M.S.O. 14 -6.4K -12-10-36.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1271 Press Mis.

Dated 25 — 8 — 1937.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
26th August 1867.

Read the following papers :—

No. 490. Proceedings of the Board of Revenue, dated 29th July 1867, No. 4,827.

Read the following letter from the Collector of Tanjore, to the Acting Secretary to the Board of Revenue, dated Point Calimere, Tritrapundi Talook, 10th July 1867, No. 120.

1. I have the honor to report, for the information of the Board, the circumstances connected with a suit* which has been filed by certain parties in the Principal Sudder Amin's Court at Tanjore, and in which they have included Government as one of the defendants.

* No. 14, of 1867.

2. A village called Peruvalandan, in the Mannargudi talook, containing an area of about 500† velies of Nunjah land, is irrigated by a channel taken off from the river Pamanyar, marked B. in the enclosed sketch.‡ As will be seen by the sketch, the river Pamanyar at this place is divided by an island (marked E) into two branches, and it is in the left or the eastern branch that the channel B. has its head. Some of their lands being on a high level, the Mirasidars of Peruvalandan have, for many years, been in the habit of obtaining a supply for the irrigation of the same by raising temporary embankments across both the branches of the Pamanyar. This, as a necessary consequence, has always led to the supply of water to the villages dependent on a lower channel§ called Tenkavattam Voikal or Kundagari Channe, (marked D,) and branching from the same river, being curtailed, and to the main or the western branch of the river being moreover silted up. Hence, complaints of losses sustained by the Mirasidars of the villages last mentioned, as well as disputes and quarrels between them and those of Peruvalandan, have been of frequent occurrence.

† Assessment about Rupees 12,000.

‡ Enclosure No. 1.

§ The extent of cultivation under this channel is about 600 velies, bearing an assessment of about Rupees 16,000.

3. To remedy this evil, it was, after much discussion and correspondence between the Revenue and Public Works Departments, at last resolved, that a masonry dam of suitable dimensions and with a vent in the centre, should be constructed across the Pamanyar, so as to regulate the supply of water to the Peruvalandan channel, and at the same time to prevent the deterioration of the main stream by constant silting up. A plan and estimate for Rupees 1,700 were accordingly submitted by the Superintending Engineer for the same, and upon the sanction of Government conveyed in their Proceedings marginally noted, the work was commenced this season, and has been already completed.

Public Works Department, dated the 6th June 1866, No. 1,799.

4. It is to prevent the construction of this work on the alleged ground that it will interfere with their own supply, that some of the Mirasidars of the villages irrigated by the lower channel marked D, have instituted the present suit against the Mirasidars of Peruvalandan, and have included Government as one of the defendants.

5. In suits instituted in the Mofussil Courts, it is unusual to include the Government as a defendant without naming some particular Officer or Officers of Government, but the plaintiffs in this case have apparently followed this course, because the regulating dam has been sanctioned by Government. In the notice of this suit which has been served on me through the Government Vakil, the date for the hearing is fixed on the 12th September 1867.

6. From the enclosed translation* of the plaint, it will be seen that the plaintiffs aver that the Peruvalandan Mirasidars have never had the right of throwing temporary embankments across the river for the purpose of diverting the water into their own channel. This, however, is not true, inasmuch as in the Fasnash account of 1880, it is shown that, during low freshes, the village in question was irrigated by such means. It is true that, as stated in the plaint, Mr. Cadell issued an order, in 1865, prohibiting the damming up of the river, but that order referred only to the western branch, and even as regards that branch, Mr. Cadell afterwards recalled his order at the suggestion of the Superintending Engineer, who recommended that the usual embankment across the western branch should be allowed, until the proposed regulating dam was constructed. The enclosed copy† of a letter addressed by the late Sub-Engineer, Ashuta Naidu, to the then Superintending Engineer, Captain Ford, shews beyond all doubt, that it could never have been possible for the lands in the village of Peruvalandan to be fully irrigated without the aid of embankments raised across both the branches of the main stream.

* Enclosure No. 2.

† Enclosure No. 4.

‡ Dated 16th September 1863, No. 61.

7. In fact, it is more for the benefit of the plaintiffs, than for that of the Mirasidars of Peruvalandan, that the regulating dam in question is intended; for, besides preventing the further deterioration of the main stream on which the plaintiffs are dependent for their supply, it will insure to them their due share of water, which they are at present unable to get, in consequence of the Mirasidars of Peruvalandan being enabled to divert an undue and undefined proportion of water into their own channel, by means of temporary embankments.

8. I enclose, herewith, the draft of a written statement which I propose to put in on behalf of Government, and beg to request that the Board will be pleased to obtain the sanction of Government for my doing so, and for conducting the defence of this suit at the public expense.

Enclosure 3.

9. In my draft of the written statement, it will be seen that I have said nothing by way of demurrer to the jurisdiction of the Court, as, in the present state of the law, it appears useless to adopt any such line of defence. I would, however, take this opportunity to observe, that this is only one of many similar cases which are likely to hereafter arise, and that it fully illustrates the necessity which, as shown in my letter marginally noted, exists for legislative measures being adopted with a view to prevent the Officers of Government being put into the Courts for acts connected with the irrigation of lands paying kist to Government. Cases like the present one, are likely to be common

22nd February 1867, No. 41.

in future, and if the Collector and Superintending Engineer have hitherto not often had to defend themselves in the Courts of Law for acts similar to that mentioned in this suit, it has been owing only to causes which no longer exist, viz., ignorance of law, and fear of the authority of Government on the part of the people.

To the Court of Principal Sudder Amin, Zillah of Tanjore.

Plaintiffs.

1. Shanmugha Mudaliar, of Nedumbalam, Tritrapundi Taluk, Tanjore Zillah,
2. Aiyasami Aiyer, of Alangudi, in the same taluk,
3. Vaidyalinga Chettiyar, of do.
4. Aiyemperumal Pillai, of Kovilur, of do. taluk,
5. Appasami Aiyengar, of Nembaneurchi do. do.
6. Chokkalinga Mudaliar, of Palvay, Mannargudi Taluk, Tanjore Zillah,
7. Sinnappavaiyer, of Siddamalli do. taluk,
8. Seshagiri Aiyer, of do. do.
9. Ramuyaiyer, of do. do.
10. Muttusami Aiyer, of do. do.
11. Kothandarama Aiyer, of do. do.
12. Kalliyanaramaiyer, of do. do.

Versus.

Defendants.

1. Srinivasa Aiyengar, agent of Srinivasa Row, Peruvalandan, Mannargudi Taluk, Tanjore Zillah,
2. Srinivasa Rao, son of Reddi Rao, residing on the north bank of the Reddi Rayerkolum tank, at Unshali Combaconum,
3. Ranganatha Rao, son of Ramma Rao, residing in the Aiyen street of the said town,
4. Venkoba Rao, *alias* Venkat Rao, residing on the north bank of the said tank,
5. Hari Rao, residing in the same street,
6. Srinivasa Rao, son of Achuta Rao, residing in the Mudavelaghum, of Chakrapaniswami Pagoda, in the said town,
7. Raghunathathu Rao, son of Kristna Row, residing in the Krisna Rayer's Aggraharam,
8. The Government of Madras,

This plaint is for the issue of a permanent injunction restraining defendants from constructing a masonry dam, and is valued at Rupees 2,700, consisting of the cost of the said dam and damages.

1. Plaintiffs are the Mirasidars possessing 450 veliss of land in the following villages:—1 Siddamalli, 2 Kurattidal, 3 Palavoy, 4 Vandalayan, 5 Kovilambattur, 6 Karaikangudi, 7 Kovilsiddamalli, 8 Kilurvoli, 9 Vilattavoli, in the Mannargudi taluok; 10 Viswanathan Kottai, 11 Vadakadu, 12 Pattavelaghum, Kottorbum, 13 Sirukalattur, 14 Kilapanmanearchi, 15 Tekkur Padu, 16 Mangalam, 17 Alangudu, 18 Kottacheerupattakarai, in the Tritrapundi Taluok, and 19 Balakrishnapuram, in the Pattukottai Taluok.

In the Mannargudi Taluok, the Palavoy river flows from south to north, and from its east bank branches the irrigating channel called Terkuvattam Voikal *alias* Kadapari Channel. It is from the water of this channel that 332 veliss of land in the above said nineteen villages are irrigated and cultivated.

2. The head of the channel of Peruvalandan is situated about 1,000 yards to the north of the said Terkuvattam Voikal *alias* Kadapariehan Voikal channel.

3. Defendants 2 to 7, who are the tenants of the first defendant, are the owners of the said village of Peruvalandan. About 200 veliss of land in the said village are cultivated by the said channel. About thirty years ago a masonry dam was constructed by Government, at a cost of Rupees 13,000, about 100 yards below the head of the said Terkuvattam Voikal, for the purpose of raising the level of water in both the channels in due proportion, and the level of this dam is so fixed as to secure the proper supply of water required for purposes of cultivation of the lands under each of the said two channels. These lands are accordingly being irrigated since a long time.

4. About five or six years ago an island, measuring 40 yards from north to south, and 20 from east to west, was formed about 1,300 yards above the said Terkuvattam Voikal, and opposite to the Peruvalandan channel. This island was extended by first defendant who caused naval grass to be planted by the men of the said village. In 1862 the entire course of the river was blocked up by earthen dams to the east and west of the island, and the lands of defendants 2 to 7 were irrigated by the water so raised, thereby causing a failure of supply to our villages. We, therefore, presented a petition to Mr. Morris, the then Collector, and, after inquiry into the subject, a final order, dated 20th June 1863, was issued by Mr. Cadell, in which it is stated that the defendants should not raise dams across the said river, and that if they should interfere with it, they would be dealt with under Section 430 of the Penal Code.

5. The first defendant and others have been raising earthen dams across the river at the time of low freshes during 1863, 1864, and 1865, and carrying away the whole quantity of water, thereby causing us loss of crops. Further, with a view of blocking up the river and carrying away the water by constructing, with the aid of the Officers of the Department of Public Works, a masonry dam across both its branches, to the east and west of the said island, at a cost of Rupees 1,700, the defendants have procured the sanction of Government, in 1866, through the Collector and the District Engineer, and are about to commence building the structure.

6. The defendants never possessed the right of raising embankment across the river; neither have we (plaintiffs) ever permitted them so to raise. In 1862 the defendants, for the first time, began to use this right, and since that year we have been frequently objecting to it before the Collector and the Engineer, and several orders have been issued denouncing the existence of such right. The said masonry dam which the defendant with the assistance of the other defendants has attempted to construct will diminish the supply of water justly due to our villages, and cause us an annual loss of not less than Rupees 1,000, and as they, (defendants,) notwithstanding the existence of several other means for irrigating the said village of Peruvalandan, are yet attempting to construct the said masonry dam, and diminish the supply of water, with a view of injuring our rights and causing us loss, we (plaintiffs) have brought this suit, in order that a permanent injunction may be issued restraining the defendants from constructing the said masonry dam.

	Rs.
Valuation of the dam which the defendants have attempted to construct ...	1,700
Probable loss that may be caused to us in one year	1,000
	2,700

25th February 1867.

The usual affirmation.

(Signatures of the eleven plaintiffs.)

Filed in Original Suit No. 14, on the 4th March 1867.

(Signed) KRISHNASAMI AIYAN,
Principal Sudder Amin.

(True Translation.)

(Signed) G. L. MORRIS,
Collector.

Draft of Written Statement to be put in by the Collector on behalf of Government, as the eighth Defendant in Original Suit No. 14 of 1867, on the file of the Principal Sudder Amin's Court at Tanjore.

1. It is not true that the Mirasidars of Peruvalandan have never had the right of throwing temporary embankment across the Pamanyar for the purpose of raising water into their channel. This right they have for many years enjoyed by prescription; and, in fact, the lands in that village could never have been fully cultivated, without the aid of such embankment during low freshes.

2. The raising of temporary dams by the Mirasidars of Peruvalandan frequently led to the supply of water to the lands dependent on the lower channel called Terkuvattam Voikal being curtailed, and to the constant silting up and consequent deterioration of the main stream.

3. To remedy this evil, it was, after careful professional inspection of the localities concerned, and a due consideration of the wants and requirements of the cultivation dependent on both the Peruvalandan and the Terkuvattam channels, at last resolved, that a regulating dam of suitable dimensions and with a vent in the centre, should be constructed across the Pamanyar, and this work has been accordingly carried out upon the plan prepared by the Officers of the Department of Public Works, and sanctioned by Government.

4. It is not true that the supply of water to plaintiff's lands will be diminished by the regulating dam now constructed. On the contrary, it will restrict the control of the Peruvalandan Mirasidars over the main stream, and thus secure to the plaintiffs their due share of water, which they have hitherto been unable to get, in consequence of the former being enabled, by means of temporary embankments, to divert an undefined and unduly large proportion of water into this channel.

5. The Government have an absolute and indisputable right to regulate, in such manner as they may deem most suitable for the interests concerned, the distribution of water for purposes of irrigation, from rivers and channels maintained at the public expense, and which, in fact, are their State property, and they (the Government) are not liable to be sued by individuals for any works, or measures, they may carry out in connection therewith.

6. I request, therefore, that this suit may be dismissed with costs.

(Signed) G. L. MORRIS, *Collector.*

From the Sub-Engineer, Department of Public Works, to the Superintending Engineer, 6th Division, dated Mannargudi, 10th September 1863, No. 61.

1. In acknowledging the receipt of your Memorandum of the 28th ultimo, No. 7, accompanied by a petition, herewith returned, from one Srinivasa Aiyengar, agent of the Mirasidar of Peruvalandan and the Puthagaram villages, in Mannargudi Taluk, complaining upon the evil effects produced from the prohibition recently ordered by the Collector, at the recommendation of the late District Engineer, against the practice of raising Korumboo across the western branch of the Pamanyar river above the island at the head of the Peruvalandan channel, and praying that, until some permanent arrangement is made, as designed by Captain Mullins, towards securing the supply of water for Peruvalandan Nunjah lands, the usual Korumboo or dam may be permitted to be raised this season, in order to save loss, which would otherwise inevitably result both to the Mirasidar and Government, I have the honor to state that, as Captain Mullins personally examined, in the month of May last, the place where the Korumboos in question were usually raised, as well as the state of the Nunjah lands, &c., which has formed the correspondence marginally noted between himself and the Collector, at whose concurrence he has directed me to submit plans and estimates for the construction of regulating dams in lieu of Korumboos, I need hardly relate the circumstances therewith connected, as, on a reference it would afford full information as to the propriety of prohibiting the practice of raising Korumboos, and of adopting some permanent improvement in lieu thereof; but I have only to report, for your further information, upon the present state of the supply of water obtained for the irrigation of a vast extent of Nunjah lands of the villages alluded to, amounting to 700 velies, assessed at Rupees 16,000 in round numbers, consequent upon the practice of raising Korumboos having been prohibited prior to the construction of the regulating dams in their stead.

Letter, No. 26, dated 23rd May 1863, from District Engineer, to the Collector.
Letter No. 114, dated 18th June 1863, from the Collector, to the District Engineer.
Letter No. 141, dated 30th June 1863, from District Engineer, to this office.

2. The quantity of water flowing down Pamanyar, as measured on the 12th instant, above the island at the head of Peruvalandan channel, (*vide* accompanying sketch,) is 20,225 cubic yards per hour, which may be sufficient to irrigate 1,011 velies at 20 cubic yards per velie per hour, the sectional area of the stream being 202 feet, and its mean velocity 900 yards per hour. Of this

supply the quantity of water drawn by Puthagaram and Peruvalandan channels, as also by Terkuvattam channel, or Kandapari Chanar, is exhibited below :—

	Sectional area.	Mean velocity.	Cubic yards of water drawn per hour.	Extent of land capable of being irrigated.	Extent of land depending for irrigation.
	C. feet.	C. yds.	C. yds.	Velies.	Velies.
Puthagaram channel	7/12	875	820 3/4	41	200
Peruvalandan do.	27 1/4	1,200	3,600	180	500
	.....	.....	4,420 3/4	221	700
Terkuvattam channel called Kandapari Chanar	55 1/2	2,400	14,850	742 1/2	600
	.....	.....	19,270 1/4	963 1/4	1,300
Add quantity of water escaping over the dam	.....	.....	955	47 3/4	.....
	.....	.....	20,225 1/4	1,011 1/4	1,300

From the foregoing statement, it would appear that the quantity of water drawn by the first two channels is not capable of irrigating more than 221 velies, whereas 700 velies of Nunjah are solely depending upon them for irrigation, having no other means of obtaining supply, and that the Terkuvattam channel, or Kandapari Chanar, draws as much water as it could irrigate 742½ velies, whereas the total extent of Nunjah land depending upon it is not more than 600 velies, the excess of water thus overdrawn running to waste, while a vast extent of Nunjah depending upon the former is suffering from the insufficient supply that could be obtained in the absence of the Korumboo in question.

3. The sluice at the head of Puthagaram channel has one vent of 1½ feet span, and 4½ feet deep; that of the head of Peruvalandan channel has three vents of 1½ feet span by 4½ feet deep each, and the sluice at the head of Kandapari Chanar has two vents of 3 feet span and 5 feet deep each. The former two sluices are quite open, and of the two vents of the latter, one is left open, while the other is kept closed. The door of the Kandapari Chanar head sluice is 4 feet below the crown of the dam over which the present depth of water, retained by means of planks and turf, is one foot. The distance from the dam to the head Peruvalandan channel is about three-quarters of a mile, and the difference of level between the floors of the head sluices of Kandapari Chanar and Peruvalandan channel is 1½ feet, the latter being high. From this, it may be inferred that, when the second vent of the Kandapari Chanar head sluice is opened, which is under the control and option of the Mirasidars therein concerned, the channels of Puthagaram and Peruvalandan could draw no supply at all in the present state of the river.

4. Under these circumstances, the prayers of the petitioner, I consider, are well deserving of your favorable consideration; but in granting his request, I would suggest the expediency of causing him to sign an agreement to the effect, that he should draw his water supply by damming up the western branch for every thirty-six hours after leaving it open by removing the dam for every twenty-four hours, so that, by this arrangement, the supply of water flowing down the river during low freshes may be distributed proportionately for the time being, and I shall be prepared in the meantime to submit, as directed by Captain Mullins, plans and estimates for the proposed regulating dams, until the construction of which, I am of opinion the raising of Korumboo across western channel cannot be entirely prohibited, without causing serious loss both to Government and the Mirasidars.

[1] Vide his letter No. 141, dated 30th June 1863.

5. The Collector's original letter, dated 13th June 1863, No. 111, which accompanied Captain Mullins's letter, is herewith returned for your information.

Enclosure No. 4.—Sketch.

1. Resolved that the foregoing letter, and its enclosures, be forwarded to the Government Pleader for his opinion.

2. The Peruvalandan village receives its supply of water for purposes of irrigation from a Government channel proceeding from a point in the Pamanyar river. The level of the channel is high, and therefore in low floods to divert the water into it, the villagers have been in the habit of raising a temporary embankment across the bed of the river. The consequence has been that the bed has silted up and become incapable of carrying the proper volume of water, and the villages lower down the river have suffered. Furthermore the temporary embankments have diverted into the channel more water than the village dependent on it ought to receive.

3. In order to remedy this evil, the Collector of the district, in consultation with the Superintending Engineer, recently determined to erect a masonry regulating dam. The dam has been completed, but the Mirasidars of a village, the supply of water to which it affects, have filed a suit to have it removed contending that it injures their irrigation supply. The Government has been included as a defendant in the suit.

4. The answer the Collector proposes to file is enclosed in the letter recorded above. The Board have no doubt that the Collector will be able to prove the statements in paragraphs 1 to 4 inclusive.

5. They wish to have the opinion of the Government Pleader upon paragraph 5. In that paragraph the Collector asserts the right of the paramount power to distribute the water from rivers and streams, the property of the State, at their discretion, and in the manner that seems to them most equitable and advantageous for the State and the people generally, giving compensation of course for injuries caused to individuals in the exercise of this prerogative. This question is one of great importance. It is obvious that if the Government are prevented from exercising this right by decrees of the Civil Courts, every step they take to regulate or improve the supply of water for irrigation purposes may be contested, and the progress of the country and the development of its resources be indefinitely retarded.

6. There is no law on the subject; nor, so far as the Board are aware, any ruling or decision of the Courts of general application. It is, however, only recently that the right of the State to deal as it deems expedient (subject to the payment of equitable compensation for injury caused) with rivers, channels, and other public sources of supply has been contested. It is notorious that, by prescriptive usage and the acquiescence of the people, the State has always possessed and exercised this right, and in fact on no other principle could the State have constructed the anicuts, channels, and tanks which have added so greatly to the prosperity of the people; and the right of the State is further recognised in the payments which the recipients of water have to make for the water they draw from public sources. Moreover, when the supply fails from natural causes, the Government by immemorial usage are bound only to remit the payments due to the State, and are not bound to compensate the ryot for the loss of his seed, labor, time, and capital; and they have the undoubted right to increase or diminish the charge for water. The water is thus the property of the State, and there is no individual

contract on the part of the State to continue its supply on the present or any other terms for any period. Under these circumstances, the Board entertain no doubt as to the rights of the State, but it is eminently desirable that they should be asserted only in a case where the issue can be tried really on its merits, and they now wish to be advised by Mr. Brockman whether the present is such a case, and if it is, they request that he will be good enough to put the plea into proper shape, and to furnish them with instructions for the Collector's guidance in the conduct of the suit, so that in the event of an adverse judgment, the appeal to the higher Courts may not be prejudiced by errors of procedure.

No. 490A. Proceedings of the Board of Revenue, dated 20th August 1867, No. 5,361:—

Read again letter from the Collector of Tanjore, dated 10th July 1867, No. 126, recorded in Board's Proceedings, dated 29th idem, No. 4,827,

Read also the following letter from the Officiating Government Pleader, to the Sub-Secretary to the Board of Revenue, dated Madras, 8th August 1867, No. 122.

1. I have the honor to acknowledge the receipt of the Proceedings of the Board noted in the margin, on the subject of a suit lately filed in the Court of the Principal Sudder Ameen at Tanjore by certain Mirasidars of villages irrigated by the Terkuvattam Voikal, or Kandapari Chanar channel connected with the river Pamanyar, against the Mirasidars of Peruvalandan, and the Government.

Dated 29th July 1867, No. 4,827.

2. It appears to be conceded that the plaintiffs in the suit above mentioned, are entitled to the easement or right of water from the river Pamanyar, through the Kandapari Chanar channel, in the same way as the Mirasidars of Peruvalandan are entitled to the easement or right of water in the same river by the Peruvalandan channel. It does not, moreover, seem to be denied that the plaintiffs have long enjoyed the right asserted by them. In this state of things, it seems to me that any disturbance of their right by any one who has not a prior prescriptive right to use and divert the river, or lessen the quantity of water in it, will give them a right of action against the wrong-doer. If the state of things above referred to is not conceded, the written statement of the Government should contain an express denial of the plaintiffs' right to the easement.

3. In the present case, the chief alleged wrong-doer is the Government; and the alleged wrongful act is stated to consist in the erection of a masonry dam across the eastern and western branches of the river Pamanyar. If, therefore, it is conceded that the plaintiffs have the right, which they set up, to the use of the water from the river, it is open to the Government in the suit above referred to, to shew, first, that the alleged wrongful act has not been and cannot be productive of damage to the plaintiffs, or obstruction to their right; second, that the Government has for a long time had and still has the right, with the view to regulate and improve the supply of water in the particular river above referred to, or otherwise, to construct works such as that of which the plaintiffs complain; and third, to justify the act of which the plaintiffs complain by virtue of such right.

4. The first ground of defence above mentioned is contained in the 3rd and 4th paragraphs of the proposed written Statement submitted by the Collector of Tanjore, which accompanied his letter embodied in the Proceedings of the Board above noted. That ground of defence presents no difficulty to my mind. The second and third grounds of defence are contained in the 5th paragraph of the proposed written Statement, and are not quite so clear.

5. I can find no authority whether at common law, in express enactments, or in rulings of Judicial tribunals in support of the general proposition contained in the 5th paragraph of the proposed written Statement, viz., that rivers and channels in this country which are maintained at the public expense are State property, and that the Government has an absolute and indefensible right to regulate as it thinks best the distribution of water therefrom. The question is, doubtless, an important one, and the situation of it is surrounded with difficulties; but, after the fullest consideration which I can give to the subject, I am inclined to the opinion that no such general right exists; and nothing has been shewn to indicate the existence of the paramount right of the Government in this particular case. If it is conceded that the right of the Government can only be exercised on the terms of its giving compensation to persons, who are injured by the exercise of its right, it seems to me that such a right can hardly be said to be a paramount right. In this case the plaintiffs are claiming compensation. If it is contended that the right of the Government can be exercised without any such conditions as to paying compensation, I am of opinion that no such general paramount right exists.

6. There has not been, as far as I can discover, any law passed for this Presidency with respect to rivers and streams, or lands gained by alluvium, or dereliction of a river or the sea. It is worthy of note, however, that the Bengal Regulation XI, of 1825 contains provisions regulating the right to land gained by gradual accession from the recess of a river or of the sea, and recognises the right (in the absence of any special usage to the contrary) of the landholders, to whose lands such accessions are made to the lands thereby gained; while it declares that, in cases where churs or islands are thrown up in the sea, or in navigable rivers, (the bed of which does not belong to any particular individual,) and where the channel between such island and the shore is not fordable, such islands or churs shall be at the disposal of Government. Under this Regulation, therefore, the rights of riparian proprietors are expressly upheld.

7. The only circumstance that should probably induce the Board to recommend that the point suggested in the 5th paragraph of the proposed written Statement should be raised and insisted upon, is the admission by the plaintiffs in their plaint that about thirty years ago, the Government had constructed a masonry dam. This admission, however, may, I think, be made use of against the plaintiffs at the hearing under the 5th paragraph of the written Statement, which I have prepared and herewith submit as a substitute for the 5th paragraph of the proposed written Statement drawn up by the Collector. Under that and the 6th paragraphs, moreover, it may be urged that, in this case, where the act complained of is one likely to be of public benefit, no injunction should be awarded as prayed by the plaintiffs. If the plaintiffs succeed in establishing their right to the easement, and the damage sustained by them in consequence of the act of Government, they will, doubtless, recover compen-

sation; but will not, in my opinion, be entitled to the injunction. If, on the other hand, they fail to establish their right, and shew damage, they will also fail to recover any damages, or secure an injunction.

8. Herewith I return the plan which accompanied the Proceedings of the Board above noted.

Paragraphs 5, 6, and 7 to the proposed written Statement on behalf of the Government in Suit filed in the Principal Sudder Ameen's Court, Tanjore, by Shunmuga Mudelliar and others, against Srinivassa Iyengar and others.

Para. 5. In their plaint the plaintiffs admit that about thirty years ago a masonry dam was constructed by the Government across the said Pamanyar river. The defendant, the Government, submits that the plaintiffs have, therefore, according to their own shewing, acquiesced in the said act of the Government, which is similar to the act which they now allege to be an interruption and obstruction of their rights. The said Government also submits that by reason of the said construction of the masonry dam about thirty years ago, which has continued and still continues to exist, the right, if any, of the said plaintiffs to have the said Pamanyar river run on in its accustomed course has been defeated.

6. The said regulating dam erected by the said Government, of which the said plaintiffs complain, is a work of public and general utility, and while it neither causes, nor is likely to cause loss, damage, or inconvenience to the plaintiffs, is and will be productive of benefit to the public and to the other owners and cultivators of, and persons interested in the lands situate upon and adjacent to the banks of the said Pamanyar river.

7. The plaintiffs have not, in their plaint, shewn that they have sustained any loss, damage, or inconvenience, by reason of the alleged acts of the said defendant, the said Government, of which they complain.

Enclosure No. 2.—Sketch.

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1. Resolved that the foregoing papers be submitted to Government, with the Board's recommendation that the suit reported by the Collector of Tanjore, be defended on the usual terms at the Government expense.

2. The Board consider that it is highly important that the plea set forth in paragraph 5 of the Collector's proposed answer should be urged in Court. They would, therefore, suggest that the Collector's answer as prepared be approved, with the additions proposed by the Government Pleader inserted between the 4th and 5th paragraphs.

3. The Government are aware that the expediency of reserving the rights of Government in all irrigation works by a special enactment is now under consideration.

4. Early orders are requested, as the date of hearing is fixed for the 12th of September.

No. 491. Order thereon, 26th August 1867, No. 1,991.

Miscellaneous.

1. The Government sanction the defence of this suit on the usual terms, and approve the Board's suggestion that the answer be filed retaining the 5th paragraph of the Collector's draft, as well as the additions proposed by the Government Pleader.

2. They suggest, for the consideration of the Board and Government Pleader, that the *joint-proprietary* of the State in all cultivated land, deducible from its unquestioned right to a certain proportion of the crop, may with advantage be insisted on as an additional argument in support of the plea therein set forth as to the right of Government to deal with all sources of irrigation for the benefit of the State and the community, whom the State represents, subject to the liability to compensate any individuals proved to be injured by acts done with this object in view.

(Signed) W. HUDLESTON,
Secretary to Government.

Revenue Depart^t

Proceedings of the Madras Govt^t
under date the 26th Augt^t 1867.

Read the follow-
-ing Ro: of the Board
of Revenue -

Recommending
to Govt that suit No 124 of
1867, filed in Principal
Sudder Ameen's Court at
Tanjore, for preventing
construction of a masonry
dam, be defended at Govt^t
expense, and that answer
proposed by Colly^r be ap-
-proved with addition pro-
-posed by Govt^t Pleader -

Vide Cutcherry Ro: dated 20th Augt^t 1867 No 2.

The Govt^t sanction
the defence of this suit
on the usual terms - and
approve the Board's sug-
-gestion that the answer
be filed retaining the
5th^t para of the Collector's
draft - as well as the
addition

additions proposed
by the Govt Pleaders -

They suggest for
the consideration of the
Board and Govt Pleade
that the joint - profit -
-tory of the State in all
cultivated land, deduc -
-cible from the pur -
-gestions eight to a
certain proportion of the
crop, may with advan -
-tage be insisted on as
a additional argument
in support of the plea
therein set forth, as to
the right of Govt to deal
with all sources of irri -
-gation for the benefit
of the State and the com -
-munity whom the State
represents, subject to the
liability to compensate
any individuals proved
to be injured by the exer -

8

cise of such power in the direction
objected to.

LOS

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No Copies Letter Bd Revenue Dept. 37
3 Govt Pleaders

5-9-68

Revenue 1867 Dep^t
Proc^g of Govt for Anjuna

No 1991.

Proc^g of the Madras Govt
dy 26th August 1867.

No 498-491