M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1953 Press ~~Mis.~~

122 123

Dated 8—10— 1861.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 8th October 1861.

No. 122. Read the following Proceedings of the Board of Revenue, dated 21st September 1861, No. 5,118 :—

Read the following letter from A. WEDDERBURN, Esq., Collector of Cuddapah, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Chepauk, dated 30th August 1861, No. 105.

SIR,

1. I have the honor to inform you that the Suit in the Moofty Sudder Amín's Court which I was authorized in Board's Order of 15th August 1860, No. 3,748, to defend on the part of the 4th Defendant, the late Acting Collector Mr. Fraser, at Government expense, has been decided in favor of Plaintiffs, but without damages, each party to pay his own costs, those of 4th Defendant being Rupees 39-11, the fees of the Government Pleader.

With translation.

2. I enclose a copy of the Decree* which has been appealed against by the Ist Defendant to the Civil Court, who have, I understand, stayed the lower Court's order, regarding the Plaintiff's right to the entire channel water, until the case has been considered in appeal.

3. The time of appeal being so short, and the translation of the decision not having been prepared in time, I have not had the opportunity of lodging an appeal, which is of the less consequence, as damages are not involved. The Government interest in the matter regarding the surplus water is very trifling, and the item of Tirwajasty cannot properly conflict with the Plaintiff's vested right to the channel water for their wet lands ; the question of surplus water must always be a difficult one, as it seems the dry fields are situated on the higher bank of the irrigating channel opposite the wet fields, and until the wet crops of the latter are harvested, it will be doubtful whether water can be spared for the dry land, whose extra cess according to the Court's inquiry seems to have been determined by the existence of wells, and not from facility of using the channel water. As a rule, wet lands should be fully supplied before any water is taken for the irrigation of dry land, but the decision of the Civil Court will finally settle the question involved. A more correct representation of the case to my predecessors would, doubtless, have led to the same decision as that of the Moofty Sudder Amín, who made a local inquiry and survey of the land in dispute, and whose decision to my mind seems equitable. The final decision of the Civil Court will, however, be communicated when ascertained.

See plan prepared at my request herewith forwarded.

NOTE.—The plan was prepared, not for the elucidation of the dispute, but for the purpose of ascertaining the capability of the dry field, No. 9, to bear a higher rate of Tirwajasty, as desired in paragraph 4 of the Government Proceedings of 13th August 1860, No. 1,346.

In Cons 14th August 1860, No. 3,994.

1. Ordered that the above letter be submitted to Government, with reference to their Proceedings, No. 1,346, Revenue Department, dated 13th August 1860, sanctioning the defence of the Suit.

2. The Plaintiffs sued for damages alleged to have been sustained by the assignment to the 1st Defendant of one-sixth share of the water of the channel on which their wet cultivation was dependant, and included the Acting Collector as having enforced that assignment to their detriment and loss.

3. It was pleaded in defence that the 1st Defendant's land was ordered to receive water after the wet cultivation had been supplied; that for 17 years, the 1st Defendant's land had been cultivated by the Plaintiffs by means of the channel water ; that through enmity at their lease not being renewed on their own terms, they brought the suit; and that they received no damage by the order continuing to the 1st Defendant the share of the channel water.

4. It was further pleaded that the channel was a Government work, and that consequently surplus water obtainable from it, after supplying all existing prior claims (as had in this case been done) might be applied in any way Government might think fit.

5. The Moofty Sudder Amín has decreed that as 1st Defendant's land is classed as dry, and is dependant for irrigation to the wet crops occasionally grown on it and charged with Tirwajasty on wells, and on the surplus water flowing from the channel on to the lands classed as wet and thence on to the dry land in question, therefore it was not right to allow to the 1st Defendant a

Defendants in the

water-course direct from the channel in excess of the established number of water-courses to the wet lands, and that the 1st Defendant's tenant 2nd Defendant should water his cultivation on it with channel water, only when it could be secured as the surplus water-flowing of his wet lands.

6. It was, therefore, decreed that the water should as heretofore flow by only the five water-courses from the channel on to the village lands.

7. The Moofty Sudder Amín refused to go into the question of the alleged damages sustained by the Plaintiff's and decreed each party to bear his own costs.

8. The Judgment was given on the 11th July, and the fair copy of the Decree was received on 23rd idem. The time for appeal expired on 9th August, and the Collector has allowed it to pass; the 1st Defendant has however appealed, and the lower Court's order regarding the Plaintiff's right to the entire channel water has been stayed pending decision on the appeal.

9. The Collector remarks that the interest of Government in the matter as regards the surplus water is very trifling, and that the question must always remain a difficult one as the dry lands are situated on the higher bank of the channel opposite the wet lands, and until the wet crops are harvested, it must be doubtful whether surplus water exists, and can be spared for the dry lands.

10. The Board consider the question of surplus water a very important one, and that the Collector was wanting in the performance of his duty to Government, when he allowed the appeal time to pass without giving the Board or Government an opportunity of considering whether they should accept the decision of the Moofty Sudder Amín.

11. The water belongs to Government, the channel is a Government work, and the land in question has for 17 years been irrigated by means of that water, apparently by the surplus off the wet lands which are supplied by a water-course from the channel.

12. There may be a reasonable objection to allowing a new water-course to be taken off the channel for the supply of this land which remains in the class it was originally placed in, viz., that of dry land, though it has for years past been cultivated and taxed as wet, but the prescriptive right of the cultivator to the water, which is shown by his 17 year's enjoyment of it, should have been upheld and secured. This right appears to be denied and endangered by the Decree, and to this extent the Board consider it faulty, and the Collector's acquiescence in it objectionable.

13. The Government can distribute the water belonging to it as it pleases so long as prescriptive rights are not interfered with, or, in other words, having provided a sufficient supply for the ordinary Nanja cultivation, it may apply the surplus as it deems best. The Ryots of the village cannot be permitted to determine what shall be done with the surplus, nor to intercept it, and dispose of it as they please.

14. The Board consider that the Moofty Sudder Amín was wrong on limiting the 1st Defendant's right to the use of the surplus water from his own wet land and decreeing that he had no right to water from the channel, which he had enjoyed for many years and had been permitted by the Revenue authorities to take, but as the time for appealing has lapsed the matter must remain as it is. The decree should in their opinion not have been accepted.

(A true Copy and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

No. 123. ORDER THEREON, 8th October 1861, No. 1,953.

1. The Governor in Council concurs in the remarks of the Board and in the censure they have properly passed on the Collector.

2. The only course now open for adoption is to instruct the Collector to aid the Appellant (1st Defendant in the O. S.) in his appeal. The Board will instruct Mr. Wedderburn accordingly, and report the result of the appeal in due course.

(Signed) J. D. SIM,

Secretary to Government.

Note. The Collr's conduct in
this case is very censurable.
The decree was pronounced
on the 11 July and he obtained
a copy of it on the 23d. yet
his report to the Bd is dated
30 Augt, a week after the
appeal time expired. I
do not see what Govt can
now do in the matter beyond
censuring the issue of the
appeal by the other Defts.

J Bs

- I concur in the Boards remarks
on the censure passed on the Collector. Re-
- ject acting the Govt will advise in conducting
his appeal. I do not see what can be done by

Rec'd 13th August 1862 Vol 137 138

Rev 1861 Department.
Pro: of Govt for October-
No. 23603

PROCEEDINGS of the BOARD of REVENUE,

Dated 21st September 1861.
Despatched. 1 Oct
Received. 2nd Oct

E-1.41 Olan Returned
(Encl)

No. 5,118.

Special

Submitting with observations a letter from the Collector of Cuddapah reporting the result of a Suit in the Moofty Sudr Ameen's Court regarding the right to channel water.

No 122.

5 October

For Orders
No 1953. 8th October.
Write a vale L

Revenue Dept

No 1953

Proceedings of the Madras Government

Under date the 8th October 1861.

Read the following

Proceedings of the Board

of Revenue.

Submitting with observations a letter from the Collector of Cuddapah, reporting the result of a Suit in the Moofty Sudr Ameen's Court regarding the right to channel water.

(Rec'd enter 21st Sept 1861 No 5718-

The Governor in Council concurs in the remarks of the Board and in the censure they have properly passed on the Collector.

The only course now open for adoption is to instruct the Collector to aid the appellant (the Defendant in the

C. S. in his appeal.

The Board will instruct Mr. Wedderburn accordingly and report the result of the appeal in due course. —

N. L.

Copy to the Bp of Rev with 2 Protos Disp. 8

Pted Copies to do. Disp. 9

Regarding the suit in the Cuddapah Moonsiff's Court, and Sudder Ameen's Court, on appeal, relative to a Channel water.

29-6-63

Revenue 1861 Departt.
Pro: of Govt. for October.

No. 1953.

Pro: of the Madras Govt.

dd 8th October 1861.

Extract Bd of Rev. 18 Octo/61
No 2493. in Proc. 30: Oct.r
No: 2075

Approving of the censure passed by the Board on the Collector of Cuddapah with respect to a suit in the Munsiff's Sudder Ameins Court regarding the right to a Channel water.

No/122 & 123.