Proceedings of the Madras Government, Revenue Department, 27th August 1873.

No. 537. Read the following Proceedings of the Board of Revenue, dated 9th August 1873, No. 1,535:—

Read the following letter from H. E. SULLIVAN, Esq., Acting Collector of South Arcot, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Cuddalore, 12th June 1873, No. 198:—

WITH reference to the Proceedings of the Board of Revenue, dated 8th February 1872, No. 286, directing the Collector to prefer an appeal to the Civil Court against the Judgment of the Acting Principal Sadr Amin, in Original Suit No. 13 of 1866, (Palur water dispute) I have the honour to report that an appeal was preferred in No. 31 of 1872, and the result is that the Civil Court reversed the decree of the Lower Court and dismissed the suit with all costs.

2. Copy of the Judgment in Appeals Nos. 31 and 39 of 1872 is herewith submitted. The Judgment was delivered on the 15th of March, but copy was received in this Office on the 6th instant. The delay in reporting the result of this appeal is therefore unavoidable.

3. I have the honour to request sanction for the payment of fees, etc., due to the Vakil as detailed below:—

	RS.	A.	P.
Vakil's Fee on 5,000 Rupees	250	0	0
Batta to Peons...	5	0	0
Appeal Judgment			
Total ...	261	9	11

ENCLOSURE No. 1.—Copy of Judgment in Appeals Nos. 31 and 39 of 1872.

ENCLOSURE No. 2.—Copy of Decree.

G. O., 1st September 1863, No. 2,307.
,, 18th December ,, ,, 3,155.
,, 13th July 1869, ,, 2,020.
,, 25th August 1871, ,, 1,457.
,, 13th February 1872, ,, 286.

SUBMITTED for the information of Government with reference to the orders noted in the margin.

2. With this letter the Collector submits copy of the appeal decision of the District Judge in the case known as the Palur water dispute between the ryots of Kilpattambaukam, Nellicooppam and sixteen other Government villages (Plaintiffs) and the ryots of Palur and Palavarayanattam also Government villages (Defendants). The Collector, the Superintending Engineer and the Executive Engineer were also defendants.

3. The object of the suit was to establish an exclusive right to the spring water of the Trivady Anicut.

4. In 1839 an anicut was constructed across the river Gudallam in substitution of mud dams that used to be raised every year for the irrigation of certain Government villages. A channel was cut from the anicut to the Palur channel and a sluice was provided to regulate the supply. Soon afterwards this anicut was destroyed but while it existed the Palur people made no use of it as they preferred raising the mud dam as before.

5. In 1848 the present anicut was constructed lower down and so near the place where the Palur people used to raise their temporary dam that they discontinued doing so and claimed a share of the water to which they were entitled and which had been promised them before the first anicut was built. Their claim was opposed by the ryots of Kilpattambaukam and the seventeen other villages. Various schemes were devised for regulating the distribution of the water. In 1854, a masonry dam was raised across the head of the Palur channel and it was intended that when the water in the main channel rose above the top of the dam, the surplus should flow to Palur. It was afterwards considered that the dam was too high and its height was reduced by three inches. Against this the ryots of the eighteen villages complained and obtained the Collector's permission to raise the dam to its original height by placing earth on the top of it during a certain period of the year. Subsequent experience showed that the dam did not suit the purpose for which it was intended. Sufficient allowance had not been made for irregularity of seasons and fluctuations in the water in the river. The consequence was that sometimes the Palur people got no water at all at the commencement of the cultivation season while at other times the supply ceased before the crops arrived at maturity. It was therefore proposed to regulate the supply to Palur by a sluice with shutters according to the original design of Captain Cotton.

6. The ryots of Kilpattambaukam and the seventeen other villages opposed [illegible] of the [illegible] and (2) to [illegible] exclusive right [illegible] water [illegible] interference with the regulating [illegible] injunction prohibiting the removal of or

7. On behalf of Government [illegible] alleged exclusive right was denied and it was asserted that the arrangement contemplated was not calculated to injure the plaintiffs.

8. At the first hearing of the case the Principal Sadr Amin dismissed the suit with costs on the grounds that plaintiffs had no prescriptive right to the exclusive use of the water and that the suit was premature as plaintiffs had not waited to see whether they would be injured by the proposed arrangement.

9. On an appeal preferred by plaintiffs the Civil Judge remanded the suit "for the framing of issues the investigation of the case on its merits and judgment *de novo*."

10. The case was then tried by the Small Cause Court Judge on the Principal Sadr Amin's side. He being of opinion that the evidence proved that plaintiffs had a *prior* though not an exclusive right to the use of the spring water of the channel passed a declaratory decree to that effect and directed that plaintiffs' costs should be paid by the defendants. He considered however that so long as this prior right was respected it was immaterial *how* the distribution of the water was regulated. The injunction prohibiting the removal of or interference with the regulating dam issued in 1866 *pendente lite* was therefore withdrawn. Against this decision an appeal was preferred on behalf of Government on the ground that the Court was wrong in finding that the evidence proved the grant of an easement on the part of Government restraining themselves in this case from the exercise of their undoubted right to regulate the distribution of all public waters.

Proceedings of the Madras Government, Revenue Department,
27th August 1873.

11. In regard to the ground of appeal, the District Judge observes that the lower Court has not found that it was an easement but that there was a sort of an agreement when the second anicut was built.

12. It appears on the representation of the Collector, that the ryots were desirous of extending the cultivation of sugar-cane, that with a sufficient supply of water about 1,400 Kanies of waste land could be cultivated, that an annual increase of revenue amounting to Rupees 10,000 might be anticipated and that Messrs. Parry and Co., were prepared to build a Sugar factory and engage ryots to cultivate sugar-cane if an anicut were built, Government sanctioned the construction of the second anicut at a cost of about Rupees 15,000.

13. The lower Court seems to have regarded this as an agreement whereby a prior right to the use of the anicut water was conceded to the ryots of the plaintiffs' villages.

14. The District Judge considers this view erroneous and observes that Government "did not intend to sell for the consideration of extra cultivation their right of control" and that having regard to all the circumstances of the case plaintiffs are not entitled to the declaratory decree made.

15. The decree of the lower Court has been reversed and the suit dismissed with costs throughout.

No. 238. ORDER THEREON, 27th [illegible]

Miscellaneous.

THE Board have failed to notice the Collector's application regarding the payment of Vakeel's fees, etc. Sanction is, however, accorded for Rs. 261-9-11 as desired.

2. Should an appeal be preferred to the High Court from the District Judge's decision, it will be defended, on behalf of Government, by the Government Pleader, with whom the Board should communicate, if necessary.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.
,, the Accountant-General.
,, the Government Pleader.

Exd. F. R. Bantleman.

31-8-1874

Original

Govt. of {1873} Madras

REVENUE.

To

THE BOARD OF REVENUE.

&c., &c., &c.

Vide Bd Pro 20 Apl 74
No. 928.

Dated August 27th

Read. Encl.

G. O. 27th August 1873, No. 918.

AUGUST

Nos. 237-238.

Appeal (Suit No. 31 of 1872, in t
Cuddalore Civil Court relating to Pol
Water-dispute—sanctioning the payment
Vakeel's fees, etc., in—, and directing that, shou
an appeal be preferred to the High Court, it
defended, on behalf of Government, by the Go
ernment Pleader.

GO 13 February 1872 Nos 171-72
- 25 Claim ant 1871 - 271-72.
- 13 July 1869 - 271-96.
- 18 August 1869 - 292-93.
- 1st September - " 25-34

Rev. 1073 Dept
No. 1530

1873.

Board of Revenue,

MADRAS.

PROCEEDINGS, 9TH AUGUST 1873, No. 1,535.

Dep. 16 aug 1873.

Encl. 2

Received 20 August 1873

AUGUST.

No. 1,535.

Suit—Appeal—No. 31 of 1872, filed in Cuddalore Civil Court, in South Arcot District, against decree in Palur water dispute, Suit No. 43 of 1866 in Principal Sadr Amin's Court.—Collector's letter reporting decision passed in favour of Government in — and requesting sanction for payment of fees, etc., due to Vakil, submitted to Government.

With Order

L. 337-258

c. 22 Aug 98 127 Cand

No 918.

1. The Board have landed to notice the Collector's report
Section 28 awarding the payment of Vakeel's fee &c.
sanction is however accorded for Rs 261, P. 11
as detailed

2. Payment are ordered be debited to the Head
Sent Pleader, Inam Commr. The Board thank
from the District Judge, decision &
to be debited in Head