

(1) Number of pages \_\_\_\_\_

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(3) Initials of the Referencer \_\_\_\_\_

# MADRAS RECORD OFFICE.

**Government of Madras.**

*Public works* **DEPARTMENT.**

|          |       |       |
|----------|-------|-------|
| G.O. No. | 1944  | Press |
| 259,260  |       | Mis.  |
| Dated    | 15-8- | 1872. |

**Not to be folded or roughly handled**

*Proceedings of the Madras Government, Public Works Department,  
15th August 1872*

No 259. Read the following letter from the Superintending Engineer, 8th Division, to the Secretary to Government, Public Works Department, dated Madura, 10th July 1872, No. 1,644:—

I HAVE the honour to request the favour of your obtaining the instructions of Government on the following points in connection with a suit about to be brought against the Executive Engineer in charge of the Southern Range, Tinnevely.

1 copy of Collector's letter, No 249, dated 29th June 1872, with five enclosures

2 Two years ago an estimate of Rupees 7,000 was received in this office for improving the Kanghyan Channel in the Ambasamoodrum Taluq of the Tinnevely District, a channel which supplies no less than twenty two tanks in its course. The estimate comprised repairs to the anicut across the Guttynuddy, the clearing of silt from the channel bed and fitting the various sluices with shutters; the estimate after the usual scrutiny in this office was forwarded to the Collector, at whose instigation the estimate was originally prepared, and having been approved by him it was duly sanctioned for execution on annual appropriations.

3. Mr Puckle, the Collector of Tinnevely, now writes to inform me—see his report to the Board of Revenue, forwarded with his enclosed letter (copy) No. 249, dated 29th June 1872—that “while the work was in progress application was made to the Civil Court, by certain persons interested, for an injunction to stay the execution of the work pending the decision of a Civil Court as to whether a certain sluice at the head of a branch channel, known as the Pallakal, should be fitted with shutters or not.” Mr. Puckle proceeds to mention “that the Court issued an injunction not to interfere with the water-supply of the Pallakal, but did not stop the work,” and that “the parties now proceed with their suit.”

4 Mr. Puckle, as it will be seen, asks my opinion as “to the right of this department to fit shutters to sluices supplying Ryotwarry lands.”

5. Mr Puckle at the same time states that “the question of right to water is a very difficult one to deal with as the law now stands,” and of course I can but assure him, in reply and with regret, that I am in no kind of position to supply him with the information which he desires.

6 As regards the present suit, the rules laid down in the Chief Engineer's Circular, 23rd June 1857, (A.) (XLV.), given at page 551 of Grant's Circular, and Standing Orders of the Public Works Department, will be attended to, and the draft answer submitted in due course. I may mention, however, that up to the present time the work has been confined principally to the repairs of the anicut and to the clearing of the channel silt. No shutters have as yet been even made for the sluices, and consequently they cannot have been either fitted or used, so that the threatened action would appear to lie on a supposed intention rather than an accomplished fact.

7. It is very desirable, however, independent of this case, that the broader question of whether the Government have, or not, the right to make such arrangements in their own channels as will ensure the equitable distribution of water to all cultivating under that channel. The question is one of very great importance

in the Tinnevely District. Sluices have been built without any reference to the area of land which they should supply, and the only manner in which the irrigation of the Tambrapoorney valley can be improved, as is most necessary, and as the Collector is most anxious should be done, is by re-adjusting and re-constructing the sluices in the channels, especially in the upper parts of the channels.

8. If the law is to step in and prohibit our altering or in any way touching a sluice, however much water may be wasted from the channel, owing to the wrong level or wrong size of that sluice, there is an end to all improvement, and the Government may as well save themselves the expense of an Irrigation Department.

9 In the North-West Provinces and in the Punjab, however, there are Acts in force declaring the Government to be "proprietors of all lakes, rivers, streams, and other natural drainage channels and collections of water," and doubtless a similar enactment will be required in this Presidency. I would refer you in this connection to Act of the Government of India, No. XXX. of 1871, published in the *Fort St George Gazette* of the 26th November 1871.

10. In a case that was tried not long since in the High Court, with reference to a channel dispute in this district, it was stated by the then Chief Justice that in this Presidency no definite rule of prescription in regard to easements had ever, in his belief, been laid down by judicial decision. He was, therefore, apparently compelled to quote the old English Common Law Rule of the time of the first year of Richard the First! the Roman Civil Law was also mentioned *en passant*; but the customary right of centuries to the control by the Government of this country of all water used therein for irrigation purposes was not even alluded to by him

11 It is passing strange, assuredly, that after so many years of occupation of the country we should have drifted into the distressing position in which we now find ourselves, when the immemorial right of the Government to the control of irrigation works should not only be disputed in a Court of Law, but that the highest Judicial authority in the Presidency should tell us that to the best of his belief no definite prescription in regard to easements had ever been laid down by judicial decision in this Presidency.

12. Independent of the wretched dispute which has led to the discussion, I have, as I am aware, only to bring the general subject to your particular notice to ensure the question being properly sifted with a view of definite instructions being furnished on the subject for the guidance of this department.

No 260. ORDER THEREON, 15th August 1872, No 1,944.

ESTABLISHMENT, No. 19.

THE Superintending Engineer of the 8th Division is referred to the Judgment in the Regular Appeal in Original Suit No. 21 of 1869.

2. He will observe that the present state of the law is not that described in paragraph 8 of his letter under reply, but that on the contrary, in the case of.

Ryotwarry land at least, the right claimed by him for Government in paragraph 7 has been affirmed in the High Court.

3. The Government are not prepared at present to entertain the general question propounded in the Superintending Engineer's letter under reply.

(True Extract)

Colonel, R.E.,  
*Secretary to Government.*

To the Superintending Engineer, 8th Division  
,, Acting Chief Engineer for Irrigation.

Exd. S. T. Austin.

N: 249.

Tuzur Cutcherry

Tinnevely 29<sup>th</sup> June 1872

From:

R. H. Pickles Esquire  
Collector

To  
Lieutenant Colonel R. A. Roberts R.E.  
Superintending Engineer  
S. Division.

Sir,

I have the honor to forward  
herewith copies of papers connected with  
2 Suits filed against the 2<sup>nd</sup> Rangir  
Officer and the Ambasamudram  
Tahsildar in the matter of the proposed  
repair of the Rangir Channel.  
2<sup>nd</sup> Rangir. The Board are wrong in  
their supposition that I intended  
shifting responsibility from one  
Department to another I merely

answered

No 1644  
Superintendent Engineer's Office & O.S.  
Madras 10<sup>th</sup> July 1872

From  
Lieutenant Colonel R. H. Roberts R.E.  
Superintending Engineer  
S. Division  
To  
Colonel C. W. Walker R.E.  
Secretary to Government C.W.  
Madras.

Sir,  
I have the honor to request  
the favor of your obtaining the instructions  
of Government on the following points  
in connection with a suit about to be  
brought against the Executive Engineer  
in charge of the Southern Range Pinnerelly.  
2. Two years ago an estimate  
of Rs 4000 was received in this Office  
for improving the Ranghyam Channel  
in

Enclosures 6.  
1 Copy of Collector's  
Letter No 249 dated  
29<sup>th</sup> June 1872  
with  
5 Enclosures.

Enclosure No 1 in a letter  
from the Superintending Engineer  
S. Division dated 10<sup>th</sup> July  
1872  
No 1644

To the Secretary to Govt  
C.W.  
Madras

P. H. 3420/72

Copy of Collector's  
Letter No 249 dated 29  
June 1872

Transmitted by

in the Ambalamoodram Taluk of  
the Tennevelli District; a Channel which  
supplies no less than 22 tanks in its  
course. The Estimate comprised  
repairs to the Aricut across the  
Guthymaddy, the clearing of silt from  
the Channel bed, and fitting the  
various Sluces with Shutters. The  
Estimate after the usual scrutiny  
in this Office was forwarded to the  
Collector, at whose instigation the  
Estimate was originally prepared, and  
having been approved by him, it was  
duly sanctioned for execution, on annual  
appropriations.

3. Mr. Puckle, the Collector  
of

of Tennevelli now writes to inform me -  
See his report to the Board of Revenue  
forwarded with his enclosed letter (Copy)  
No. 249 dated 29<sup>th</sup> June 1872, that  
"while the work was in progress application  
was made to the Civil Court, by certain  
persons interested, for an injunction to  
stay the execution of the work; pending  
the decision of a Civil Court as to  
whether a certain Sluce at the head  
of a branch Channel, known as the  
Pallakab, should be fitted with  
Shutters or not." Mr. Puckle proceeds  
to mention that the Court issued an  
injunction not to interfere with the  
water supply of the Pallakab, but did  
not stop the work, and that the parties  
now

now proceed with their Suit.

4. Mr. Pickles, as it will be seen, asks my opinion as to the right of this Department to fit Shuttles to "Sluices Supplying Ryotwari lands."

5. Mr. Pickles at the same time states that "the questions of right to water is a very difficult one to deal with as the law now stands," and of course I can but assure him in reply and with regret that I am in no kind of position to supply him with the information which he desires.

6. As regards the present Suit, the rules laid down in the Chief Engineer's Circular 23<sup>d</sup> June 1857 (A) (XLV) given at Page 55 of Grants' Circular

and Standing Orders of the Public Works Department) will be attended to, and the draft answer submitted in due course. I may mention, however, that up to the present time the work has been confined principally to the repairs of the Anicut and to the clearing of the Channel & Silt. No Shuttles have as yet been even made for the Sluices, and consequently they cannot have been either fitted or used, so that the threatened action would appear to lie on a supposed intention, rather than an accomplished fact.

7. It is very desirable however independent of this case that the broader question of whether the Government have

have, or not, the right to make such  
arrangements in their own Channels as  
will ensure the Equitable distribution  
of water to all Cultivating under that  
Channel. The question is one of very  
great importance in the Pinnerelly  
District. Sluices have been built  
without any reference to the area of  
land which they should supply, and  
the only manner in which the irrigation  
of the Tambrapoorney valley can be  
improved, as is most necessary, and as  
the Collector is most anxious should  
be done, is by readjusting and re-  
Constructing the Sluices in the Channels,  
especially in the upper parts of the  
Channels. —

8. ... If the law is to step in, and  
prohibit our altering, or in any way  
touching a Sluice, however much water  
may be wasted from the Channels,  
owing to the wrong level or wrong  
size of that Sluice, there is an end  
to all improvement, and the Government  
may as well save themselves the  
expense of an Irrigation Department.  
9. In the North West Provinces  
and in the Punjab, however, there  
are Acts in force declaring the Government  
to be proprietors of all lakes, rivers,  
streams and other natural drainage  
Channels and Collections of water,  
and doubtless a similar enactment  
will be required in this Presidency.

It would refer you in this Connection  
to Act of the Government of India,  
No. ~~XXX~~ of 1871, published in the Port  
Saint George Gazette of the 26<sup>th</sup> November  
1871.

10. In a case that was tried not  
long since in the High Court, with  
reference to a channel-dispute, in this  
District, it was stated by the then  
Chief Justice that in the Presidency  
no definite rule of prescription in  
regards to easements had ever, in his  
belief, been laid down by judicial  
decision. He was therefore, apparently  
compelled to quote the old English  
Common Law Rule of the time of  
the

the first year of Richard the 1<sup>st</sup>! the  
Roman Civil Law was also mentioned  
in passant, but the Customary ~~had~~ right  
of Centuries to the Controul by the  
Government of this Country of all  
water used therein for irrigation purposes  
was not even alluded to by him.

11. It is passing strange, assuredly,  
that after so many years of occupation  
of the Country, we should have drifted  
into the distressing position in which we  
now find ourselves, where the immemorial  
right of the Government to the Controul  
of irrigation works should not only be  
disputed in a Court of law, but that  
the highest judicial authority in the  
Presidency should tell us that to the  
best

best of his belief no definite prescriptions  
in regard to Easements had ever been  
laid down by Judicial decisions in  
this Presidency. —

12. Independent of the wretched  
dispute which has led to the discussions  
I have, as I am aware, only to bring the  
general subject to your particular notice  
to ensure the question being properly  
sifted with a view of definite instructions  
being furnished on the subject for the  
guidance of this Department.

I have the honor to be

Sir

Your Most Obedient Servant

Wm. H. P. S. Esq.

Superintending Engineer S. D.

Comp.  
S.

the same, the decision of the High Court

W. 1872 No 44  
Pro of Govt for W. 1872  
From. No 3420.  
The Supt. Engineer  
8<sup>th</sup> Division

To. The Secy to Govt  
DPW.  
Madras.

Dated. 10<sup>th</sup> July 1872  
Received. 15<sup>th</sup>

Enclosure 6.

Brings to notice certain  
Circumstances regarding a  
Suit to be brought against  
the Executive Engineer Southern  
Range Tirunelveli; and request  
definite instructions to deal  
with this and similar cases.

No 259  
W. 1872 to P. 19 July 1872

No 1944 15<sup>th</sup> Aug 72

Revenue Department  
Proceedings of the Board of Revenue.

Dated 22<sup>nd</sup> June 1872.

Read letter from the collector of Tirunelveli  
Dated 12<sup>th</sup> June 1872 No 245. Submitting for  
Sanction a draft answer proposed to be  
filed in Suit No 1 of 1872 on the file of the  
Civil Court in which the Tahsildar of  
Ambasamudram has been made a defendant.

The Plaintiffs assert a right to  
a certain sluice against government.

The collector proposes to plead  
that it was the Public Works Department  
and not he who interfered with the sluice.

This plea is irrelevant to the  
Chief question which is under litigation,  
viz whether government have a right to  
fit the sluice with shutters or not. The  
answer to the Plaint should be an  
answer on behalf of government and  
should not merely transfer responsibility  
from one Department to another.

The collector after consulting  
the professional department must report  
more in detail and show whether the  
suit can be defended on its merits or not.

If the Plaintiffs are absolute  
proprietors of the land irrigated under  
the sluice, the decision of the High Court

in special appeal 122 of 1868 applies &  
their contention is probably sound. If on  
the other hand the land is ryotwary  
land the decision of the High Court in  
special appeal 26 of 1871 applies and  
the suit is defensible.

(True Extract)

(Sigs) J. G. [unclear]

Secretary

(True Copy)

W. B. [unclear]

Collector

Compd  
W

N<sup>o</sup> 245.

Sinnamully  
June 24<sup>th</sup>. 1872

To The Secretary to the Board of Revenue.  
Madras.

Sir. The Kangiyan channel in the Ambasamudram taluk, was very much out of repair and an estimate was framed to put it in thorough order - this estimate included shutters to the sluices without which the water could not be distributed. The work was carried out under the supervision of the D.P.W. and the Tahsildar made himself useful in procuring labor and materials.

While the work was in progress, application was made to the Civil Court by certain persons interested, for an injunction to stay the execution of the work, pending the decision of a Civil Court as to whether a certain sluice at the head of a branch channel, known as the Pallakal, should be fitted with shutters or not.

2. The Court issued an injunction not to interfere with the water supply of the Pallakal, but did not stop the work.

3. The parties now proceed with their suit and I request sanction for the answer that I propose to file.

4. The date of hearing is fixed for 27<sup>th</sup> August 1872.

I have &c.  
H. K. Puckle  
Collector.

(True Copy)  
H. K. Puckle  
Collector.

To The Supg. Engineer 8<sup>th</sup> Division. Madras.

Comd<sup>g</sup>

P. N. 3420/72.

Draft answer to be filed in the  
Civil Court of Simsbury in  
Original Suit No. 1 of 1892

Plaintiffs

1. Carvary Iyer son of  
Subbayan
2. Subba Cotti Iyer son of  
Kamala Iyer
3. Karayana Chariar son of  
Harari achariar
4. Rama Chendra Rayer  
son of Ananda Rayer

Defendants

1. Subba Kutta Iyer son of  
appathure Iyer
2. Vengoo Iyer
3. Coops Iyer
4. Sija Iyer Village head  
of Pappakudi
5. Karayana Iyer son of  
Pichu Iyer
6. Andu Iyer son of Subba  
Iyer
7. Ramasubba Iyer  
all of Pappakudi Village  
Ambasamudram Taluq
8. The Tahsildar of Ambasam  
udram
9. The Sub-Engineer in charge  
of 2<sup>d</sup> Range Ambasamudram

Suit under Section 15 of  
the Civil Procedure Code  
for a declaration of the

Plaintiffs' title to a certain  
sluice in the Pallahal  
Village in the Taluq of  
Ambasamudram is that  
the sluice known by the  
name of the Pallahal  
(పల్లహల్ గేట్) sluice.

1 The river Gadana flows  
from west to East through  
the Pallahal Village  
in the Taluq of Ambasamudram.

2 The said river Gadana  
irrigates by means of the  
Pallahal sluice the  
Kunjah lands in the said  
Village of Pallahal, portions  
of which Village belong  
to Plaintiffs.

3 The said Kunjah lands  
in the Pallahal Village  
have been so irrigated by  
the said Pallahal sluice  
prior to and since the year 1802.

4 The Plaintiffs enjoy  
ment has been and is  
"longus usus nec per vim  
nec clam nec precario."

5 On the representation of  
Defendants 1 to 7, the defendants  
8 and 9 have interfered  
with and are continuing  
to interfere with Plaintiffs  
prescriptive title to and  
interest in the said sluice  
and to the water thereby  
derived.

6 By a Copper Sasanam  
made by Venkatapathi Maha-  
rajah in Salwahanasakaptham  
1572, the said Venkatapathi  
Maharajah granted the  
said Pallahal sluice in  
the Kanguzen Channel of  
the Gadana river as a  
(అర్హ-గేట్).

7 The estimated value  
of the Kunjah lands irrigated

The Kanguzen channel  
was in very bad condition  
and an estimate was pre-  
pared for its repair. This  
estimate provided among  
other things for shutters for  
the sluices. The Pallahal  
sluice was thus provided  
for, and it was intended to  
have fitted shutters to this  
sluice which was already  
grooved at the sides and so  
arranged as to carry shutters.  
The 8<sup>th</sup> Defendant had  
nothing to do with the prepa-  
ration of this estimate and  
merely assisted 9<sup>th</sup> Defendant  
in collecting labor and materi-  
als for the prosecution  
of the work.  
As the 8<sup>th</sup> Defendant has

by the said sluice is Rupees 10500. in no way interfered with the plaintiff's sluice, he prays that this suit may be dismissed as against him and that the costs may be borne by the plaintiff.

Signed R. K. Puckle  
Collector  
(True Copy)  
P. M. 3420/72

M. P. Puckle  
Collector

Comps. P. S.

N<sup>o</sup> 269

Ginnevelly  
26 June 1872

To

The Secretary to the Board of Revenue.  
Madras.

Sir,

I have the honor to forward for the Board's approval, a draft of an answer proposed to be filed to a plaint in a suit in which the Tahsildar of Ambasamudram is made a defendant.

The facts of the case are as under.

The Kanguyan channel was much out of repair and was being put in order by the Range Officer, 6<sup>th</sup> defendant, who arranged for the better regulation of the water supply by fitting the several sluices with shutters. The Tahsildar, 5<sup>th</sup> defendant, assisted him by supplying labor and materials. Hence both the Tahsildar and Range Officer have been included as defendants in the present suit.

The date of hearing was fixed for the 22<sup>nd</sup> instant, but application has been made for an extension of 2 months.

I have &c  
M. P. Puckle  
Collector.

(True Copy)

M. P. Puckle  
Collector.

To The Subg. Engineer, 8<sup>th</sup> Division, Madurai.

Camp. M.

5

The Civil Court, Lillah Tennevelly  
Original Suit No. 8 of 1872

1. Mirasidar Venkata Lakshmi
2. Chinna Krishna Iyer
3. Anantha Rama Iyer
4. Sankaranarayana Iyer
5. Naraina Iyer
6. Putta Muthu Pillai

f. Pananjady  
Gramam  
Arubasamudram  
Taluk

Plaintiffs

versus

1. Iya Iyer, Gramam Muniiff of Pananjady
2. Iya Iyer, Son of Suresh Venkataratnam Iyer
3. And Iyer Son of Sorb Iyer
4. Chundhee Nayaga Mudaliar, Son of Chidambharanada Mudaliar
5. The Tahsildar of Arubasamudram
6. The Sub Engineer in Charge 2 Range Arubasamudram

Defendants

Suit under Section 15 of the Civil Procedure Code for a declaration of the Plaintiffs title to a certain sluice in the Pananjady Gramam in the Taluk of Arubasamudram. Scilicet the sluice known by the

name of the Pananjady  
(1000 @ 1019) Sluice

1. The River Gadana flows  
from West to East through  
the Pananjady Gramam in  
the Taluq of Subbarandram  
2. The River Gadana  
irrigates by means of the  
Pananjady Sluice the Kanyah  
lands in the said Gramam  
of Pananjady portions of  
which Gramam belong  
to the Plaintiffs.

3. The said Kanyah lands  
in the Pananjady Gramam  
have been so irrigated by the  
said Pananjady Sluice  
prior to and since the year  
1802.

4. On the representations The Rangayam Channel  
of Defendants 1 to 4, the Defendants in which the Sluice in  
5 and 6 have interfered with the question stands was  
and are continuing to being repaired on estimate

interfere with Plaintiffs by the 6<sup>th</sup> Defendant who  
prescriptive title to and was assisted by the 5<sup>th</sup>  
interest in the said Sluice Defendant in procuring  
and to the water thereby labor and material.  
derived and are about to As the 5<sup>th</sup> Defendant  
Construct a floodgate in has in no way interfered  
order to prevent the usual with the Sluice named  
& hitherto uninterrupted in the plaint and is  
flow of water from the said prepared to obey any decree  
Sluice of the Court concerning it.

5. The Plaintiffs enjoy he prays that this suit  
~~may be dismissed~~ may be dismissed as  
unus nec per Venu Chee against him & that  
Claw, Chee precario. his cost be adjudged to be  
borne by the plaintiffs.

6. The properties watered  
by the said Sluice are estimated  
at Rupees 10,500. (ten thousand  
five hundred.)

7. The Cause of action  
accrued in January 1872.

Signed R. A. Puckler  
Collector  
True Copy  
R. A. Puckler  
Collector

Compd  
S.D.

Enclosures 5 in a letter  
from the Superintendent's Regn  
8<sup>th</sup> Division dated 10<sup>th</sup> July  
1872 N<sup>o</sup> 1644

To. The Secretary to Govt  
D. P. W.  
Madras.

P. W. 3420/72.

Copies of Correspondence  
See 15<sup>th</sup> July 1872 L. A. 1257

N<sup>o</sup> 1944.

3000

The Superintendent  
Engineer of the 8<sup>th</sup> Di-  
vision is referred to the  
Judgment in the  
Regular appeal in  
original suit No 21  
of 1869.

He will observe  
that the present  
state of the law is  
not that described  
in para 8 of his  
letter under reply

1872-73  
1873-74  
1874-75

but that on the con-  
-trary, in the case  
of ryotwary land  
at least, the right  
claimed by him  
for Government  
in para 7 has been  
affirmed in the High  
Court.

The Government  
are not prepared at  
present to entertain  
the general question  
propounded in the  
Superintending Engineer's  
letter under reply.  
in and with  
G.M.

Chs 3420.

Govt. of 1872: Madras.  
PUBLIC WORKS.

To the Superintending Eng<sup>r</sup>  
of the Division

Dated

Recd.

Recd.

G. O. 15 Aug 1872, No. 1944.

Nos. 257 & 260

Suit - Passing orders on the  
letter from the S. Eng<sup>r</sup> of the  
8th Div<sup>n</sup> requesting instructions  
on certain points connected  
with a suit about to be brought  
against the Eng<sup>r</sup> in charge  
of the Southern Range, Timmerville.

1 Aug 8th Dec  
Ch Eng<sup>r</sup> for Div<sup>n</sup>  
Recd 22/8/72