

(1) Number of pages _____

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MADRAS RECORD OFFICE

Government of Madras

Public Works DEPARTMENT

G.O. No.	810	(W)	Press
B.P. No.			Mis.
Dated	23-3-	1875	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
23rd March 1875.*

No. 552. Read the following letter from W. S. HARRINGTON, Esq., District Engineer, Malabar, to Colonel G. W. WALKER, R.E., Secretary to Government, Public Works Department, dated Calicut, 10th March 1875, No. 230:—

ADVERTING to G. O., No. 2,926 A, dated 13th October last, I have the honor to forward copy of a decree passed by the District Munsif, Tellicherry, dismissing a suit brought against Overseer Francis by one Guatjala Amboo, both the plaintiff and two defendants to bear their own costs. The cost awarded by the Court against Overseer Francis is Rs. 8-8-10,

	RS	A.	P.	
Vakeel's fee	15	0	0	but the amount actually incurred by
Batta deposited for witnesses	2	8	0	the Overseer is Rupees 18-4-0, as per
Stamp for Vakalathnama	0	8	0	margin, which I trust I may be author-
Writing fee...	0	4	0	ized to pay, as it does not appear that
Total	18	4	0	Overseer Francis was in any way to
				blame.

2. I have also the honor to enclose copy of letter, No. 458, dated 4th instant, from the officer in charge of the Cannanore Range, urging that Overseer Francis should be recouped the expenses incurred by him in defending the suit.

No. 553. ORDER THEREON, 23rd March 1875, No. 810.

ESTABLISHMENT, No. 40.

UNDER the circumstances represented His Excellency the Governor in Council sanctions the payment of Rupees 18-4-0,

being the costs incurred in defending the suit.

(True Extract.)

Colonel, R.E.,

Secretary to Government.

To the District Engineer, Malabar
.. Controller of Public Works Accounts.

Erd S. T. Austin.
Spare Copies

Suit No. 258 of 1874.

In the Court of the District Munsif of Tellicherry
Present - E. H. Richardson Esq. District Munsif

Pattalai alias Kattayala Ambu —

By Taki Kumbhar —

By Taki Kummaya Amma —

1. Chinn Mannan —

2. R. Francis —

1st and 2nd Defendants by

Taki Periyar Ramani —

3rd by Taki Krishnan —

Plaintiff

Defendants

The Plaintiff says to have removed a
channel made in 1st Defendant's land by the
2nd Defendant an Officer of the Department
of Public Works, whereby his land "Karakat"
marked B in the plan is said to have been
flooded, and also to recover damages as dam-
age alleged to have been sustained by the wrong-
ful acts of the 1st and 2nd Defendants and
to have restored a channel said to have existed
in the 1st Defendant's land parallel to the
public road for draining the water down
let in his (Plaintiff's) land.

2. The 1st Defendant denies the existence

of a channel in his land parallel to the Perigo-
lam road and alleges that the 2nd Defendant
without his permission did open a channel
for draining the water by the tunnel &c.
in the said road that the 1st Defendant has
no objection to its being filled up that the in-
crease of water brought down by the tunnel has
been increased by the Plaintiff damming
up his other outlets and that he is not res-
ponsible for any damage the Plaintiff might
have sustained by the floods.

3. The 2nd Defendant alleged that
finding that tunnel C was choked up by
mud and the road damaged by water con-
fusing the same he in the exercise of his
duty cleared the tunnel and opened up a
small channel in 1st Defendant's land for
the free flow of water through the tunnel that
the 2nd Defendant ought to have continued
the channel up to the brook &c. that he is not
responsible for the damage the Plaintiff might
have sustained by the heavy increase of
last year and that he never intended to
do any harm to his Plaintiff's land.

On the 3rd October the following
issues were recorded.

1. Whether the 2nd Defendant has com-
mitted any tortious act in constructing
the channel in dispute.

2. Whether the volume of water passing through
the tunnel A has been increased by any act
of the Plaintiff.

3. Whether there was formerly a channel in
the direction of the parallel to the public road
and whether it was filled up by the 1st Defendant.

4. Whether the Plaintiff sustained damage to
the extent of Rs 100 by the construction of
the channel in dispute.

5. Whether the Defendants are liable for the
damage claimed.

Plaintiff's Exhibits

A. Attested copy of a petition presented
by the Plaintiff to the Sub. Magistrate of
Tellicherry against the 1st Defendant Kanna-
nan Kachayappan complaining of his having
let in water into his Plaintiff's land Marakut
by breaching a bund dated 14th Chingam
1040.

B. Attested copy of an order addressed by
the Sub. Magistrate of Tellicherry to the Adhikary
of Mailam jamm directing him to cause
water to flow as formerly dated 28th August
1865.

C. Attested copy of the report of the Adhikary
stating the breach complained of has been
repaired. Dated 1st September 1865.

D. Attested copy of a petition addressed
by

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by the Plaintiff against the Defendant...
 -navan...
 to that in A Dated...
 B. Attested copy of the...
 -kary of...
 complained if...
 Original complaint...
 Plaintiff to the...
 against the 2nd Defendant...
 the channel in dispute...
 endorsed on it...
 dated 30th March...
 as he thought that no...
 to occur...
 Plaintiff...
 1. Karayi...
 2. R. Francis...
 3. Cherware...
 4. Pudukudi...
 Defence...
 1. Azatyela...
 2. Cherware...
 Judgment...
 On a...
 spot I am satisfied that the channel...
 ought to be removed...
 and

and that the Plaintiff has brought on himself
 the damage he claims by his wilful neglect
 to dig a channel in his land in continuation
 of the disputed channel so as to drain the
 rain water into the brook marked K in the
 plan. It is admitted that the tunnel X
 drains the rain waters coming down by
 several lanes from a great distance, and
 unless it is kept open during the monsoon
 the road above it would be inundated
 and damaged. It is the 2nd Defendant's
 duty to see that no damage is done to
 the road which is under his charge.
 6. When the tunnel X was first
 built the 1st Defendant's land was
 no doubt lower than it is at present and
 it must have become higher by the gradual
 accretion of mud and silt brought down
 by the current through the tunnel. At
 present the level of the land is several feet above
 that of the tunnel and consequently the mere
 clearing of it without making a channel
 on a level with it to permit of the free flow
 of water, would not have improved the con-
 dition of the road. When water came in
 it dribbled through X when it was partially
 choked up it might have been drained
 into 1st Defendant's land by a breach

in the line of his 1st Defendant's land parallel to the road, as spoken to by the Plaintiff's 3rd and 4th witnesses. The truth was that as stated by the defence 2nd witness the tunnel X was hitherto left filled with mud and sand until the 2nd Defendant cleared it up, and the water coming to the mouth of tunnel used to be drawn partly through the line Z. But that line is private property and if shut up by the owners of the parambas between which it runs, at the same time the tunnel X was choked up, the road at X is certainly have been breached. It is 2nd Defendant's duty to see that the safety of the road under his charge does not depend upon the whims of the proprietors of the parambas situated between and to make use of the tunnel X for what it was intended. The Plaintiff's former complaints as per exhibits E and C cannot lie up 2nd Defendant's hand.

7. The 1st Defendant's allegation that the dams at P and Q were recently made by Plaintiff and another person and occasioned a greater flow of water to Z is false. It is proved that they have been in existence from a very long time.

8. The 2nd Defendant in his examination states that he did not get 1st Defendant's permission to make the channel. If so, he did wrong. It was his duty to have consulted both Plaintiff and 1st Defendant as to the making of a channel and if they had refused to assist him to have taken proper steps to get the land for public purpose under the provisions of the law bearing on the subject.

9. For the above reasons I dismiss the suit but without costs.

Signed, C. H. Krishnan
District Munsif

In the District Munsif's Court at Tellicherry
No. 253 of 1874.

Present C. H. Krishnan B.L. Munsif

Gnathala Ambor alias Pathalai Ambor of Mazilanjamm Deshom and Ambor of Kotiam Salug by Fakir Kunen 2 nd Kunn Maya Ramen	} Plaintiff

Karage

Karaye Mannen of Mayilam-
 jamun Amshom and Deshom
 of Kotham Salug.
 2. Kotham Salug Oversee R. Francis
 of Chonokakum Deshom in
 Tellicherry Amshom
 1st and 2nd by Takil P. Ramen.
 2nd by Takil Krishnayen

Suit for recovery of 100 Rs. and
 -ages together with costs and interest
 there after and also to order the removal
 of a water channel made on the Karamat
 Nilam to its former course. the amount
 of the Suit calculated at Rs 16-10-00 five
 times the Government assessment of the land
 viz Rs 3-6-00

Filed on the 5th June 1874
 Decree

It is ordered that the Suit be dis-
 missed but that each party do bear his
 own costs. 11th January 1875.

Plaintiff's Cost.
 Stamp duty on the plaint. Rs 4-0-0
 -10-0 for Takalatnama
 Takul's fee 5-0-0
 Batta for issuing summons 5-12-10
 other Stamp duty 2-8-0
 Stamp duty on the decree 1-0-0

First Defendant's cost
 Stamp duty on Takalatnama
 and Deposition 1-0-0
 Takul's fee 5-12-10
 other Stamp duty 4-8-0
 Batta for summons 1-4-0
 Total Rs 8-8-10

Second Defendant's cost
 Stamp duty on Takalatnama
 and Deposition 1-0-0
 Takul's fee 5-12-10
 Batta for issue of summons 1-4-0
 Total Rs 8-8-10

Particulars of Disbursements
 Plaintiff and Takalatnama 2. Summons 6.
 1st Defendant's deposition and Takalatnama 2.
 2nd Defendant's deposition and Takalatnama 3.
 Copy of issues 1. Miscellaneous petitions 3. Plan
 produced by Plaintiff 1. Plan produced by
 1st Defendant 1. Plan produced together with
 deposition 1. Plaintiff's Exhibits and list of Wit-
 nesses 7. 1st Defendant's list of Witnesses 1.
 2nd Defendant's list of Witnesses 1. Depositions
 of Plaintiff's Witnesses 4. Depositions of
 Defendant's Witnesses 2. Decree 1.
 Plaintiff filed on the 5th June 1874
 Pleadings completed 30th October 1874

Case

Case heard on the 5th and 7th January 175th
Decree 11th January 175th

Signed/ C. H. Krishnan.

District Munsif

/ True copy /

Signed/ C. H. Krishnan.

District Munsif

Compared

Signed/ Raffles

Magistrate.

Copy applied for 5th February 175th

Copy made 25th February 175th

Signed/ C. H. Krishnan.

District Munsif

/ True copy /

W. S. Ramington

S. Engineer & alderman

N^o 455.

Cannanore 4th March/75.

From

The Assistant Engineer
Cannanore Range, Malabar

To

The District Engineer
of Malabar D. P. W.

Sir,

I have the honor to forward the judgment of the Munsif in the case of Oversee Francis. Although he has found for Government he does not give cost, as I anticipated he would in my letter N^o 456 of 27th January 1875 because as he states, Overseer Francis neglected to ask the 1st defendant permission to open a channel to lead water from the tunnel although the 1st defendant never objected in the least to the channel being opened. I hope Government will allow the cost. The case was most vexatious and frivolous, and had already been decided by the Tahsildar once, but not being satisfied the Plaintiff brought this Civil Action causing much trouble and taking up a good deal of the Overseer's time in defending it. I respectfully request that you will

Enc. letter from
the Dist. Engineer
Malabar, to the
Secretary to Govt,
D. P. W., Madras,
dated 10th March
1875, N^o 230.

Copy of judgment
and decree in
suit of Francis
vs Overseer
Cannanore Range

Mr. 1655/
2/75.

will ask government to allow the cost.

I have &c
(Signed) A. C. Roberts, Lt. R. E.
Assistant Engineer, Malabar

(True Copy)
W. H. Hainington
S. Engineer Malabar

Malabar District Office
 No 230. Calicut 10th March 1875

From The District Engineer
 Malabar

To The Secretary to Government
 Public Works Department
 Madras

Sir, Adverting to G. O. No 2925
 A dated 15th October last, I have
 the honor to forward copy of a
 Decree passed by the District Munsif
 Tellicherry dismissing a suit brought
 against Oversee Francis by one
 "Guatuala Ambos", both the
 Plaintiffs and two Defendants
 to bear their own costs. The Cost
 awarded by the Court against
 Oversee Francis is Rs 8-8-10, but
 the amount actually incurred
 by the Oversee is Rs 18-4-0 as
 per margin, which I

Vakeeli fee	Rs 15-0-0	per margin, which I
Batta deposited for witnesses	Rs 2-8-0	trust I may be author-
Stamp for Vakeel	Rs 4-8-0	ized to pay, as it does
Writing fee	Rs 18-4-0	not appear that Oversee
		Francis was in any way
		to blame.

I have also the honor
 to enclose copy of letter No 458
 dated 4th Instant from the Officer
 in charge of the Cannanore
 Range urging that Oversee
 Francis should be re-couped the

In a letter from the
 Dist. Eng. Malabar
 to the Secy. to Govt.
 D. O. No. Malabar 970
 dated 1/10/75 No 230.

Copy of letter from
 the Dist. Engineer
 Cannanore Range
 to the Dist. Engineer
 Malabar, submitting
 copy of judgment
 in suit by Ambos
 against Oversee
 Francis
 D.O. No 1655/75

the expenses incurred by him
in defending the suit.

I have the honor to be
Sir
Your most obedt. Servant

W. Livingston
District Engineer
Malabar

P. M. 1875 Del.

of the Western Engineer

of the Dictionary to Court

W. P. H. H.

Marches

Patent 117 March 1875

No. 230

Arch: 2. V

Forwarded copy of
Review passed by the
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P. 3-4, being the sum
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and interest.