M.R.O. 1—77,005—8-5-37.

(1) Number of pages 44

(2) Date of repair 5.5.20

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Public (Misc.) DEPARTMENT.

G.O. No. 309 Press Mis.

419-20

Dated 19 - 12 1870.

Not to be folded or roughly handled

621

Proceedings of the Madras Government, Public Works Department, 19th December 1870.

No. 419. Read the following letter from the Superintending Engineer, 6th Division, to the Secretary to Government, Public Works Department, dated Tanjore, 3rd December 1870, No. 745 :—

I HAVE the honour to report, for the information of Government, that in July last a contractor in the Combaconum Range, according to the established custom, removed a quantity of earth from a Merasidar's field for carrying out the repairs to the south bank of the Cauvery; the Merasidar at once filed a suit against the contractor for damaging his property, and the Town Sub-Magistrate, in whose Court the suit was filed, sentenced the contractor to five days' simple imprisonment, and to pay a fine of Rupees 15. Mr. O'Shaughnessy, the Range Officer, took exception to the decision, and regarding the proceedings of the Sub-Magistrate as detrimental to the working of the Department, and as likely to incite other Merasidars to obstruct the progress of works, desired the contractor to appeal against the Town Sub-Magistrate's decision; the contractor did so, and the Assistant Magistrate reversed the sentence of the Lower Court, and ordered the fine to be refunded to the Appellant, as will be seen by the enclosed copy of that Officer's Judgment.

Copy of Judgment.

2. In reporting the circumstance to this Office in October last, Mr. O'Shaughnessy submitted a statement of the expenses incurred by the contractor as detailed in the margin, and requested permission to re-imburse the amount to him.

	Rs.
Vakeel's fee	43
Value of stamp	6
Batta to witnesses	5
Total...	54

3. As the appeal was made at the desire and by the recommendation of the Range Officer, and the result has been that other landowners, who were obstructing the Department, have now withdrawn their opposition, I beg that on this occasion permission may be granted for the re-imbursement to the contractor of the expenses incurred by him on account of his appeal, from the amount provided for sundries in the estimate.

4. Mr. O'Shaughnessy states that the contractor has incurred a loss of Rupees 38-8-0 by the dispersement of his coolies before they had worked out their advances when he was imprisoned, but as he will probably be able to recover this amount by getting his coolies to work out his advances on other works, there seems to be no reason to make good this sum.

No. 420. ORDER THEREON, 19th December 1870, No. 3,092.

ESTABLISHMENT, No. 32.

UNDER the circumstances brought to notice in this letter, the Government authorize the re-imbursement to a contractor of the expenses* incurred by him in appealing against the decision of the Sub-Magistrate at Combaconum in the matter of the removal of earth from a Merasidar's field for the repair of the south bank of the Cauvery.

* Rupees 54.

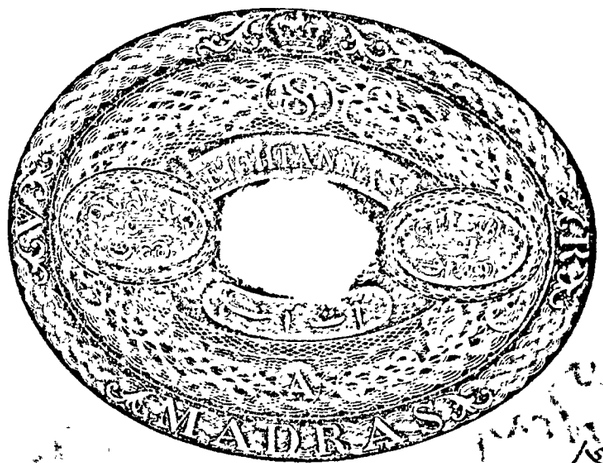
(True Extract.)

Colonel, R.E.,
Secretary to Government.

To the Superintending Engineer, 6th Division.
" Controller of Public Works Accounts.

Exd. E. C. Shunker.

The owner of the backyard the Canjacanam Rayanar he objected in vain to the removal of the earth that



3B

In the Court of the assistant Magistrate of Tanjore.
Cumbaconam Division

The 10 th day of September 1870.

Petition of appeal No 95 of 1870. against the conviction and sentence by the 2 class Town Sub Magistrate of Cumbaconam under Section 426 of the I.P.C. in case No 812 of the Calender for 1870.

Appellant
Iruyappan.

Judgment

This appeal is against the decision of the Town Sub Magistrate the 2nd class sentencing the appellant Iruyappan to 5 days Simple imprisonment and to a fine of Rs 15 under Section 426. of the Indian Penal Code. The matter is one of some importance as it affects the relation of the Department Public works to the mirasdars. The appellant took a Contract from the range officer to repair a portion of the many miles of line banks which border the rivers as a protection against excessive floods.

2. In carrying out his Contract the appellant following the ordinary practice entered into a certain back yard and by his Coolies dug out and removed the earth he required for the repair of the bank.

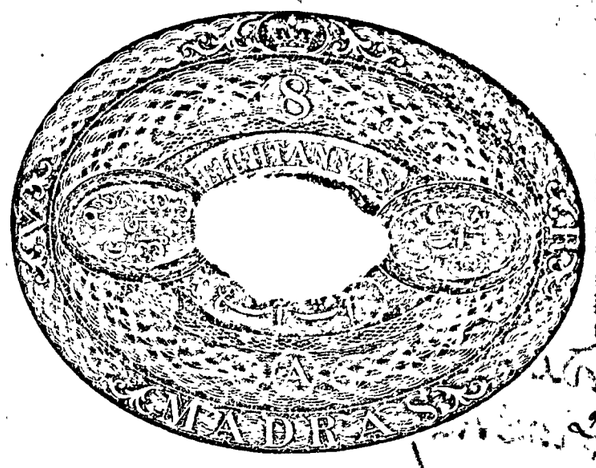
3. The owner of the backyard the Complainant says that he objected in vain to the removal of the earth, that Comp[t] K Saminadw.

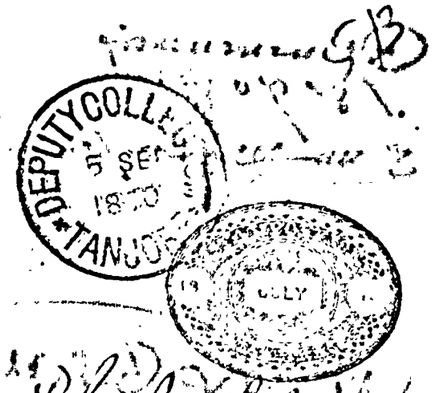
[illegible] about [illegible] destroyed and that the pits are dug close near his bamboo [illegible] hedges that their roots are undermined and they are [illegible] to die. Iruyan denies by the mind. the appellant denies that the Complainant objected, any Cocoanut trees were destroyed, and that the bunches are weakened.

5. The backyard in question has been inspected both by this Court and by the Sub Magistrate. The Sub Magte was of opinion that one or two young Cocoanut trees were missing but this Court is of opinion that there was no destruction of trees and no injury to the bamboos. The evidence now recorded by the Sub Magistrate is conflicting on the matter, but the probability is in favor of the appellant who is entitled to the benefit of the doubt.

6. Now as to the question whether the appellant was guilty of mischief in removing earth from the backyard and employing it for the repair of the line bank. His "intent" undoubtedly was to repair the bank and not "to cause wrongful loss" to the Complainant or to anybody else. Did he know that he was likely to cause wrongful loss." In many places the Ryots are glad to have earth removed from their land, because the level is thereby lowered. In the present case however the backyard is even now low and swampy, so that a lowering of the whole level is detrimental to the owner, and as he objected too, the appellant must be supposed to have known that he was likely to cause not any loss, but wrongful loss as if he believed himself justified in his act, it was through a mistake

In the most essential to the offence to that destruction of property must have ensued of a change in it or its situation which destroyed or diminished its value or utility or affected it injuriously





None of these effects appear to have ensued. The earth was not destroyed, and so far from its value or utility being diminished, it was removed by the appellant at a certain cost that its utility might be increased. The existence of the pits in the backyard was in itself no damage, and the High Court have decided that to constitute mischief the damage must be actual and immediate and not prospective.

8. For these reasons therefore the Court is of opinion that the Conviction Cannot Stand and it will accordingly be reversed.

9. It must however be remarked that if the owners of land object to the removal of their earth, they are entitled to reasonable Compensation if the earth is taken from them. The forcible removal of the earth without any intention to pay its value would expose the persons who so acted to prosecutions under other sections of the Penal Code.

Order

Upon perusing the petition of appeal and the record of the case, I do order that the sentence of the Lower Court be and it hereby is reversed and annulled, and that the fine levied from the appellant be refunded. (Signed) A. J. Arundel
Cambacanam
Asst Magte

Copy applied for 12-9-70
Prepared and given 14-9-70
Compd K. Saminadew.
Clerk.

(True Copy)
A. J. Arundell
Assistant Magistrate



Supdg Engrs Office, 6 Div.

No 745 Tanjore 3rd December 1870.

7B

From

Captain R. F. Oakes R.E.

Superintending Engineer, 6th Div.

To,

Colonel C. A. Orr R.E.

Secretary to Government. P.W.D.

Sir,

I have the honor to report for the information of Government that in July last a Contractor in the Combaconum Range, according to the established custom removed a quantity of earth from a Merasidar's field for carrying out the repairs to the South Bank of the Cauvery, the Merasidar at once filed a suit against the Contractor for damaging his property and the Town Sub Magistrate in whose Court the suit was filed sentenced the Contractor to five days simple imprison=ment and to pay a fine of Rs. 15.

Mr. O'Shaughnessy the Range Officer took exception to the decision and regarding the proceedings of the Sub Magis=trate as detrimental to the working of the Department and as likely to incite other Merasidars to obstruct the

the progress of work desired the Contractor to appeal against the Town Sub Magistrates decision, the Contractor did so and the Assistant Magistrate reversed the sentence of the Lower Court and ordered the fine to be refunded to the Appellant as will be seen by the enclosed copy of that Officer's judgment.

In reporting the circumstance to this Office in October last Mr O'Shaughnessy submitted a statement of the expenses incurred by the Contractor as detailed in the margin and requested permission to re-imburse this Amount to him.

As the Appeal was made at the desire and by the recommendation of the Range Officer and the result has been that other land owners, who were obstructing the Department, have now withdrawn their opposition I beg that on this occasion permission may be granted for the re-imbursement to the Contractor of the expenses incurred by him on account of his Appeal, from the Amount provided for sundries in the Estimate.

Mr O'Shaughnessy states that the Contractor has incurred a loss of Rs. 38-8- by the dispersement of his Coolies before they had worked out their advances when he was imprisoned, but as he will probably be able to recover this Amount by getting his Coolies to work out his Advances on other works there seems to be no reason to make good this sum.

I have the honor to be

Your Most Obed't Servant

Captain R.E.
Superintending Engineer 1st Division

Public Works Department

No. 33.092

Proceedings of the Madras Government

Under date the 19th Decr 70

Read the following

From The Supdg Engineer 6th Dn 3 (H.E. No. 745 dy 3rd Decr 70)

Under the circumstances brought to notice in this letter, the Govt authorize the re-imbursement to the Contractor of the expenses incurred by him in appealing against the decision of the Sub Magistrate at Combaconum in the matter of the removal of earth from a Meeravoridaré field for the repair of

Rs 54

Rd 18 Dec 70
Fwd to Govt
No 1985
The Judg Engineer
6th Dn

Dated 3 Decr 1870
Rec'd 5th Decr
Encl 1
No 745

To
The Secretary to Govt
P.W.D.

Requests sanction to the Assessment of Rs 54 & a Contingent Bill for the Combaconum Range, for amount of costs of an appeal against the decision of Govt in the matter of removing earth from Meeravoridaré field for the repair of the Anicut of Public Work, the removal of which was objected to by the Ryots

No 30 dy 2-12-70

Recd 13 Dec 70

Read 14 Dec 70

Recommended Rs. 13.

of the South bank of the
Cauvery.

The Supt Engr 6th Dist
& Controller P.W. accts

Despr 20/12/70. [illegible]

6/12 Dec/70 R. 13.

of the South bank of the

1/12/1887

Govt. of {1870} Madras.

PUBLIC WORKS.

To The Superintending Engineer
6th Division

Dated

Recd.

G. O. 19 Dec 1870. No. 3092

No. 119-420

Earth - Re-imbursement to a Contractor for expenditure incurred in appealing against the decision of the Sub-Magistrate at Mubaconum in the matter of the removal of earth from the Meerasidars field for the repair of the South bank of the Anicut, authorized.