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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.
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1804

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1804

*Proceedings of the Madras Government, Public Works Department,
6th July 1876. No. 1,723.*

No. 116. Read the following Proceedings of the Madras Government in the Revenue Department, dated 14th June 1876, No. 795:—

Proceedings of the Board of Revenue, dated 26th May 1876, No. 1,397.

Read again Board's Proceedings, dated 23rd August 1873, No. 1,639, 4th December 1873, No. 2,478, 28th August 1874, No. 2,437, 21st April 1876, No. 1,059, and 4th May 1876, No. 1,179.

Read also the following letter from J. D. B. GRIBBLE, Esq., Acting Collector of Cuddapah, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 19th May 1876, No. 114.

I HAVE the honor to report that, in obedience to the orders of the Board of Revenue conveyed by telegram,* I have inspected the Jillalamadaka tank with a view to making arrangements for the necessary repairs. I was accompanied by the District Engineer, by Mr. Haworth, the Resident Engineer, and by the Range Officer Mr. Schoury.

* 4th May 1876—*vide* Board's Proceedings, dated 4th May 1876.

2. The District Engineer is of opinion that it is impossible to execute the repairs before the setting in of the north-east monsoon. It might perhaps be possible to construct a calingulah; but were this done, the bund is in such a rotten state that it is more than probable it would breach. Almost the whole of the revetment is off, and the bund leaks in several places. To put the whole into thorough repair will cost a large sum of money; how much I cannot even now approximately say; an estimate is, however, in course of preparation, which, when ready, shall be submitted for the information of the Board.

3. It is, however, possible to render the tank comparatively harmless. The old weir breached four years ago, and was replaced by a high revetted bund entirely blocking up the escape. In consequence of this bund, the pressure of the water was so great that in 1874 the tank-bund breached not far from the old calingulah. This breach now forms a species of rough calingulah, but it is prevented from being of any use by being blocked up by a ring-bund. Were this ring-bund removed, the District Engineer and the Range Officer both affirm that the tank would contain so little water that the danger of the bund breaching would be infinitesimal. Mr. Haworth also states that were the ring-bund removed, he would entertain no apprehensions for the safety of the railway.

4. The best thing, therefore, to be done is to remove the ring-bund, but the question arises how is this to be done? If the tank were to breach, there would be danger to the railway, and consequently to human life; and for this reason I should feel prepared to issue an order under Section 518 *if the danger were imminent*, but I have no grounds to believe that it is. The tank is now empty, and is not likely to receive a supply until the north-east monsoon, as this portion of the country is but slightly affected by the south-west monsoon, and the District Engineer informs me that not only is he not prepared to say that the tank is a cause of imminent danger now, but that, in his opinion, it is improbable it will receive a supply for some months. Under these circumstances, an order could only be issued under Section 521, but this section clearly does not provide for a case of this kind. I feel inclined to advise caution in this matter, since if by removing

the ring-bund the tank receives a short supply, I have little doubt that the Shrotriendars will put the Magistrate into a Civil Court, and if the loss were incurred in consequence of an order issued under Section 521, I feel no doubt that he would be cast in damages.

5. I therefore propose to adopt the following arrangement. As soon as the Civil Court opens, the Railway authorities should file a suit for an injunction to compel the Shrotriendars to repair, and, pending the completion of the repairs, to remove the bund. In the mean time, I will instruct the Head Assistant (in whose range the tank is, and who accompanied me on my inspection) that should at any time a sudden emergency arise from a heavy fall of rain, he should at once take steps for the removal of the bund under Section 518, Criminal Procedure Code, which, in a case of emergency, is applicable.

6. Supposing my view of the law to be correct, I would strongly urge upon the Board the necessity of providing special legislation to meet such cases as suggested by the Advocate-General.

7. As regards the 30 feet arch, the District Engineer is of opinion that it should be enlarged, and in this opinion I quite concur. The arch being 30×8 up to the spring of the arch provides only a waterway of 3,600 cubic feet per second, whereas the area of the catchment basins of the Shrotriem and the Government tanks, which both discharge into the same channel, shows that the discharge might

NOTE.—This, in reality, is only half of the discharge of the Koorlakunta tank, as there is a second calingulah at the other end of the bund. be 4,158 cubic feet per second. Hence, if a breach should occur, and a breach is possible even when a tank is in good repair, the railway embankment would be in considerable danger. As a matter of fact, when the tank breached in 1874 the water could not find an escape quickly enough, it stood against the railway embankment, and inundated all the surrounding fields.

8. I beg to submit an accurate sketch* of the situation of the two tanks which has been carefully prepared by Mr. Schoury, the Range Officer.

* In two sheets.

Mr. GRIBBLE's letter will be submitted for the orders of Government.

2. The correspondence at the head of these Proceedings relates to the neglect of the Shrotriendars of Jillalamadaka to repair their tank which breached in 1870, 1872, and 1874, and has never been properly repaired. The tank adjoins the line of rail, and the embankment is stated to be endangered by its insecure condition. The Board decided in 1874 that as there was no proof of negligence on the part of the Shrotriendars an action for damages on account of the injury done to the road by the breach which occurred in 1872 would not lie, but directed that the Shrotriendars should be served with a notice to render the tank safe. Mr. Gribble recently reported that no steps have been taken with this end, that the tank has been pronounced unsafe by the Railway authorities and District Engineer, and asked for instructions as to the course to be adopted. The Board thereupon directed him to consider whether he would not be justified in taking action as a Magistrate under Chapter XXXIX. of the Code of Criminal Procedure,

and instructed him, in the event of his being of opinion that the circumstances of the case did not warrant such a course, to file a suit for an injunction to compel the Shrotriendars to take the requisite precautions, unless the District Engineer considered the danger imminent, in which case he was to take immediate steps to ensure the safety of the tank, leaving the question of the recovery, by civil suit, of the outlay incurred for settlement hereafter. The Collector thereupon reported that the matter was complicated by the recent construction of a dividing bund between the shrotriem tank and the adjoining Koorlakunta tank, the property of Government, the danger to the former having been increased by that step, which prevented the flow of water from one tank into the other and its escape over the calingulah of the Government tank. He expressed considerable doubt as to his power to exercise his magisterial powers, and the Board, therefore, directed him to take the requisite precautions in his capacity as Collector.

3. Mr. Gribble now reports that he has inspected the tank in company with the District Engineer, Range Officer, and Resident Engineer of the Railway; that it is impossible to execute the necessary repairs before the setting in of the north-east monsoon; that the repairs will cost a considerable sum of money; and that the best course to adopt is the removal of the ring-bund thrown up in front of the breach of 1874, by which the danger would be reduced to a minimum; but, as the storage capacity of the tank would be injuriously affected, he anticipates that its removal would expose him to an action for damages. He does not consider the imminence sufficient to warrant his proceeding under Section 518 of the Code of Criminal Procedure, and he is of opinion that Section 521 is inapplicable. He, therefore, proposes that the Railway authorities should apply for an injunction as soon as the Court re-opens, the Head Assistant being instructed to take immediate action as Magistrate, should a sudden emergency arise.

4. The removal of the ring-bund would, no doubt, secure the railway embankment from danger; and as Mr. Gribble does not consider himself justified in taking immediate action under the Procedure Code, the course proposed by him in paragraph 5 seems the best possible under the circumstances. He has omitted to notice the Board's suggestion regarding the breaching of the dividing bund between the two tanks; he is requested to report on the matter at an early date.

5. The orders of Government are requested as to whether the application for an injunction should be made by the Collector or the Railway authorities, and the remarks at paragraph 7 regarding the seeming inadequacy of the water-way provided at the railway arch in question to carry off even the ordinary drainage are brought to notice for such orders as Government may deem fit to pass.

6. With reference to paragraph 6, the Board are of opinion that if Mr. Gribble is right in supposing that the danger in the present case is not sufficiently imminent to warrant a Magistrate in taking action for the removal of the ring-bund, and to prevent its reconstruction until the tank has been placed in a proper state of repair, additional powers should at once be conferred on Magistrates to meet cases of the kind. It seems clear that Section 521 is inapplicable, but the Board gather from the opinion of the Advocate-General that he contemplated the issue of an injunction under Section 519, and its enforcement by criminal prosecution

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6th July 1876. No. 1,723.*

under the Penal Code. On this point the orders of Government are desired, as it seems to the Board open to question whether the fact that a single heavy fall of rain would be sufficient to breach the tank and the railway embankment before the orders of the Head Assistant Magistrate could be acted on does not constitute imminence in a sufficient degree to justify action in anticipation.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

Irrigation, No. 4.

THE Government agree with the Board that the proposals of Mr. Gribble in paragraph 5 of his letter are the best under the circumstances stated.

2. The Government await the report called for in paragraph 4 of the Board's Proceedings.

3. Paragraphs 5 and 6 of the Board's Proceedings will be referred to the Public Works Department, where the previous correspondence on the subject was considered and disposed of.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

Proceedings of the Board of Revenue, dated 23rd August 1873, No. 1,639.
Read the following letter from W. D. HORSLEY, Esq., Collector of Cuddapah, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Wottimadgu, 26th July 1873, No. 123:—

THE Korlakunta tank, in the Pullampett Taluq, breached last year and carried away a portion of the Madras road. It has been estimated by the District Engineer that an expenditure of Rupees 637 will be necessary to repair the damage done. The tank is the property of a Shrotriendardar, and the Local Fund Board have requested me to demand from him payment of the above sum.

2. It is of no use making the demand unless I can enforce payment, and this power I do not consider that I possess. It appears to me that the Local Fund Board must meet the expenditure themselves.

3. From what I have seen of the tank it must breach again when it receives its next supply. A very frail ring-bund now closes the breach. This temporary structure was made at the expense of the villagers. They decline to do anything more unless the Shrotriendardar advances the money. He makes promises but does nothing, and thus the tank remains in a very unsafe state.

4. Such wilful neglect on the Shrotriendardar's part ought to render him liable for future damages to the road should the tank breach again. But I am not sure that he can be held civilly responsible. The Railway Company lately sued a Zemindar for damages caused by a tank bursting. The suit was dismissed by the Chittoor Court, whose decree was upheld by the High Court. I have not seen the judgments passed in the case and, therefore, I cannot say whether it was held that even negligence on the part of the defendant did not render him liable to damages. I can scarcely think that such is the case. I should say that ordinary care on the part of the owner of a tank must be proved before he can be indemnified against losses caused by its breaching.

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5. All I can do is to point out to the Shrotriendardar that his tank is in an unsafe state and that if by breaching again its water destroys the road he will be held responsible. I have no reason for saying that, owing to the Shrotriendardar's neglect, the tank breached last year, and therefore the Local Fund Board must bear the loss.

THE Board concur with the Collector. He must arrange so that the fact that the Shrotriendardar has received the warning may be susceptible of proof.

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Acting Secretary.

Proceedings of the Board of Revenue, dated 4th December 1873, No. 2,478.
Read the following letter from H. SEWELL, Esq., Acting President of the Local Fund Boards, Cuddapah District, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 31st October 1873, No. 443:—

I HAVE the honor, with reference to Board's Proceedings, No. 6,232, dated 20th September 1873, to state that a notice (copy whereof is enclosed for perusal) warning the Shrotriendardars of Jilalamadaka, that they will be strictly held responsible for any damage that may be occasioned to the Public Works by the breaching of their tank in consequence of their neglect, has been duly served on all the Shrotriendardars concerned, but two, who are said to be absent, and to request that the Board of Revenue will be so good as to intimate their opinion as to whether it would be advisable to sue the Shrotriendardars civilly for the recovery of the amount of Rupees 637, already sanctioned from the Road Fund Reserve of Cuddapah Circle.

ENCLOSURE No. 1.—Copy of Notice.

IN cases like this, "negligence causing damage gives a cause of action, but unless there be negligence there is no cause of action." There is no right to compensation simply because of damage from an escape (High Court, Regular Appeal No. 108 of 1870).

2. The President will report whether he can prove that the damage was caused by unreasonable neglect on the part of the Shrotriendardars and not by "vis major."

(A true Copy and Extract.)

(Signed) J. GROSE,
Secretary.

Proceedings of the Board of Revenue, dated 28th August 1874, No. 2,437.
Read the following letter from W. D. HORSLEY, Esq., President of the Local Fund Boards, Cuddapah District, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 7th August 1874, No. 507:—

WITH reference to the Proceedings of the Board, No. 2,478, dated 4th December 1873, I have the honor to state that I do not consider that unreasonable neglect on the part of the Shrotriendardar can be proved.

2. The calingulah of the Jilalamadaka tank breached first in 1870. It was repaired by means of a ring-bund which was revetted with stone in 1871. In the following year the calingulah gave way again and caused the damage alluded to in my letter to the Board, published in their Proceedings, No. 1,639, dated 23rd August 1873.

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3. There is no doubt that great apathy was displayed by the Shrotriendars in repairing the tank after it burst in 1871; but I very much doubt whether sufficiently conclusive evidence will be forthcoming to justify a civil action for damages. Various circumstances may be urged to show why the repairs were not made more complete. The tank always receives a good and early supply of water, and when full difficulties are experienced in carting material to the oalingulah.

4. I recommend that no steps be taken to recover losses caused by the breach in 1872. Copies of letters on the subject are enclosed from the District Engineer and the Head Assistant Collector.

ENCLOSURE No. 1.—Copy of letter from Acting Head Assistant Collector.

ENCLOSURE No. 2.—Copy of letter from District Engineer.

THE Board agree with the Collector.

(A true Copy and Extract.)

(Signed) J. GROSE,
Secretary.

No. 117. ORDER THEREON, 6th July 1876, No. 1,723.

IRRIGATION, No. 8.

Proceedings of the Madras Government,
Revenue Department, 14th June 1876,
No. 795.

FROM the sketch and cross sections referred to in paragraph 8 of Mr. Gribble's letter, No. 114, 19th May 1876, it appears that the level of the crest of the Korlacoo-tah (Government) tank is 53.99, while the crest of the ruined weir of the Jillalamadaka (Shrotriem) tank was at 52.67. It would seem, therefore, that the breaching or removal of the division bund between the two tanks, so far from lessening the danger resulting from the insecure state of the Shrotriem tank would add thereto.

2. The apparently inadequate waterway provided for the passage of the surplus of these tanks under the Railway has been noticed in G.O., 7th June 1876, No. 1,423. The quantity of water, 2,611 cubic feet a second, there mentioned, however, is the discharge due to the drainage from the Jillalamadaka tank basin only, and in paragraph 7 of Mr. Gribble's letter it is mentioned that both tanks discharge into the same surplus channel and that the total discharge is 4,158 cubic feet a second. It is therefore clear that one opening of 30 feet at the Railway is altogether inadequate, and this subject should receive the early attention of the Consulting Engineer for Railways, who should ascertain what increase of waterway the Railway officers propose to afford.

3. Danger to the Railway will not be altogether removed by the provision of sufficient waterway for the passage of the maximum flood discharge from the drainage basins of the two tanks, but as soon as arrangements have been made for its provision, the Government consider that the Railway will be in a position to apply for an injunction to compel the Shrotriemdar to place the Jillalamadaka tank in proper order, including the construction of an efficient surplus weir, and to remove the ring-bund pending the completion of the repairs. At present it would be hopeless to apply for

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an injunction, seeing that the danger in which the Railway is placed is to a considerable extent due to the insufficiency of the waterway provided under the line by the Company itself.

(True Extract.)

[Signature] Colonel,
Offg. Under Secy. to Govt., P.W.D.

To the Revenue Department.

- " District Engineer, Cuddapah.
- " Chief Engineer for Irrigation.
- " Consulting Engineer for Railways.

Exd. W. H. French.

20 Spare Copies

No. 3095.
Revenue 1875 *Departments*
 Govt. of 1876 Madras.
 PUBLIC WORKS.

To
 THE REVENUE DEPARTMENT,
 &c., &c., &c.

Dated July 6th.

Is dated

Recd. *29 July 1876* Encl.

G. O., 6th July 1876, No. 1,723.

JULY.
 Nos. 116-117.

14. To the Boarding Office, 14 August

Jillalambikai Tank, Chidambaram District.
 Passing orders on Proceedings in the
 Revenue Department on the question of
 using legal measures to enforce the Shrotri-
 dar, to repair the — which in its present
 state endangers the Madras Railway Line.

No. 1804.

*Communicated to the Secy of the
 It is observed that this Government
 by the receipt in the Revenue Dept.
 No. 96 of 18 July 1875
 21 July 1876*

Dated

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