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Ans 10553 ✓

N^o 2955 Wd/ Dec 10. 1885

Govt. of (1885) Madras.

LEGISLATIVE.

Comd to the
C. & for I and
the S. E. & C.
the S. E. & C.



S.E.C.

8/12/85

Issued

Recd. 7/12/85

Encl.

G.O., 1st December 1885, No. 175.

N^o 2955 Wd/ Dec 10. 1885

8.12.85

DECEMBER.

C. & for I
S. E. & C.

Dec 10 - 12. 85

Irrigation and Navigation Bill.

Communicating to the Select Committee on the papers relating to the cutting of breaches in tank bunds by ryots of the South Arcot district.

One Copy to only

Ans 10553

8/12/85

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper:—

From Lieutenant-Colonel J. L. L. MORANT, R.E., Superintendent of Works in charge of II Circle, to the Chief Engineer for Irrigation, dated Bezvada, 21st October 1885, No. 1436-K.S.

In respectfully inviting attention to the subject of the cutting of the river bank at Puligedda by an individual named Mandali Ramaswami, in my letter, No. 993-K.S., of the 15th August last, wherein I pointed out the necessity for some special legislative action on the part of Government to put a stop to such injurious and mischievous acts, I have the honor to forward, herewith, copy of a report by Delta Superintendent, Chendrasekhara Row, of another instance of ryots cutting breaches in tank banks and supply-channel banks without obtaining the permission of any officer, either of this, or of any other department.

2. I beg to invite your particular attention to Mr. Grant's remarks at the foot of the report, and as this has reference to the case reported in my letter, to which I have invited your attention, I trust you will be able to furnish me with early instructions on the same.

3. The banks of large and dangerous rivers like the Kistna and Pennér, and the bunds of tanks and channels on which the supply of water to many acres of land depend, cannot, I submit, be allowed to be tampered with at the caprice of any individual who may conceive his little land, or property, or even life, is endangered by the height of the waters. Still less can such a person be allowed to do so merely that his fields may be supplied with more water. In justice to *all*, some one must have the controlling power which he can legally carry out: it matters not in whose hands it is invested.

ENCLOSURE.

From M.R.Ry. K. CHENDRASEKHARA ROW PANTULU, Delta Superintendent, to the Officer in charge, Southern Sub-Division, Kistna, dated Viswanadhapalli, 3rd October 1885, No. 93.

I beg to inform your honor that there are no lists of palmyra sluices put in tank bunds in Devi. Ryots cut breaches in tank banks and supply-channel banks without application and taking permission from any officer. These breaches are left open without putting any palmyra spouts or pendals over it. They gradually become wider and cause hindrance to people walking over the banks. Your honor has seen some of these breaches.

2. I therefore request to know what is to be done when I see such breaches. If the ryots are to take permission before they breach the banks for taking water for irrigation purposes, I request to publish the same in the District Gazette for general information.

No. 267.

Forwarded to the Divisional officer for orders.

(Signed) J. INGLIS,
Asst. Engineer Sn. Sub-Division.

6th October 1885.

No. 2312.

Forwarded to the Superintending Engineer for orders. The High Court having ruled that it is no crime to cut the river bank, our efforts to stop such mischievous acts are, of course, of no avail.

BEZVADA,
8th October 1885.

(Signed) J. D. GRANT,
Executive Engineer.

No. 94-E.W.

Transferred to the Chief Engineer, Public Works department, in continuation of this office No. 83-E.W., dated 7th September 1885.

CHEPAUK,
30th October 1885.

(Signed) A. W. SMART, Captain, R.E.,
for Chief Engineer for Irrigation.

No. 1807-C.

Transferred to the Legislative department, in continuation of No. 616-E., dated 18th September 1885.

CHEPAUK,
10th November 1885.

(Signed) D. McN. CAMPBELL, Captain, R.E.,
Under Secy. to Govt., P.W.D.

ORDER—dated 14th November 1885, No. 164, Legislative.

Communicated to the Select Committee on the Irrigation and Navigation Bill.
(True Extract.)

H. A. STUART,
Ag. Asst. Secy. to Govt.

To the Honorable Members of the Select Committee
on the Irrigation and Navigation Bill.

Public Works Dept.

P.W.D.

Govt. of 1885 Madras.

LEGISLATIVE.

No 2827 May 26 100/85

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OW 10090/85*

*Communicated to
the Chief Engineer for
Irrigation and the
Suptg Engr II Circle.*

*one copy for Chd 10165
24/11*

Issued

Recd.

Encl.

G.O., 14th November 1885, No. 164.

Sy J.S.S.

No 2827 May 26 100/85

NOVEMBER.

Irrigation and Navigation Bill.

Communicating to the Select Committee papers from the Public Works department on the subject of the cutting of breaches in tank banks and supply-channel banks without permission.

*Engr for Irry.
Suptg Engr II Circle*

Written by

1ST DECEMBER 1885, No. 175, LEGISLATIVE.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper:—

From J. C. LARMINIE, Esq., Executive Engineer, South Arcot division, to the Superintending Engineer, V Circle, dated Vanamadevi, 12th November 1885, No. 578.

With reference to G.O., No. 2505 W., dated 23rd October 1885, circulated with your No. 3177, dated 26th October 1885, I have the honor to invite attention to the fact that the cutting of the Veeranam tank bund in this division during the floods of last December by certain ryots of Vattathur was an exactly parallel case to the one alluded to by the Superintending Engineer, II Circle.

2. In the former instance, however, seven of the delinquents were punished by imprisonment for six months.

3. The District Magistrate, South Arcot, represented to the High Court the inadequacy of this punishment, but the sentence only just escaped being reversed altogether.

4. Considering the valuable interests which were imperilled by the cutting of this bund, the punishment, though, no doubt, awarded in strict accordance with the law as it now stands, was not nearly severe enough.

5. All the papers connected with the case were submitted with this office Nos. 405 and 426, of 6th and 17th August 1885, and as it is a striking instance of where great loss of life and property might have resulted from an act any ryot is any day capable of, I would venture to suggest that the papers should also be laid before the Select Committee on the Bill to provide for Irrigation and Navigation in the Madras Presidency.

ENCLOSURE.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Monday, the twentieth day of July, one thousand eight hundred and eighty-five.

PRESENT:

The Honorable Mr. Justice HUTCHINS.

The Honorable Mr. Justice PARKER.

Criminal Revision Cases, Nos. 309 and 310 of 1885.

In No. 309.—Karuppan, Ramaswami Padiyachy, Appu Padiyachy and Vythi Padiyachy.
In No. 310.—Runga Padiachi and Muruga Padiyachy.

Accused in Calendar cases, Nos. 9 and 10 of 1885, respectively, on the file of the Head Assistant Magistrate of South Arcot.

Cases referred for the orders of the High Court, under section 439 of Criminal Procedure Code, by the District Magistrate of South Arcot in his letter, dated 30th June 1885, No. 203.

These cases coming on for hearing, upon perusing the letter of reference and the records submitted therewith, the Court delivered the following—

Judgment.—In these cases certain persons have been convicted of cutting the bund of a large tank, knowing that they were likely to cause thereby (1) a diminution of the supply of water for agricultural purposes, and (2) an inundation. They were each sentenced by the First-class Magistrate to six months' rigorous imprisonment. The District Magistrate submits that this is an inadequate punishment, but no one has been instructed to appear on his behalf.

The evidence shows, and nearly all the accused admitted, that they made the cut secretly at night, and that their object was to let off a portion of the water, as their houses lie within the tank and were submerged. They say that they did not at first realise the probable consequences, but that when they did, and fearing they might themselves be swept away, they filled in the breach just as the water began to flow through it, and made the bund secure, at all events for the time.

What the overseer found next morning would be consistent both with the statements made by the defendants and with their having cut down the bank sufficiently to let the water begin to run off and then left the bank to its fate; in the latter case, the breach was providentially closed by the sides of the cut falling in, and in that case the accused might have deserved a more severe penalty. But the Magistrate has adopted the more lenient view of the offence, and not without reason.

We must hold therefore that although the accused went with the knowledge that they were likely to cause most serious mischief and actually made a cut which, if left to itself, would probably have caused a disastrous inundation, they repented just in time and so far remedied their act as to have prevented any bad consequences ensuing.

In this view of the case, we are certainly not prepared to enhance the sentence.

Indeed, we have thought it necessary to consider whether the accused were not entitled to the benefit of the provision that "nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of avoiding other harm" (section 81). But in this case the harm sought to be avoided, so far as it has been brought out by the evidence, does not appear to have been so imminent as to justify or excuse the enormous risk of the act done.

We will not therefore interfere.

Ordered accordingly.

(Signed) W. MORGAN,
Dy. Registrar, Appellate Side.

No. 3588.

Submitted to the Chief Engineer for irrigation, with the recommendation that the papers be transferred for consideration by the Select Committee on the Bill to provide for Irrigation and Navigation in Madras Presidency.

2. The High Court's judgment referred to by the Executive Engineer is enclosed.

BANGALORE,
21st November 1885.

(Signed) W. H. BURTON, Col., R.E.,
Offg. Superintending Engineer, V Circle.

No. 100 E.W.

Forwarded to the Chief Engineer, Public Works department, with a view to the papers being laid before the Select Committee on the Irrigation and Navigation Bill.

CHEPAK,
23rd November 1885.

(Signed) A. W. SMART, Captain, R.E.,
for Ag. Chief Engr. for Irrigation.

No. 1979 C.

Transferred to the Legislative department, in continuation of No. 1807 C. dated 10th November 1885.

(By order.)

CHEPAK,
27th November 1885.

(Signed) D. McN. CAMPBELL, Capt., R.E.,
Under Secy. to Govt., P.W.D.

ORDER—dated 1st December 1885, No. 175, Legislative.

Communicated to the Select Committee on the Madras Irrigation and Navigation Bill.

(True Extract.)

H. A. STUART,
Ag. Asst. Secy. to Govt.

(True copy)
H A Stuart
Ag. Asst. Secy to Govt
Legislative Dept

To the Honorable Members of the Select Committee
on the Madras Irrigation and Navigation Bill.
" Public Works department.

Exd. A. Raitt.

5-A. Cup