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*Proceedings of the Madras Government, Revenue Department,
20th May 1872.*

No. 206. Read the following Proceedings of the Board of Revenue, dated 14th May 1872, No. 776:—

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, to the Secretary to the Board of Revenue, dated Madras, 9th May 1872, No. 73:—

I HAVE the honour to acknowledge receipt of the Board's Proceedings, noted in the margin, requesting my opinion as to the advisability of preferring a Special

Appeal against the Decree of the Civil Court of Madura, in Appeal Suit No. 297, of 1870, relating to a water dispute between a Devasthanam and a Government village.

2. The only part of the Decree which would be open to Special Appeal is the declaration contained in it that "the plaintiff is not debarred by this decree from erecting a dam, though it may be of a substantial character if that should appear necessary to him in order to make a full use of his property." The rest of the Decree rests upon findings of fact with which the High Court could not interfere. on Special Appeal, and I doubt whether the Court would interfere to remove the above declaration which is a mere *obiter dictum* intended to meet another of the plaintiff's rights—his right to the erection of a temporary dam, Both dicta were equally unnecessary and of no real effect, the plaintiff only sought to restrain the defendants from interfering with his "Mamool dam" which was according to his own evidence a temporary one. If the Civil Judge had gone so far as to make a positive declaration that plaintiff was entitled to erect a permanent dam, his decree would, I think, have been illegal, as going beyond the relief sought by the plaintiff. What he does say is only that the plaintiff is not debarred by the Decree from doing so, which really declares no right at all, and is not illegal though it may possibly be mischievous by leading the plaintiff to suppose that his rights are greater than they are.

3. With regard to the Civil Judge's view of the rights of riparian owners in artificial streams, it seems to come to this—the proprietor of land through which an artificial stream flows has *prima facie* the right to use the water of it as he likes, so far as the people below him are concerned, unless they have acquired any rights either by grant or prescription, by virtue of which his rights are curtailed. This I take to be his meaning, though it is rather obscured by much learned discussion of points not directly involved in the case, and if this is his view, I think it is a sound one.

4. On the whole, I should not advise a Special Appeal. If the plaintiff hereafter erects any dam of a different nature from that hitherto existing, and which interferes with the rights of the Government village in the channel in question, I do not think there is any thing in the present decision to prevent his being restrained by proper legal measures. That the Government ryots have some rights in the channel is admitted, all that this suit decides is that the plaintiff also has a right to fill his tank from it according to custom.

Proceedings of the Madras Government, Revenue Department,
20th May 1872.

5. I observe that the time for preferring a Special Appeal expires on the 29th instant, to which may be added the time occupied in obtaining copies of the Decree and Judgment.

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

SUBMITTED to Government in continuation of the Proceedings disposed of in G. O., dated 11th May 1872, No. 756.

2. The Board concur with the Government Pleader.

No. 207.

ORDER THEREON, 20th May 1872, No. 804.

Miscellaneous.

THE Government concur in the opinion that, under the circumstances stated, it is not necessary to prosecute any appeal.

(True Extract.)

(Signed)

W. HUDLESTON,

Secretary to Government.

Proceedings of the Board of Revenue
dated 14 - May 1872.

Read the following

N^o 73

From

J. W. Handley Esqre,

Government Pleader

Madras

To

J. Grose Esqre,

Secretary to the Board of Revenue

Sir,

I have the honor to acknowledge receipt of the Board's Proceedings noted in the margin requesting my opinion as to the advisability of preferring a special appeal against the Decree of the Civil Court of Madras in appeal suit N^o 297 of 1870 relating to a water dispute between a Devasthanam and a Government village.

2. The only part of the Decree which would be open to special appeal is the declaration contained in it that "the Plaintiff is not debarred by this Decree from erecting a Dam though it may be

25th April 1872

N^o 667

of

of a substantial character if that should appear necessary to him in order to make a full use of his property." The rest of the Decree rests upon findings of fact with which the High Court could not interfere on special appeal and I doubt whether the Court would interfere to remove the above declaration which is a mere obiter dictum intended to meet another of the Moonsiff's limiting the plaintiff's right to the erection of a temporary dam. Both dicta were equally unnecessary and of no real effect. The Plaintiff only sought to restrain the defendants from interfering with his "Mamool dam" which was according to his own evidence a temporary one. If the Civil Judge had gone so far as to make a positive declaration that Plaintiff was entitled to erect a permanent dam, his decree would I think have

have been illegal, as going beyond the relief sought by the plaintiff. What he does say is only that the Plaintiff is not debarred by the Decree from doing so, which really declares no right at all and is not illegal though it may possibly be mischievous by leading the plaintiff to suppose that his rights are greater than they are.

3. With regard to the Civil Judge's view of the rights of riparian owners in artificial streams, it seems to come to this. The proprietor of land through which an artificial stream flows has *prima facie* the right to use the water of it as he likes, so far as the people below him are concerned, unless they have acquired any rights, either by grant or prescription, by virtue of which his rights are curtailed. This I take to be his meaning though it is rather

obscured

obscured by much learned discussion of points not directly involved in the case, and if this is his view I think it is a sound one.

4. On the whole I should not advise a special appeal. If the Plaintiff hereafter erects any dam of a different nature from that hitherto existing and which interferes with the rights of the Government village in the channel in question, I do not think that there is anything in the present decision to prevent his being restrained by proper legal measures. That the Government ryots have some rights in the channel is admitted, all that this suit decides is that the plaintiff also has a right to fill his tank from it according to custom.

5. I observe that the time for preferring a special appeal expires on the 29th Instant to which may be added the time occupied in

in obtaining copies of the decree and judgment.

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

Madras,

9th May 1872.

I have &c

(Signed) J. W. Handley

Government Pleader

Submitted to Government, in continuation of the Proceedings disposed of in Government Order 11th May 1872 N^o 756.

The Board concur with the Government Pleader.

(True Copy & Extract)

J. Grose

Secretary

To,
The Offg. Chief Secretary to Government
Revenue Department

C. M. Angell
213/Revenue Secy

