but that is no ground for throwing a greater degree of additional risk on the plaintiffs, which would no doubt be the consequence of the removal of the bund in dispute so long at all events as the Kukur bund remained. We can say nothing as to what might be the effect of the removal of that bund.

We are upon these grounds of opinion that the plaintiffs have shown their right still to maintain their bund, and having that right they are (as has been conceded on the part of the 9th

313
*Proceedings of the Madras Government, Public Works Department,
17th February 1871.*

defendant as the representative of the Government) entitled to have the bund repaired with the sum of money now held by the Government for that purpose.

There must be a decree reversing the decree of the Court below and declaring the rights. The plaintiffs' costs of this appeal and in the Court below must be borne by the defendants.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Wednesday, the eighteenth day of January, one thousand eight hundred and seventy-one

PRESENT

The Honourable Sir C. H. SCOTLAND, *Kt*, Chief Justice

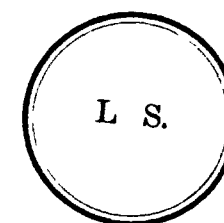
The Honourable Mr Justice INNES

Regular Appeal No 19 of 1869

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

Samimuttu and eight others Respondents (Defendants)

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



Grounds of Appeal

I—"It is not disputed that the bank in question has existed for a long time, and that the plaintiffs have a right to its continued existence."

II—"The removal of the bank or any breach therein would be positively ruinous to the plaintiffs as is evident from the evidence."

III—"The plaintiffs have proved the loss incurred by them in consequence of the wrongful act complained of on the part of the defendants."

IV—"The Civil Judge improperly refused to send a notice to the 9th defendant calling upon him to produce certain documents named by the plaintiffs in his possession and material to the cause, and to show cause why he should not give evidence in the suit."

V—"The Civil Judge is wrong in granting double costs as against the plaintiffs."

Decree—This Regular Appeal coming on for final hearing after the return of the finding of the Lower Court upon the issues referred by this Court for trial. Upon perusing the grounds of Appeal, the Judgment and Decree of the Lower Court, the finding of the Lower Court upon the said issues, and the memorandum of objections to the said finding, and upon hearing the arguments of Mr Mayne, Counsel, and Sanjiva Row, Vakil for the Appellants, and of Mr Government Pleader for the 9th Respondent, and Mr Sloan, Counsel for all the other Respondents, this Court doth order and decree that the decree of the Lower Court be, and the same hereby is, reversed, and this Court doth adjudge and declare that the plaintiffs are entitled still to maintain their bund and to have the same repaired with the sum of money now held by the Government for that purpose, and doth order that the said sum or so much thereof as is required for the proper repair of the said bund be paid over to the plaintiffs for that purpose, or be expended by the appointed officers of the Government in making such repair, and this Court doth further order and decree that the Respondents do pay to the Appellants Rupees 199-8-0 for their costs in prosecuting this Regular Appeal, together with their costs in the Lower Court.

(Signed) C H. SCOTLAND,
Chief Justice.

(Signed) L C INNES,
Judge.

*Proceedings of the Madras Government, Public Works Department,
17th February 1871.*

Memorandum of Costs

Appellants' (1st to 7th, and 9th and 10th Plaintiffs) costs

	RS	A	P.
1 Stamp for Vakalutnama. ...	2	0	0
4 Stamps used for Appeal Memorandum ...	115	0	0
2 do. for copy of the Original Decree	1	8	0
1 do. for memorandum of objections ..	2	0	0
Vakil's fee on Rupees 1,300 . . .	65	0	0
Printing charge	9	8	0
Batta and postage	4	8	0
To be paid to the Appellants (1st to 7th, and 9th and 10th Plaintiffs) by the Respondents (Defendants) ...	199	8	0

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

No. 382.

ORDER THEREON, 17th February 1871, No. 484.

IRRIGATION, No 18.

18th July 1868, No 2,286.
3rd Feb. 1869, „ 347
24th Feb. „ „ 598.

COMMUNICATED to the Superintending Engineer of the 6th Division, with reference to the orders marginally noted.

2. The High Court having, on appeal, reversed the decision of the Civil

Court of Trichinopoly in Original Suit No. 10 of 1868, and ordered that the restoration of the Yadayathemangalum cross-bank should be carried out with the monies held at the disposal of Government for the purpose, or that the Rupees 1,000 so held, or so much as is required for the restoration of the bund, be paid over to the villagers of Yadayathemangalum, Captain Oakes will follow the latter course and will take measures for disbursing the costs as ordered by the High Court

3 With reference to paragraph 3 of Mr. Handley's letter, the Superintending Engineer will take such steps as he may consider advisable for the removal of the Kukur bank if, on examination, its existence be found to have the injurious effect attributed to it.

(True Extract)

Colonel, R.E.,

Secretary to Government.

To the Superintending Engineer, 6th Division.
„ Controller of Public Works Accounts
„ Chief Engineer for Irrigation.

Exd E C. Shunker.

*In the High Court of Judicature
at Madras.*

*Tuesday, the eighteenth
day of January One thousand
eight hundred and seventy
One.*

Present:

*The Honorable Sir C. H. Scottland
Knight, Chief Justice.*

The Honorable Mr. Justice James.

Regular Appeal No 19 of 1869.

Subbarain and 8 others.

Appellants.

(1st to 7th, 9th & 10th Plaintiffs)

Sami Mutta 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 final hearing, the Court delivered
the following*

Judgment: The former judgment

in this appeal reduced the case to the question whether the Plaintiffs are entitled to have the cross bund in dispute repaired out of the sum Rupees 1,000 which had been paid into the Government Treasury for that purpose; and referred for trial the issue whether the continuance of the bund was prejudicial or otherwise to the surrounding lands and whether there was an obligation on the Government to repair it. We have now to determine the above question upon the findings returned to that issue.

The finding against the existence of any obligation on the part of the Government to repair the bund has hardly been questioned and we have no doubt that it is right. With respect to the other finding returned, we think the Civil Judge is in part right. He concurs in the conclusion that in ordinary years the embankment along the north bank of the Coleroon river and the discharge of the water through the modern improved sluices in the embankment afford every reasonable

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protection to the Plaintiffs lands and render the cross-bund in dispute unimportant. That is if by ordinary years the Civil Judge means seasons in which the Coleroon does not rise to such a height as to prevent the flow of the water from the neighbouring lands through the sluices.

But beyond this we think the finding unsupported by the evidence.

We do not see how the Civil Judge could have come to the conclusion that the Plaintiffs cross bund like the others formerly existing to the west of it had been rendered useless for any of the purposes for which it was originally constructed. There has been an embankment along the river for several years. The present sluices are really the improvements recently made and we think the clear conclusion from the evidence is that at the times of floods when the river rises so high as to resist the flow of any large body of water

through the sluices, the Plaintiffs' bund is needed for its original purposes, even more than formerly because of the bunds to the west of it at the higher level having been removed and the Rukur bund immediately below it (marked on the plan V.W.) effectually preserved, the latter having, it appears, been strongly repaired at the expense of the Govt. so lately as 1865. Mr. Venter the Executive Engineer in his letter of the 29th June 1867 (Exhibit II) says when the river is in flood the surplus sluices are useless but that even then the minimum of damages would be attained by the removal of all the cross bunds and allowing the water to flow freely. And Captain Oakes in his evidence on the trial of the issues after stating that cross bunds caused the lands above them to be submerged to a much greater extent than they would be if the water were allowed to flow freely over an extended area says
and

96
and provided the state of the Colerom is such as to admit of drainage into it the surplus water will find its way into it through the sluices. But Colerom can't receive drainage in very high floods in which case there is no help for the land until the river falls.

It is clear therefore that at all events while the Rukur bund exists the bund in dispute is a matter of real importance to the Plaintiffs as a protection from damage in times of flood, and if they had acquired the right to its continuance they cannot be coerced to give up the benefits of the protection and share whatever damage might happen after its removal. Because the Defendants & other villagers holding the lands at the higher level have thought proper to do away with their cross bunds as no longer necessary. Thus as to the Plaintiffs' right to the bund. It appears from the order of the Collector in 1829 which the lower Court is improperly refused to receive in evidence that it was constructed about 40 years ago under an express agreement between the Collector and the villagers in order to obtain the

the mutual benefits accruing from two crops in the year which the villagers under look to praise, and there is nothing in the circumstances of the case to make us doubt that the bund has been ever since preserved and the crops raised without objection until the occurrence which has led to the present suit. In effect therefore it has been made a term of the Plaintiffs' holdings that they should be allowed to continue the bund so long as it is of any material use for the purpose for which it was constructed and the 1st to the 8th Defendants and the other tenants of the neighbouring Government villages hold their lands subject to its continuance as they hold them subject also to the continuance of the other crops bunds which it was necessary to continue them. The doing away with the higher crops bunds has naturally exposed those defendants to greater risk of injury from the obstruction by the Plaintiffs' bunds of the water which cannot pass off through the ditches but that is no ground for throwing a greater degree of additional risk on the Plaintiffs which would no doubt be the consequence of the removal of the bunds.

1166
Remained in dispute as long at all events as the Kunkur bund remained. We can say nothing as to what might be the effect of the removal of that bund.

We are upon these grounds of opinion that the Plffs have shown their right still to maintain their bund and having that right they are (as has been conceded on the part of the 9th Defendant as the representative of the Government) entitled to have the bund repaired with the sum of money now held by the Govt for that purpose.

There must be a decree reversing the Decree of the Court below and declaring the rights. The Plaintiffs costs of this appeal and in the Court below must be borne by the Defendants.

(A true Copy)

(s/d) J. Klein
Deputy Registrar
Appellate Side.

In the High Court of Judicature at Madras
Wednesday, the eighteenth
day of January, One thousand
eight hundred and seventy
One.

Present.

The Honorable Sir C. H. G. Scotland, Knight,
Chief Justice.

The Honorable Mr Justice James.

Regular Appeal No 19 of 1869.

Subbavaiyan and 8 others. Appellants.
(1 to 9 and 10 Plaintiffs)

Sann Muttu and 8 others Respondents in
(Defendants)

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

Grounds of Appeal.

I. "It is not disputed that the bank in
question has existed from a long time, and that
the Plaintiffs have a right to its continued
existence.

II. "The removal of the bank or any breach
thereof would be positively ruinous to the Plffs
as is evident from the evidence.

III. "The Plaintiffs have proved the loss
incurred

L.S

Proceedings
18th January 1871
Judgment
J. R. A. No 19/69
J. M. S. 11/71

misled by them in consequence of the wrongful act
complained of on the part of the defendants.

IV. "The Civil Judge improperly refused to
send a notice to the 9th Defendant calling upon
him to produce certain documents named by the
Plaintiffs in his possession and material to their
cause, and to show, because, why he should not
give evidence in the suit.

I. "The Civil Judge is wrong in granting
double costs as against the Plaintiffs."

Decree. This Regular Appeal coming on
for final hearing after the return of the finding
of the Lower Court upon the issues referred by
this Court for trial. Upon perusing the grounds
of Appeal the judgment and Decree of the Lower
Court, the finding of the Lower Court upon the
said issues and the memorandum of objections
to the said finding, and upon hearing the
arguments of Mr. Mayne, Counsel, and
Sanjiva Rao, Vakil for the Appellants and of
Mr. Government Pleader for the 9th Respondents
and Mr. Sloan Counsel for all the other
Respondents, this Court doth order and decree
that the Decree of the Lower Court be, and the
same hereby is, reversed, and this Court doth
adjudge

15B
adjudge and declare that the Plaintiffs are
entitled still to maintain their bund and to
have the same repaired with the sum of money
now held by the Government for that purpose
and doth order that the said sum or so much
thereof as is required for the proper repair of
the said bund be paid over to the Plaintiffs for
that purpose, or be expended by the appointed
Officers of the Government in making such
repair, and this Court doth further order and
decree that the Respondents do pay to the
Appellants Rupees 199-8- for their costs in
prosecuting this Regular Appeal together with
their costs in the Lower Court

(Signed) L. H. Scotland, Chief Justice

(Signed) L. C. Innes Judge.

Memorandum of costs.

Appellants (1 to 9 and 10 Plaintiffs) costs.

1 Stamp for Vakalatnama 2-0-0

4 Stamps used for Appeal Memo. 115-0-0

2 D^s for copy of the Original Decree 1-8-0

1 D^s for Memo. of objections 2-0-0

Vakils fee on Rupees 1300-0-0 65-0-0

Printing Charge 9-8-0

Batta and Postage 4-8-0

To be paid to the Appellants (1 to 9 and 10 Plaintiffs) by the Resp^{ts} (Def^{ts}) 199-8-0

(Signed) J. B. Wigram, Acting Ref^y.

Appellate Side.

... the bund be repaired by

No 25

Madras

6th February 1871

From J. W. Handley Esq
Government Pleader
Madras

To Col. C. A. Orr C.E.

Secretary to Government
Public Works Department

Sir

G. O 6th April 1869
No. 1125 With reference to the Proceedings
of Government noted in the margin
& in continuation of my letter of 25th
February 1870 No 17. I have the honor
to forward copies of the Decree and
Judgment of the High Court in Re-
gular appeal No 19 of 1869.

2. It will be seen that the Court has
decided in favour of the plaintiff's claim
to have the Crop bund in dispute repaired
out of the Rs 1000 which come to the hands
of the Government officials, under the
Magisterial decision, for that purpose.
The decree directs this sum of money or
so much of it as is required for the repair
of the bund to be made ^{over} ~~once~~ to the plaintiffs
or else that the bund be repaired by

Proceedings

15 January 1871

Decree

R. A. 19 of 1869.

11/5/71

Government officers out of the same funds. The Costs of the plaintiffs ^{Appellants} on appeal & in the lower Court are to be paid by the defendants.

3 Much stress is laid in the judgment upon the injury to the plaintiffs from the continuance of the Rukur bund to the East of their village, while all the bunds higher up to the west have been removed. It will be for the local officers of the Department to ^{consider} ~~decide~~ whether any alteration of the works in this respect is necessary or desirable. It would seem to be very desirable in the interests of the villages above the plaintiff's village that the bund in dispute should not remain, and no doubt the plaintiffs themselves will not object to its removal if they are once satisfied that no loss or injury will be caused to them. In the present state of the works it does seem tolerably clear that the bund is a protection to them against inundation in times of unusually high floods & having been decided that they have a legal right to this protection, they cannot be expected to forego it as long as they require it.

I have the honor to be
Your most obedient servant
J M Handley
Government Pleader

196

Printed by Andrew Dwyer
No 483. 213
Proceedings of the Madras Government
Under date the 17th February 1871.
Read the following

From the Govt. Pleader
Madras.
(H.E. No 25 of 6th Feb 1871)

Communicated
to the Superintendent
Engineer of the 6th Div.
18th July 1868. No 2286.
3rd Feb 1869 — 347.
24th do — 598.
with reference to the
order marginally noted.

High Court
having on appeal
reversed the decision
of the Civil Court
of Pichinopoly, in
original suit No 107
of 1868, and ordered
that the restoration of
the Padayathemangalam
cross bank should

be carried out with
the monies held
at the disposal of
Government for the
purpose, or that the
Rs. 1000 so held, or
so much as is required,
for the restoration of
the bunds be paid
over to the villagers
of Jayathangalam,
Capt. Baker will
follow the latter course,
and will take measures
for disbursing the
costs as ordered by
the High Court.
With
as long as they require it.

53B
With reference to
para 3 of Mr. Mandley's
letter the Superintend-
ing Engineer will
take such steps as
he may consider
advisable for the re-
moval of the Tunk
bank if, on examination,
its existence be found
to have the injurious
effect attributed to it.

27
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S. Eng. C. D. ✓
5- Cont. Sec. ✓
2- Chief Sec. of Insp. ✓
Dec 21/8/71

Ab.

Pro. 15 July 1868 90-114
 " 3 Feb/69 - 96-97
 " 24 - 603-604
 " 6 April - 162-163
 " 25 Feb/70 - 90-91

836 J/591

Govt. of 1871 Madras.

PUBLIC WORKS.

1. The Superintending Engrs
 to the (Division)

Private file

Dated

Recd

G. O. 17 Feb 1871, N. 484

Nos. 381/382

Gadagammanpalam crop

Rank:- Paper orders on
 the letter from the Govt Pleader
 forwarding with remarks,
 copies of the Decree and
 judgment of the High Court in
 Regular Appeal No. 79 of 1869
 relating to the destruction
 of the Gadagammanpalam
 crop bank in the Pudukkottai
 District.

13 Feb/70 Feb 13:

as long as they require it.