

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1674	<u>Press</u> <u>Mis.</u>
75-76	
Dated 6 8 18 62	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
6th August 1862.*

No. 75. Read the following Proceedings of the Board of Revenue, dated 31st July 1862, No. 4,969:—

Read the following letter from the Honorable D. ARBUTHNOTT, Collector of Salem, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Madras, dated 25th July 1862, No. 171.

SIR,

1. I have the honor to forward herewith translations of two complaints, original and supplemental in Original Suit No. 1,305 of 1861, on the file of the Munsiff's Court at Tripatur, with draft of an answer which I propose to file in the Suit in question, and to request the Board will obtain the sanction of Government to my defending the Suit at the public cost.

2. This suit has been instituted by Vencatun of Sengodaputtada in the Tripatur Taluq against Mr. Hathaway, Head Assistant Magistrate as Supplemental Defendant, and one Choti Ram of Tripatur, as Defendant, to compel the Defendants either to restore the bank which was removed by the order of the Supplemental Defendant, or to recover from them Rupees 300, being the sum spent on the bank, and to establish his right thereto.

3. The facts of the case are fully explained in the enclosed copy of Mr. Hathaway's letter, dated 5th July 1862, No. 88.

4. I may add that an appeal was made to Mr. Brett, late Collector, against the Head Assistant's order, and that Mr. Brett confirmed the order.

5. I have amended the answer prepared by Mr. Hathaway, copy of which is also enclosed.

6. The Civil Court has been moved to get up the case to the Principal Sudder Amin's Court, and the time for filing the answer will expire on the 29th August 1862.

ENCLOSURE No. 1.

TRANSLATION of a complaint filed in the Munsiff's Court at Tripatur by Vencatun of Sengodaputtada in the Tripatur Taluq, against Choti Ram of Tripatur.

1. This Suit is instituted to get a decree passed for not removing an old tank bund valued at Rupees 61, measuring in length 497 yards, in breadth 7 yards, and in height $2\frac{1}{2}$ yards, and standing on my Putcut lands, bounded on the south by the Curnum field, on the west by the Punjab field of Parya Velluttum Gownden, on the east by the field of the Defendant, and on the north by Kalandai Gownden field.

2. The disputed tank bund was constructed during the time of my ancestors from private funds, and its possession by me descended by right of inheritance. As it was hitherto usual to make the necessary repairs now and then, and as the embankment was out of order here and there, I put, about a year ago, some new earth over the embankment at my own expense. The Defendant, who has seen with his own eyes my enjoyment (possession) for the last 30 years, and who has not hitherto raised any objections, made a complaint to the Tahsildar of Tripatur, that the wall of his house, which is situated at a distance, will be drenched, and will thereby be endangered by my throwing earth on the embankment, with a view to strengthen the bund of his own tank. The Tahsildar without thorough inquiry made a report in the Magisterial Department, No. 381, to the Head Assistant Collector, who issued an order dated the 18th May 1861, No. 102, to cause the embankment under dispute to be removed by me. As the order cannot affect the Malguzari right, I have brought this action. I have never taken to my tank the Annasagarum tank water running waste after irrigating my Nunjah lands, and referred to in the order in question. I have been using unobjectionably and from a long time since, the water of my own tank which receives its supply as usual by freshes of rain to my Punjab lands, which I cultivate with Nunjah crops, and which are not irrigated by the water of the (Annasagarum) tank. With the exception of this supply, the lands have no other sources of irrigation. The tank under dispute is in existence from a long time since. It was not newly constructed by me.

2 *Proceedings of the Madras Government, Revenue Department,*
6th August 1862.

3. Under the foregoing circumstances, I request the Court will be pleased to pass their decree, allowing the bund to remain in existence, and confirming my right thereto at the same time.

4. I, the Plaintiff, do declare that what is stated in the plaint is true to the best of my information and belief. Filed 20th July 1861.

(True translation.)

(Signed) D. ARBUTHNOTT, *Collector.*

ENCLOSURE No. 2.

TRANSLATION of a Supplemental Plaint filed by the Plaintiff in Original Suit No. 1,305 of 1861 on the file of the Munsiff's Court at Tripatur.

1. For the reasons hereunder mentioned, I request the Head Assistant Magistrate, Mr. Hathaway, may be included as Supplemental Defendant in the above Suit, and he and the original Defendants may be made responsible for my claims.

2. I have been using to my Nunjah cultivation, without any objection raised, the water stored by freshes of rain in an old tank standing within the limits of the spot situated within the boundaries described in my original plaint, and also the water of the Annasagarum tank. The bund of the tank was repaired now and then both by my ancestors and by myself at an aggregate cost of Rupees 300, inclusive of amount shown in the original plaint.

The original Defendant, who has seen with his own eyes for the last 30 years (the tank in existence), and who had been present when the repairs were made, made a complaint to the Tahsildar that the wall of his house, which is situated at a great distance, is endangered by the water of my tank. The Head Assistant Magistrate, Supplemental Defendant, on this complaint ordered the removal of the bund of the tank by me. As I am not satisfied with the summary order in question, I have brought this Suit with a view to establish my Malguzari right.

3. After the Suit has been instituted, Supplemental Defendant sent for me four times and imposed fines on me and kept me in custody for not removing the bund, and thus troubled me. He also about 20 days ago, while a Civil Suit is instituted removed on behalf of Government 25 (Indian) yards of the bund, and let the water stored in the bund into the bund of the original or 1st Defendant.

4. The bund of the tank having been so removed, the seedlings of the Raggy and other crops sown in my Nunjah fields were destroyed from want of water: this has occasioned me a loss of ten Kundagums of grain. The Plantain trees about 200 and the tender Cocoanut trees planted in my Nunjah lands are also withering from want of water.

5. Under the foregoing circumstances I request the Court will be pleased to pass a decree adjudging the Defendants either to restore the bund of the tank, which was constructed at an outlay of 300 Rupees, and enjoyed by me for a long time, or to pay the sum of 300 Rupees spent on the bund, and confirming my right to the tank. With regard to the loss, I will bring a separate action.

I, the Plaintiff, do declare that what is stated in the Supplemental Plaint is true to the best of my information and belief.

(True translation.)

(Signed) D. ARBUTHNOTT, *Collector.*

ENCLOSURE No. 3.

DRAFT of an Answer proposed to be filed in Original Suit No. 1,305 of 1861 on the file of the Munsiff's Court at Tripatur.

First.—That the Supplemental Defendant denies the statement of the Plaintiff that the bund was constructed by his ancestor, and urges that it was built only two years ago by the Plaintiff himself.

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6th August 1862.

Secondly.—That the bund raised by the Plaintiff proved injurious to the 1st Defendant's house, and prejudicial to the interests of Government.

Thirdly.—That the Plaintiff has no right to any more water than what is actually required to irrigate his Nunjah field, and that his securing more water by the bund under litigation is illegal, and cuts off the supply of water to the fields of others.

Fourthly.—That therefore the Supplemental Defendant as Head Assistant Collector and Magistrate acting judicially was fully justified in passing the order for the removal of the bund, illegally raised by the Plaintiff, and that under Act XVIII of 1850, he is not liable to be sued in a Civil Court for an act done by him in his judicial capacity as Head Assistant Magistrate.

(Signed) D. ARBUTHNOTT, *Collector.*

ENCLOSURE No. 4.

From W. F. HATHAWAY, Esq., Acting Head Assistant Collector of Salem, to the Honorable D. ARBUTHNOTT, Collector of Salem, dated Tripatur, 5th July 1862, No. 88.

SIR,

1. I have the honor to enclose the copies of papers in a Suit filed against me in the Court of the District Munsiff of this place by one Venkittan.

2. The case is as follows.—One Choti Ram complained to the Tahsildar that the Defendant Venkittan had put up along the edge of his field a bund or bank of earth so as to form a small pool or tank, and thus to cut off the supply of water which otherwise came into his (the Complainant's) tank, which is situated immediately below this field of the Defendant in which the bund is raised, and further that as his (the Complainant's) house was close upon this bank, the water soaked through into his house, endangering the wall and causing him great discomfort; that while the Defendant was forming this bank, he objected, but that the Defendant pretended he was only removing the earth from his field in order to put on better soil, and then afterwards, while he was absent made this earth into a strong bank.

3. The Tahsildar went and saw the land and found that the statements of the Complainant were correct, and that this bund of the Defendants stopped water which came from the waste channel of a higher tank belonging to Government, which otherwise flowed into the Complainant's house, and further that this field, at the tank, besides endangering the wall of the Complainant's house, was a Nunjah field irrigated by water lower edge of which the Defendant had raised his bund, was a certain amount of Government from the Anasagarum tank; that the Defendant was entitled to a certain amount of Government water from this tank in order to irrigate this field, but that now having by this bund turned his paddy field into a tank or reservoir of water, he drew a much larger supply of water than he was entitled to, so as to fill this reservoir that he had made and irrigated a great deal of other land by the water which he had thus obtained, and that thus instead of the amount of water that he was entitled to, he drew off a much larger quantity, as materially to affect the Anasagarum tank, and deprive the other Ryots who held lands under this tank of water.

4. The Tahsildar then tried the case, convicted the Defendant of trespass and unlawful diversion of water, and as he thought that it demanded a higher punishment than he was able to give, reported the case to me under Clause 2nd, Section 4 Regulation IV of 1821, as extended by Regulation XXXIII of 1837, and recommended that the accused should be fined 15 Rupees, and be ordered to remove the bank.

5. I concurred in the Tahsildar's decision that the case was proved, and that the Defendant had unlawfully raised the bank, but as there did not appear on his part any forcible seizure or injurious violence that would make the offence such a criminal trespass as to require punishment, I thought that there was no necessity for fining him as well, and therefore merely issued an order under the general powers vested by the Regulations in the Collector and Magistrate and his subordinates of superintending and protecting the interests of Government in matters con-

nected with the irrigation of land and the public revenue requiring the Defendant to remove this bund. The Takid communicating this to the Tahsildar is dated 18th May 1861.

6. A report afterwards arrived stating that the Defendant Venkittan had refused to remove his bank. I therefore summoned him and fined him 10 Rupees for neglecting to carry out the previous order again ordering him to do so. This decision is dated June 5th.

7. But he still was determined not to carry out the order. The prosecutor again complained that the water was still stopped, and again I summoned him to answer to the charge. The summons was served upon him, but he refused to attend, and he had to be apprehended on warrant. On his appearing before me on the 14th August, I again fined him 10 Rupees for his pertinacious disobedience and neglect to obey the summons.

8. I waited some months but the prosecutor again complained, and again on the 27th November I tried the case, and fined him 20 Rupees.

9. But he still refused to remove his tank, and as it seemed useless to go on punishing him, I finally, on the 21st January 1862, imposed a fine of 30 Rupees, and applied part of it to the removal of the bank.

10. On the 15th July 1861 the Defendant Venkittan filed a Suit against Choti Ram for instituting this complaint and thereby having his bund destroyed, the value of which he fixed at 64 Rupees, and then on the 29th March 1862, filed a supplemental plaint including me as a Defendant and valuing the original bank at 300 Rupees.

11. The District Munsiff issued a summons on the 29th March, but from some reason it did not reach me till the 23rd ultimo. As the time for filing the answer is the 30th ultimo, I have instructed the Government Vakil to apply for a further period of two months in order to enable me to send in the answer.

12. I enclose a copy of the answer that I propose filing.

13. With regard to the first point the original proceedings of the Tahsildar upon which the whole is based were decidedly judicial. He convicted the accused and applied for sanction to fine him 15 Rupees and order the removal of his bank. As I stated above I thought the latter part of the sentence sufficient and therefore remitted the fine. The previous proceedings being by a Magisterial Officer the confirmation of them was magisterial but the Takid to the Tahsildar announcing this was sent under the joint powers vested in a Collector and Magistrate, and his subordinates by which on the one hand they give instructions about minor irrigation details and matters connected with the revenue, and on the other punish any flagrant act of trespass in these matters. As, however, it is customary in my office to separate the Revenue from the Magisterial Takids and file them in different books, this was entered on the revenue side. It would have been more correct to enter it in the Magisterial Department. But at any rate even though it might be objected that from the form of this Takid it was more a Revenue than a Magisterial Takid, there can be no doubt about the subsequent orders given. They are all Magisterial cases and entered as such in the Criminal reports; and the final order, which was the one in pursuance of which the bank was actually removed, was passed under Section 188 of the Penal Code.

14. With regard to the second point in this answer the Defendant (present Complainant) in his deposition before the Tahsildar makes no mention of the bank having been raised by his ancestors, as he now says; but on the contrary says "I built it myself a year ago."

15. With regard to the third point in the answer, from an inspection of the ground, or the plan, it is evident that as the ground slopes towards the Complainant Choti Ram's tank, it is filled by the drainage that flows from this ground, and that he would not have built a tank bund there except with this object; and that as the Defendant Venkittan has put his bund exactly in front of this, a great part of the drainage must be stopped, and that the Defendant Venkittan would not have built his bund there except with this view. There is a channel that carries off the waste water from the Anasagarum tank which runs into the Defendant Venkittan's field. He is entitled to take from this channel all the water that he may want for irrigating that piece of Nunjah land;

but during the rainy season when a large volume of water comes down this waste channel as it is more than he wants, it passes on to the complainant Choti Ram's tank, and the Defendant Venkittan has no right to divert it. He is entitled to take as much water, and only as much as is necessary for his field.

16. With regard to the fourth point in the answer the Defendant Venkittan has a large field of 18 acres by the side of this bund. Apparently it was his intention to draw water from Government ostensibly for his Nunjah field of 2½ acres, store it up there by means of this bank, and thereby irrigate the whole of this field of 18 acres. He commenced this work, but as the complainant objected, and as it was new land he was only able to cultivate with wet crops 3½ acres out of this 18 acre field, but even that is more than he was entitled to, and in the ensuing year he would probably have irrigated the whole.

(True Copy.)

(Signed) D. ARBUTHNOTT, Collector.

ENCLOSURE No. 5.

Copy of Answer filed.

1. The order to remove the bund was passed by the 2nd Defendant acting judicially. An appeal ought therefore to be made against it as by Regulation XVII of 1850 it cannot form the ground of a Civil Suit.

* Andigounden, Kandasami, Ramasami Setti, and Karedar Muninayaken.

என்குமாரிக்கு ஆதரவாய் ஒருவருஷத்திய போது வாதிதிலவும் என்னுடையவும் வீடுகளுக்கு 10 மார் வீட்டுக்கப்பறம் தொடையரம் மண்கரை 100 மார் அளவில்போட்டிருக்கிறேன்.

† Andigounden, Kandasami, Ramasami Setti, and Karedar Muninayaken.

வியாஜமத்தியகாலத்தில் இப்போதைக்கு சுமார் 20 நாளுட்போது சுமார் 250 மார்தூரம் வரையில் ஹெகுட்டைக்காரையை சர்கார் தரவில் எடுப்பித்து அதில்தேக்கிருந்த தண்ணியை எல்லாம் முதல் பிரதிவாதினிடம் மைத்தொரு குட்டைக்கு போய் விழும்படி செய்திருக்கிறார்கள்.

‡ Karedar Muninayaken and Yellen

குட்டையில் தேக்கப்பட்ட மழை வெள்ள தண்ணி யின் ஆதரவினாலும் அன்னசாகரம் ஏரி தண்ணி ஆதரவினாலும் நஞ்சை சாகவடி முதலானது செய்து இருக்கிறோம்.

2. The bund is not of long standing, but was built within the year which can be proved first by witnesses; * second by the complainant's own statements in his deposition before the Tahsildar.

3. It cuts off water that would go into the 1st Defendant's tank, which can be proved first by witnesses; † second by the complainant's own admission in his supplemental plaint that when his bund was removed the water flowed into the 1st Defendant's tank.

4. It was made in order to stop Government water from the Anasagarum tank so as to create a supply for irrigating other dry fields, and thus to carry on more wet cultivation and obtain more water than he is entitled to.

This is proved first by witnesses‡.

Second by his own admission in the supplemental plaint.

(True Copy.)

(Signed) D. ARBUTHNOTT, Collector.

1. Ordered to be submitted to Government, with the Board's recommendation that the defence of the Suit at the public cost be sanctioned, and that the Collector be authorized to file the answer drafted by him.

2. The facts of the case are briefly, that the Plaintiff illegally constructed a bund on his Nunjah field which he had excavated so as to form a Tank, thereby diverting the supply of water to the lands of others, and to a tank belonging to 1st Defendant on a lower level and sapping the foundation of 1st Defendant's house;

6 *Proceedings of the Madras Government, Revenue Department,*
6th August 1862.

That on 1st Defendant's complaint, the Tahsildar investigated the charge magisterially, and recommended to the Head Assistant Magistrate, his immediate superior, a sentence of punishment in excess of what he was himself competent to award;

That the Head Assistant Magistrate modified the sentence so as to require merely the removal of the bund under penalty;

That Plaintiff having failed to remove it, was fined on more than one occasion for his recusancy, and that eventually the bund was destroyed by the orders of the Head Assistant Magistrate. The defence sets forth these facts, and pleads also non-liability to be sued on account of acts done in a judicial capacity and in good faith.

3. The Board consider the defence good and sufficient, and although Mr. Hathaway's earlier proceedings were informal, still as they were essentially just and proper, and were based on the formal proceedings of the Head of Police, the Board would not alter the Draft answer, but would leave it to the Court to weigh the facts, and to decide on the merits of the case.

(True Copies and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

No. 76.

ORDER THEREON, 6th August 1862, No. 1,674.

The Governor in Council sanctions the defence at the public expense, on the usual terms of Original Suit No. 1,305 of 1861 on the file of the District Moonsiff's Court at Tripatur, instituted by one Vencatun against the Head Assistant Magistrate of Salem and another. The draft answer proposed by the Collector is approved.

(Signed) T. PYCROFT,
Chief Secretary.

drainage that flows from this ground, and that he would not have built a tank bund there except with this object; and that as the Defendant Venkittan has put his bund exactly in front of this, a great part of the drainage must be stopped, and that the Defendant Venkittan would not have built his bund there except with this view. There is a channel that carries off the waste water from the Anasagarum tank which runs into the Defendant Venkittan's field. He is entitled to take from this channel all the water that he may want for irrigating that piece of Nunjah land; but during the rainy season when a large volume of water comes down this waste channel as it is more than he wants, it passes on to the Complainant Choti Ram's tank, and the Defendant Venkittan has no right to divert it. He is entitled to take as much water, and only as much as is necessary for his field.

16. With regard to the fourth point in the answer the Defendant Venkittan has a large field of 18 acres by the side of this bund. Apparently it was his intention to draw water from Government ostensibly for his Nunjah field of 2½ acres, store it up there by means of this bank, and there- by irrigate the whole of this field of 18 acres. He commenced this work, but as the Complainant objected, and as it was new land he was only able to cultivate with wet crops 3½ acres out of this 18 acre field, but even that is more than he was entitled to, and in the ensuing year he would probably have irrigated the whole.

(True Copy.)

(Signed) D. ARBUTHNOTT, *Collector.*

ENCLOSURE No. 5.

Copy of Answer filed.

1. The order to remove the bund was passed by the 2nd Defendant acting judicially.

An appeal ought therefore to be made against it as by Regulation XVII of 1850 it cannot form the ground of a Civil Suit.

* Andigounden, Kandasami, Ramasami Setti, and Kare-
dar Muninayaken.

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வாதிதிலும் என்னுடையவும் வீடுகளுக்கு 10 மார்
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20 நாளும்தோது சுமார் 250 மார்தூரம் வரையில்
ஹெகுட்டைக்ககையை சர்கார் தரவில்எடுப்பித்து அ
தில்தேங்கிருந்த தண்ணியை எல்லாம் முதல் பிரதி
வாதினிட மைத்தொரு குட்டைக்கு போய் விழும்படி
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‡ Karedar Muninayaken and Yellen.

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ருக்கிறோம்.

2. The bund is not of long standing, but was built within the year which can be proved first by witnesses; * second by the Complainant's own statements in his deposition before the Tahsildar.

3. It cuts off water that would go into the 1st Defendant's tank, which can be proved first by witnesses; † second by the Complainant's own admission in his supplemental plaint that when his bund was removed the water flowed into the 1st Defendant's tank.

4. It was made in order to stop Govern- ment water from the Anasagarum tank so as to create a supply for irrigating other dry fields, and thus to carry on more wet cultivation and obtain more water than he is entitled to.

This is proved first by witnesses‡.

Second by his own admission in the supple- mental plaint.

(True Copy.)

(Signed) D. ARBUTHNOTT, *Collector.*

1. Ordered to be submitted to Government, with the Board's recommendation that the de- fence of the Suit at the public cost be sanctioned, and that the Collector be authorized to file the answer drafted by him.

2. The facts of the case are briefly, that the Plaintiff illegally constructed a bund on his Nunjah field which he had excavated so as to form a Tank, thereby diverting the supply of water to the lands of others, and to a tank belonging to 1st Defendant on a lower level and sapping the foundation of 1st Defendant's house;

That on 1st Defendant's complaint, the Tahsildar investigated the charge magisterially, and recommended to the Head Assistant Magistrate, his immediate superior, a sentence of punishment in excess of what he was himself competent to award;

That the Head Assistant Magistrate modified the sentence so as to require merely the removal of the bund under penalty;

That Plaintiff having failed to remove it, was fined on more than one occasion for his recusancy, and that eventually the bund was destroyed by the orders of the Head Assistant Magistrate. The defence sets forth these facts, and pleads also non-liability to be sued on account of acts done in a judicial capacity and in good faith.

3. The Board consider the defence good and sufficient, and although Mr. Hathaway's earlier proceedings were informal, still as they were essentially just and proper, and were based on the formal proceedings of the Head of Police, the Board would not alter the Draft answer, but would leave it to the Court to weigh the facts, and to decide on the merits of the case.

(True Copies and Extract.)

[Signature]
Secretary.

To A. J. Arbuthnot, Esq., Acting Chief Secretary to Government.
Copy to Honorable D. Arbuthnot, Collector of Salem.

2 Aug 1867
31-8-67

Exd. J. Wright

N^o 1674.
The Governor in Council sanctions the defence at the public expenses, on the usual terms, of original suit N^o 1305 of 1861 on the file of the District Munsiff's Court at Triplicat instituted by one Venkatesh against the Head Assistant Magistrate of Salem Vanother. The draft answer proposed by the Collector is approved.

6th Aug 1867
14 Copies to the Secy. of Revenue
M L C. P. Wright

Submitting a letter from the Collector of Salem and recommending that the Collector be authorized to defend, at the public cost, the Suit No 1305 of 1861, instituted against Mr. Hathaway and another party, and to file the answer drafted by him.

No. 4963.

Dated 31st July 1867.
Despatched 1st Aug 1867.
Received. 2nd Aug 1867.

PROCEEDINGS OF THE BOARD OF REVENUE.

No. 2163.

Revenue Department
14th Aug 1867