M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2075	Press / ~~Mis.~~
368. 369	
Dated 30 - 10 - 1867.	

Not to be folded or roughly handled

No. 368. Read the following Proceedings of the Board of Revenue, dated 18th October 1861, No. 5,736:—

Read the following letter from A. WEDDERBURN, Esq., Collector of Cuddapah, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Chepauk, dated 9th October 1861, No. 118.

SIR,

1. I have had the honor on the 4th instant, to receive the Board's Proceedings of the 21st September 1861, No. 5,118. I greatly regret the delay in reporting the Court's decision to the Board, occasioned by several causes—a lapse of 12 days out of 30 before I got a fair copy of the decree; the necessity of having it translated; the inadvertent mislaying of the original in my Sheristadár's office; and the requirement of consideration whether there were grounds of appeal.

2. On collating the Court's decision with a plan of the land in question, I came to the conclusion that the decision was substantially just. Had it denied the Collector's legal right to apportion surplus water, the Plaintiffs' costs would have been charged against the 4th Defendant, and I should at once have lodged an appeal; but I think the decision merely determines that the Collector's order was not right, under the peculiar circumstances of the case. Indeed, I believe, that if the proceedings, which came before the former Acting Head Assistant Collector, had been accompanied by a plan of the spot, his decision would have been similar to that of the Court.

3. The whole question hinges upon the meaning of surplus water. It is admitted that wet assessed lands have the first claim of supply, and that after their necessities are supplied, Government may dispose of the surplus. But in this case the water had not passed the wet lands, which may be seen from the plan; it was intercepted by a new side channel. When the wet and dry lands near the channel were in the same hands, as was the case for 17 years, there could be no cause of dispute; water then taken from the channel for the dry land was at the proper risk of the wet cultivators; but when a third party, with no community of interest, resumes this dry land, himself never having enjoyed a right of water to it, the case is altered, and from the position of the new channel, he has the power of cutting off the supply to the heavily assessed fields; he paying a mere nominal water cess in comparison with his neighbours. According to the decision of the Court the Teervajasty on the dry land in dispute was on account of wells being situated on it, and the use of the channel water by the Plaintiffs was merely supplementary to the wells. However that may be, the rate levied hitherto as Teervajasty on this dry land is so wholly inadequate, being less than Rupee 1 per acre, that it shows the dry land could not have had a full right of water, and had the Court confirmed this right, it would have been to the loss of Government, and to counteract this a revised assessment would be required.

4. The decision of my predecessors was apparently based on the consideration that when water has been applied to land, such land obtains a right of water, and if applied by the Plaintiffs, why not by the 1st Defendant. But the Plaintiffs were using the water at their own risk, and only occasionally, and with due consideration for their wet land; the rate charged seems to ignore a full right of water, and only to indicate a possible surplus; but the new channel affords a means, not merely of obtaining a surplus, but of intercepting the whole; had the dry land been down the channel, this question could not have arisen; when the wet lands are fully irrigated, the surplus water cannot be retained without injury and submerging of the wet land, and the Plaintiffs have not the power of preventing the escape of surplus water, or of appropriating it.

5. It is not the power of themselves disposing of the surplus water which the Plaintiffs claim; it is the right to be protected from the 1st Defendant irrigating his dry land with the water before it reaches them, and lessening the supply to their wet fields. I expressed, in my first letter, great doubt whether this suit should be defended on Government account, as no proper investigation of the merits of the case had been gone into by my predecessors. I do not find that the Court have decided on the abstract right of Government to dispose of the surplus water. Indeed I think the contrary is indicated by the decision regarding costs. I consider that

the upholding of the 1st Defendant's right to the use of the new channel would have been detrimental to Government interests, as well as to those of the wet cultivators, and in accepting the Court's decision, I trust I may be absolved from the blame of neglecting Government interest.

6. I beg that this further explanation may be also submitted to Government.

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1. Ordered to be submitted to Government as requested.

2. The Board observe that the decree did not declare that the Plaintiffs had made an optional use of the water for their wet lands, or for the Defendant's dry land during the time that they rented the latter, but that they had applied the *surplus water* from their wet lands to this dry land; and although it did not from the plan appear feasible to do this, still the Board presumed that as the Moofty Sudder Amín had himself visited the spot, and the Collector admitted that his facts were correct, there could be no doubt that the Plaintiffs had applied *surplus* water to this dry land after a sufficient supply had been taken for their wet lands, but refused to allow the Defendant to make a like use of this surplus water when they were no longer renting his land.

3. If, however, to obtain water from the channel for the dry land, it is necessary to intercept the supply to the wet lands, then the Board are not disposed to question the substantial justice of the decree, but its terms do not convey this idea of the facts of the case.

(A true Copy and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

No. 369. ORDER THEREON, 30th October 1861, No. 2,075.

1. The Government cannot concur in the view taken of the case by the Collector, whose Proceedings they consider to be unsatisfactory.

2. The result of the appeal in the Civil Court will be reported as soon as it is known.

(Signed) J. D. SIM,

Secretary to Government.

No. 5,736.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 18th October 1861.

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3. The whole question hinges upon the meaning of surplus water. It is admitted that wet assessed lands have the first claim of supply, and that after their necessities are supplied, Government may dispose of the surplus. But in this case the water had not passed the wet lands, which may be seen from the plan; it was intercepted by a new side channel. When the wet and dry lands near the channel were in the same hands, as was the case for 17 years, there could be no cause of dispute; water then taken from the channel for the dry land was at the proper risk of the wet cultivators; but when a third party, with no community of interest, resumes this dry land, himself never having enjoyed a right of water to it, the case is altered, and from the position of the new channel, he has the power of cutting off the supply to the heavily assessed fields; he paying a mere nominal water cess in comparison with his neighbours. According to the decision of the Court the Teervajasty on the dry land in dispute was on account of wells being situated on it, and the use of the channel water by the Plaintiffs was merely supplementary to the wells. However that may be, the rate levied hitherto as Teervajasty on this dry land is so wholly inadequate, being less than Rupee 1 per acre, that it shows the dry land could not have had a full right of water, and had the Court confirmed this right, it would have been to the loss of Government, and to counteract this a revised assessment would be required.

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(A true Copy and Extract.)

J. D. Sim, Esq., Secretary to Government, R. D. *Secretary.*

Copy to A. Wedderburn, Esq., Collector of Cuddapah.

d. J. Wright.

derburn's proceedings are not satisfactory
ing sanction to defend the suit he said that
case had set in equity & beg to stand on
ction the correctness of a decree which interfer
e right of Govt to distribute the surplus wa
n channel. If the decree is right no
fference would be prevented - The appe
of irrigation would be allowed to put nothing ca
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the Bd to refer
Collector of Cuddapah
the appeal
Civil Court

No. 2075.

The Government cannot concur in the view taken of the case by the Collector whose proceedings they consider to be unsatisfactory.

The result of the appeal in the Civil Court will be reported as soon as it is known.

Fort St. George
31st Oct. 1861

11 Copies
To the Board of Revenue

28 Oct 1861