

Proceedings of the Madras Government, Revenue Department.
15th September 1871.

No. 201. Read the following Proceedings of the Board of Revenue, dated 25th August 1871, No. 3,673:—

Read the following letter from the Acting Collector of Madura, to the Acting Secretary to the Board of Revenue, dated Peracolum, 26th July 1871, No. 220.

WITH reference to the correspondence noted in the margin I have the honour

To Board, 22nd May 1869, No. 180. to submit herewith copies of the Judgments and Decrees in Appeal Suits
From do., 27th " " " 3,800. Nos. 184 and 185 on the file of the

Principal Sudder Ameen's Court of this district, awarding, in modification of the original decree, payment to Government of the whole amount sued for with costs.

2. The Appeal No. 185 is the cross appeal preferred by the 1st defendant against that portion of the original decree which was unfavourable to him.

ENCLOSURE No. 1.

Madura Principal Sudder Ameen's Court.

Present:—G. MUTTUSAMY CHETTY, Principal Sudder Ameen.

Appeal Suit Nos. 184 and 185 of 1869.

JUDGMENT.

THIS suit was brought on behalf of Government for the recovery of Rs. 970 on account of damages for injury caused to road No. 15, and the Government tank of Todanary by the bursting of the reservoir called Tanichiem attached to the estate of Ammianaiknur, of which the 1st defendant is the Lessee in possession, and the 2nd defendant the proprietor.

2. The plaintiff represented as follows:—"In December 1866 the tank of Tanichiem, owing to its neglected state, burst and caused mischief to the Todanary tank belonging to Government which in consequence breached in ten places. It also injured road No. 15, between the 9th and 12th mile-stones, and Government, as represented by plaintiff's predecessors, was thereby put to an expense of Rs. 780 for closing the breaches of the said Todanary tank and Rs. 190 for repairing the road. The late Superintending Engineer, who is the head of the Department Public Works in the district, has reported that the mischief resulted solely by the bursting of the defendant's tank, which he neglected to keep in order, notwithstanding that the head of the village has been often told of the dangerous state it was in. The 1st defendant, who was called upon by the plaintiff to make good the loss, denied his liability for the same, and 2nd defendant, when called on to pay, replied that according to the terms of the lease on which he has let the estate to the 1st defendant, the latter is liable. The terms of that lease, however, concern only the 2nd defendant and not Government." Hence the present suit.

3. The 1st defendant filed a written statement denying that the said tank of Tanichiem was ever in a neglected state, or that the bursting of the Government tank called Todanary was caused by the action of the water which escaped from the former reservoir. He stated that the bursting of the said Government tank was owing to floods brought on by excessive rains which fell in the adjoining hilly tracts in December 1866. He admitted that the road above referred to was damaged by the bursting of the Tanichiem tank.

4. The 2nd defendant denied his liability to the claim, on the ground that provision had been made in the lease granted to the 1st defendant for the maintenance of all the works of irrigation belonging to the said estate in a state of repair, and declared that the 1st defendant should alone be held responsible for the damages sought for which were caused by his neglect to observe the conditions of the said lease.

5. The District Moonsiff of Dindigul awarded to plaintiff Rs. 190, being the cost of the repairs made to road No. 15, but rejected the rest of the claim.

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6. Against this finding both the plaintiff and 1st defendant have appealed, the former on the ground that the Moonsiff has not correctly appreciated the evidence which, he adds, shows clearly that the injuries complained of were caused mainly by the neglected state of the defendant's tank and not by any extraordinary floods.

7. The 1st defendant also objects to the estimate formed by the Moonsiff of the evidence produced in the case which he contends does not prove that the injury sustained by road No. 15 was caused by any negligence on his part.

8. It has been satisfactorily proved by the evidence of the six witnesses examined for the prosecution, that prior to the occurrence of the breaches which have led to the institution of this action, the bund of the Tanichiem tank was very weak, not exceeding three feet in width in some parts, and in others much lower than the calingulah or outlet through which the surplus water of the tank escaped, that though the attention of the 1st defendant and the Revenue-officer of the village in which it is situated was drawn before the bursting of the said reservoir to the neglected state in which it was, no measures were adopted by the 1st defendant to place the tank in an efficient condition and thus prevent the damage both to Government road No. 15 and tank called Todanary, which has resulted mainly from the failure on the part of the 1st defendant to attend to the timely warning given him by the officers of Government. There is nothing in the evidence of the said witnesses to weaken it, and in the absence of any motive on their part to misrepresent facts, I am unable to discredit their testimony which is based upon observations made in the execution of their professional duties. The District Moonsiff seems to lay some stress on the part of some of the intervening tanks between the Tanichiem and Todanary reservoirs having suffered no damage at the time; but this is accounted for by the witness Mr. Colquhoun, by the fact of the bulk of the water which escaped through the breaches on the Tanichiem tank having passed by the extremities of the said intervening tanks, which being much smaller in size than the others, were saved. I consider the explanation satisfactory; and considering the ordinary nature of the floods, as appears from the evidence of the witnesses examined by both parties in this case, I am led to believe that the damage caused both to the Government road and reservoir was mainly owing to the absence of proper care on the part of the 1st defendant to keep the Tanichiem reservoir in a state of thorough repair, the need of which was duly brought to his notice as already observed. The Moonsiff also alludes in his Judgment to the fact of only slight repairs having been made to the Government tank above referred to since 1859, but this is immaterial, since it is clear from the testimony of the witnesses for the prosecution, that the said tank was in an efficient condition before the breaches occurred. Differing, therefore, from the estimate the Lower Court has formed of the evidence adduced in the case in regard to the effect produced on the Government reservoir by the influx of water from the Tanichiem tank, I hold the 1st defendant primarily responsible for the loss occasioned to Government by the bursting of the said tank which he was bound by the terms of the lease held by him from the 2nd defendant to keep in a state of repair.

9. The amount expended by Government in repairing the injury has been proved by the documentary and oral evidence produced in the case, and concurring in the conclusions arrived at by the Lower Court in regard to the liability of the 1st defendant to make good the amount laid out by Government in repairing road No. 15, I direct the 1st defendant primarily, and the 2nd defendant on his failure, to pay to the plaintiff, on behalf of Government, the whole of the amount sued for with plaintiff's costs and interest at 6 per cent. per annum from this date up to the date of payment. The defendants will bear their own costs both in original and appeal.

Pronounced in open Court this 30th day of June 1871.

(Signed) G. MUTTUSAMY CHETTY,
Principal Sudder Ameen.

(True Copy.)

(Signed) T. RAM ROW,
Deputy-Collector, for Collector.

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ENCLOSURES Nos. 2. and 3.—Decrees.

SUBMITTED for the information of Government.

2. The Original Suit No. 155 of 1868 in the Dindigul Moonsiff's Court was instituted by the Collector of Madura* (with the sanction of Government) to

* G. O., 11th May 1868, No. 1,300. recover from defendants (the Zemindar and the Agent to the Lessee of the Ammia-naiknur estate) Rs. 970, being the loss sustained by Government by the bursting of the Tanichiem tank belonging to the above-named estate, in consequence of which a Government road and tank were injured.

3. The issues in the Original Suit were—

1st.—Whether defendants' tank was in a neglected state.

2nd.—Whether the injury to the Government tank was caused entirely by the bursting of defendants' tank, and,

3rd.—What was the extent of damage done to the road, this being estimated by the Collector at Rs. 190.

4. The Moonsiff decided the 1st and 3rd issues in favour of the Collector and the 2nd in favour of defendants, thus disallowing the claim of Government to Rs. 780, the amount expended in repairing the Government tank.

5. Both parties appealed to the Principal Sudder Ameen's Court, and the result is, that the defendants have been directed to pay to Government the whole amount originally sued for, with costs.

No. 202. ORDER THEREON, 15th September 1871, No. 1,608.

Miscellaneous.

COMMUNICATED to the Department
Public Works.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Public Works Department.
,, the Board of Revenue.

Exd. F. R. Bantleman.

1871.1871
Court of Session,
MADRAS.

PROCEEDINGS, 25TH AUGUST 1871, No. 3,673.

Aug 25 1871

Encl. 2

Received.

Secy. to Govt.
25/8/71
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AUGUST.

No. 3,673.

21 To the Public Works Dept. 22/8/71
14. The Board of Rev.

Appeal Suite Nos. 184 and 185 of 1869—filed
in Madras Principal Sudder Ameer's Court
against Decree of Dindigul Munsiff in Suite No
185 of 1868 instituted by Government in his
Court to recover loss sustained by them by burst-
ing of Tanichien tank in Ammaiaickur Pottiem,
—Letter from Collector forwarding copies of
Judgments and Decrees passed in favor of Go-
vernment in, submitted to Government.

W. 1605 in 1871
Commenced in 1871.

No. 201-203

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