

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1886	Press Mis.
429-30 Dated	30-11-1870 19	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
30th November 1870.*

No. 429. Read the following Proceedings of the Board of Revenue, dated 12th November 1870, No. 6,631 :—

Read the following letter from the Acting Collector of North Arcot, to the Acting Secretary to the Board of Revenue, dated Chittoor, 22nd October 1870, No. 464.

I HAVE the honour, in continuation of the correspondence marginally noted, to forward, for the information of the Revenue Board, copy of the decision of the Chittoor Civil Court in Original Suit No. 26 of 1868, wherein the Collector of this district was 1st defendant.

Proceedings of the Board of Revenue, dated 9th June 1869, No. 4,167A.
Government Order, dated 17th June 1869, No. 1,725.

2. The Board will observe that the decision is adverse to the Collector, who has been required to remove the tunnel and bund, the construction of which was objected to by the plaintiffs, the inhabitants of the village of Avalur.

3. The grounds on which the decision has been passed are fully set forth in the judgment, copy of which is also forwarded herewith, and it is, therefore, unnecessary for me to enter upon them in this letter.

4. The Board will observe that this judgment is very important in one respect. It distinctly interferes with or curtails the power or right that the Government, as lord paramount, has always hitherto exercised, through the Revenue-officers, of distributing the water-supply of the country as it considers best for the interests of the community.

5. In paragraph 28 of the judgment, the Civil Judge places the right of Government over the water in rivers or streams on precisely the same footing as its right over land in the *bona fide* occupation of ryots or Merassidars. This is a very important ruling, and it is well worthy of consideration by the Revenue Board; for, if they dissent from the opinion of the Civil Judge in this case, and which will undoubtedly govern future decisions in Suits of the same nature that may hereafter be brought against Government, it is advisable that an appeal should be preferred to the High Court without delay. I confess myself that, in this particular instance, I concur with the Civil Judge in the view he has taken of the rights of the plaintiffs as proved in evidence.

6. It is now a question whether it is advisable to contest the matter any further. If, however, the Board finally decide that it is unadvisable to appeal, I would merely point out that this case adds another to the already long lists of Suits brought by villagers against Government to restrict their right to make changes in the distribution of water in streams or rivers as may be found most advantageous for the common weal, and shows forcibly how necessary it is that Government should protect its own interests and rights by a well-considered legislative enactment, empowering the Local Revenue and Engineer Officers to make such distribution of the water-supply of the country from time to time as may be best calculated to promote the welfare of the general community without the certainty of being constantly harrassed by Suits in the Civil Courts.

7. With regard to the remarks of the Civil Judge in paragraph 30 of his Judgment, as to the manner in which the Head Assistant Collector, in his report,

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dated 7th December 1867, No. 480, commented on the plaintiffs' rights and claims, I shall forward copy of the report for the information of the Board. The original was filed in the Civil Court, and I have applied for its return; but I do not like to delay the despatch of this letter any longer, and so will address the Board further as soon as I receive the documents in question.

ENCLOSURE No. 1.

In the Civil Court of Chittoor.

Present: C. G. PLUMER, Esq., Acting Civil Judge.

Original Suit No. 26 of 1863.

JUDGMENT.

THIS is a Suit to establish plaintiffs' right to retain, on certain lands attached to Sithanthi village, a supply of water for the use of their tank of Avalur, to cause the removal of a bund and tunnel recently erected by orders of the 1st defendant, and to recover from defendants a sum of Rupees 600 on account of the loss of produce sustained by plaintiffs in 1867, in consequence of defendants' acts.

2. The plaint alleges—

That the annual assessment of their (plaintiffs') village is Rupees 3,000; that their lands are irrigated by a tank to the west of the village; that the defendants 9 to 17, who live at Sithanthi, possess 30 cawnies of nunjah lands in front of the bed of the said tank.

That according to long prevailing usage, these lands are only to be cultivated when the said tank is dry.

That when the tank is full, the said 30 cawnies of nunjah land retains water to a depth varying from one to one and-a-half yards.

That surplus water from the villages of Karavedu and Sithanthi, lying west of the said tank, flows to the said tank and to plaintiffs' channel, and contributes to the irrigation of plaintiffs' nunjah lands.

That defendants 9 to 17, on a false pretence that a jungle channel, which, for the last fifteen years, flowed to the said tank, left deposits of sand in their nunjah lands by permission of defendants 1 to 4, and, with the assistance of defendants 5 to 8, raised a bund of two or two and-a-half yards in height and nearly four yards in breadth, east and north of their nunjah lands, and also built on the north a tunnel about 3×3 feet, thereby causing the water obstructed by the bund to empty itself into the channel of another tunnel, instead of flowing as usual into the plaintiffs' tank.

That these acts on the part of defendants are opposed to long prevailing usage, and prejudicial to plaintiffs' right.

That the execution of the said works was commenced in October and finished in December 1867.

That the defendants by their acts have caused a decrease of two months' supply in the usual quantity of water retained by the tank, and that serious damage and loss have accrued to plaintiffs.

That the plaintiffs' objections to the said works were disregarded by defendants 1 to 4, who assisted the defendants 9 to 17 in depriving plaintiffs of their rights.

And the plaintiffs pray that a decree may be passed, directing the removal of the said bund and tunnel, establishing plaintiffs' right to retain in the said 30 cawnies of nunjah, in front of the bed of their tank, a supply of water varying from 1 to 1½ yards height, and their right to receive into the said tank and into their channel the surplus water flowing as usual from the villages of Sithanthi and Karavedu through the said nunjah lands, and adjudging defendants to pay plaintiffs a sum of Rupees 600, with costs and further interest.

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3. The 1st defendant, by Vakil Subramaneyam, put in a written statement as follows:—

1st.—That the 1st defendant denies that the plaintiffs have suffered, or will suffer any damage by the embankments and sluice, of which they complain; 2nd asserts that these works were necessary for the protection of lands in Sithanthi; 3rd, that even if any loss of water were caused to plaintiffs by these works (which the 1st defendant denies), a full equivalent would be given by a channel which has recently been made to the Avalur tank from the Palar anicut through lands belonging to village of Sithanthi; 4th, that the Government, as owner of sources and works of irrigation, have a right to exercise their control for the benefit of the public, and in this case they have done so without causing damage to the plaintiffs; and he, therefore, prays that this Suit may be dismissed with costs.

4. The 2nd defendant prayed to be released from the Suit, pleading that he had acted throughout under the orders of 1st defendant, his superior officer.

5. The defendants 5 to 7, in their joint written statement, alleged that the plaintiffs are entitled to have the bund and tunnel referred to in plaint removed, and to recover the damages sued for; that when 4th defendant estimated for the construction of said bund and tunnel, these defendants and plaintiffs objected to the execution of the said works that they were referred to 1st defendant, who referred the matter to 3rd defendant; that 3rd defendant examined these defendants, and defendants 9 to 11 and 17, and took a statement from the latter, to the effect that they would execute the works in the manner shown in the plan filed by them; that the works have not been executed in accordance with that agreement, and that thus loss has been occasioned to these defendants and plaintiffs; that 11th defendant executed the work on contract; that when these defendants remonstrated with him for not executing the work according to the agreement, a complaint was preferred against these defendants to the Magistrate; that it was not at the request of plaintiffs and these defendants that the Government, some fifteen years ago, constructed a flood channel from the Palar river to the Avalur tank; that the said channel was constructed for the benefit of the villagers of Damal and Sangrapadi; that since the construction of the said channel, the defendants 9 to 17 made no complaint that the water from the channel left any deposit on their lands; that no such deposits were left, and no loss occasioned to defendants; that the works should be executed according to the agreement.

6. The defendants 9 to 17, by Vakil Naranaiyengar, put in a written statement, in which they have alleged that the plaintiffs have no right to sue for the removal of the tank and bund referred to in the plaint; that when the tank in Avalur was supplied by only one spring channel, and had a scanty supply of water, some of the cultivable lands of these defendants, lying in front of the bed of the tank, were immersed in water to the depth of half a yard, but that the water used to run off through the Vettu Madai of the said tank; that there was no obstruction to the cultivation of 60 and odd cawnies in front of the bed of the said tank; that about ten years ago, Government, in order to give a full supply of water to the said tank, and at the request of the people of Avalur, newly constructed a channel along the north side of the cultivable lands of Sithanthi, and filled up the Vettu Madai of the said tank; that as no bank was raised to this channel, the water overflowed the lands of these defendants, left sandy deposits, and greatly injured the crops; that the said channel abundantly and quickly supplies the said tank with water; that in consequence of the increased supply of water thus afforded, the water overflows the tank and floods the lands of these defendants, and thus destroys the crops and delays cultivation, thereby causing considerable loss to these defendants; that the people of Sithanthi made many complaints to Revenue authorities; that they inspected the spot, and passed orders in pursuance of which and of the deposition given by defendants 5 to 8, who are the principal ryots of Avalur, the Engineer Officers properly constructed the tunnel and bank referred to in the plaint; that these works will not and do not cause any decrease in the supply of water in the Avalur tank, nor any loss of cultivation; that the amount of damages claimed by plaintiffs is not correct.

7. The first hearing of the Suit took place on the 30th July 1869.

Vakil Nagaya appeared for plaintiffs, Vakil N. Subramaneyam, B.A. and B.L., for 1st defendant, and Vakil Naranaiyengar for defendants 9 to 17.

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Defendants 5, 6, and 7, appeared in person. The 8th defendant did not appear in person or by Vakil. The case as against him was set *ex parte*.

The 1st defendant having undertaken the defence of defendants 2, 3, and 4, their names were ordered to be removed from the list of defendants.

8. The following issues were fixed :—

(1.) Whether the defendants were legally entitled to erect the embankments and sluice complained of by the plaintiffs.

(2.) Whether the plaintiffs, in consequence of the erection of the said embankment and sluice, have sustained any damage, and if so, what amount are they entitled to recover from defendants.

9. The Suit came on for final hearing on the 22nd August 1870, when the issues previously settled were modified and enlarged as follows :—

(1.) Whether the plaintiffs are possessed of the right to retain water in the nunjah land of defendants situated in front of the bed of plaintiffs' tank at Avalur, and to receive into the said tank and into plaintiffs' channel the surplus water flowing from the village of Sithanthi and Karavedu through defendants' nunjah lands.

(2.) Whether the erection of the bank, and the construction of the sluice referred to in the plaint, have created a disturbance of the said rights.

(3.) Whether the 1st defendant, as the representative of Government, was legally entitled to erect the said bank, and to construct the said sluice.

(4.) Whether the plaintiffs in consequence of the erection of the said bank, and the construction of the said sluice, have sustained any loss, and if so, what amount of damages are they entitled to recover from the defendants.

10. The plaintiffs filed the following seven exhibits :—

A.—Mamulnamah concerning water, dated the 20th December 1815.

B.—Mamulnamah of Sithanthi village produced by plaintiffs' 1st witness, dated 24th December 1815.

C.—An authenticated copy of the plan.

D.—Petition written by plaintiffs to Revenue Board, dated 27th January 1867.

E.—Endorsement made by Collector, on the 9th September 1867, thereon.

F.—Letter written by Mr. J. Lee-Warner to Collector of North Arcot, dated 7th December 1867, No. 480.

G.—Account for Faslies 1276 to 1277 produced by plaintiffs' 7th witness, and examined the following seven witnesses :—

(1.) 92. Chinnasami Mudali.

(2.) 93. Krishnama Chari, 1st plaintiff.

(3.) 94. Ragavaiyengar.

(4.) 95. V. Krishnama Chari.

(5.) 96. Kuppurama Sastri

(6.) 97. Muniyappar.

(7.) 98. Thillanayaga Pillay.

11. The defendants filed the following one exhibit :—

(1.) Kyfeat given by Ragavachariyar and others before the Tahsildar of Wallajah on the 3rd April 1867.

And the 1st defendant examined the following four witnesses :—

(1.) 100. Chendra Goundan.

(2.) 101. Yakambra Mudali.

(3.) 102. Kannaya Pillay.

(4.) 103. Ranga Pillay.

12. After hearing the examination of witnesses and the arguments of the Vakils, and perusing the exhibits filed, I proceed to pass the following :—

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Judgment.

13. *First Issue.*—During the arguments, it was admitted by defendants' Vakil that plaintiffs were possessed of the rights claimed by them, and, indeed, the evidence, oral and documentary, on both sides abundantly proves that from time immemorial the plaintiffs have been possessed of and enjoyed those rights.

14. The exhibit A., which is a document executed by the inhabitants of Sithanthi, defendants' village, in 1815, showing the then existing usage which regulated the distribution of water to the lands in their village, proves that at that time the inhabitants of plaintiffs' village were in possession of the rights which they now seek to establish by a decree of this Court.

15. It is clear then that at some time previous to 1815 the plaintiffs or their ancestors, the owners of the tank of Avalur, had acquired over a certain portion of the lands of Sithanthi the right to compel the owners thereof to allow the surplus water to remain on those lands and to flow uninterruptedly into the tank of Avalur.

16. It is equally clear that from 1815 up to 1866 the plaintiffs uninterruptedly enjoyed the right which they had previously acquired. I find, therefore, the first issue in favour of the plaintiffs.

17. *Second issue.*—It is admitted by the defendants, and is abundantly proved in evidence, that the construction of the sluice and the erection of the bund complained of have extinguished the easement which plaintiffs had admittedly acquired, and which they had uninterruptedly enjoyed up to the execution of those works; but on behalf of the defendants 9 to 17, it was contended that the construction of the flood channel from the Palar to the Avalur tank had caused a much more frequent overflow of the water of the said tank over their lands than formerly, and that, to protect themselves, they were obliged to get the works complained of executed; in fact, they plead that such an additional burthen imposed on them by the owners of the dominant tenement as fully to justify them in extinguishing the easement altogether.

But the answer to this argument is obvious; even supposing it were proved that the construction of the flood channel from the Palar had caused a more frequent supply of water to the tank, and that consequently the waters of the said tank remained longer than before on the Sithanthi lands, yet the plaintiffs were no parties to the construction of this channel; it was not made at their request, or for their benefit; it is not they, the owners of the dominant tenement, who have imposed any additional burthen on the servient tenement, but the Government by whom the channel was constructed.

18. Moreover, from the evidence, it is clear that the plaintiffs' tank is not in any way responsible for any damage which the channel may have caused to the lands of Sithanthi, but that such damage is occasioned in consequence of the channel having no proper bund, and thus at the time of freshes the water overflowed from the channel direct on to the Sithanthi.

19. This could easily be, as indeed it already has been, remedied by the erection of a bund from east to west on the south side of the channel without any interference with plaintiffs' rights, although the plaintiffs at first sought for the removal of this bund, as well as the bund from B. to C. in the plan C.; they, during the argument, withdrew all objections to the bund newly constructed from east to west.

20. It was contended on behalf of the 1st defendant that, although the plaintiff's easement was extinguished by the new bund and sluice, yet that ample compensation was afforded to them by the flood channel from the Palar.

21. It is obvious, however, that where the existence of a right is undoubted, it is no excuse for interfering with, or extinguishing that right, to say that some other benefit quite as great has been conferred.

22. It is admitted that whereas, until the construction of the bund and tunnel complained of, 30 cawnies of nunjah land belonging to the defendants were comprised in the water-spread of the plaintiffs' tank, and that the surplus water from the fields of Sithanthi and Karavedu flowed uninterruptedly into the plaintiffs' tank: now the plaintiffs' tank is dependent solely on the flood channel from the Palar for its supply of water; it is possible that this mode of supply may be

equally as efficient as the former, but the plaintiffs have acquired no right to the water of the channel which was made by Government for the use of some other villages; whereas they have an undoubted right to the uninterrupted flow of the surplus water from Sithanthi and Karavedu: they are dependent on the will and pleasure of Government for the enjoyment of the channel water, but they have an incontestible right to the other mode of supply for which they are dependent on no one. No wonder then that they are not disposed to concede their rights.

23. It is clear from the report made by the Head Assistant Collector that the whole of the 30 cawnies of land of Sithanthi will be most effectively drained by the newly constructed tunnel, and it is also clear from the evidence that the water so drained, instead of flowing into the plaintiffs' tank, will make its way into the tank of Perumbulipakam.

24. I am of opinion, therefore, that the tunnels, and so much of the newly erected bank complained of as is marked in the plan "C." and "B.," have caused a substantial injury to the plaintiffs, and on the second issue I find in their favour.

25. *Third issue.*—I find myself face to face with a most difficult question. I can find no judicial decision to govern the case, and I am not referred to any legislative enactment conferring on the Collector, as the representative of Government, the powers for which defendant contends in the 4th paragraph of his written statement.

26. In a case recently decided by the High Court (Regular Appeal No. 122 of 1868, High Court Rep. Volume V., page 6, the Chief Justice in his judgment remarked: "However lawful the exercise of such a power (the power which 1st defendant seeks now to establish) may be in regulating the distribution of water amongst ryotwary villages held immediately of the Government, or to the lands of proprietors or their tenants whose enjoyment of it is simply permissive, etc.," and Mr. Justice Innes in his judgment in the same case makes somewhat similar remarks, though he restricts the exercise of this power to cases in which *rights have not as yet been acquired*. These are *obiter dicta*, but with the restriction imposed by Mr. Justice Innes, I believe they are most valuable guides to enable me to arrive at a correct decision on this *exata questio*.

27. No doubt where existing rights are not disturbed, Government have the power to regulate the distribution of water amongst ryotwary villages, but, in my opinion, they have not the right when so distributing it to interfere with and destroy existing rights.

28. Special legislation was considered necessary to confer on Collectors the power to take up land, even though wanted for public purposes. If the Government have not the power to interfere with or determine existing rights in land without a special enactment, I think it may fairly be reasoned that without such special enactment Government could not prejudicially interfere with or destroy existing rights to the use of water.

29. In the present case, the 1st defendant has, by the erection of the bund B. to C., and the construction of the tunnel, wholly extinguished an easement which plaintiffs had acquired on the lands of defendants 9 to 17, simply because those defendants said to him—

"The burthen imposed on us by the easement is heavy, remove it we pray from us," and without any consideration for the plaintiffs' rights he did remove it.

30. The utter indifference which the Head Assistant Collector shows in his report "C" to the plaintiffs' acknowledged rights is quite sublime; when the plaintiffs assert their rights, they are said to talk nonsense, they are called alarmist Brahmmins, overfond of mamul, etc., etc. It may be that it would be advisable to invest Collectors with the absolute power claimed by 1st defendant, but in the present state of the law, I am of opinion that they have no such power, and that in this case the 1st defendant, by the erection of the bund and construction of the sluice to the prejudice of the existing rights of plaintiff, acted *ultra vires*. On the 3rd issue, therefore, I find for the plaintiffs.

31. *Fourth issue.*—I am of opinion that the plaintiffs have failed to make out their case. I do not think that they have satisfactorily proved that the decrease in cultivation, which from the account "G." undoubtedly occurred in 1867, was owing to the construction of the works complained of.

32. That year was undoubtedly a most unfavourable one for cultivation everywhere, owing to the diminished rain-fall, and I believe that the decrease of cultivation may well be attributed to causes over which the defendants had no control.

33. The result of the case is, that a decree is passed, declaring that the plaintiffs are entitled to the rights claimed in the plaint, and directing the removal of the tunnel and so much of the bank complained of as is marked in the plan B. to C. The plaintiffs' claim for damages is dismissed. The proportionate costs incurred by plaintiffs will be borne by defendants 9 to 17.

34. The 1st defendant will bear his own costs.

Pronounced in open Court this 29th August 1870.

(Signed) C. G. PLUMER,
Acting Civil Judge.

(True Copy.)

(Signed) V. SIVA ROW,
Sheristadar.

ENCLOSURE No. 2.—Copy of Decree in Original Suit No. 26 of 1868.

SUBMITTED to Government, with reference to Government Order, 17th June 1869, No. 1,725.

2. In this Suit the question of the right of Government to control works of irrigation has again been raised, and, as in the Madura case, (Government Order, 22nd February 1870, No. 275,) decided against them.

3. The subject in dispute is this: the tank of Avalur has been partly supplied from water allowed to accumulate and stand for some time on land belonging to another village, Sithanthi. The Public Works Department erected a bund and tunnel which prevented the accumulation of the water on the Sithanthi fields. For the supply thus cut off from the Avalur tank a *quid pro quo* had been previously given in a flood channel from the Palar.

4. It was urged on behalf of Government—

- (1.) That no harm had been done to Avalur;
- (2.) That the work was necessary in the interest of Sithanthi;
- (3.) That Government as owner of sources and works of irrigation, have a right to exercise control over them for the benefit of the public.

5. The Civil Judge of Chittoor has decided—

- (1.) That previous to 1815, the Avalur ryots had acquired an easement over certain Sithanthi lands, viz., that surplus water should remain thereon and flow thence to the Avalur tank;
- (2.) That the extinguishment of this easement was a substantial injury, inasmuch as the Avalur ryots had no *prescriptive right* to the Palar flood channel, and it was in the power of Government to divert its water from them;
- (3.) That Government has no power to alter the distribution of water amongst ryotwary villages, when by such alteration they interfere with and destroy existing rights;
- (4.) That no actual damage had been caused by the sluice and dam.

6. The decree directs the removal of the new works complained of by the Avalur ryots.

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7. The language used by the Judge with regard to the rights of Government is similar to that used in the Madura case. He says: "I find myself face to face with a most difficult question. I can find no judicial decision to govern the case, and I am not referred to any legislative enactment conferring on the Collector as the representative of Government the powers for which 1st defendant contends."

8. If this decision is good in law, it is evident that Government cannot interfere with existing irrigation without first obtaining the consent of all who are affected by their operations. In the Godavery and Kistna Districts, for instance, it would be possible for any ryot to interfere with and stop the progress of the channels, for even if it were proved that they would increase his supply of water, he could reply that he had no *prescriptive* right to them.

9. In the Madura case, the dispute involved Zemindari lands, and the Board thought it would be necessary to await a decision in the South Arcot case (Government Order, dated 13th July 1869, No. 2,020,) before again discussing the question of the rights of Government to distribute irrigation in ryotwary tracts. No final settlement has yet been arrived at in the South Arcot case, but the one now reported seems to be as decisive.

10. The first question is, as to whether an appeal should be made to the High Court. The opinion of the Government Pleader, recorded in Board's Proceedings, 1st April 1870, No. 2,193, (copy of which is herewith submitted) is distinctly against the contention of Government. In a Bill to regulate the construction and maintenance of Public

No. 18 of 1869, Northern India Canal and Drainage Bill. Works for Irrigation, Navigation, and Drainage, which was introduced into the Governor-General's Council last year, and was afterwards withdrawn, in order that it might be modified, although the right of Government to the lakes, rivers, and streams of British India is asserted in the Preamble, it has been considered necessary to provide a procedure "for taking possession of a water-supply for public purposes, and awarding compensation for loss arising thereon." This seems to concede the point as regards Northern India. Altogether, the Board are of opinion that an appeal would not be successful in the High Court or afterwards in the Privy Council. It may, however, be desirable, as a means of ascertaining the real state of the law.

11. The decree having been given on the 29th August, the appeal time will expire on the 29th instant.

No. 430. ORDER THEREON, 30th November 1870, No. 1,886.

Miscellaneous.

THE Board will instruct the Collector to give the usual notice of intention to appeal, the time for which will not expire till 21st December, as the ninety days allowed are exclusive of the time occupied in obtaining copy of the Decree (*vide* Section 333, Civil Procedure Code); and in this case the copies are marked as having been "delivered 22-9-70," or 22nd September last.

2. It is not certain whether the points at issue in the other cases which are understood to be before the High Court are identical with those raised in the

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present Suit, and the Government deem it desirable to have a distinct enunciation of the law by the higher Court. But if the Board are in possession of any further information as to the High Court's decision in the other cases, showing that appeal in the present case would be hopeless, they will submit it for the information of Government. Otherwise, they will at once consult the Government Pleader as to the best form in which to present the grounds of appeal.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue.]
,, the Government Pleader.

Exd. F. R. Bantleman.

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[illegible]

5. In the present case, the real fight will be, in my opinion, over the question of facts raised by the 2nd plea on behalf of Government, viz., whether the water spread of the tank has not been increased by the unauthorized acts of the plaintiffs and their ancestors, so as to justify the Government in interfering to restore it to its original condition. The Proceedings of the Board of 5th August 1869, are not among the papers before me, but from paragraph 7 of the Proceedings of 5th January 1870, No. 46, and from the letter of Lieutenant Graham therein referred to, I gather that the evidence on this point is very satisfactory. Care should be taken that ample original evidence on this point is adduced on behalf of Government, showing clearly the original condition of the tank and the alterations made by the Padarapooloor villagers. Much may turn upon the date of these alterations and the knowledge and acquiescence of the revenue authorities, upon all which points the fullest possible evidence should be adduced. It should also, if possible, be ascertained and proved by whom the tank was originally constructed and has been since maintained and repaired.

6. I return the papers forwarded to me with the above Proceedings.

ENCLOSURE No. 1.

In the Court of the Principal Sudder Ameen of Cuddalore.
Original Suit No. 26 of 1869.

Plaintiffs.

versus

Defendants.

1. A. L. Lister, Esq., Acting Head-Assistant Collector of South Arcot. Ragavachari and six others.

2. Assistant Engineer and seventeen others.

Written statement of the abovenamed first and second defendants.

The villages of Padarapooloor and Chendoor, in the plaint named, are Government villages, and the tank, the subject of this suit, is the property of Government, who maintain and repair it for the benefit of the lands irrigated by it. The Government have, therefore, a right to make any alterations they may think fit in the said tank, and to regulate the amount of water to be stored therein in such manner, as they may think best, for the interests of Government, and of the occupiers of their villages.

2. The occupiers of the plaintiffs' village have, from time to time, without the sanction of Government, made certain alterations in the bund of the said tank and the outlet therefrom, and have thereby increased the waterspread of the said tank, and caused injury to some of the lands belonging to the said village of Chendoor.

3. The order passed by me, the second defendant in this suit complained of, and the works executed in consequence of such order were for the purpose of restoring the said tank to its original condition, and preventing further injury to the said Chendoor lands through the unauthorized alterations made by the occupiers of the plaintiffs' villages as aforesaid.

4. These defendants deny that such damages as in the plaint is mentioned or any damage will be caused to the plaintiffs' lands by the works executed in consequence of the said order, but whether this be so or not, they submit that for the reasons aforesaid, the plaintiffs have no cause of action in respect of such works.

We the abovenamed defendants hereby declare, that what is herein contained, is true to the best of our information and belief.

COMMUNICATED to the Collector of South Arcot, who will file the answer prepared by Mr. Handley.

2. The Collector's attention is specially called to paragraph 5 of Mr. Handley's letter.

(True Copies and Extract.)

(Signed)

J. GROSE,
Acting Secretary.

To the Collector of South Arcot,
with original records returned.

Copy to the Government Pleader, Madras.

Ed. G. A. Turton.

Memorandum No. 3306

With these Pro: the Board of Revenue submit a letter from the M. Coll. of North Arcot reporting that the M. Civil Judge of Chittoor has upheld a suit brought by certain ryots against it would be well by certain ryots against the Govt in regard to the distribution of water of the Advocate's suit and directed the removal of certain controlling works which had been erected. The Civil Judge is of opinion that no legal enactment gives to Govt the power to distribute water as best seems to them for the public good, and that

that they have no power to ask I will not
disturb or interfere with Smith?

any existing supply of water
which may be enjoyed by the
proprietor of a fishery
holding.

2. The Bd. of Res. and the Govt Pleader are not of opinion that the right of distribution in such cases claimed by Govt could be upheld & the Board therefore recommend that no appeal be filed from the Civil Judge's decision.

3 In Mr Handley's letter, however, printed with Board's Pr: dated 1st April 1870, ^{an} allowance is made to two cases then pending in the High Court in which it was likely that a decision on this particular point would be pronounced. It is submitted that the Board may be called upon to ascertain & report the

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I don't know whether
the other suits involve
exactly the same points
as this one. I would
take the opinion
denied by Mr. Sine.

I hope all these
points will be settled
by the general act
introduced by Mr.

Track. I see
a further improvement
the appeal time
will expire on the
29th inst. There
will therefore be no
time for the appeal
consultation desired.
Mr. Norton being absent
I could appeal to

Should get a distant
examination of the
law.

I have been thinking
 of you very much lately
 and wondering how you
 are getting along.
 I hope you are well
 and happy.
 Love,
 John

the result of these cases, in view to its being recommended with reference to G. O. 25: June 1867 No 1809, whether any legislation on the subject is desirable. The circumstances of Northern India and the tenures of land there are so different from those of Madras, that separate action in the matter will probably be advisable, if any action be eventually determined upon.

4 Orders are requested
as to whether an appeal is
to be submitted in the
particular case under notice.



Ty. H. L.

Mr.
S. S. S. S. S. S.
referred to the
the government

8.

one

W. G. P. C.

16
1886 Revenue Department
Pro. of the Madras Govt.
Under date the 30th Novr 1890

Read the following
Pro. of the Board of Revenue

Subm. letter from J. W. forward-
ing copy of Decree in suit filed
in Chittoor Civil Court, North
Arcot, regarding a tunnel and
bund.

M. E. 12: November 1890

The Board will
instruct the collector to give
the usual notice of intention
to appeal - the time for which
will not expire till 21st Decr
as the 90 days allowed
are exclusive of the time
occupied in obtaining
copy of the decree (vide
sec. 333. Civil Pro. Code)
and

and in this case the copies
are marked as having
been "delivered 22. 9. 70"
or 22^d Sept. last.

2. It is not certain
whether the points at issue
in the other cases which
are understood to be
before the High Court
are identical with those
raised in the present
suit, and the Govt. deem
it desirable to have a
distinct enunciation
of the law by the higher
Court. But if the
Board are in possession
of

of any further information
as to the High Court's
decision in the other
cases - showing that
appeal in the present
case would be hopeless,
they will submit it for
the information of Govt.
Otherwise they will
at once consult the
Govt. Pleader as to the
best form in which
to present the grounds
of appeal.

L. D.

List
Ordered in Council
29 Nov. 1870

M^s copy Letter M^o of Pleader with 2 Encls. Despt 30 Nov. 1870 14 Dec^r 6^o
3 copies - Govt. Pleader Despt 6^o

60

Just in front of
first, N. E. 1/4, no. 17, 18
Tand and land