

*Proceedings of the Madras Government, Revenue Department,
17th August 1871.*

No. 156. Read the following Proceedings of the Board of Revenue, dated 12th August 1871:—

Read the following letter from the Collector of Salem, to the Acting Secretary to the Board of Revenue, Madras, dated Salem, 5th August 1871, No. 2,190.

I HAVE the honour to enclose the translation of a plaint in Original Suit No. 158 of 1870 filed in the Salem District Moonsiff's Court by Komaragounden of Vuppoopoliem in the Trichengode Talook against the present Tahsildar of Trichengode, Soondrier, and thirteen others.

2. The object of the suit is to obtain a decree, establishing plaintiff's right to restore the calingulah of a kuttai (small tank or pond), marked D. D. in the accompanying sketch (to be returned) belonging to him, and interdicting the defendants from interfering with its construction, and to recover 150 Rs. as loss of produce, etc.

3. The particulars of the case are as follow:—On the 2nd December 1854 plaintiff applied for five acres of immemorial waste land for wet cultivation. The Sub Collector, Mr. Cherry, on the 16th December 1854, issued a Takked, directing the Tahsildar to give the plaintiff the five acres applied for by him at an assessment of Rs. 11-13-2, on condition of his irrigating the same from his own tank, the water being carried through the breach of another tank belonging to Government; that, should the Government ever close the breach of their tank, plaintiff should take his water by some other way, or should irrigate his land by wells, and that in either case he must continue to pay the nunjah assessment, viz., Rs. 11-13-2. Plaintiff gave a Muchilika on the 5th January 1855, binding himself to the above terms.

4. On the 10th February 1864 the Curnum of the village gave a statement before the late Deputy-Magistrate V. Ramiengar to the effect, that plaintiff had constructed a small kuttai or tank, marked D. D. in sketch, five or six years previously, and had stored in it the water flowing to the Government tank at Karoomapuram, marked "J." in sketch; that the kuttai (small tank) in question breached some six months before; and that the plaintiff had since closed the breach and strengthened the bund by which the supply to the Karoomapuram tank was considerably diminished. The Deputy-Magistrate investigated the case, and fined plaintiff Rs. 15 for damming up water flowing to a Government reservoir—*vide* accompanying decision.

5. On the 25th October 1870 the Tahsildar reported that the plaintiff had again dammed up water flowing to the Government tank of Karoomapuram, and requesting permission to try plaintiff criminally. Mr. Kough, the Assistant Collector in charge, ordered the prosecution of the plaintiff, and desired the Tahsildar to take measures for cutting the bund in question, "where it is on Govern-

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"ment land," and "where it interferes with the supply to the Karoomapuram tank." The Tahsildar tried the case, and fined the plaintiff Rs. 30, and at the same time removed a portion of the calingulah of the kuttai, D. D. in sketch.

6. Plaintiff built the disputed kuttai or tank D. D. in 1852-53, and enlarged it in Fusly 1273 (1862-63), and dammed up the water flowing to Karoomapuram tank. It also appears a portion of the kuttai was removed in 1864 by the Tahsildar on the Deputy-Magistrate fining the plaintiff.

7. To sum up, it appears that permission was given to plaintiff in 1854 to irrigate five acres of Poramboke by water from his private tank, marked A. in sketch; that the irrigating channel was to pass through a ruined tank belonging to Government, E. in sketch; that plaintiff subsequently constructed the kuttai D. D., which is just above his five acres of land, so that he might easily store water for irrigation; that he gradually strengthened and extended the bund, till at last he entirely dammed up the water flowing to the Karoomapuram tank. The Curnum, I have no doubt, was privy to the plaintiff's act till 1864, when, finding that supply to the Government tank was so seriously affected by plaintiff's acts that he could no longer screen plaintiff, and so brought the matter to the notice of the Deputy-Collector.

8. The permission given in 1854 was, it is clear, not for the construction of any new tank, and the plaintiff cannot therefore claim any right to restore the calingulah; but this he seeks to do by the present suit. There is nothing to prevent his irrigating his five acres of land by the channel in the manner laid down in the order of 1854, without storing the water in any reservoir, or without interfering with the supply to the Government tank. It appears from the Tahsildar's report that the plaintiff has, as usual, carried on his cultivation, and that he has not sustained any loss of produce, as alleged in the plaint, by the act of the Tahsildar.

9. The draft of an answer, which I propose to file on behalf of the Tahsildar, is enclosed, and if the Board approve of it, I request that the necessary sanction may be accorded for conducting the suit at the Government expense.

10. I have directed the Government Vakeel to apply to the Civil Court to have the suit brought on the file of that Court.

THIS suit has been occasioned by the action of the Tahsildar in his magisterial capacity, and the case will therefore be submitted for the orders of Government.

2. The Board suggest that the following be substituted for paragraph 4 of the proposed draft answer :—

"That the 1st defendant having acted *bona fide* in proceeding criminally against plaintiff is not (by the provisions of Act XVIII. of 1850) liable to be sued in any Civil Court on account of such action."

3. As revenue interests are involved in this case the Collector has rightly submitted it through the Board.

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No. 157. ORDER THEREON, 17th August 1871, No. 1,402.

Miscellaneous.

THE defence of the suit and the filing of the answer, amended as proposed by the Board, are sanctioned on the usual terms.

(True Extract.)

(Signed) A. DEC. SCOTT, Captain R.E.,
Under-Secy., P.W.D.,
for Secy. to Govt.

Original Suit No. 158 of 1870

Draft answer.

1. That the Plaintiff has no right to the Calingulah in dispute, as it is on Government land, and that the Plaintiff obtained no permission for its construction.
2. That the construction of the Calingulah cuts off the supply of water to the Government tanks of Harunapuram, and thereby causes a loss of Revenue to Government.
3. That the Plaintiff has carried on his cultivation, as usual; and that he has not sustained any loss of produce, as alleged in the plaint.
4. That the 1st defendant was justified in fining the petitioner, and removing the Calingulah as the Plaintiff's act was criminal and injurious to the interests of Government.
5. That the 1st Defendant, therefore, prays that the Suit may be dismissed with costs.

/Signed/ C. S. Longley
Collector

/True Copy/

J. G. M.
Secretary

Exd. C. Hogg.

Enclosures in Green -
dirigs of the Board of
Revenue to the Secretary
to Government. A. R. P.
dated 12 August 1871.

Recd. 2607/71.

Draft Answer.

Rev. 1871 Sept¹²
No 2607
Proceedings of the
Board of Revenue.

Dated 12th August 1871
Depd 12 _____
Ret 15 _____
W. L. 1000
No 1402-17 August 1871

Submitting letter from
Collector of Salem re-
questing sanction to
defend, at public
expense, Suit. No. 158
of 1870 filed in District
Munsif's Court re:
guarding a Calingulad
Duff

Ms. A. 9. 2. 10. 2
The signing of the Declaration of the
American Continental Association of the
18th and 19th centuries etc.
and the - 18th

14. St. Elizabeth's Sept. 20-17.
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No 156-157