

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1018	Press Mis.
265.266	
Dated 16.5.1865.	

Not to be folded or roughly handled

1018

Proceedings of the Madras Government, Revenue Department,
16th May 1865.

No. 265. Read the following Proceedings of the Board of Revenue, dated 4th May 1865, No. 2,232.

Read the following letter from T. A. N. CHASE, Esq., Sub-Collector in charge of the Godavery District, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated Narsapur, 11th April 1865, No. 59:—

1. I have the honor to submit translation of a plaint filed against me and the Tahsildar of the Narsapur Talook in the District Moonsiff's Court at Narsapur, by Mr. W. Bowden, Junior, Zerayati Ryot of Konteru in the Narsapur Talook.

2. The object of the suit is to obtain a Decree for the recovery of Rupees 45-5-5 as particularized below:—

Teerwajasti for Fusly 1272	...	...	...	...	RS.	A.	P.
Do. for Fusly 1273	...	...	...	...	27	6	1
					14	13	4
					42	3	5
Interest on do.	...	...	...	...	3	2	0
					45	5	5

3. Mr. Bowden complains that Rupees 42-3-5 have been collected from him on account of Teerwajasti unjustly imposed on his Zerayati land at Konteru, which was not irrigated from anicut channels, and he sues Government for Rupees 3-2-0 on account of interest on the above sum of Rupees 42-3-5 from 14th August to 5th December 1864.

4. The Teerwajasti imposed on the Plaintiff's Zerayati land in the village of Konteru was Rupees 27-10-3 as mentioned below:—

Number.	Full extent.	Extent of the Plaintiff's interstitial fields.	Teerwajasti for Fusly 1272.	Teerwajasti for Fusly 1273.	Total.
	A. C.	A. C.	RS. A. P.	RS. A. P.	RS. A. P.
149	14 96	1 38	1 12 4	...	1 12 4
169	23 28	6 43	7 9 11	11 10 10	19 4 9
170	2 8	0 70	2 1 7	1 9 3	3 10 10
173	7 40	0 96	1 5 1	1 9 3	2 14 4
	47 72	9 47	12 12 11	14 13 4	27 10 3

These four fields, the extent of which is A. 47, C. 72 were held jointly by different Ryots, of which the Plaintiff's share is A. 9, C. 47. Portions of these fields having been irrigated for wet crops in several years by anicut water, they were entered in the Settlement Registers as wet, and charged with water tax.

5. Mr. Bowden's interstitial fields were in some years fully, and in others partly, irrigated for wet cultivation before Fusly 1272 in which the new Survey rates were introduced, and they were properly classed as wet in the Settlement Registers.

6. These interstitial fields appear from the Adungal accounts of Fuslies 1272 and 1273 to have been partly irrigated for wet crops. Under the rules in force up to the end of Fusly 1273, these fields were properly classed as wet, and charged with water tax for full fields, and it is clear that irrigation was available. The joint holders of these fields have accordingly been charged with the water tax, and have paid it.

7. The full water tax for the Plaintiff's land is Rupees 23-6-0 a year, but this was reduced to Rupees 12-12-10 in Fusly 1272, and Rupees 11-13-4 in Fusly 1273, in consequence of the gradual imposition of the demand as ordered in paragraph 2 of the Government Order, dated 24th June 1861, No. 1231, and of the remission granted on account of picottah irrigation at the rate of one-fourth of the Teerwajasti, as ordered in paragraph 6 of the above Government Order.

8. The amount of Teerwajasti collected is Rupees 27-10-3, and not Rupees 42-3-5 as erroneously alleged in the plaint. The Teerwajasti imposed on his fields at Konteru, and collected, was only Rupees 27-10-3 in Fuslies 1272 and 1273, as will be seen from the accounts, and from the Puttahs granted to the Plaintiff.

9. Mr. Bowden's allegation that his fields were not irrigable is incorrect.

10. It is quite clear from the Curnums' accounts of several years, and from the examination accounts of the Talook officials, that these fields were more than once irrigated for wet crops by anicut water, and the same will be proved by the Curnums and Gumashitas, as well as by the accounts.

Proceedings of the Madras Government, Revenue Department,
16th May 1865.

11. Mr. Bowden having complained in July 1864 against this assessment of water tax, the collection was suspended pending an inquiry into the justness of the demand. But after the inquiry which proved its justness terminated, the sum demanded was collected.

12. I submit a draft of an answer to be put in, and request sanction for defending the suit at the cost of Government.

13. The period for filing an answer expires on the 20th June 1865.

ENCLOSURE No. 1
Suit No. 700 of 1864.

To the District Moonsiff's Court of Narsapur.
versus

Plaintiff.

W. Bowden, Junior, Esq., Renter,
inhabitant of Palcole.

Defendants.

1. Dharvada Venkanna Puntulu,
Tahsildar of Narsapur.
2. T. A. N. Chase, Esq., Sub-Collector
of the Godavery District.

Plaint preferred against the Defendants under Section 26, Act VIII. of 1859.

1. The Plaintiff was informed that his cattle were attached by the 1st Defendant for Rupees 42-3-5, being the amount of Teerwajasti alleged to have been due by him for Fuslies 1272 and 1273, on the Zerayati lands cultivated by him at Konteru, and said to have been irrigated by Government channels.

2. On a petition presented by the Plaintiff to the 2nd Defendant on the 9th July 1864, requesting to examine the lands as they were not irrigated by channels, the 1st Defendant wrote to him on the 20th idem to pay only the shist, and to give in a list of the fields not watered.

3. The 1st Defendant, without taking the said list, wrote a letter on the 2nd August 1864, to the Plaintiff requesting, among other things, to pay the Teerwajasti, as the 2nd Defendant had directed.

4. On a communication of the Plaintiff to the 1st Defendant on the subject of Teerwajasti, the latter wrote to the Plaintiff on the 4th August 1864, stating that it was unnecessary to examine the lands.

5. The Plaintiff's lands charged with water tax cannot be irrigated by Government channels. One or two acres of the land in question are annually irrigated with stagnated water from an old swamp (aver) at Palcole by means of Picottahs and by the rain water. Consequently the Plaintiff has no reason to pay the Teerwajasti. The Plaintiff requests that after examining his oral and documentary evidence, and the lands in question, the Court will exempt him from the imposition of water tax unjustly charged, pass an order to the Defendants to refrain from any further proceeding on the subject of this Teerwajasti until the final decision of the Court, and decree that the expenses borne by him be defrayed by the Defendants.

6. The three letters above-mentioned are herewith submitted.
(Signed) W. BOWDEN, Junior.
6th August 1864. (") K. VENKATARATNAM, Pleader.

I, W. Bowden, Junior, the Plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my information and belief.

(Signed) W. BOWDEN, Junior.
(True Translation.)
(Signed) T. A. N. CHASE,
Sub-Collector, in charge.

Suit No. 700 of 1864.

To the District Moonsiff's Court of Narsapur.
versus

Plaintiff.

W. Bowden, Esq. Junior,

Defendants.

1. Dharvada Venkanna Puntulu, Tahsildar
of Narsapur.
2. T. A. N. Chase, Esq., Sub-Collector of
the Godavery District.

Supplemental plaint preferred against the Defendants.

1. I have brought an action against the 1st and 2nd Defendants for Rupees 42-3-5 on account of Teerwajasti.

2. Having petitioned your Court that an interest of 2 per cent. may be charged on the said amount collected subsequently from me on the 14th August 1864, I was ordered to file a supplemental plaint, and I therefore request that the sum hereinafter stated may be ordered to be paid by the Defendants.

Proceedings of the Madras Government, Revenue Department,
16th May 1865.

Original amount of Teerwajasti
Interest at 2 per cent., calculated on the amount of
Rupees 156-2-11, being the sum for three months
and twenty-one days, from the 14th August 1864
(the day on which the Teerwajasti was collected) to
this day

RS. A. P.
42 3 5

3 1 11

45 5 4

5th December 1864.

(Signed) W. BOWDEN, Junior.
(") K. VENKATARATNAM,
Pleader.

I, W. Bowden, Junior, the Plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my information and belief.

(Signed) W. BOWDEN, Junior.
(True Translation.)
(Signed) T. A. N. CHASE,
Sub-Collector in charge.

ENCLOSURE No. 2.
Suit No. 700 of 1864.

To the District Moonsiff's Court at Narsapur.

Statement to be filed by T. A. N. CHASE, Esq., Sub-Collector of the Godavery District, 2nd Defendant in the Suit No. 700 of 1864, filed by Mr. Bowden, Junior, a Ryot in the village of Konteru.

1 The Plaintiff states in his plaint that his Zerayati fields* in the village of Konteru have been charged with Teerwajasti of Rupees 42-3-5 for Fuslies 1272 and 1273, although they were not irrigated nor irrigable. This statement is

incorrect. The entire extent of the fields of the above numbers is A. 47, C. 87, and jointly held by different Ryots. The Plaintiff is one of them, and his share consists of A. 9 and C. 27. The interstitial fields of the Plaintiff were almost fully irrigated by anicut water for wet cultivation in Fuslies 1268, 1269, and 1270. They were, therefore, properly classed as wet in the Settlement Registers, and charged with water tax. They were also partly irrigated for wet crops in Fuslies 1272 and 1273, and the full fields charged for, as particularized in the subjoined Statement, reducing the amount according to the system of the gradual imposition as directed in paragraph 2 of the Government Order, dated 24th June 1861, No. 1,431, and granting remission of one-fourth of the Teerwajasti for picottah irrigation, as ordered in paragraph 6 of the above Government Proceedings:—

Number.	Full extent.	Extent of the Plaintiff's interstitial fields.	Teerwajasti for Fusly 1272.			Teerwajasti for Fusly 1273.			Total.		
			RS.	A.	P.	RS.	A.	P.	RS.	A.	P.
149	14 96	1 38	1	12	4	...	...	...	1	12	4
169	23 28	6 43	7	9	11	11	10	10	19	4	9
170	2 8	0 70	2	1	7	1	9	3	3	10	10
173	7 40	0 66	1	5	1	1	9	3	2	14	4
Total ...	47 72	9 47	12	12	11	14	13	4	27	10	3

2. As these fields were more than once irrigated for wet crops, it is evident that they were irrigable, and that water was available. It will also be proved by the Curnum of the village, who prepared the accounts, and by the Talook officials, who examined the fields, as well as by the accounts of the several Fuslies in which they were entered, as irrigated for wet cultivation.

3. The amount of Teerwajasti imposed on the fields in question for Fuslies 1272 and 1273, was Rupees 27-10-3, and not Rupees 42-3-5 as alleged in the plaint. Only Rupees 27-10-3 were collected from the Plaintiff, and carried to account in those Fuslies on account of Teerwajasti. The same is entered in the Puttahs granted him for two Fuslies. Under the foregoing circumstances, the 2nd Defendant prays the Court to dismiss the Plaintiff's suit with costs.

(Signed) T. A. N. CHASE,
Sub-Collector.

*Proceedings of the Madras Government, Revenue Department,
16th May 1865.*

1. In the Order* in which Government were pleased to invest the Board with authority to sanction the defence of certain suits against Government, a special reservation was made regarding suits in which any important principle was involved. The Board accordingly resolve to submit the foregoing letter for the consideration and orders of Government.

* 9th December 1862, No. 2,565.

2. Mr. Chase requests sanction to defend a suit which has been brought against him by a Mr. Bowden for the recovery of money paid on account of certain water rate charged on his lands. The Board consider that the statement which Mr. Chase proposes to file would be a sufficient answer, if it be deemed desirable at once to defend the suit upon its merits.

3. In Section 3 of the Draft Act for the levy of a water rate, special provision is made excluding such questions as that raised in the suit now brought against Mr. Chase from the jurisdiction of the Courts, and the Board are decidedly of opinion that for the reasons urged in the letter from Government to the Board, dated 12th March 1863, No. 282, (printed at page 116 of the Board's Circular Order Book,) and adverted to in the Order of Government, dated 28th January 1863, No. 192, that a demurrer should be in the first place put in to the jurisdiction of the Court in this case. They, therefore, recommend that Mr. Chase should be directed in the first place to take exception to the jurisdiction of the Court on the ground that the plaint relates to the assessment of Her Majesty's revenue derived from land, and involves a question which the Executive Officers of Government, with an appeal if necessary to the Board of Revenue and Government, are alone competent to determine, and further that the jurisdiction of the Court is specially barred by Section 59 of Madras Act II. of 1864.

4. It is true that in the suit to which Government referred in the Order last quoted, the High Court of Judicature have held that the Civil Court of Rajahmundry had jurisdiction to entertain the particular suit referred to, and that the High Court did in their Judgment, dated 7th March 1864, a copy of which was forwarded to Government with the Board's Proceedings, dated 2nd July 1864, No. 4,091, remand the suit for trial on its merits, but from the concluding remarks in paragraph 5 of the Judgment, it would seem as though the Court did not desire to assume to itself an authority which has never hitherto been exercised by any Municipal Court, in this country. It was also considered in that case that the Plaintiff had set up a "legal proprietary right in the land," or a right to hold the land on a permanently fixed assessment, whereas in the present case, the Plaintiff does not found his claim to hold the land free from a water rate, on the ground that the original assessment was permanently fixed, but on the question of fact that the land was or was not supplied with water.

No. 266.

ORDER THEREON, 16th May 1865, No. 1,018.

Land Revenue.

Before passing orders on these Proceedings, the Government resolve to refer them to the Government Pleader for his opinion. Mr. Dale will be requested to submit an early reply. It is presumed that the Section of the Madras Revenue Arrears Act No. 2 of 1864, to which the Board intended to refer, is No. 58, and not No. 59 as quoted.

(Signed) W. HUDLESTON,
Acting Secretary to Government.

22-10-1865 3

*Before passing orders on these
Procs, the Govt. resolve to refer them to
the Govt. Pleader for his opinion - Mr. Dale*

*Dale will be requested to submit an
early reply. It is presumed that the*

*section of the Madras Rev. Ar-
rears Act No. 2 of 1864 to which
the Board intended to refer is
No. 58 and not No. 59 as quoted.*

*17/5/65
J. Fort St. George
16th May 1865
Govt. Pleader
14 Bd. of Rev. N*

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3. In Section 3 of the Draft Act for the levy of a water rate, special provision is made, excluding such questions as that raised in the suit now brought against Mr. Chase from the jurisdiction of the Courts, and the Board are decidedly of opinion that for the reasons urged in the letter from Government to the Board, dated 12th March 1863, No. 232, (printed at page 116 of the Board's Circular Order Book) and adverted to in the Order of Government, dated 28th January 1863, No. 192, that a demurrer should be in the first place put in to the jurisdiction of the Court in this case. They, therefore, recommend that Mr. Chase should be directed in the first place to take exception to the jurisdiction of the Court on the ground that the plaint relates to the assessment of Her Majesty's revenue derived from land, and involves a question which the Executive Officers of Government, with an appeal if necessary to the Board of Revenue and Government, are alone competent to determine, and further that the jurisdiction of the Court is specially barred by Section 59 of Madras Act II. of 1864.

4. It is true that in the suit to which Government referred in the Order last quoted, the High Court of Judicature have held that the Civil Court of Rajahmundry had jurisdiction to entertain the particular suit referred to, and that the High Court did in their Judgment, dated 7th March 1864, a copy of which was forwarded to Government with the Board's Proceedings, dated 2nd July 1864, No. 4,031, renounce the suit for trial on its merits, but from the concluding remarks in paragraph 5 of the Judgment, it would seem as though the Court did not desire to assume to itself an authority which has never hitherto been exercised by any Municipal Court in this country. It was also considered in that case that the Plaintiff had set up a "legal proprietary right in the land," or a right to hold the land on a permanently fixed assessment, whereas in the present case, the Plaintiff does not found his claim to hold the land free from a water rate, on the ground that the original assessment was permanently fixed, but on the question of fact that the land was or was not supplied with water.

(True Copies and Extract.)

Sub-Secretary.

To J. D. Sim, Esq., Secretary to Government, R. D.
T. A. N. Chase, Esq., Sub-Collector, in charge of the Godavery District.

Ed. J. Wright.

Acting Secretary to Government

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Pr 24 June/61 No. 210-211
" 9th Decr/62 - 118
" 28th Jan/63 - 381-2
" 19th July/64 - 299-300

Revenue 1865. Department.
Pr. of Govt. for May

No. 121,2

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 4th May 1865.

Dep. Secy
Rev. 104

No. 2,232.

From Govt. Secy dated 18 May
6/10/76

Submitting for orders of Government, letter from Sub-Collector in charge of Godavery District requesting sanction for defence of Suit No. 700 of 1864, instituted by Mr. Bowden in the Nursapur District Munsiff's Court for recovery Teervajasty paid on his land.

No. 1018-16 May
W. H. B. Oakes

Acting Secretary to Govern

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