M.R. O. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2807 Press ~~Mis.~~

25-34 Dated 1—9— 19 1868

Not to be folded or roughly handled

Read the following :—

No. 25. Proceedings of the Board of Revenue, dated 14th November 1866, No. 8,246.

Read the following letter from the Collector of South Arcot, to the Secretary to the Board of Revenue, dated Cuddalore, 31st October 1866, No. 216.

1. I have the honor to submit translation of a Plaint in Suit No. 43 of 1866, on the file of the Small Cause Court at Cuddalore, together with a draft answer which I propose to file, and I request sanction for the defence of the suit at the public cost.

2. The facts of the case are briefly these.

3. One Lakshmana Reddy and 17 others have brought the above suit to put a stop to the execution of a project, originating with the Superintending Engineer, for the better regulating of the supply of water to the branch channel leading to the villages of Palur and Pullavaroyanuttum, and a part of which project involves the removal of the present dam, and the construction of a new one by which the water could be turned on or off with greater facility and readiness. The plaintiffs have not suffered any loss, and none will arise by the execution of the work in question, and their fears that their supply of water will be curtailed are groundless; and under any circumstances no cause of action can exist till those fears have been realized, and they are able to show that their interests have been injured or interfered with. The plaintiffs' present alleged grievance has no foundation, and their suit is wholly premature.

4. The time allowed for putting in the answer expires on the 12th proximo, but the Court has been requested to extend the period till 12th December next.

To the Court of the Principal Sudder Ameen, South Arcot.

Plaintiffs.

1. Lakshmana Reddy, residing at Keelputtampaukum, attached to the Cuddalore Talook.
2. Linga Reddy, residing at Mulikerampat.
3. Coopoo Reddy, residing at Puttampaukum.
4. Linga Reddy, of Kalpauthy.
5. Singaroo Mootoosamy Moodelly, ryot of Melapauthi, residing at Vilvarayanuthum.
6. Soobba Reddy of Eidavur.
7. Vencata Rama Reddy, of Umimamu Covil.
8. Moodoolinga Reddy, of Keil Aroomcoonum.
9. Balakistna Reddy, residing at Vayadepaukum.
10. Soobba Reddy, residing at Sitharasoor.
11. Devanayaga Reddy, residing at Kudithanghi.
12. Appavoo Pillay, residing at Vazahappet.
13. Vencatarama Reddy, residing at Vaupaukum.
14. Mootoosamy Nynar, of Sozhavully.
15. Seeneevassa Reddy, of Vithy Reddy, residing at Nellicoopum.
16. Seeneevassa Reddy, residing at Vellapaukum.
17. Poorooshotama Reddy, residing at Karamany Coopum.
18. Devanayaga Pillay, son of Vengitraya Pillay, residing at Konamungalum.

} Cultivators by profession.

Represented by Janakirama Puntulu.

A

Defendants.

1. W. J. Harrington, Esq., Executive Engineer, First Range, South Arcot, residing at Munjacooppum, attached to the Cuddalore Talook.
2. Colonel Foord, Superintending Engineer, residing at Munjacooppum, but now absent at Bangalore.
3. C. W. Reade, Esq., Collector of South Arcot.
4. Vencataroyer, Maniem of Palur, attached to the said talook.
5. Gopala Iyer, another Maniem of Palur.
6. Agarum Vengitrama Reddy, another Maniem of the said village.
7. Narasa Reddy, ryot of the said village, residing at Sannasipet.
8. Soobba Reddy, residing at Pullavaroyanuttum, attached to the said talook.

The defendants 1, 2, 3, hold employment under Government.

The others are cultivators by profession.

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1. The lands of Keelputtampaukum, &c., eighteen villages, owned by the plaintiffs, continue to be irrigated by the spring water of the Guddelum, near the Trivady anicut, the right of irrigation being vested in the plaintiffs.

2. In the year 1836, corresponding to Fusly 1246, when Colonel Cotton erected a brick bund opposite to Trivady temple in lieu of an earth bund which originally existed, he constructed a channel called Rajavaikkal for the irrigation of the said eighteen villages; a branch channel communicating by a sluice with the main one was also constructed for the irrigation of Palur and Pullavaroyanuttum owned by defendants 4 to 8; but the spring water supplied by the anicut being found insufficient for the irrigation of the said eighteen villages, the said sluice was never opened, and branch channel remained unused.

3. The brick bund above alluded to having been subsequently removed, the one which now stands was newly constructed by the late Collector near the site of the original earth bund, after receiving an engagement from the ryots of the said eighteen villages to improve the cultivation so as to augment the Government revenue. The main channel proceeding from the new anicut was terminated by the old Rajavaikkal. The inhabitants of the said eighteen villages have thus been enabled not only to irrigate the lands already under their occupancy, but also to bring new lands under cultivation, and contribute to the increase of the Circar revenue.

4. In the year 1854, Mr. Wilkieson, the then District Engineer, inspected the brick bund at the instance of the Board of Revenue, and submitted a report that the plaintiffs had the exclusive right to the supply of the spring water from the said anicut, and in pursuance to the Board's instructions he constructed a regulating dam across the head of the branch channel feeding the villages of Palur and Pullavaroyanuttum, and settled that the ryots of the two villages just mentioned are only entitled to the water passing over the said dam during freshes. This arrangement which cut off the supply of spring water to the said two villages was approved by the late Collector, Mr. Hall.

5. In the year 1856, the second defendant, in opposition to the said order of Mr. Wilkieson, lowered the height of the said regulating dam by three inches, and thus facilitated the supply of water to the villages of Palur and Pullavaroyanuttum. But on a complaint being made by the plaintiffs against this measure, the said 2nd defendant in communication with the then Collector, Mr. Hall, considered the subject and settled that during the part of the year beginning with the 1st of March and ending the 30th June, when the water supply is scanty, the inhabitants of the eighteen villages should have the exclusive enjoyment of the water, a temporary bund being constructed over the regulating dam to prevent the water from passing over it.

6. The above order continued in force until March 1862, when the defendants 2 and 3 on an application from the defendants 4 to 8, removed the earth bund constructed by the plaintiffs over the regulating dam in opposition to mamool and the previous orders, and to the great detriment to the interests of the eighteen villages; but when the plaintiffs represented their rights

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to the 3rd defendant praying for a redress of grievances, he passed an order on the 5th of April 1862, declaring that the right of the first use of the anicut water belongs to the inhabitants of the eighteen villages owned by the plaintiffs, and that two villages of the defendants 4 to 8 are only entitled to what may remain after a sufficient supply has been made to the said eighteen villages, and issued a Takeed to the Sub-Magistrate of Trivady to carry the above order into effect.

7. That the plaintiffs alone are entitled to the use of the spring water supplied by the said anicut has been established on several occasions, not only by Collectors and Engineer Officers, but has also been upheld by the defendants 2nd and 3rd, as is shewn in the previous paragraphs. Yet the defendants 4 to 8 having continued to submit groundless petitions to the defendants 2nd and 3rd on a settled subject, the latter have, in violation of the obvious rights of the plaintiffs, accepted the claims of the defendants 4 to 8 to the spring water supplied by the anicut, and ordered the regulating dam to be razed to the ground; a notice has been circulated by the 1st defendant, &c., among the inhabitants of the said eighteen villages on the 3rd July 1863, announcing the removal of the dam in pursuance to the above order, and the 1st defendant, with his subordinates, accompanied by the defendants 4 to 8 and their servants, are preparing to remove the dam.

8. The removal of the dam will not only deprive the plaintiffs of their established right and claim to the spring water supplied by the anicut, but will also cut off the supply to a large extent of land reclaimed and prepared for cultivation at great expense of money, on the hope of a supply of spring water from the said anicut, thus preventing the cultivation of an extensive tract of land to the prejudice of the interests both of Government and ryots, and damaging the cultivation of sugar-cane for the firm of Parry and Company.

9. The total ayacut of the eighteen villages amounts to 3,300 Cawnies, and as the supply by the river during freshes as well as ordinary times is insufficient for the irrigation of whole ayacut, a very large tract has been left waste, though the plaintiffs continued to pay the assessment due thereon. The plaintiffs, therefore, pray that the Court may reverse the decision of the defendants 1, 2, and 3, directing the removal of the said regulating dam, which yields a supply of water irrigating 1,000 Cawnies in the said eighteen villages, and valued at Rupees 5,000, according to the usual Kasser rate of 5 Rupees a Cawny, charged in the eighteen villages, confirm the right of the plaintiffs and other inhabitants of the eighteen villages to the spring water supplied by the said anicut, and prohibit the defendants to interfere with the dam and order them to leave it untouched.

Verification of the Plaint. Signature of the plaintiffs.

(Signed) F. C. CARR,
Judge.

28*th August* 1866.

Enclosure No. 2.—Abstract.—Proposed answer.

1. The Board await the Collector's reply to their Proceedings, dated 5th November 1866, No. 8,008, calling for a report on Messrs. Parry & Co.'s letter on the subject of this suit.
2. The Collector will forward a rough sketch of the locality with his reply.
3. The Board consider the general plea against the jurisdiction of the Courts in such matters to be wholly untenable.

No. 26. Proceedings of the Board of Revenue, dated 8th March 1867, No. 1,448.

Read the following letter from the Government Pleader, to the Secretary to the Board of Revenue, dated Madras, 6th March 1867, No. 43.

1. With reference to the Proceedings of the Board, and letter of the dates and numbers noted in the margin, I have the honor to enclose a draft of a written Statement, which I advise should be put in on behalf of the three first defendants.

Procs. of Board, 8th February 1867, No. 794.
Letter from Govt. Pleader, 13th Feb. 1867, No. 27.
Procs. of Board, 19th February 1867, No. 1,026.

2. It will be observed that after raising the questions of law by which the case must be decided. I have framed the defence principally from the answer which Colonel Foord prepared, and which I think embraces all the points put by Mr. Reade except the first.

3. The first part of the Collector's proposed answer I have omitted. He does not refer either in his answer or his correspondence to any law which vests in him the authority which he claims, and I do not recollect any Regulation or Act by which such an authority is given; it being remembered this is a dispute regarding the rights of parties to the use of water flowing in a public river. If, however, I am in error, and you will refer me to the enactment, I will re-consider that part of the subject.

4. There are two notes in the margin of the draft requiring attention.

5. I advise that the Civil Judge be moved to call up the suit to his own file; the question involved in it being one of great importance, and if either party appeals, the whole question can then be discussed in the High Court.

6. The works bearing on the law of the subject I apprehend are not likely to be with the Government Vakeel at Cuddalore, and possibly not in the possession of the Court; but I can refer the Collector to Mr. Norton's very useful work "Topics of Jurisprudence," and in page 154 and subsequent pages he will find in a small compass, and to considerable extent, the law on the subject so far as relates to the use of running water by parties whose lands adjoin a river. In the argument it should be borne in mind this is a public river. Mr. Norton's work does not go so fully into the subject as could be wished to support a legal argument, but probably it will prove sufficient for the lower Court. In the case of Mason *v.* Hill, the stream in question was not a tidal or public river, but a mere natural stream.

7. I recommended that a fair English transcript be filed with the Tamil translation.

IN THE COURT OF THE PRINCIPAL SUDDER AMEEN, SOUTH ARCOT.

In Original Suit No. 43 *of* 1866.—Wherein

Cultivators by profession. *Plaintiffs.*

1. Lakshmana Reddy, residing at Keelputtampaukum, attached to the Cuddalore Talook ... ...
2. Linga Reddy, residing at Mulikerampat ... ...
3. Coopoo Reddy, residing at Puttampaukum ... ...
4. Linga Reddy, of Kalpauthy ... ...
5. Singaroo Mootoosamy Moodelly, ryot of Melapauthy, residing at Vilvarayanathum ... ...
6. Soobba Reddy, of Eidavur ... ...
7. Vencatarama Reddy, of Umimamu Covil ... ...
8. Moodoolinga Reddy, of Keil Aroomcoonum... ... ...
9. Balakistna Reddy, residing at Vayadepaukum ... ...
10. Soobba Reddy, residing at Sitharasoor ... ...
11. Devanayaga Reddy, residing at Kudithanghi ... ...
12. Appavoo Pillay, residing at Vazahappet ... ...
13. Vencatarama Reddy, residing at Vaupaukum ... ...
14. Mootoosawmy Nynar of Sozhavully ... ...
15. Seeneevassa Reddy, of Vithy Reddy, residing at Nellicoopum ... ...
16. Seeneevassa Reddy, residing at Vellapaukum ... ...
17. Poorooshotama Reddy, residing at Karamany Coopum ... ...
18. Devanayaga Pillay, son of Vengitraya Pillay, residing at Konamungalum... ... ...

and

Cultivators Employment by profession. *Defendants.*

1. W. J. Harrington, Esq., Executive Engineer, First Range, South Arcot, residing at Munjacoopum, attached to the Cuddalore Talook.
2. Colonel Foord, Superintending Engineer, residing at Munjacoopum, but now absent at Bangalore ... ...
3. C. W. Reade, Esq., Collector of South Arcot ... ...
4. Vengitrayer, Maniem of Palur, attached to the said talook ... ...
5. Gopala Iyer, another Maniem of Palur... ... ...
6. Agrarum Vengitrama Reddy, another Maniem of the said village ...
7. Narasa Reddy, ryot of the said village, residing at Sannasipett ...
8. Soobba Reddy, residing at Pullavaroyanuttum, attached to the said talook... ... ...

Written Statement of the case of first, second, and third defendants.

I. The defendants deny the case put forward by the plaintiffs in their plaint, except in such respects as any part of such case is expressly admitted in this Statement, and they put the plaintiffs to the proof of their whole case, except as to such parts as are so admitted.

II. The defendants say the river Guddelum is now, and from time immemorial has been a public river in which the tides and waters of the sea have from time immemorial flowed and re-flowed, and is a prerogative appertaining to Her Majesty.

III. The defendants further say that the Trivady anicut main channel, through which the water flows that irrigates the plaintiffs' land, is an artificial channel made by, and at the expense of, Government* in the year 18 .

* The date is of no importance, and if any difficulty occurs in filling up the blank, the words, &c., "in the year 18 ," may be struck out.

(Signed) C. DALE,
Government Pleader.

IV. The defendants further say that the plaintiffs have no prescriptive right to the whole and sole use and appropriation of the water flowing in the said river Guddelum, or into the Trivady anicut main channel lands belonging to the villages of Palur, Pullavaroyanuttum, and other villages above and below the village of Trivady, lie on either side of the said river.

V. The defendants say that in the year 1837, Captain H. C. Cotton, the then Civil Engineer of the Division, recommended that a masonry dam or anicut should be built across the river Guddelum, near Trivady, to supersede the mud dams which had heretofore been annually constructed in the river, for the purpose of facilitating the irrigation of the lands of what are known as the eighteen villages, and which belong to the plaintiffs and others, and the lands of Palur and Pullavaroyanuttum. This recommendation was adopted by Government.

VI. Captain Cotton's diary shews unmistakeably that it was his intention that the lands of Palur, as well as the lands of the eighteen villages, should be benefited by the anicut, and these defendants say that the large increase of revenue to be derived from Palur had a great deal to do with the sanction accorded by the Board of Revenue and Government to the estimate for the anicut.

VII. In furtherance of the proposal so made by Captain Cotton, an anicut was built across the river Guddelum, a channel was also cut to connect the Palur channel with the Trivady channel, and a sluice built in the cut to regulate the supply. These works were executed about the year 1839, and at the expense of Government.

† I have taken this from Colonel Foord's draft, but it appears a little inconsistent. Captain Cotton's anicut was built about 1839, according to Mr. Wilkieson's report, and shortly afterwards was breached according to Colonel Foord, and the present anicut was not built till about 1848. What did the Palur ryots do between the time when the first anicut was breached and the present anicut was built?

(Signed) C. DALE,
Government Pleader.

VIII. Soon after its erection, the anicut mentioned in paragraph VII was breached and rendered useless, but while it stood† the sluice also mentioned in that paragraph was not made use of by the Palur ryots, as they preferred getting an independent supply of water from the river by constructing a mud dam as before.

IX. After the anicut was breached, and in or about the year 1848, a second anicut (the present Trivady anicut) was built, but lower down the river and so near to the Palur dam that the ryots of Palur gave up the construction of the dam, and applied for the share of the water to which they claim to be entitled, and which was promised them when the first anicut was built.

The claim of the Palur ryots has always been resisted by the ryots of the eighteen villages, and hence, various schemes have been proposed for giving a share of the water to Palur from the Trivady main channel.

X. For this purpose a dam was constructed across the head of the Palur channel in 1854 by the Civil Engineer, and it was intended that when the water in the main channel rose above the top of this dam, the surplus-water should flow to Palur.

XI. It was then thought that a sufficient supply of water would thus be obtained by the ryots of the Palur village, and that the dispute between the ryots of Palur and the ryots of the eighteen villages would come to an end.

XII. The dam, however, has proved to be useless, consequent on seasons being irregular, and the quantity of water in the river being subject to great fluctuations. It has, therefore, happened that at the proper time for commencing the cultivation, no water was flowing over the dam, and again, just before the crops arrived at maturity, the water had ceased to flow over the dam.

XIII. The defendants say that the proper way to regulate the supply is by means of the sluice built for that very purpose by Captain H. C. Cotton, the designer of the first Trivady anicut, and that if this sluice is used, the supply of water to the eighteen villages will not be diminished, but the present clumsy and inefficient method will be superseded by one that is simple and efficient, and the supply to Palur may be regulated to such quantity as they are fairly entitled to by means of the shutters with which the sluices are provided.

XIV. These defendants have no personal interest in the matter in dispute, they are merely acting as servants of Government in good faith to do to the best of their judgment what is fair and just to all the parties who are interested, and who are in reality the contentious parties to the suit, and they disclaim any intention or wish to bring the land of one village under cultivation by throwing out of cultivation the land of any other village.

XV. These defendants submit to the judgment of the Court that, in the present instance, no real cause of grievance exists.

XVI. For the contents of the documents which the plaintiffs in their plaint mention, the defendants crave leave to refer thereto, if, and when the same shall be produced to this Honorable Court.

XVII. And they pray the suit may be dismissed as against them with costs.

Forwarded to the Collector of South Arcot with the proposed answer. Mr. Reade will be careful that due attention is paid to all Mr. Dale's instructions (see also Standing Order No. 312).

No. 27. Proceedings of the Board of Revenue, dated 16th January 1868, No. 340 :—

Read the following letter from the Collector of South Arcot, to the Secretary to the Board of Revenue, dated Cuddalore, 14th November 1867, No. 296.

I have the honor to forward to the Board, and for submission to Government, if necessary, copy of the Decree passed by the Principal Sudder Ameen in favor of Government in the Palur water dispute or Suit No. 43 of 1866, and regarding which the correspondence, as noted in the margin, took place between the Board of Revenue and myself.

Board's Procs., dated 5th Nov. 1866, No. 8,008.
Do. ,, 14th ,, ,, ,, 8,246.
Do. ,, 8th Feb. 1867, ,, 794.
Do. ,, 19th ,, ,, ,, 1,026.
Do. ,, 8th March ,, ,, 1,448.
Do. ,, 13th ,, ,, ,, 1,570.
Do. ,, 18th ,, ,, ,, 1,664.
Do. ,, 2nd April ,, ,, 2,096.

Proceedings of the Madras Government, Revenue Department, 1st September 1868.

Decree of the Principal Sudder Ameen's Court of Cuddalore, Original Suit No. 43 of 1866, by T. Kristnasawmy Iyer.

Plaintiffs.	*versus*	*Defendants.*
1. Lakshmana Reddy.		1. W. J. Harrington, Esq., Executive Engineer, South Arcot.
2. Linga Reddy.		2. Lieutenant-Colonel E. A. Foord, R. E., Superintending Engineer, 5th Division.
3. Coopoo Reddy.		3. C. W. Reade, Esq., Collector of South Arcot.
4. Linga Reddy.		4. Vencataroyer.
5. Singaroo Mootoosamy Moodelly.		5. Gopala Kistnyer.
6. Soobba Reddy.		6. Agrarum Vencatrama Reddy.
7. Vencatarama Reddy.		7. Narasa Reddy.
8. Moodoolinga Reddy.		8. Soobba Reddy.
9. Balakistna Reddy.		Kakkurla Subba Row, Vakeel for 2nd and 3rd defendants.
10. Soobba Reddy.		Cumbaconum Subba Row and Narasimma Charriar, Vakeels for 4th, 5th, 7th, and 8th defendants.
11. Devanayaga Reddy.		
12. Appavoo Pillay.		
13. Vencatarama Reddy.		
14. Mootoosamy Nynar.		
15. Seeneevassa Reddy.		
16. Seeneevassa Reddy.		
17. Poorooshotama Reddy.		
18. Devanayaga Pillay.		

By Vakeel Janakiram Puntulu.

The object of the plaintiffs in bringing this suit is—

First.—To obtain cancelment of the order of the first, second, and third defendants, relating to the entire removal of the regulating dam that has been constructed across the head of the branch channel supplying the villages of Palur and Pullavaroyanuttum.

Second.—To establish their exclusive right to the spring water of the Trivady anicut.

Third.—To obtain an injunction prohibiting the defendants from interfering with their regulating dam, and directing them to leave it undisturbed.

Decree.

The Acting Principal Sudder Ameen dismisses the plaintiff's claim with costs.

Costs to be borne by plaintiffs.

	Rs.	A.	P.	Rs.	A.	P.
2 Rolls of Vakalutnamahs	1	0	0			
1 ,, for Plaint with an additional roll	152	0	0			
6 ,, for Motions	3	0	0			
6 ,, for list of Documents	3	0	0			
Vakeel's fees on Rupees 5,000	250	0	0			
Batta for serving summons	1	7	0			
				410	7	0

Costs to be paid by plaintiffs to the 4th, 5th, 7th, and 8th defendants.

	Rs.	A.	P.	Rs.	A.	P.
1 Roll for Vakalutnamah	0	8	0			
2 ,, for Statements...	1	0	0			
1 ,, for Application	0	1	0			
Vakeel's fees on Rupees 5,000	250	0	0			
				251	9	0

Costs to be paid by plaintiffs to the 2nd and 3rd defendants.

							RS.	A.	P.			
1 Roll for Vakalutnamah	...	..	...	...	...	...	0	8	0			
3 ,, for Statements	...	...	...	...	...	...	1	8	0			
2 ,, for Motions ...	...	...	...	...	...	...	1	0	0			
2 ,, for Applications	...	...	...	...	...	...	0	2	0			
Vakeel's fees on Rupees 5,000		...	...	...	...	...	250	0	0			
										253	2	0

Promulgated at Cuddalore, on the 15th October, in the year of our Lord one thousand eight hundred and sixty-seven.

No private adjustment of this Decree shall be deemed valid, unless such adjustment is made a record of Court by all the parties concerned in the Decree.

No process of execution will be issued to enforce this Decree, unless some proceeding shall have been taken to keep the same in force within three years next preceding the application for such execution.

Judgment.

This case was taken up for the first hearing, and as the documents filed by both the parties, and the arguments advanced by their Counsel at the hearing, appear sufficient for the decision of the suit, I proceed to dispose of it under Section 145 of the Civil Code.

The plaintiffs claim a right to the whole and sole use and appropriation of the spring water flowing into the Trivady anicut main channel from the river Guddelum. But this the defendants deny; the second and third defendants further contending that the anicut in question was constructed, not only for the benefit of the plaintiffs' eighteen villages, but also of Palur and Pullavaroyanuttum belonging to the defendants 4 to 8. There is nothing on the side of the plaintiffs to prove the exclusive right claimed by them. On the other hand, the assertion of the 2nd and 3rd defendants that the benefit of the villages Palur and Pullavaroyanuttum was also intended by the anicut, is fully borne out by the Official Diary of Captain Cotton,* the Civil Engineer, by whom the anicut was originally constructed in 1836, and the Rajah channel opened. This diary,* which was produced by the Vakeel for the 2nd and 3rd defendants, unmistakeably shews that the anicut in question was constructed for the supply not only of the eighteen villages, but also of Palur and two other villages.

* Copy.

That such was the object of the construction of the anicut is further clearly inferable from the admitted fact, that, when opening the Rajah channel a branch channel was cut from it, obviously to give a share of the water to Palur, &c., and a sluice built in the cut to regulate the supply.

It, however, appears, and indeed both the parties admit, that the branch channel and sluice were not made use of by the Palur ryots until 1848. But in assigning cause for it, both the parties differ; the plaintiffs stating that it was owing to the insufficiency of the anicut spring water even for the supply of the eighteen villages, and the second and third defendants, on the other hand, contending that the Palur ryots did not make use of the branch channel and sluice, as they preferred getting an independent supply of water from the river by the construction of temporary mud dams, as they had done before the formation of the anicut.

In support of the plaintiffs' assertion they have filed the Exhibits C to G which are all Takeeds issued by the Collector of South Arcot to the Tahsildar of Trivady between the years 1846 to 1848. These exhibits do not *conclusively* prove the plaintiffs' assertion. The Takeeds, however, marked E, F, and G, shew that the Collector insisted on the Palur ryots getting a supply of water from the river by the construction of a mud dam, as they had previously used to do.

In 1848, an entire change occurred in the state of things. At this period, the anicut of 1836 was breached, and this led to the construction of a second anicut, the one now existing and marked F in the plan. This anicut was constructed below the old site, and near the place where the ryots of Palur had used to construct the temporary mud dam. A new main channel was also made at the

Proceedings of the Madras Government, Revenue Department, 1st September 1868.

time, which joined the old Rajah channel above the Palur sluice. Thenceforward, the ryots gave up the construction of the mud dam, and laid claim to participative enjoyment of the anicut water, which was promised them, as above noticed, when the first anicut was built. This claim was always resisted by the ryots of the eighteen villages, and the result was that continual disputes arose between both the parties.

The exhibits filed on record shew that various schemes were proposed and tried in vain, by the authorities in the Revenue and Public Works Departments, to put a stop to the above disputes, and to insure distribution of water to both the contending parties in equitable portions.

In 1852, the Civil Engineer, Captain F. Smythe, premising that he was anxious to investigate the state of the irrigation by the Trivady channel before giving his recommendation, proposed* as a temporary measure that, during freshes in the channel, the Palur head sluice should be opened for the supply of their tank. This proposal was carried out by the Takeed marked I. The arrangement, however, did not meet the wants of the Palur ryots, who again began to complain. In 1853, the Collector began to inquire† whether any substantial injury would result to the plaintiffs' villages by a portion of the water being supplied to Palur. In the same year, the Palur ryots complained to the Board of Revenue, who called‡ upon the Civil Engineer to report his opinion upon the measures proper to be taken in the case. On the 2nd February 1855, the Acting Civil Engineer proposed that a masonry regulating dam be constructed across the head of the Palur channel, and that the sluice be only opened when the water in the channel rises above the dam. In March 1855, the Board of Revenue permitted the work proposed by the Acting Civil Engineer to be constructed *if approved by the Collector.* The Takeeds P and Q shew that the Collector approved of the work, and ordered the necessary preparations to be made for the construction of the dam.

* *Vide* Exhibit H.

† *Vide* Takeed J.

‡ *Vide* Proceedings, Board of Revenue, 23rd October 1854.

Even before this period, or in 1854, a portion of the water of the Trivady anicut was allowed by the Collector to flow to Palur village, as the Takeeds L and M shew.

By the construction of a regulating dam across the head of the Palur channel, as proposed by the Acting Civil Engineer, it was hoped that the Palur people would also get a fair share of water.—(*Vide* paragraph 9 of the Acting Civil Engineer's letter to the Board of Revenue, dated the 2nd February 1855). The sufficiency of water that flowed into the river Guddelum in the year 1854, as appears from the Takeed L, fully warranted such a hope. And it was expected at the time that the disputes between the ryots of Palur, and of the eighteen villages, would come to an end by the construction of the regulating dam. But in this the authorities seem to have been disappointed by subsequent irregularity of seasons and the scantiness of freshes in the river Guddelum. In his general observations, dated the 14th February 1856, the Acting Civil Engineer, Lieutenant Foord, referring to the Palur channel, observed as follows :—

"There is a branch from the main channel of the above (Trivady) anicut leading to Palur "and another village, while the main channel waters the lands of eighteen villages. There has been "a dispute for several years between the inhabitants of Palur and those of the eighteen villages "about the distribution of water.

"The Palur ryots say that at the time the present anicut was built, it was settled they were "to have one-fifth, and the other villages four-fifths of the water. Masonry dams have been built "across each channel, the length of the one across the main channel between the wing-walls is twenty "feet, and of the other five, that is, in the proportion of four to one, but there the floor of the dam "across the Palur branch channel is one foot nine inches higher than the other, and when the water "in the river diminishes, the Palur channel gets none at all. It appears that, during the existence "of the old anicut, the ryots of Palur were in the habit of building a temporary dam, two inches "lower down, to turn the river water into their channel; but since the re-construction of the anicut, "a mile below its original site, they have discontinued making the temporary dam. What the Palur "ryots want is the lowering of the dam across their channel, six inches, in order to get a larger share "of the water, and to a later period in the year. This arrangement has, of course, been opposed by

"the ryots of the eighteen villages, both for the usual reasons that influence ryots in such cases, and "because their cultivation is really much more extensive and valuable, a great deal of it being sugar-"cane, and it does not appear that the water they now have is more than sufficient. As the water "in the river constantly varies in quantity, no alteration of the levels of the two dams can be made on "theoretical principles, and the safest way to proceed in this case will be experimentally. In my "letter to the Collector, (who has written to me on the subject of this dispute,) I have proposed lower-"ing the Palur dam three inches as an experiment. At the time of visit, the depth of water on the "Palur dam was three inches, and on the other two feet, and water was then escaping over the anicut. "The lowering of the dam will, of course, lessen the quantity of water going to the eighteen villages; "but this must be made up by raising the anicut slightly. I hope to see the anicut again very soon, "and will then forward an estimate of the cost of raising it. But the slight alterations might be "made at once."

The Takeed S shews that, as recommended above by the Acting Civil Engineer, orders were given by the Collector for lowering the Palur dam by three inches. But even this did not put an end to the disputes between both the parties.

The 2nd and 3rd defendants (the Civil Engineer and the Collector) at last thought that the proper way to regulate the supply was by means of the sluices built for the very purpose by Captain H. C. Cotton, the designer of the first Trivady anicut. They were of opinion that, by the *discreet* use of the shutters with which they intended to provide the sluices, the supply to Palur may be regulated to such quantity as they are fairly entitled to, without at the same time diminishing the water to the eighteen villages. They accordingly ordered, in July 1866, that the masonry dam erected, as above stated, in the year 1854, may be entirely removed, and that the sluices may be provided with shutters. In the same month, the plaintiffs petitioned the Collector that the above order may be cancelled. But the Collector replied* as follows :—

* Exhibit B.

"The petitioners are informed that what is being done at the Palur channel is ordered in "connection with the consent of the Collector and Superintending Engineer, and that no damage or "injury will be done to the petitioners' interests. When such damage or injury arises, it will be "time enough to complain."

It would appear, from the above summary, that the plaintiffs have no real cause of grievance, and that they have no *prescriptive* right to the exclusive use and appropriation of the water flowing into the Trivady anicut main channel.

The second and third defendants are officers of Government, responsible as well to protect the interests of people as the revenue of the State. It is clear, from the whole record of the case, and especially from the Exhibits B and X, that in the present instance they have, to the best of their judgment, acted in good faith towards both the contending parties, and that, in directing the removal of the dam, and the use of the sluice, they *really* considered such a proceeding adapted to the exigency of the time and the requirements of the parties. It must further be observed, that, in giving the direction in question, they intended no more than that of trying the scheme contemplated by the original designer, Captain Cotton, and which, as above noticed had never before been properly tried.

It appears to me that the present claim of the plaintiffs is rather premature. They have been assured by the second defendant, (as the endorsement on the Exhibit B shews,) that no damage or injury will be done to their interests. Under this circumstance, I think that the plaintiffs ought to have exercised patience, and seen if any damage or injury really results to them by the acts of the second and third defendants, and then to have come forward to complain. Under the foregoing view of the case, I dismiss the plaintiffs' claim with costs.

(Signed) T. KRISTNASAWMY IYER,
Acting Principal Sudder Ameen.

(True Copy.)

(Signed) C. W. READE,
Collector.

Ordered to be recorded.

No. 28. Proceedings of the Board of Revenue, dated 26th June 1868, No. 4,765.

Read the following letter from the Collector of South Arcot, to the Acting Secretary to the Board of Revenue, dated 18th June 1868, No. 135.

1. In reference to the decree passed by the Principal Sudder Ameen in Original Suit No. 43 of 1866, and the answer to which was prepared by the Government Pleader, Mr. Dale, (*vide* Proceedings of Board, dated 16th January 1868, No. 340,) I have the honor to state that the said decree has been appealed against to the Civil Court, but I am not aware that any special defence is called for, though on this point the Board may wish to consult with the Government Pleader; meanwhile it appears to me that the accompanying answer which I have prepared may be sufficient.

2. I may add that strictly the defence in the appeal should be filed on the 2nd July next.

Proposed answer to Original Suit No. 43 of 1866.

The defendants 1 to 3 have nothing to add to the defence already put in in the original suit. They maintain the equity and correctness of the decree passed by the lower Court, which is supported by all the facts deduced from the records placed before the Court bearing on the particular question in issue. It is difficult to understand how the *onus probandi* of an alleged right set up by the plaintiffs could be otherwise than thrown upon themselves, and equally unreasonable that defendants should be required to prove a negative. In the absence of that proof, and as well in the absence of any act proved against defendants, by which the interests of the plaintiffs have been in any way damaged or affected, the lower Court very properly rejected the pretensions raised, and non-suited the plaintiffs, and the defendants have only to pray that this decree be affirmed and the appeal be dismissed.

(Signed) C. W. READE,
Collector.

The Collector is directed to apply for a postponement of the hearing of this suit to admit of the opinion of the Law Officers of Government being obtained. Should the postponement be refused the answer should be filed as proposed.

No. 29. Proceedings of the Board of Revenue, dated 21st July 1868, No. 5,329.

A copy of Board's Proceedings, dated 26th June 1868, No. 4,765, together with copies of their Proceedings, numbered 8,246 of 14th November 1866, 1,448 of 8th March 1867, and 340 of 16th January 1868, containing respectively the original Plaint, Answer, and Decree in Suit No. 43 of 1866 in the Small Cause Court of Cuddalore, are herewith forwarded to the Government Solicitor, who is requested to favor the Board with his opinion as to the statement* now proposed to be filed in answer to the appeal which has been made against the decree of the Principal Sudder Ameen in the above Suit.

* *Vide* Board's Procs., 26th June 1868.

No. 30. Proceedings of the Board of Revenue, dated 5th August 1868, No. 5,685A.

Read the following letter from the Collector of South Arcot, to the Acting Secretary to the Board of Revenue, dated on circuit, Cutcherry at Papasamoodram, 20th July 1868, No. 171:—

1. Referring to my letter of the 14th instant, No. 163, I beg to state that the additional time, applied for by me to put in the answer in the appeal suit therein

alluded to, has been granted by the Court, and at the same time, the Government Vakeel has intimated that the case is not likely to come on for hearing for some time to come.

2. Should the Board intend taking legal advice in the matter, I request that I may be favored with any draft answer in the appeal within the extra period now allowed.

3. The appeal petition, filed in the Court by the appellants, is herewith submitted for the Board's information.

Memorandum of Appeal, Original Suit No. 43 *of* 1866, *on the file of the Principal Sudder Ameen's Court of Cuddalore.*

1. Lakshmana Reddy of Keelputtampaukum, in the Cuddalore Talook.
2. Linga Reddy of Mulikerampat, in the do.
3. Coopoo Reddy of Puttampaukum, in the do.
4. Linga Reddy of Kalpauthy, in the do.
5. Singaroo Mootoosamy Moodelly, belonging to Melapauthi, now residing at Vilvarayanuttum, do.
6. Soobba Reddy of Melvady, do.
7. Vencatarama Chetty of Umimamu Covil, do.
8. Moodoolinga Reddy of Keil Aroomcoonum, do.
9. Balakistna Reddy of Vayadepaukum, do.
10. Soobba Reddy of Sitharasoor, do.
11. Devanayaga Reddy of Kudithanghi, do.
12. Appavoo Pillay of Vazahappet, do.
13. Vencatarama Reddy of Vaupaukum, do.
14. Mootoosamy Nayanar of Sozhavull, do.
15. Seeneevassa Reddy, brother of Vythy Reddy, of Nellicoopum, in the same talook.
16. Seeneevassa Reddy of Vellapaukum, in the same talook.
17. Poorooshotama Reddy of Karamany Coopum, in the same talook.
18. Devanayaga Pillay, son of Vengitraya Pillay, of Konamungalum, in the same talook.

} *Plaintiffs.*

versus

1. Mr. W. J. Harrington, Executive Engineer, No. 1 Range, South Arcot, residing at Munjacooppum, in the Cuddalore Talook.
2. Colonel Foord, Superintending Engineer, residing at Munjacooppum, in the Cuddalore Talook, now at Bangalore.
3. C. W. Reade, Esq., Collector of South Arcot.
4. Moonien Vencataroyer of Paloor, in the Cuddalore Talook.
5. Gopala, of the same village, also a Moneagar,
6. Agarum Vengitrama Reddy, of the same village, also a Moneagar.
7. Narasa Reddy, a ryot of the same uillage, residing at Sunnasipettay.
8. Soobba Reddy, of Pullavaroyanuttum, in the same talook.

} *Defendants.*

Appeal against the Decree of 15th October last, of the Principal Sudder Ameen, dismissing with costs a suit brought by plaintiffs for the purpose of setting aside the order of the first and third defendants, directing the removal of a regulating dam valued at 5,000 Rupees, and which supported the spring, and of establishing the right of the plaintiffs to the water of the Trivady anicut spring, and of preventing the defendants from interfering with the regulating dam, preferred by the plaintiffs on the following grounds, and put in by their Vakeel, Janikaram Puntulu in the Civil Court of Cuddalore, in conformity with the provisions of Section 335 of Act No. VIII. of 1859.

I. The Judgment of the Principal Sudder Ameen, deciding that plaintiffs have failed to establish their right to the whole flow of water, is opposed to law and the weight of evidence.

II. The Principal Sudder Ameen has committed an error in law, in considering that the plaintiffs are bound to establish their prescriptive right. For their right to the land carries with

it a right also to the whole flow of water. The *onus probandi*, therefore, rests on the defendants of establishing a prescriptive right to interfere with such flow of water.

III. The defendants have neither affirmed nor proved that they have such a prescriptive right.

IV. The Principal Sudder Ameen has erred in law in considering that plaintiffs should have waited until they have actually suffered loss. For they are entitled to a decree declaring that they ought to enjoy their right, and prohibiting all acts which would in any way interfere with the exercise of such right.

V. It has not been proved, nor has it been determined that the measures contemplated by the 1st and 2nd defendants are not calculated to diminish the flow of water, whereas it is apparent that these measures will necessarily diminish the water.

VI. It has been admitted on the part of the defendants one, two, and three, that loss would ensue if water is thus diminished; and plaintiffs are entitled to protect themselves against such prospective loss.

VII. None of the facts mentioned in Diary No. 3 can rebut the evidence for the plaintiffs, nor restrict their right.

The original decree must, therefore, be reversed.

(Signed) JANAKIRAM PUNTULU,
Court Vakeel.

26th November 1867.

Filed on the 18th December 1867.

(Signed) W. M. CADELL,
Acting Civil Judge.

(A true Translation.)

(Signed) C. W. READE,
Collector.

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1. Resolved that the foregoing letter, with its enclosure, setting forth the grounds of appeal, be forwarded to the Government Solicitor, with reference to his letter, dated 24th July, No. 411.

2. Mr. Brockman is requested to give his advice as to the course to be pursued by the Collector: copies of the same papers as were transmitted with Board's Proceedings, dated 21st July 1868, No. 5,329, are again forwarded for reference.

No. 31. Proceedings of the Board of Revenue, dated 6th August 1868, No. 5,704.

Read the following telegrams:—

From the Collector of South Arcot, to the Acting Secretary to the Board of Revenue, dated 5th August 1868, No. 8.

Just received notice from the Government Vakeel of Civil Court that, on the motion of the appellants, the appeal suit in the Palur water dispute will be heard on the 10th instant.

From the same Officer, dated 5th August 1868, No. 10.

Since telegram just despatched, have ascertained that Barrister Miller, now here, is to appear on behalf of the appellants in the Palur Water Suit. He is retained by Parry & Co. of Madras.

Read also the following letter from the Officiating Government Pleader, Madras, to the Acting Secretary to the Board of Revenue, dated 6th August 1868, No. 126.

1. I have the honor to acknowledge the Proceedings of the Board of Revenue, noted in the margin, and addressed to me as Government Solicitor, with the copy, which accompanied them, of the Memorandum of Appeal preferred against the decree of the Principal Sudder Ameen's Court at Cuddalore, in Original Suit No. 43 of 1866, by the plaintiffs; and, in reply thereto, to refer you to the opinion expressed in paragraph 2 of my letter, No. 411, of the 24th ultimo, to which I adhere, namely, that it is neither necessary, usual, nor desirable to file any written statement by way of answer to an appeal.

Dated 5th August 1868, Rev. Dept.

2. All the grounds upon which the appeal is to be resisted can very well be, and ought, in the usual course, to be urged orally during the hearing of the appeal.

3. With reference to your demi-official communication to me of this day's date, regarding the engagement of Counsel to represent Government on the hearing of the appeal in question on the 10th instant, I have to inform you that, since writing my demi-official reply thereto this morning, I have seen the Honorable Mr. Norton, (who has this morning returned from Pondicherry,) and ascertained from him that, should his services be required on behalf of the Government at the hearing of the appeal, he will be prepared to appear at any date after the 5th September ensuing.

4. On hearing from you, with the instructions of the Board on this subject, I will make the necessary arrangements with him. Meanwhile, I have the honor to advise that a further adjournment of the hearing of the appeal be applied for at once. It will be impossible to secure the services of any other good Counsel in time for the 10th instant; and I am myself obliged to appear in the course of next week before the Appellate High Court on the hearing of Regular Appeal No. 30 of 1863, in which Government is interested, and which I have to defend on its behalf.

The Collector of South Arcot will be requested, by telegraph, to apply for an extension for a month, to admit of the Advocate General appearing on behalf of Government.

No. 32. Proceedings of the Board of Revenue, dated 10th August 1868, No. 5,803.

Read the following letter from the Government Solicitor, to the Acting Secretary to the Board of Revenue, dated Madras, 24th July 1868, No. 411.

1. I have the honor to acknowledge the Proceedings of the Board of Revenue, noted in the margin, with the papers which accompanied them, requesting my opinion as to the statement proposed to be filed in answer to the appeal preferred against the Decree of the Principal Sudder Ameen's Court at Cuddalore in Original Suit No. 43 of 1866.

Dated 21st July 1868, Rev. Dept.

Proceedings of the Madras Government, Revenue Department, 1st September 1868.

2. It is quite unusual to file any written statement in answer to an appeal; and the Court would most probably refuse to receive any. Even if the written statement submitted for my perusal could be received, I cannot advise upon it without having before me a copy of the grounds of appeal, which is not amongst the papers forwarded with the Proceedings of the Board above noted. A written statement, where necessary, should be a concise statement of the facts; but the one now submitted for my perusal is wholly argumentative, and is on that ground objectionable.

Ordered to be recorded, with reference to their Proceedings of the 5th August 1868, No. 5,685A.

No. 33. Proceedings of the Board of Revenue, dated 28th August 1868.

Read again Board's Proceedings, dated 14th Nov. 1866, No. 8,246.

Do.	do.	8th March 1867,	,, 1,448.
Do.	do.	16th Jan. 1868,	,, 340.
Do.	do.	26th June ,,	,, 4,765.
Do.	do.	21st July ,,	,, 5,329.
Do.	do.	5th August ,,	,, 5,685A.
Do.	do.	6th ,,	,, ,, 5,704.
Do.	do.	10th ,,	,, ,, 5,803.

Read also the following letter from the Officiating Government Pleader, Madras, to the Acting Secretary to the Board of Revenue, dated Madras, 17th August 1868, No. 131.

1. Adverting to paragraph 3 of my letter, No. 126, of the 6th instant, embodied in the Proceedings of the Board of Revenue, noted in the margin, I have the honor to state, for the information of the Board, that I have arranged with the Honorable Mr. Norton for his appearing before the Civil Court of Cuddalore, and defending on behalf of Government the appeal preferred to that Court against the Decree of the Principal Sudder Ameen's Court at Cuddalore in Original Suit No. 43 of 1866, for a fee of 3,000 Rupees and travelling expenses.

Dated 6th August 1868, No. 5,704.

2. I request that the amount of the fee may be placed at my disposal as early as possible, to enable me to arrange with Mr. Norton for his being in attendance at Cuddalore on the day of hearing, which I understand to be the 11th of the ensuing month.

3. I have instructed Mr. Norton fully upon all the points arising out of the pleadings, and I consider it necessary that he should be furnished on or before the 2nd proximo, with a copy of the evidence, in the original suit, together with a map or plan of the Palur river and the channel mentioned in the pleadings and the lands of the plaintiffs and defendants respectively.

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1. The Board resolve to request that Government will direct the payment, through the Government Pleader, of Rupees 3,000 to Mr. Norton.

2. It will be observed that the case is one of the highest importance, involving the right of Government to construct anicuts across large rivers.

No. 34. ORDER THEREON, 1st September 1868, No. 2,307.

Irrigation, No. 1

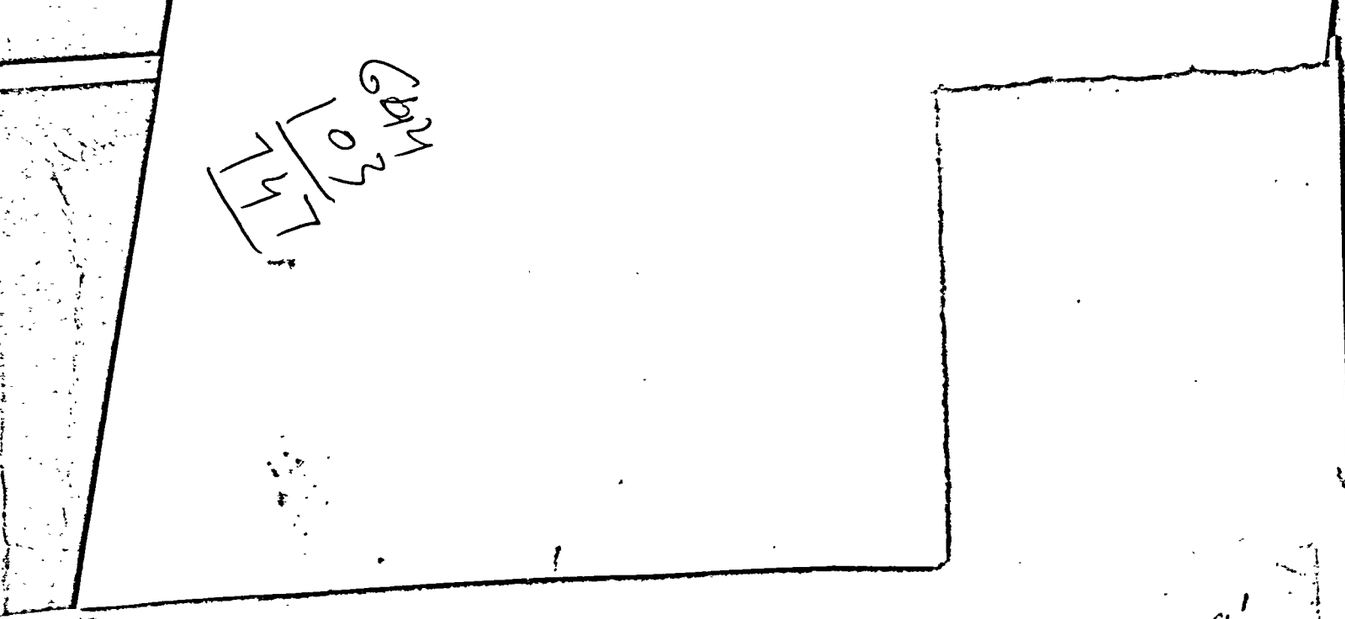
The Government sanction the payment of Rupees 3,000 to the Honorable Mr. Norton, as proposed by the Board of Revenue.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.
,, the Government Pleader.
,, the Accountant General.

Exd. F. R. Bantleman.



Ward 1

9'

Ft. 2307.

The Govt sanction the payment of Rs 3000
to the Hon'ble Dr. Norton as proposed by the Board
of Revenue

N. Rs.

1st. Feby. 68

14 T. B. Dcpts 8
3 Coffee Tds Planters.
6 — Inspection Tds.

45
4

Exd. F. R. Bantleman.