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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

REVENUE DEPARTMENT

G.O. No. / B.P. No.	1485	Press. / Mis.
Dated	11-9-1878	197 .

Not to be folded or roughly handled

Archives I—5,806—24-2-78.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

11th September 1878, No. 1,425.

Read the following paper:—

No. 137. Proceedings of the Board of Revenue, dated 2nd August 1878, No. 2,188.

Read the following letters:—

From C. S. CROLE, Esq., Acting Collector of Kurnool, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 13th July 1878, No. 271.

As directed in the Board's docket, dated 18th October 1877, No. 14,385, on G.O., dated 8th idem, No. 6,059, I have the honor to submit a report from the Special Sub-Collector on the alleged improper interference by ryots with the distribution channels under the Irrigation Company's Canal.

2. This class of dispute came into prominence during the famine, and the cause is to be found in the sudden demand for water caused by the failure of the monsoons in 1876-77.

3. It is sufficient to note that the irrigated area rose from 14,000 to* 90,750 acres in order to understand the pressure which must have suddenly been laid upon the works, as well as the establishments, both alike prepared for and used to a very insignificant demand for irrigation.

* *Vide* Mr. Latham's Annual Administration Report for 1876-77.

4. Ryots in large numbers applied for water and became responsible for the payment of the water-rate, their crops were dying, famine was staring the country in the face, and there was a general scramble for water, which was believed, rightly or wrongly, to be insufficient to meet all demands.

5. In connection with this remark, I beg to draw attention to the enclosed report from the Deputy Collector of Peapally and its enclosure, a letter from that officer to the Conservancy Engineer of the lower division. The statement that the distributionary channels were utterly insufficient to carry the volume of water for which the ryots had, by applying, bound themselves to pay, is there deliberately made.

6. Some of the ryots, who in the confusion had taken the supply of water to their field into their own hands, merely a question of a few spadefuls of earth, were prosecuted under Section 430 of the Indian Penal Code.

7. Now, the act may have been, in a sense, wrongful, but it was clearly an act committed by one of the parties to a civil contract for the supply of water, *prima facie* for the *bona fide* protection of his interests under that contract.

8. This, doubtless, was annoying to the other party, represented by the officers of the Company, who, not being lawyers, complained to the Magistrate.

9. That a very grave mistake, both in policy and in law, was committed in instituting such prosecutions, seems undeniable. Such a course was impolitic and indiscreet, because it tended to increase the tension on the relations subsisting between the Company and the ryots, which the correspondence shows were sufficiently strained already.

10. Moreover, convictions obtained on such facts were illegal. Mr. Lister suggests the advisability of submitting a case in the following terms for the opinion of the Advocate-General: "A ryot, having applied for water, is dissatisfied with the supply given him; he puts a dam across a channel to carry more water to his field, the result of this act is a diminution of water to other fields. Does this act constitute a criminal offence?"

11. I see no reason myself for obtaining an opinion on the subject. The High Court have already decided that no offence would be committed—*vide* their Proceedings, dated 12th November 1874, and 19th January 1877, No. 143.

12. Moreover, the law itself is perfectly plain, and it would be preposterous to control the distribution of water, solely in the Company's interests, by fine and imprisonment. I think it shows a want of prudence and discretion much to be deplored, and accounts for not a little of the failure of the present management of the canal, when we find its Chief Engineer and Manager bringing forward charges against the officers of Government, because they "failed to control the irrigation as Magistrates." No commercial undertaking conducted on such principles can ever succeed.

Vide last paragraph of Mr Latham's, letter to the Chief Engineer for Irrigation printed in Government Order under reply.

13. If the Company were as fully alive to its interests as the ryot is to his there could be no difficulty, but the latter has hitherto been regarded *prima facie* as a criminal instead of as a customer; and efforts which should have been directed to making him glad to deal with the Company, have been used to throw him into jail. To this he has suitenly submitted hitherto, because in Kurnool his class is poor and ignorant. The consequences to the Company have been confined to a loss of revenue merely. I hesitate not to say, however, that if such a course had been attempted in Tanjore or Chingleput, both of which districts I know well, the Company's officers would have found to their cost that there were two sides to the legal aspect of the question, and would have been overwhelmed with suits.

14. So much for the class of cases which consist in the mere interference with the distribution on the part of ryots who have applied for water.

15. There is another class of complaints regarding illicit irrigation by persons who have never applied. To begin with, I observe that it would be much better to cut away the possibility of any such by abolishing these applications altogether. Government ryots are not accustomed to this formality, and it irritates and confuses them. It is, moreover, quite unnecessary. With the increase in the Curnam and Revenue Inspector staff, recommended in my letter of the 11th instant, No. 270, surreptitious irrigation cannot remain unregistered for a fortnight. I would propose, therefore, that the Company's officers should let water flow into any field, the owner of which opens the necessary cut in its bund, and that they should look to the Curnam to enter the fact in his register. There can never be the slightest dispute about the class under which the irrigation falls, for the description of crop raised supplies palpable evidence as to the quantity of water which has been taken.

16. Mr. Lister recommends, in the event of prosecutions being declared illegal, the institution of fines of double the rate for taking water at irregular times or in an irregular manner, and Rupees 25 per acre for water taken from breached channels or improper dams, the power to impose such fines being vested in him. I have no doubt that he would use such a power with discretion, and I have the honor to recommend that it be granted to him as a sort of reserve of authority to be exercised in the treatment of exceptional cases.

17. At the same time I feel certain that if an attitude of fairness and confidence be assumed towards the ryots, and if proper relations be cultivated with them, it will be found unnecessary to resort to either of the above expedients, and that an increased revenue under the canal will not be slow to justify such a change in policy.

ENCLOSURE No. 1.

From A. L. LISTER, Esq., Special Sub-Collector in charge of Irrigation, Kurnool and Cuddapah, to C. S. CROLE, Esq., Acting Collector, Kurnool, dated Dhoor, 9th May 1878, No. 93.

In reply to your endorsement of the 25th October on Government Proceedings of 27th September, Public Works Department, No. 349-I, I have the honor to state that the delay in submitting this report has been caused by my inability to procure the records of the cases in question from Chagulmarry; I managed at last to procure them as I passed through this week.

2. Two cases were tried by the Sheristadar-Sub-Magistrate of Sirwoll; the accused were acquitted in one case because the Magistrate discredited the testimony of the bankers who were the only witnesses in support of the complaint; the second case was adjourned at the request of the complainant, and as he was not present on the date of adjournment the case was dismissed.

3. The Taluq Magistrate would no doubt assign the pressure of famine duties as his reason for transferring these cases to the Sheristadar, a newly appointed Magistrate: I would suggest that for the future Taluq Magistrates should be directed to dispose of all irrigation cases which may hereafter be brought before them.

4. I confess the judgment of the Deputy Magistrate in the case in which the defendants were fined 10 Rupees; the finding in my opinion discloses no criminal offence, for the marginal note is at variance with the plain words of the section.

5. This point raises the whole question, whether Magistrates have any power by law to control the distribution of water in irrigation channels; does a ryot who puts a dam across an irrigation channel to turn water into his field, and who by doing so, diminishes the supply of water to other lands, commit a criminal offence at all; no doubt if he is trying to filch the water without paying for it, he commits theft, but this is rarely the case; there is an absence of dishonest intention in most cases; the ryot means to pay the Company their charge for a supply of water, but he is dissatisfied with the supply the Company gives him and he tries to supplement it by a dam of his own.

6. Is this mischief within the meaning of Section 425 of the Penal Code? I think not; look at the illustrations to 425. Even if the case can be ingeniously brought within the *words* of the section and the ryot can be said to have caused such a change in the situation of some property as to diminish its value, knowing that he is thereby likely to cause wrongful loss to some person, and if the distinction drawn by the High Court between the act itself and the probable result of the act be got over, can one look at the illustrations and honestly think that the framers of the Code, drafted before the days of Companies and canals, intended its provisions to cover a case of this kind. Is a ryot who conducts to his fields through unauthorized channels water to which he believes he has acquired a right, to be placed on the same footing with a man who scuttles a ship, burns a will, melts his neighbors' ice, shoots his horse, or tramples down his crops.

7. On the 12th November 1874, the High Court in quashing a case of mischief under 430, tried, I believe, by the District Magistrate of Kurnool, distinctly disposed of the question, that opening a sluice at a forbidden time amounted to an offence under Section 430, even though the destruction or diminution in the value of crops or lands of others might be a probable result of the act.

8. Even though the entry is upon a channel which belongs to the Company, is it trespass? I think not; the entry is not made with intent to commit any offence; if it is, let that offence be stated in specific terms, and let the trial be for that offence.

9. Even if a Collector can lawfully promulgate an order on the subject, could disobedience to such an order be said to cause injury or annoyance to any person *lawfully employed*? I think not.

10. It is quite impossible for the Company to protect their numerous works and channels by civil actions; there must be some simpler and quicker remedy.

11. I would suggest that the Advocate-General's opinion should be taken on the point, whether the provisions of the Penal Code enable the Magistracy to control the distribution of water belonging to the Canal Company, and if his opinion is an affirmative one, that plain instructions should be issued on the subject for the guidance of the Magistracy; if he should consider the general question too vague, this case might be submitted: a ryot having applied for water, is dissatisfied with the supply given him; he puts a dam across a channel to carry more water to his field; the result of this act is a diminution of the supply of water to other fields; does this act constitute a criminal offence?

12. If it is no offence, some remedy must be supplied either by legislation or by extra charges for water improperly taken.

13. A great advantage of the latter plan would be the ease and certainty with which it could be enforced; it is often difficult to prove who erected a dam or who cut a hole in a channel bank; but what land is irrigated by the dam or through the hole is at once ascertainable.

14. I would therefore suggest that Government should issue a clear notification that the rates specified in the rules apply only to water taken by authorized channels, at stated times, under instructions of the distributor, and that permission should be given to Revenue Officers to charge, but not for the Company to demand, up to Rupees 25 an acre for water taken from breached channels or diverted by improper dams, and double rate for water taken at improper times and in disobedience to the instructions of the distributor; the actual collections of such extra charges to be paid to the Company.

15. The matter is of pressing importance, for until effectual control over the distribution of water is secured and improper interference with it stopped, there can be no improvement in the management of the affairs of the Company.

(True Copy.)

(Signed) A. L. LISTER,
Special Sub-Collector.

ENCLOSURE No. 2.

From P. RAJARUTNUM, Deputy Collector of Peapally, to C. S. CROLE, Esq., Acting Collector of Kurnool, dated Koilkuntla, 15th January 1878, No. 20.

In reply to your endorsement, No. 2,871, dated 25th October 1877, I have the honor to inform you that no complaints have been made by Canal officers of any improper interference on the part of the ryots with the distribution of water in the Koilkuntla Taluq.

2. At the irrigation settlement held in June last, the ryots of Kristipad, Harivaram, and other villages complained that sufficient water did not flow down the distribution channels. In December 1876 when I went to Joladarasi and Koilkuntla to start relief-works, the ryots stated that water was not supplied to them although they had applied for it several weeks previously. I was told that one main distribution channel has to supply water for ten villages, and that it was not large enough to bring down a sufficient volume of water for the purpose. I noticed that the whole of the available supply had been appropriated, and not improperly, by the ryots of Ravenur, two miles north of Koilkuntla, and that very little water could be spared for the small patch of land irrigated in Vuppalur, half a mile lower down, although there was then a large quantity running to waste into the Kundur and other streams from the main canal. I enclose copy of a letter I wrote to Mr. Dunphy at the time. No reply was received, but it is possible the letter may have miscarried, for I found two months ago that letters addressed to him after the settlement took from thirty to thirty-five days to reach him by post.

3. It seems to me that there ought to be no ground for complaint if the Company's officers would only arrange to give each ryot his full fair share of water necessary to mature his crop. It is more than doubtful whether this can be properly effected in the present condition of the main and minor distribution channels, and with the insignificant staff of bankers and unions now employed for regulating the supply of water, I think the capacity of the channels should be improved and an efficient water-distributing agency organized as recommended in my letter, No. 172, dated 23rd May 1877, before the Company's officers can hope to remove all cause for complaints.

(True Copy.)

(Signed) N. GOPALAKRISHNAMAH,
Deputy Collector,
for Acting Collector.

ENCLOSURE No. 3.

From P. RAJARUTNUM, Acting Deputy Collector of Peapally, to the Conservancy Engineer, Dunnipad, dated Koilkuntla, 9th December 1876, No. 362.

I WAS at Koilkuntla on the 2nd instant and again yesterday, I had been also to Joladarasi, Dodanala and Vuppalur. The ryots complained that canal water has not yet been brought to their villages. They have now evidently opened their eyes and are most anxious to sow dry crops with canal irrigation. It is greatly to be regretted that arrangements have not been completed to meet their demand. The ryots tell me that one sluice has to supply nearly ten villages, and that consequently a sufficient head of water is not brought down the main distribution channel to afford irrigation for all the villages affected. I do not know how far this is correct, but I noticed on the 2nd instant* that the ryots had not enough water even to bale to their chohum fields. All the available supply was appropriated by the Ravenur people, and there was not a drop of water flowing down the branch which runs past Vuppalur. I beg you will issue such orders as you deem proper to supply irrigation to all the villages below Ravenur. I can give you any number of coolies for working at the channels.

* at Vuppalur.

(True Copy.)

(Signed) P. RAJARUTNUM,
Deputy Collector.

(True Copy.)

(Signed) N. GOPALAKRISHNAMAH,
Deputy Collector,
for Acting Collector.

ENCLOSURE No. 4.—Copy of Judgment in Calendar Case No. 27 of 1876, in Nandial Deputy Magistrate's Court.

From W. D. HORSLEY, Esq., Collector of Cuddapah, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 22nd July 1878, No. 433.

I HAVE the honor to enclose copy of a letter from the Special Sub-Collector in charge of canal affairs to the Collector of Kurnool, suggesting that rules should be framed to prevent ryots taking water in an unauthorized manner from the Irrigation Company's Canal.

2. The subject is connected with something that has occurred in the Kurnool District, and of which I am ignorant. The only criminal offence that can be committed in taking water is theft, but Mr. Lister has discovered that the act seldom constitutes such an offence, because the ryot has no intention to evade payment for the water. He suggests a reference to the Advocate-General, which I do not think necessary, or that rules authorizing additional charges for water surreptitiously taken should be framed. Such charges are always imposed when water is taken without a written application, and they might be equally imposed when water is taken without the sanction of the distributor, and I do not know that any special rules are required on the subject.

3. In such cases there is a difficulty in determining whether the ryot has received all the water to which he is entitled. The banker, who is apparently the distributor, says he supplied the proper amount of water. The ryot says he did not receive all he was entitled to, because he refused to fee the banker, and therefore without the knowledge of the banker he helped himself. *This is*, I imagine, what Mr. Lister refers to when he says that water is seldom taken in order to evade payment. There is no doubt that the ryot in this requires protection, and I would *suggest that the distribution should not be left to low-paid bankers*, but that the village authorities should be present at the sluices to see that the interest of the villagers are attended to and that the banker supplies all the water he has been directed by the canal officer to furnish to the village. This will put an end to the frauds of the bankers, the complaints of the ryots will cease, and there will be no excuse for taking water surreptitiously.

ENCLOSURE No. 1.—Copy of Mr. Lister's letter to Collector of Kurnool, 9th May 1878.

THE foregoing papers relate to the complaints of improper interference on the part of the ryots with the distribution of water from the Madras Irrigation and Canal Company's Canal regarding which a report was called for in G.O., dated 27th September 1877, No. 348-I, Department of Public Works. They will be submitted for the orders of Government with reference thereto.

2. Mr. Lister has carefully investigated the circumstances out of which the complaints arose and points out the difficulty of dealing with cases of the nature referred to inasmuch as there is seldom any dishonest intention; the ryot is perfectly willing to pay the regulated charge, but being dissatisfied with the supply furnished supplements it by a dam of his own. The Collector of Kurnool encloses a report from the Deputy Collector of Peapally bearing out the statement as to inadequacy of supply. Mr. Lister suggests that the Advocate-General's opinion should be taken on the point whether the provisions of the Penal Code enable the Magistracy to control the distribution of water belonging to the Canal Company or that the Revenue Officers should be vested with power to charge up to Rupees 25 an acre for water taken from breached channels or diverted by improper dams and double rate for water taken at improper times and in disobedience to the instructions of the distributor.

3. Mr. Crole considers that it is unnecessary to obtain an opinion on the legal question as the High Court have already decided that diversion of water under circum-

stances similar to those now under discussion does not constitute the offence of mischief. He points out the impolicy of such prosecutions as those which have been instituted in connection with canal irrigation and supports Mr. Lister's proposal in regard to the imposition of penal rates. With the increase of the staff of Curnums and Revenue Inspectors lately recommended for sanction he considers that the formality of previous application for water may be abolished. Mr. Horsley does not consider that any alteration of the rules is necessary to warrant the imposition of additional charge for water taken surreptitiously, and suggests that for the protection of the ryot the distribution should not be left to low-paid bankers, but that the village authorities should be present and see that the interests of the villagers are attended to.

4. The Board think that the view taken of the legal question is correct; but apart from this consideration they entirely concur with Mr. Crole as to the inexpediency of the action taken at a time when great allowances should have been made and when an opportunity was offered of diminishing the strain on the relations existing between the representatives of the Company and the agricultural community. When the revenue staff is strengthened it may be possible to allow the ryots greater freedom in the matter of taking water without prior application; but to meet cases of diversion, construction of unauthorized dams, &c., power to levy penal rates should be conferred on the special officer entrusted with the administration, as the existing rules do not sufficiently meet the case. Under Clause 4 of the rules an enhanced charge is permissible and the right to remission is forfeited when water is taken without application or registration, but no penalty is attached to any interference with the distribution, when application has been duly made. The Board, therefore, support the amendment suggested, which might be embodied in Rule 4. As regards protection of the ryots from fraud on the part of the bankers the Board do not see how the presence of the village authorities who have other duties to attend to can be required at all times, but Mr. Lister will consider what remedy can be applied. The Board concur with him in thinking that cases connected with breaches of canal rules should not be referred to Taluq Shiristadars for disposal.

(True Copies and Extract.)

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

No. 138. ORDER THEREON, 11th September 1878, No. 1,485.

Irrigation No. 5.

PURSUANT to the Public Works G.O. of 27th September 1877, No. 348-I, the Board of Revenue submit reports from the Collectors of Kurnool and Cuddapah regarding the complaints of improper interference on the part of the ryots with the distribution of water from the Madras Irrigation and Canal Company's Canal.

2. The Board support the recommendation of the Collector of Kurnool and the Special Sub-Collector for an alteration in Rule 4 of the Water Rate Rules, so as to give the last-named officer power to charge penal rates for water in certain circumstances.

3. The Governor in Council is adverse to any alteration in this direction at present. A difficulty has grown to some magnitude in a most exceptional season, and the Government should have before them the results of more experience of ordinary circumstances, for at least three seasons, before authorizing such action as is proposed.

4. But half the difficulty would, the Government are convinced, disappear if the district officers would recognize and make the village officers also recognize that the ryots have nothing to do with the Company; that it is the Government who are responsible to the Company and not the ryots when taking water without

paying for it are defrauding Government who have to pay for it to the Company; and that the case is precisely similar to what occurs under every Government tank or irrigation work throughout the country, and should be treated similarly.

5. All the idea of contest between the ryots and the Company would vanish if once the real position was clearly recognized. Both directly under the contract and indirectly by virtue of the guarantee Government are responsible to the Company for the price of the water. The ryots are not responsible to the Company but to Government.

(True Extract.)

(Signed) L. A. CAMPBELL,
Under Secretary to Government.

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

Rcd. W. H. French.

No. 2,138.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 2nd August 1878.

Read the following letters:—

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2. This class of dispute came into prominence during the famine, and the cause is to be found in the sudden demand for water caused by the failure of the monsoons in 1876-77.

3. It is sufficient to note that the irrigated area rose from 14,000 to* 90,750 acres in order to understand the pressure which must have suddenly been laid upon the works, as well as the establishments, both alike prepared for and used to a very insignificant demand for irrigation.

* *Vide* Mr. Latham's Annual Administration Report for 1876-77.

4. Ryots in large numbers applied for water and became responsible for the payment of the water-rate, their crops were dying, famine was staring the country in the face, and there was a general scramble for water, which was believed, rightly or wrongly, to be insufficient to meet all demands.

5. In connection with this remark, I beg to draw attention to the enclosed report from the Deputy Collector of Peapally and its enclosure, a letter from that officer to the Conservancy Engineer of the lower division. The statement that the distributionary channels were utterly insufficient to carry the volume of water for which the ryots had, by applying, bound themselves to pay, is there deliberately made.

6. Some of the ryots, who in the confusion had taken the supply of water to their field into their own hands, merely a question of a few spadefuls of earth, were prosecuted under Section 430 of the Indian Penal Code.

7. Now, the act may have been, in a sense, wrongful, but it was clearly an act committed by one of the parties to a civil contract for the supply of water, *prima facie* for the *bona fide* protection of his interests under that contract.

8. This, doubtless, was annoying to the other party, represented by the officers of the Company, who, not being lawyers, complained to the Magistrate.

9. That a very grave mistake, both in policy and in law, was committed in instituting such prosecutions, seems undeniable. Such a course was impolitic and indiscreet, because it tended to increase the tension on the relations subsisting between the Company and the ryots, which the correspondence shows were sufficiently strained already.

10. Moreover, convictions obtained on such facts were illegal. Mr. Lister suggests the advisability of submitting a case in the following terms for the opinion of the Advocate-General: "A ryot, having applied for water, is dissatisfied with the supply given him; he puts a dam across a channel to carry more water to his field, the result of this act is a diminution of water to other fields. Does this act constitute a criminal offence?"

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when we find its Chief Engineer and Manager bringing forward charges against the officers of Government, because they "failed to control the irrigation as Magistrates." No commercial undertaking conducted on such principles can ever succeed.

Vide last paragraph of Mr. Latham's letter to the Chief Engineer on inspection prunes in Government Order under reply.

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Enclosure No. 1.

From A. L. LISTER, Esq., Special Sub-Collector in charge of Irrigation, Karnool and Cuddapah, to C. S. CROLE, Esq., Acting Collector, Karnool, dated Dhoor, 9th May 1878, No. 98.

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6. Is this mischief within the meaning of Section 425 of the Penal Code? I think not; look at the illustrations to 425. Even if the case can be ingeniously brought within the *words* of the section and the ryot can be said to have caused such a change in the situation of some property as to diminish its value, knowing that he is thereby likely to cause wrongful loss to some person, and if the distinction drawn by the High Court between the act itself and the probable result of the act be got over, can one look at the illustrations and honestly think that the framers of the Code, drafted before the days of Companies and canals, intended its provisions to cover a case of this kind. Is a ryot who conducts to his fields through unauthorized channels water to which he believes he has acquired a right, to be placed on the same footing with a man who scuttles a ship, burns a will, melts his neighbors' ice, shoots his horse, or tramples down his crops.

7. On the 12th November 1874, the High Court in quashing a case of mischief under 430, tried, I believe, by the District Magistrate of Kurnool, distinctly disposed of the question, that opening a sluice at a forbidden time amounted to an offence under Section 430, even though the destruction or diminution in the value of crops or lands of others might be a probable result of the act.

8. Even though the entry is upon a channel which belongs to the Company, is it trespass? I think not; the entry is not made with intent to commit any offence; if it is, let that offence be stated in specific terms, and let the trial be for that offence.

9. Even if a Collector can lawfully promulgate an order on the subject, could disobedience to such an order be said to cause injury or annoyance to any person *lawfully employed*? I think not.

10. It is quite impossible for the Company to protect their numerous works and channels by civil actions; there must be some simpler and quicker remedy.

11. I would suggest that the Advocate-General's opinion should be taken on the point, whether the provisions of the Penal Code enable the Magistracy to control the distribution of water belonging to the Canal Company, and if his opinion is an affirmative one, that plain instructions should be issued on the subject for the guidance of the Magistracy; if he should consider the general question too vague, this case might be submitted: a ryot having applied for water, is dissatisfied with the supply given him; he puts a dam across a channel to carry more water to his field; the result of this act is a diminution of the supply of water to other fields; does this act constitute a criminal offence?

12. If it is no offence, some remedy must be supplied either by legislation or by extra charges for water improperly taken.

13. A great advantage of the latter plan would be the ease and certainty with which it could be enforced; it is often difficult to prove who erected a dam or who cut a hole in a channel bank; but what land is irrigated by the dam or through the hole is at once ascertainable.

14. I would therefore suggest that Government should issue a clear notification that the rates specified in the rules apply only to water taken by authorized channels, at stated times, under instructions of the distributor, and that permission should be given to Revenue Officers in charge, but not for the Company to demand, up to Rupees 25 an acre for water taken from breached channels or diverted by improper drains, and double rate for water taken at improper times and in disobedience to the instructions of the distributor; the actual collections of such extra charges to be paid to the Company.

15. The matter is of pressing importance, for until effectual control over the distribution of water is secured and improper interference with it stopped, there can be no improvement in the management of the affairs of the Company.

(True Copy.)

(Signed) A. L. LISTER,
Special Sub-Collector.

Enclosure No. 2.

From P. RAJARUTNUM, Deputy Collector of Peapally, to C. S. CROLE, Esq., Acting Collector of Kurnool, dated Koilkuntla, 15th January 1878, No. 20.

In reply to your endorsement, No. 2,871, dated 25th October 1877, I have the honor to inform you that no complaints have been made by Canal officers of any improper interference on the part of the ryots with the distribution of water in the Koilkuntla Tuluq.

2. At the irrigation settlement held in June last, the ryots of Kristipad, Harivaram, and other villages complained that sufficient water did not flow down the distribution channels. In December 1876 when I went to Jolarpett and Koilkuntla to start relief-works, the ryots stated that water was not supplied to them although they had applied for it several weeks previously. I was told that one main distribution channel has to supply water for two villages, and that it was not large enough to bring down a sufficient volume of water for the purpose. I noticed that the whole of the available supply had been appropriated, and not improperly, by the ryots of Ravenur, two miles north of Koilkuntla, and that very little water could be spared for the small patch of land irrigated in Yuppalur, half a mile lower down, although there was then a large quantity running to waste into the Kundur and other streams from the main canal. I enclose copy of a letter I wrote to Mr. Dunnaby at the time. No reply was received, but it is possible the letter may have miscarried, for I found two months ago that letters addressed to him after the settlement took from thirty to thirty-five days to reach him by post.

3. It seems to me that there ought to be no ground for complaint if the Company's officers would only arrange to give each ryot his full fair share of water necessary to mature his crop. It is more than doubtful whether this can be properly effected in the present condition of the main and minor distribution channels, and with the insignificant staff of bankers and sluices now employed for regulating the supply of water. I think the capacity of the channels should be improved and an efficient water-distributing agency organized as recommended in my letter, No. 172, dated 23rd May 1877, before the Company's officers can hope to remove all cause for complaints.

(True Copy.)

(Signed) N. GOPALAKRISHNAMAH,
Deputy Collector,
for Acting Collector.

Enclosure No. 3.

From P. RAJARUTNUM, Acting Deputy Collector of Peapally, to the Conservancy Engineer, Dornigal, dated Koilkuntla, 9th December 1876, No. 302.

I was at Koilkuntla on the 2nd instant and again yesterday. I had been also to Juladarasi, Dedimala and Yuppalur. The ryots complained that canal water has not yet been brought to their villages. They have now evidently opened their eyes and are most anxious to sow dry crops with canal irrigation. It is greatly to be regretted that arrangements have not been completed to meet their demand. The ryots tell me that one sluice has to supply nearly ten villages, and that consequently a sufficient head of water is not brought down the main distribution channel to afford irrigation for all the villages affected. I do not know how far this is correct, but I noticed on the 2nd instant* that the ryots had not enough water even to bale to their cholum fields. All the available supply was appropriated by the Revenue people, and there was not a drop of water flowing down the branch which runs past Yuppalur. I beg you will issue such orders as you deem proper to supply irrigation to all the villages below Ravenur. I can give you any number of coolies for working at the channels.

(True Copy.)

(Signed) P. RAJARUTNUM,
Deputy Collector.

(True Copy.)

(Signed) N. GOPALAKRISHNAMAH,
Deputy Collector,
for Acting Collector.

Enclosure No. 4.—Copy of Judgment in Calendar Case No. 27 of 1876, in Nandial Deputy Magistrate's Court.

* At Yuppalur.

From W. D. HORSLEY, Esq., Collector of Cuddapah, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 22nd July 1878, No. 433.

I have the honor to enclose copy of a letter from the Special Sub-Collector in charge of canal affairs to the Collector of Kurnool, suggesting that rules should be framed to prevent ryots taking water in an unauthorized manner from the Irrigation Company's Canal.

2. The subject is connected with something that has occurred in the Kurnool District, and of which I am ignorant. The only criminal offence that can be committed in taking water is theft, but Mr. Lister has discovered that the act seldom constitutes such an offence, because the ryot has no intention to evade payment for the water. He suggests a reference to the Advocate-General, which I do not think necessary, or that rules authorizing additional charges for water surreptitiously taken should be framed. Such charges are always imposed when water is taken without a written application, and they might be equally imposed when water is taken without the sanction of the distributor, and I do not know that any special rules are required on the subject.

3. In such cases there is a difficulty in determining whether the ryot has received all the water to which he is entitled. The banker, who is apparently the distributor, says he supplied the proper amount of water. The ryot says he did not receive all he was entitled to, because he refused to fee the banker, and therefore without the knowledge of the banker he helped himself. This is, I imagine, what Mr. Lister refers to when he says that water is seldom taken in order to evade payment. There is no doubt that the ryot in this requires protection, and I would suggest that the distribution should not be left to low-paid bankers, but that the village authorities should be present at the sluice to see that the interest of the villagers are attended to and that the banker supplies all the water he has been directed by the canal officer to furnish to the village. This will put an end to the frauds of the bankers, the complaints of the ryots will cease, and there will be no excuse for taking water surreptitiously.

Enclosure No. 1.—Copy of Mr. Lister's letter to Collector of Kurnool, 9th May 1878.

The foregoing papers relate to the complaints of improper interference on the part of the ryots with the distribution of water from the Madras Irrigation and Canal Company's Canal regarding which a report was called for in G.O., dated 27th September 1877, No. 348-I, Department of Public Works. They will be submitted for the orders of Government with reference thereto.

2. Mr. Lister has carefully investigated the circumstances out of which the complaints arose and points out the difficulty of dealing with cases of the nature referred to inasmuch as there is seldom any dishonest intention; the ryot is perfectly willing to pay the regulated charge, but being dissatisfied with the supply furnished supplements it by a dam of his own. The Collector of Kurnool encloses a report from the Deputy Collector of Peapally bearing out the statement as to inadequacy of supply. Mr. Lister suggests that the Advocate-General's opinion should be taken on the point whether the provisions of the Penal Code enable the Magistracy to control the distribution of water belonging to the Canal Company or that the Revenue Officers should be vested with power to charge up to Rupees 25 an acre for water taken from breached channels or diverted by improper dams and double rate for water taken at improper times and in disobedience to the instructions of the distributor.

3. Mr. Crole considers that it is unnecessary to obtain an opinion on the legal question as the High Court have already decided that diversion of water under circumstances similar to those now under discussion does not constitute the offence of mischief. He points out the impolicy of such prosecutions as those which have been instituted in connection with canal irrigation and supports Mr. Lister's proposal in regard to the imposition of penal rates. With the increase of the staff of Curnums and Revenue Inspectors lately recommended for sanction he considers that the formality of previous application for water may be abolished. Mr. Horsley does not consider that any alteration

of the rules is necessary to warrant the imposition of additional charge for water taken surreptitiously, and suggests that for the protection of the ryots the distribution should not be left to low-paid bankers, but that the village authorities should be present and see that the interests of the villagers are attended to.

4. The Board think that the view taken of the legal question is correct; but apart from this consideration they entirely concur with Mr. Crole as to the inexpediency of the action taken at a time when great allowances should have been made and when an opportunity was offered of diminishing the strain on the relations existing between the representatives of the Company and the agricultural community. When the revenue staff is strengthened it may be possible to allow the ryots greater freedom in the matter of taking water without prior application; but to meet cases of diversion, construction of unauthorized dams, &c., power to levy penal rates should be conferred on the special officer entrusted with the administration, as the existing rules do not sufficiently meet the case. Under Clause 4 of the rules an enhanced charge is permissible and the right to remission is forfeited when water is taken without application or registration, but no penalty is attached to any interference with the distribution, when application has been duly made. The Board, therefore, support the amendment suggested, which might be embodied in Rule 4. As regards protection of the ryots from fraud on the part of the bankers the Board do not see how the presence of the village authorities who have other duties to attend to can be required at all times, but Mr. Lister will consider what remedy can be applied. The Board concur with him in thinking that cases connected with breaches of canal rules should not be referred to Taluq Sheristadars for disposal.

(True Copies and Extract.)

Acting Secretary.

To the Secretary to Government, Revenue Department,
with one original enclosure to be returned.
" Collector of Cuddapah, with copy of G.O., dated 27th September 1877, No. 348-I.
" " of Kurnool.
To A. L. Lister, Esq., Special Sub-Collector, Cuddapah and Kurnool.

Encl. W. H. French and A. Gambert.

Printed at the Government Press.

Dated August 1878.

Received 28 AUG 1878.

Proceedings, Revenue Department, 1878, No. 2,103.

AUGUST 78

No. 2,103.

Ext. Copy

Public Works—Water — from the Madras Irrigation and Canal Company's Canal—Submitting to Government records from Collectors of Kurnool and Cuddapah regarding complaints of improper interference on the part of the ryots with the existing Board's rates, &c.

Revenue Department.

No. 3584 1485/B

From Board of Revenue

Dated 2nd August 1878.

FOR ORDERS.

This is a reply to a G.O. on the Public Works Department dated 27th September 1877 No. 348 I. proposing an ordinary sanction, would be passed as per consideration and disposal. But as the Board support the representation of the Collector of Kurnool and the Acting Special Sub Collector for an alteration in the Water Note to Rule 4 of the Water Note to G.O. 5th December 1877 No. 3339 so as to give the Water power to charge penal rates for water in certain circumstances it may be desirable to pass orders on that proposal.

FOR ORDERS.

Revenue Department

No 1130 Vol 5 10

Proceedings of the Madras Government,

Under date the 11 Sept 1878

Read Proceedings of the Board of Revenue dated 2nd August 1878, No 2135 submitting with remarks reports from the Collectors of Kurnool and Cuddapah regarding complaints of improper interference on the part of the Ryots with the distribution of water from the Madras Irrigation and Canal Company's Canal.

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1. Pursuant to the Public Works G.O. of 27th September 1872, No 318 I the Board of Revenue submit reports from the Collectors of Kurnool and Cuddapah regarding the complaints of improper interference on the part of the ryots with the distribution of water

water from the Madras Irrigation and Canal Company's Canal.

2. The Board support the recommendation of the Collector of Karnool and the Special Sub-Collector for an alteration in Rule 4 of the Water Rate Rules, so as to give the Local Revenue officer power to charge penal rates for water in certain circumstances.

3. The Board ~~[illegible]~~ adverse to any alteration in the direction of ~~[illegible]~~ the Company.

4. The Board consider that it would be some advantage if a record exceptional season, and the Government should

[illegible]

should have before them the results of more experience of ordinary circumstances for at least three seasons, before authorizing such action as is proposed.

5. But half the difficulty would, the Government are convinced, disappear, if the District officers would recognize, and make the Village officers also recognize, that the Ryots have nothing to do with the Company; that it is the Government who are responsible to the Company, that the Ryots who are taking water without paying for it, are defrauding Government who have to pay for it to the Company, and that the case is precisely

similar

similar to what occurs under every Government bank or Irrigation work throughout the Country, and should be treated similarly.

6. All the idea of conflict between the Rights and the Company would vanish, if once the real position was really recognized. Both directly under the Contract and indirectly by virtue of the Guarantee Convention were responsible to the Company for the price of the Lands. The Rights are not responsible to the Company but to Government.

C. S. L.