M.R. G. 1—30,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1605 155–156	Press ~~Mis.~~
Dated 7 June ~~19~~ 1869	

Not to be folded or roughly handled

No. 155. Read the following Proceedings of the Board of Revenue, dated 10th May 1869, No. 3,178 :—

Read the following letter from the Collector of Tanjore, to the Acting Secretary to the Board of Revenue, dated 6th March 1869, No. 45.

With reference to the correspondence marginally noted, I have the honor to report, for the information of the Board, that the suit therein referred to has been dismissed with costs.

Board's Proc.,	29th July	1867,	No.	4,827.
,,	20th Aug.	,,	,,	5,361.
,,	28th ,,	,,		
,,	5th Sep.	,,	,,	5,771.
,,	4th Dec.	,,	,,	7,834.
,,	21st ,,	,,	,,	8,252.
,,	18th July	1868,	,,	5,256.

2. I enclose a copy of the judgment of the Principal Sudder Ameen.

3. I have issued the necessary orders for the recovery of the costs incurred an account of the defence conducted on behalf of Government.

Enclosure No. 1.

In the Principal Sudder Ameen's Court of Tanjore—Original Suit No. 14 of 1867.

Present—A. Annusamy Moodelliar.

Plaintiffs, Mirassidars of certain villages in the talook of Tritrapundy, complain that a masonry dam, about to be erected by the Collector of the district (8th defendant) at the instance of the other defendants, across the river Pomany, deprives them of the usual flow of water for the proper cultivation of their fields, and seek for a decree restraining defendants from erecting such a dam. They further sue for the recovery of damages, Rupees 1,000, sustained in consequence of a temporary dam erected from the year 1862.

2. Defendants 1 to 7 (Mirassidars of the village of Pereevaldan, in the talook of Manargudy) deny the claim, and declare—

1*st*.—That the dam complained of was undertaken and completed upon sanction for the work being duly granted by Government.

2*nd*.—That, prior to the erection of this dam, defendants were allowed the right of throwing temporary embankments across the river to raise the water for the purpose of facilitating the irrigation of their fields.

3*rd*.—That no loss ever occurred or is apt to occur to plaintiffs.

4*th*.—That the flow of water is not sufficiently regulated by the old dam below the Tercoovattam channel.

3. Eighth defendant (as the Collector of the district, and representative of the Madras Government) denies the claim equally, and concurs in the defence set up by the other defendants. He maintains that the said Government has an absolute and indisputable right to regulate the distribution of water from rivers and channels generally, and this for the good and benefit of those concerned.

4. The following are the issues joined in the suit on the 25th October 1867 :—

(1.) Whether defendants 2 to 7 have enjoyed the right of throwing temporary embankments across the river by prescription.

(2.) Whether the new dam is injurious to plaintiff's interests.

(3.) Whether the old dam sufficiently regulates the flow of water.

(4.) Whether 8th defendant is with or without power to interfere in the accustomed course of the stream.

(5.) Whether the damages sought for are correct.

5. 1st issue.—It is admitted on all sides that there is an Isle formed for years in the centre of the stream, and on both sides of this Isle it is shown abundantly by the evidence on record that defendants 1 to 7 have been throwing temporary dams made of earth, supported by rollers of grass or straw, to raise the water to the level of their fields, and this for a series of years. The District

Engineer (Captain Oakes) testifies to such a practice, and all the witnesses for defendants equally testify to it. Exhibits 1 to 7, and 10, 11, 12, 13, 14, 15 and 16 confirm the existence of the practice.

6. Plaintiffs rely on Exhibits A. and B. as showing that no such dams were raised, but A. itself refers to dams of the kind having been frequently laid by defendants; besides A. and B. (orders) have been cancelled, or virtually deprived of force by Exhibits 1 and 2.

7. 2nd, 3rd, and 4th issues.—That the plaint dam is just the sort of work required for the due and proper irrigation of both parties' villages is sworn to by the said District Engineer. That the old dam of 1830, at about 100 yards below the plaint one, is not suited for the purpose, and does not properly fulfil its object, is equally sworn to by the same Officer, and the data upon which he founds his opinion appears to me unquestionably good and proper. Nothing in fact can be more satisfactory or complete than the sworn testimony of this Officer in this case; and judging by the details which he has deposed to relative to both these dams in the course of his examination, I am fully convinced that he has spared no pains to study or examine the questions on which he had to give his testimony.

8. Much stress is laid by plaintiffs' Vakeel upon a kilcumuly below the dam being used as a source of supply for defendants' village, but the District Engineer does not admit it to be a proper source, and it does not appear from the evidence of plaintiffs' witnesses, what extent this kilcumuly has ever irrigated or is capable of irrigating.

9. As to the authority of Government to construct such dams as those in dispute to regulate the flow of water, plaintiffs in my mind in vain object to it. No one can deny that all the rivers and channels of the province are the property of Government. That they are maintained at the expense of the State is a thing within every day's experience of the inhabitants of Tanjore. The District Engineer swears to such being the case, and to dams across a number of other rivers being in progress in the province on a large scale, and this without the owners of the lands dependent on such rivers or channels being consulted as to their wishes, etc.

10. The result regarding the above issue being thus in favor of defendants, it follows that no notice is to be taken of the alleged damages sustained by plaintiffs.

11. I dismiss the claim with costs.

26th January 1869.

(Signed) A. ANNUSAMY,
Acting Principal Sudder Ameen.

SUBMITTED for the information of Government, with reference to their Order, dated 26th August 1867, No. 1,991, wherein the defence of this suit was sanctioned.

2. The suit has been dismissed with costs.

No. 156. ORDER THEREON, 7th June 1869, No. 1,605.

Miscellaneous.

ORDERED to be recorded.

(True Extract.)

(Signed) H. WELLESLEY,
Acting Under-Secretary to Government.

To the Board of Revenue.

Exd. E. C. Shunker.

Rec'd 1869. Dept. of
Board of Revenue,
MADRAS.
No. 1582

PROCEEDINGS, 10TH MAY 1869, No. 3,178.

Encl.

Sept 13 1868
Received

MAY.
No. 3,178.

Suit—No. 14 of 1867, filed in Tanjore Principal Sudr Ameens Court to prevent construction of a masonry dam across Panany river,—Letter from Collector, forwarding copy of Judgment in, submitted for information of Government.

Submitted for the information of Government, with reference to [illegible]
August 1867, No. 1,991, wherein the defence of this suit was sanctioned.

2. The suit has been dismissed with costs.

(True Copies and Extract.)

for Acting Secretary.

To the Acting Secretary to Government, Revenue Department.

Copy to the Collector of Tanjore.

Exd. J. Tulloch.

2-19 Augt 1869 Lmc

From the Bd of Rev
25 Febry/70 Ple 4 28

REVENUE.

To

THE BOARD OF REVENUE.

Dept. June 7th

Read. Encl.

G. O., The date & No. [illegible]

Suit No. 14 of 1867, against the Collector of Tanjore—Reported favourably by the Board. Order passed [illegible]

purpose or facilitati

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