

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 3217	Press ~~Mis.~~
284-285	
Dated 21 st Decemr 1918	

Not to be folded or roughly handled

28/12/20

*Proceedings of the Madras Government, Revenue Department,
21st December 1869.*

No. 284. Read the following Proceedings of the Board of Revenue:—

Submitting Collector's letter forwarding translation of Decree in Suit No. 113 of 1868, filed in Rajahmundry Civil Court in Godavery District, for prohibiting removal of grass from bed of a river, and requesting sanction for payment of plaintiff's costs. (Here enter 6th December 1869, No. 8,965.)

No. 285. ORDER THEREON, 21st December 1869, No. 3,217.

Miscellaneous.

SANCTION for the disbursement of Rupees 48-2-0 from "Land Revenue subordinate to Allowances, Refunds, and

Drawbacks," as well as for the payment of the costs adjudged against the Collector (of which the amount is not stated), is granted.

2. The Governor in Council deems it proper to observe that the Board of Revenue were not competent to sanction the defence of a suit which owed its origin to an act done by Mr. Fraser in his magisterial capacity.

3. As the suit involved an important question the Magistrate should have applied for its transfer from the District Moonsiff's file to that of a superior Court, in accordance with the instructions conveyed in G. O., dated 5th September 1868, No. 2,328.

4. Mr. Fraser, in the opinion of the Government, acted hastily in ordering the removal of the tufts of Darbha grass from the river-bed. He should first have warned the plaintiff of the mischievous consequences likely to ensue from his encroachment. If the latter persisted in planting, or declined to remove the grass, and if the Magistrate was satisfied that the river-flow was liable to be affected thereby, a criminal prosecution, under Section 430 or 431 of the Indian Penal Code, was the proper course for adoption.

5. It is possible, however, that the decision of the District Moonsiff was passed upon a misapprehension of facts. Mr. Fraser intended to appeal to the Civil Court with regard to the costs awarded to plaintiff, but owing to singular delay in procuring copies of and translating the Judgment and Decree passed in the Original Suit, the time allowed for appeal had expired before the appeal was made.

6. The Government, however, observe that the Magistrate is not precluded from prosecuting the occupiers of the land in question under Section 430 or 431 of the Penal Code, if it can be shown that the planting of grass has injuriously affected the course of the river. Mr. Fraser is requested to obtain the opinion of the Department Public Works officers on this point.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

To the Board of Revenue.
,, the Accountant-General.

Exd. F. R. Bantleman.

No. 6,263.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 1st September 1868.

Read the following letter from J. H. MASTER, Esq., Acting Collector of the Godavery district, to the Acting Secretary to the Board of Revenue, dated Cocanada, 15th August 1868, No. 216:—

1. In accordance with the Board's Circular Order of the 15th February 1862, No. 25, a notice was issued by the Collector, in the District Gazette of 9th March, No. 10, page 66, prohibiting encroachments on beds of rivers as tending to limit the water-way and mischievously divert the stream, and that any breach of the rule would, on conviction, be punished as a criminal offence.

2. Another Circular was again issued in the District Gazette of the 5th May 1866, No. 18, page 171, on the same subject.

3. The Sub-Magistrate of Kottapata reported, on the 19th December 1867, that, in contravention of the above orders, some persons were planting Darbha, or coarse grass, in the river bed near Mandapilly, a proprietary village of the Palivala estate, for the growth of a lanka; the Collector, Mr. Fraser, ordered him to have the newly planted Darbha grass removed. While the Sub-Magistrate was executing this order, the Proprietrix of the Palivala estate filed a suit in the District Munsiff's Court at Rajahmundry against the Sub-Magistrate, stating that the defendant was causing loss to her by having, *contrary to the orders of the Collector*, rooted out the tufts of grass hitherto grown in her Zirayati land measuring three-quarters of a putty, yielding an annual assessment of Rupees 75 within the boundaries described in the plaint, and requesting that a decree might be passed against the defendant. She also, at the same time, presented a petition praying for an injunction to prevent the eradication of the grass pending a final adjustment of the suit. The Court accordingly issued the injunction, but the Sub-Collector in charge caused a motion to be presented in the Civil Court praying that the injunction should be cancelled on the ground that if the grass were not rooted out before the freshes, it might cause the formation of a lanka in the bed of the river and divert the stream, thereby causing possible damage to the Government Public Works and lankas.

4. The Civil Judge thereupon passed an order cancelling the above injunction. I have had the tufts of the newly planted grass rooted up at a cost of Rupees 48-2-0, which sum was paid from advances recoverable.

5. As it appears right that the suit should be defended by the Collector at the public expense, I have the honour to submit, herewith, translations of the Plaint and Memorandum, and draft of an answer, and to request sanction to file it if approved of by the Board of Revenue. I also request sanction for the payment of the sum of Rupees 48-2-0, from the provision under "Land Revenue" subordinate to "IV, Allowances, Refunds, and Drawbacks."

ENCLOSURE No. 1.

Suit No. 113 of 1868.

To the District Munsiff's Court of Rajahmundry.

Plaintiff,

versus

Defendants.

Sri Rajah Ravu Bhavayyah Garu, Zemindar of the Muttahs of Palivala, etc., residing at Pittapur.

1. Durga Viranna, Sub-Magistrate of Kottapetta.
2. Chobam Balaji Dufterbund, residing at Kottapetta, a hamlet of the village of Palivala.

1. Plaintiff states that the defendants are causing loss by having, contrary to the orders of the Collector, rooted out, from the 1st instant, the tufts of grass hitherto grown in the Zirayati land measuring three-quarters of a putty, yielding an annual assessment of Rs. 75, and situated within the boundaries described below, and which forms part of the island called Dubbula Badana Lanka, in the village of Mandapally, appertaining to the Mootah of Palivala in her Zemindary, and therefore prays the Court that a Decree may be passed with costs of the suit against the defendants eradicating the tufts in the above land.

Handwritten: 28/9/61

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REVENUE

THE BOARD OF REVENUE

No. 6,263.

19th December 1867

C. O. 214 December 1867. No. 2217.

1868

No. 6,263.

Suit No. 113 of 1868. Collector of Godavery District. The following is a copy of the plaint in being sanctioned in accordance with the order of the Board of Revenue.

2. Boundaries of the land. It is bounded on the east by the mainland of the village of Mandapally; on the south by the mainland of the village of Palivela; on the west by Pogatota lanka or tobacco-producing island, and Dubbula Badana adjoining it; and on the north by the waterspread at the sand-hill forming the boundary of the island of the village of Tatapuly.

2nd March 1868. Received 4th March 1868.

(Signed) SRI RAJAH BHAVAYYA GARU.

(Signed) KOTA ISWARAPPA,

Pleader.

I, Sri Rajah Ravu Bhavaiya Garu, plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my information and belief.

(Signed) SRI RAJAH BHAVAYYAGAR,

Four additional stamps, of the value of Rupees 74, are attached to this.

Stamp correct.

(Signed) KANUAKOLANU SITAPATI,

Head Gumastah.

(Signed) SAMINENI RANGAYYA,

District Munsiff.

(True translation.)

(Signed) J. H. MASTER,

Acting Collector.

ENCLOSURE No. 2.

To the District Moonsiff's Court of Rajahmundry.

Suit No. 113 of 1868.

Memorandum caused to be presented by the plaintiff Rajah Ravu Bhavayyah Garu, residing at Pittapur.

Description of the Zirayati land mentioned in the plaint which we have this day preferred against defendants, first, Durga Viranna, Sub-Magistrate of Kottapetta, and second, Chobam Balaji.

1. This Zirayati land being a single field in the village of Mandapalli, attached to plaintiff's proprietary estate, it is not possible to fix permanent assessment payable thereon to Government.

2. The Zirayati land in dispute is situated in the village of Mandapalli in this district, and its extent is about six acres. The above estate was permanently settled.

3. The said Zirayati land yields an annual assessment of Rupees 75.

4. The amount of the claim is Rupees 600, being eight times the assessment payable to us on the Zirayati land.

4th March 1868.

(Signed) SRI RAJAH BHAVAYYA GARU.

(Signed) KOTA ISWARAPPA,

Pleader.

I, Rajah Ravu Bhavayyah Garu, plaintiff, named in the above plaint, do declare that what is stated therein is true to the best of my information and belief.

(Signed) SRI RAJAH RAVU BHAVAYYA GARU.

(Signed) SAMINENI RUNGIAH,

District Munsiff.

(True translation.)

(Signed) J. H. MASTER,

Acting Collector.

ENCLOSURE No. 3.

To the District Moonsiff's Court of Rajahmundry.

Suit No. 113 of 1868.

Sri Rajah Ravu Bhavayyah Garu, Zemindar of the Muttahs of Palivela etc., residing at Pittapur, Plaintiff, against the first defendant Durga Viranna, Sub-Magistrate of Kottapetta; second defendant

Chobam Balaji Dufterbund residing at Kottapetta, a hamlet of the village of Palivela; and third defendant, Collector of the Godavery district at Cocanada, on behalf of Madras Government.

The written Statement of the third defendant J. H. Master, Esq., Acting Collector.

1. The tufts of grass ordered by the Magistrate of the district to be removed were, as reported by the Sub-Magistrate of Kottapetta, the first defendant, planted newly in the bed of the river.

2. It is not Zirayati land belonging to the plaintiff as stated by her in the plaint. In contravention of the Circular Orders issued by the Collector in the District Gazettes prohibiting encroachments on beds of rivers as tending to limit the water-way and mischievously divert the stream, and that any breach of the rule would, on conviction, be punished as a criminal offence, the plaintiff has caused the Darbha grass to be planted.

3. The third defendant prays that the Court will, under the foregoing circumstances, dismiss the suit with costs.

(Signed) J. H. MASTER,
Acting Collector.

1. The Draft Answer is approved, and the defence of the suit sanctioned at the public expense.

2. A paragraph should be added claiming refund of the expense incurred in rooting up the grass.

(True Copies and Extract.)

(Signed) A. MACGREGOR,
Acting Secretary.

To the Acting Collector of the Godavery district.

Copy to the Accountant General.

Exd. J. Wright.

No. 8,965.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 6th December 1869.

Read the following letter from J. FRASER, Esq., Collector of the Godavery District, to the Acting Secretary to the Board of Revenue, dated Cocanada, 25th October 1869, No. 265:—

I HAVE the honour to enclose translation of a Decree passed on the 28th June 1869, in Suit No. 113 of 1868, of the file of the District Moonsiff's Court at Rajahmundry, the defence of which was sanctioned by the Board, in their Proceedings, dated 1st September 1868, No. 6,263. In order to make an appeal to the Civil Court against the above decision with regard to the costs awarded to the plaintiff, I directed the Government Vakeel to send me public copies of the Decree and Judgment. He applied for them on the 9th July, and got them on the 19th idem. These copies reached me on the 22nd July. Before they were translated and the appeal was prepared, the time of one month for making an appeal was over, and my appeal was, therefore, rejected by the Court. I, therefore, request sanction of the Board for the payment of the amount of costs adjudged for the plaintiff.

2. As mentioned in my letter of the 15th August last, No. 216, embodied in the above quoted Proceedings, Rupees 48-2-0 were paid from the "Advances recoverable" for rooting out the coarse grass planted by the plaintiff. I now request sanction for the payment of the same from "Land Revenue Subordinate to Allowances, Refunds, and Drawbacks."

ENCLOSURE No. 1.

The District Moonsiff's Court of Rajahmundry.
N. 113 of 1868.

Present.—Samineny Rangaiya, District Moonsiff.

Plaintiff.

Sri Raja Row Bhavaiyagar, Zemindar of
the Mootahs of Palivela, etc.

Pleader.

Kota Iswarappa.

versus

Defendants.

1. Durga Virannagar, Sub-Magistrate of Kottapeta.
 2. Choham Balaji, Dufterbund under do.
 3. J. Fraser, Esq., Collector of the Godavery District.
- Isallapalli Raghunayakulu, Pleader for the 1st defendant.
Chittrapu Kamaraz, Government Vakeel, on behalf of the 3rd defendant.

Judgment.

THIS suit is preferred by the plaintiff, complaining that the 1st defendant, the Sub-Magistrate of Kottapeta, and the 2nd defendant, the Dufterbund under him, had been, in opposition to the Collector's orders, causing to be rooted out from 1st March 1868, the tufts of grass grown on the Zirayati land measuring three-quarters of a Putty, yielding an annual assessment of Rupees 75, which forms part of the Island called Dubbala Badana Lunka, attached to the village of Mandapally, appertaining to the Mootah of Palivela in her Zemindary, and that they had thereby been causing loss; and requesting that the rooting out of the same might be prohibited.

2. The 1st defendant filed no statement, but his Pleader was present at the hearing of the suit, and on being examined under Section 125 of the Code of Civil Procedure, he stated that the 1st defendant had, under orders issued by the Collector, in accordance with the Proceedings of

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 1st September 1868.

Received

No. 6,263.

Sanctioning defence, at public cost, of suit filed in Rajahmundry District Moonsiff's Court against Sub-Magistrate of Kottapeta, in Godavery district, for removing grass planted in the bed of a river, and approving proposed draft answer with addition of a paragraph.

Enclosed in the Order of the 15th of August 1869 to the Secretary to the Board of Revenue, dated 1st December 1869, No. 8965.
1868. Department.

No. 4189/69

No. 25 Oct 1869

Government, caused to be rooted out through the 2nd defendant, the tufts of grass on the land referred to in the plaint, and requested that the same being an act done in the official capacity, the claim of the plaintiff might be dismissed under Act XVIII. of 1850.

3. The 2nd defendant having failed to appear, has been tried *ex parte*.

4. The Collector of this district presented a Petition No. 2,698 of 1868, stating that he is the principal party to conduct the defence of this suit, because the 1st defendant merely acted under the orders issued by him, as a Magistrate, on the subject of eradicating the tufts of grass on the said land, and requesting that he might be admitted as 3rd defendant; he has, therefore, been admitted as such.

5. He states that the tufts of grass were, as reported by the 1st defendant, planted newly in the bed of the river, that the land where they had been planted is not the Zirayati belonging to the plaintiff, as stated by her in the plaint; that the plaintiff had caused the tufts of grass to be planted in contravention of the Circular Orders issued by him in the *District Gazette* prohibiting the encroachments on beds of rivers as tending to limit the water-way, and mischievously divert the stream, and that as the Government have incurred an expense of Rupees 48 2-0 for removing the tufts in question, the same may be ordered to be paid by the plaintiff.

6. The following are the issues in this suit:—

1st.—Whether the land referred to in the plaint is the Zirayati belonging to the plaintiff.

2nd.—Whether this suit is contrary to the provisions of Act XVIII. of 1850, as regards the 1st defendant.

3rd.—Whether the tufts of grass referred to in the plaint are newly planted, so as to limit the water-way and to divert the stream.

7. The District Moonsiff inspected the land in dispute. As shown in the plan which was then drawn up by him and filed in the record, the land in question is adjoining to the Lunka land lying below the Godavery bank, near the village of Mandapally, belonging to the plaintiff, and is within the lake which the 1st and 2nd witnesses for the plaintiff as well as the witnesses for the 3rd defendant assert to be the boundary of that village. From the evidence of the Curnum of the village of Mandapally, who is the witness for both the parties, it appears that this land has been formed in consequence of the dry lands of this village having been washed away ten years ago; it is, as shown in the Plan abovementioned, bounded on one side by the aforesaid lake, and on all other sides by the Lunka belonging to the plaintiff. Moreover, the land in dispute contains alluvium just as the Lunka does. It can, therefore, be presumed that the land is a portion of the Lunka, and that the Lunka has been formed owing to the washing off of the Godavery bank, inasmuch as the whole Lunka inclusive of this land is adjoining to the Godavery bank.

8. By Law, a proprietor becomes the owner of those islands in his estate which may be formed below the bank, and in the bed of the river, consequent on the washing off of that bank.

9. The fact of the disputed land having been in the possession and enjoyment of the plaintiff for many years, is another proof of her right. From the evidence of the witnesses for both the parties, and of the 1st witness for the plaintiff, residing in the village of Yenugalamatal, at a distance of about a mile from the land under litigation, who was late a Samutdar of Mandapally, it appears that this land having been utterly unfit for cultivation up to Fusly 1273 (A. D. 1863), the Vettymen, whom the plaintiff employed as watchers of her Lunka, used to grow vegetables in it, and to enjoy their produce under her permission; that for some time afterwards, the plaintiff caused Mustard seeds to be sown and Gourd plants to be sprouted between the tufts of grass in the Lunka, and that she rented out the land to ryots for a certain period. The witness for both parties produced accounts of the village of Mandapally for Fuslies 1273 and 1274, and they bear testimony of the said two witnesses is supported by these accounts as well as by the evidence of the 2nd, 3rd, and 4th witnesses for the plaintiff.

10. After all the above statements have been made in the depositions of the witnesses for both parties, the Government Vakeel, who is the pleader for the 3rd defendant, stated that he, (the said Curnum) had been tampered with by the plaintiff, and that he need not, therefore, be

examined as a witness on behalf of the Government; and this statement has been inserted under a *nota bene* in the deposition of that witness. With a view to prove that he had been, among other circumstances, told by this witness that the land under discussion formed no part of the Zirayati land belonging to the plaintiff, and that the people belonging to the plaintiff newly planted tufts of grass in it, the pleader for the defendant put some questions to him, but the witness denied having told him so. The 1st witness for the 3rd defendant speaks that he related to him only a few of the said statements, and that he never told him that the disputed land is not the Zirayati belonging to the plaintiff; the 2nd witness for the 3rd defendant, who is said by the said 1st witness to have been then present, asserts that when he and the 1st witness went to the pleader for the 3rd defendant, the witness for both the parties had not come there.

11. The 3rd defendant failed to adduce such evidence as would tend to disbelieve the statement of the plaintiff that the land in dispute is the Zirayati composing the Lunka land of Mandapally in her proprietary estate.

12. The 3rd defendant speaks that the tufts of grass which were removed from the land in dispute under his orders, had been, as reported by the 1st defendant, caused by the plaintiff to be newly planted; but from the testimony of the witnesses for the plaintiff, and of the witness for both the parties, it is evident that on this land there had been tufts of Lunka grass for a very long time, that some of them, viz., those that stood along the bank of the said lake, having been washed away by the Godavery freshes in 1867, the plaintiff's Tanedar caused some tufts of grass to be again planted in that locality for the safety of the Lunka belonging to her (plaintiff); that these tufts were caused to be removed by the 3rd defendant himself, and that all the old tufts were afterwards caused by the 1st defendant to be rooted out. The re-planting for the safety of the lunka, of the tufts in the locality, in which that had been washed away, existed, cannot be considered a new plantation. The evidence adduced to prove that those tufts which were removed had also been newly planted is not satisfactory. The 1st of the three witnesses examined for the 3rd defendant, speaks that when the men belonging to the plaintiff were planting the said tufts of grass, the 1st defendant took him and the 2nd witness to the place where the planting has been progressing, and that they witnessed the planting. The 2nd witness contradicts this statement by saying that he did not see the planting. The 3rd witness deposes that, having been given to understand that the 1st defendant had gone to the disputed ground where the planting of the tufts had been in progress, he went there, and that the workmen were then planting the tufts; but neither this witness says that the others were present, nor do the other witnesses speak that this witness was present, when the tufts were being planted; they depose that some others were present.

13. The land in dispute is, as has been shown in the Plan, distant from the usual way of the current on the northern side, and this distance would be about more than a mile; between these two, lies the Tatapudi lunka on a high level. The disputed land is low and lies close to the southern bank of the Godavery. It appears that, in times of freshes, water flows over the land in dispute, just as it does over the other dry lands; but after the freshes draw back, there will be no current in the vicinity of this land; the water that stands there is stagnant and there is no current. There is, therefore, no room to consider that the existence of the tufts of grass on the disputed land would tend neither to limit the water-way nor to divert the stream.

14. These observations should not be construed to mean that the Court are of opinion that the plaintiff can cause tufts of grass to be newly planted on the ground in dispute. This suit is preferred with a view to prohibit the removal of the tufts from that land but not to re-plant them. The injunction of this Court prohibiting the removal of the tufts until this suit is decided has been cancelled by the Civil Court on appeal. Afterwards, the 1st defendant caused all the tufts to be rooted out. The Court can, therefore, give no remedy in the case of the tufts of grass.

15. This suit has been brought against the 1st defendant on the ground of his having in opposition to the orders of the 3rd defendant caused the tufts of grass to be removed from the Lunka at issue, but the 1st defendant defends that they were removed under orders from the 3rd defendant, and the 3rd defendant admits having given such an order to him. The 1st defendant

as well as the 2nd, his subordinate, have, therefore, been excluded from the liability of this suit, under Act XVIII. of 1850.

16. On the 3rd defendant arguing that the disputed land is not the Zirayati belonging to the plaintiff, she requested a decision, allowing her to enjoy the land as heretofore, but the land is the property and in the possession and enjoyment of the plaintiff, as stated above. Moreover, she has not preferred a claim to that land. The decision of the Court on the subject is not, therefore, needed.

17. It is adjudged that the costs incurred by the plaintiff be paid by the 3rd defendant. The 1st and 2nd defendants have been excluded from this suit. The costs incurred by the 1st defendant shall be paid by the plaintiff.

28th June 1869.

(Signed) SAMINENY RANGAIYA,
District Moonsiff.

(True Translation.)

(Signed) J. FRASER,
Collector.

ENCLOSURE No. 2.—Translation of Decree.

SUBMITTED (together with a copy of the Board's Proceedings, dated 1st September 1868, No. 6,263,) for the information and orders of Government.

2. The plaintiff in this suit had caused grass to be planted (or as she stated *re-planted*) in the river bed of the Godavery, on land which she stated to belong to her. The Collector ordered the removal of the grass, on the grounds that the land was not the plaintiff's, and that the grass had been planted in contravention of the orders (contained in No. 25 of Standing Orders of the Board) regarding encroachment on river beds.

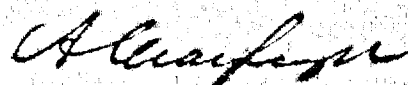
3. The suit was then brought against the Collector.

4. It will be seen that the decree is in favour of the plaintiff, and the Collector has been adjudged to pay her costs as well as his own, and he has failed to recover the expense incurred in rooting up the grass.

5. The Collector's appeal against this decree was not made to the Civil Court within the required period and was consequently dismissed, which is much to be regretted. The delay is explained, but might have been obviated.

6. The Board observe that an application should have been made to have the suit called up to the higher Court, and that the case should have originally been sent direct to Government, as the suit was instituted against the Collector for an act done in his Magisterial capacity.

(True Copies and Extract.)


Acting Secretary.

To the Acting Secretary to Government, Revenue Department,

with translation of Decree and copy of Board's Proceedings, No. 6,263 of 1868.

Copy to the Collector of the Godavery District.

Exd. G. A. Turton.

Rev. Dept.

No. 3217.

Proceedings of the Madras Government.
Under date the 21 December 1869.

Read the following
Pro. of the Board of Revenue.

H.E. 16: Decr. 1869. N: 2966.

Submg: Collector's letter forward-
ing translation of Decree in Suit No. 113
of 1868, filed in Rajahmundry Civil
Court in Godavery Distt., for prohibi-
-ing removal of grass from bed of a
river, requesting sanction for pay-
-ment of App's costs.

Sanction for the
disbursement of Rs. 48. 2. 0 from
"Land Revenue Subordinate
to Allowances, Refunds and
Drawbacks" as well as for
the payment of the costs
adjudged against the
Collector (of which the amount
is

A. A.

Cell 1869. Decr
Board of Revenue
MADRAS

Decr 4/189

PROCEEDINGS, 6TH DECEMBER 1869, No. 8,965.

Decr 10 Decr 1869 Encl 2
Received 11/11/1869

Decr 31/11/1869

DECEMBER.
No. 8,965.

Suit.—No. 113 of 1868, filed in Rajahmundry
Civil Court in Godavery District, for prohib-
ing removal of grass from bed of a river.—Let-
ter from Collector forwarding translation of
Decree passed in favor of plaintiff in, and re-
questing sanction for payment of costs adjudg-
ed for plaintiff, submitted to Government.

Decr 31/11/1869

284

is not stated is granted.

2. It is, however, not without hesitation that the Government have decided on bearing the expenses contingent on this suit, the conduct of which has been highly irregular.

omit

but I am not prepared to oblige him.

3. In the first

place the Board of Revenue were not competent to sanction the defence of a suit which owed its origin to an act done

done by Mr. Fraser in his Magisterial capacity.

4. As the suit involved an important question, the Magistrate should have applied for its transfer from the District Moonsiff's file to that of a Superior Court in accordance with the instructions conveyed in G.O. dated

dated 5th September
1868 No 2328.

5. Mr. Fraser

in the opinion

of the Govern-

ment acted hastily

in ordering the

removal of the

tufts of Darbha

grass from the

river bed. He

should first have

warned the Plaintiff of

the mischievous consequences

likely

likely to ensue from his
encroachment. If the
latter persisted in planting
or declined to remove the
grass, and if the Magistrate
was satisfied that the
river flow was liable to be
affected thereby, a criminal
prosecution under Sections
430 or 431 of the Indian
Penal Code was the proper
course for adoption.

6. It is possible, how-
ever, that the decision of
the District Moonsiff was
passed upon a misapprehension
of facts. Mr. Fraser intended
to appeal to the Civil Court
with regard to the costs
awarded to plaintiff, but
owing to singular delay
in procuring copies of and
translating

translating the judgment
and decree passed in the
Original Suit, the time allow-
ed for appeal had expired
before the appeal was made.

7. The Government have
never, observe that the Magistrate
is not precluded from prose-
cuting the occupiers of the land
in question under section 430
or 431 of the Penal Code, if it
can be shown that the planting
of grass has injuriously affected
the course of the river. Mr.
Fraser is requested to
obtain the opinion of the
D. O. W. officers on this point.

14. In the By-Laws with an Enactment 220
6. Act of 1861
The
C. H. Hall
C. H.