M.R.O. 1—77,006—8-6-37.

(1) Number of pages 88

(2) Date of repair 14-9-160

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1730 Press
(Revl. 327-329) ~~Mis.~~

Dated 20 8 1879.

Not to be folded or roughly handled

No. 2,054.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 17th July 1879.

Read the following letter from J. GROSE, Esq., Collector of Nellore, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 27th June 1879, No. 2,218:—

WITH reference to G.O., No. 1,453, dated 6th September 1878, communicated to me with the Board's Proceedings, No. 10,069, dated 1st October 1878, I have the honor to submit a statement showing the details of the existing fishery rents in this district, together with the rents collected for Fasli 1281 to 1287.

2. It will be observed from the statement that fishery rents exist only in three out of the nine taluks of this district, viz., Nellore, Gudur, and Rapur.

3. Up to Fasli 1281 only eight tanks and one river in the Nellore Taluk used to be let to the fishermen of the places concerned for a fixed annual payment of Rs. 61. But in Fasli 1282, on the introduction of the Madras Local Fund Act IV of 1871, competition was introduced, and the same nine fisheries were rented out for that year for Rs. 190. In Fasli 1283 the number of recognized fisheries in the Nellore Taluk was 148, and there were six others in the Gudur Taluk and one in the Rapur Taluk, and the total rent realized for Fasli 1283 was Rs. 1,583-10-0. The rent for Faslis 1284 and 1285 was Rs. 1,508-12-0 and Rs. 1,325 respectively. Fasli 1286 being a famine year, only Rs. 56-8-0 were collected on account of fishery rents. The fish having diminished in number during the famine, the rent of the next year (Fasli 1287, was only Rs. 954.

ENCLOSURE No. 1.—Statement.

SUBMITTED to Government in continuation of the Board's Proceedings, dated 14th June 1879, No. 1,674.

(A true Copy and Extract.)

J. Lewis
Acting Sub-Secretary.

To the Chief Secretary to Government, Financial Department,
with original statement to be returned.
" Collector of Nellore.

Exd. A. Grubert.

Transferred to the Revenue Department with reference to that department order No. 1453. dated 6th September 1878.

Recommended 20th August 1879

Financial Department
Fishery Rents

1879. No. 585.

Board of Revenue,

MADRAS.

To

THE CHIEF SECY. TO GOVT.,
FINANCIAL DEPARTMENT,
&c., &c., &c.

Dated July 17th.

Printed

Received 30 July 1879

No. 2334

PROCEEDINGS, 17TH JULY 1879, No. 2,054.

Exp. 28/7/79.

JULY.

No. 2,054.

Fishery Rents — in Nellore District.—Submitting to Government letter from Collector forwarding a statement showing the details of the existing —, together with the rents collected for Faslis 1281 to 1287.

Rev. Pros. dy. 20 Augt/79
No. 1730

No. 1,673.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 14th June 1879.

Read the following letter from E. F. WEBSTER, Esq., Collector of Tanjore, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Tranquebar, 10th May 1879, No. 1,675 :—

IN connection with my letter of 28th July 1878, No. 2,557, I think it right to submit, for the information of the Board, the enclosed petition addressed to me by the renter of fisheries in the Negapatam Taluk.

2. The matter is important, as an erroneous impression appears to be current that Government having leased out the right to fish decline to secure to the renter the enjoyment of the right which he has paid for.

3. I can do no more than impress on the people that the difficulty has arisen from the present state of the law, and that the question whether special legislation is necessary is now occupying the attention of Government.

4. Meanwhile I beg the Board will kindly urge on Government the necessity for considering the question at an early date in the Legislative Department.

ENCLOSURE No. 1.—Petition.

THE whole subject has been now referred to the Government with a view to early legislative action. In the meantime the Board desire the Collector to make such composition with the renter as he may think just.

(A true Copy and Extract.)

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

To the Collector of Tanjore.

Exd. A. F. Goodall.

1879.

Board of Revenue,

MADRAS.

To

THE COLLECTOR OF TANJORE.

Dated June 14th.

Printed 19th.

Received Rev 21 5-1-79

PROCEEDINGS, 14TH JUNE 1879, No. 1,673.

JUNE.

No. 1,673.

Fisheries — in Negapatam Taluk, Tanjore District. — Desiring Collector to make such composition with the renter of — as he may think just, pending the legislative action of Government, regarding the loss sustained by him in consequence of the people fishing in places included in his contract.

Rev. Proc. by 20° Augt/79

No. 1731

5

STATEMENT showing the Revenue derived from Fisheries under the several heads desired by Government in their Order, dated 6th September 1878, No. 1,453.

Districts.	Tank. Auction.	Tank. Commutation.	Anicut.	Open River.	Total.	Remarks.
	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	
Ganjam	...	...	...	...	5,364 0 0	Taken from the Local Fund Report, 1877-78.
Nellore	...	...	...	...	472 0 0	
Kistna	28 8 0	...	...	4,161 0 0	4,189 8 0	
Bellary	1,271 0 0	...	...	...	1,271 0 0	
Chingleput ...	...	...	...	...	90 0 0	Collections are not given. The amount was taken from the Local Fund Report for 1877-78.
North Arcot ...	...	...	...	...	8,136 13 4	This is the average collection for the last six years. Details are not given.
South Arcot ...	631 8 0	6,342 11 3	...	736 7 9	7,710 11 0	
Tanjore	...	...	...	...	22,169 0 0	Details are not given.
Trichinopoly ...	...	...	...	...	5,486 0 0	Collections are not given. The amount was taken from the Local Fund Report for 1877-78.
Madura	...	...	...	...	23,000 0 0	The rate of commutation in this district is two annas per cawny.
Tinnevelly ...	944 12 4	11,518 15 7	...	528 2 0	12,991 13 11	
Coimbatore ...	...	...	...	...	751 6 0	Details are not given.
Salem	...	...	...	...	1,511 2 8	Do.
Total ...	...	...	...	...	93,143 6 11	

Rev. Proc. 20 Aug 79
No. 1730

No. 1,674.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 14th June 1879.

Read the following letters:—

From the Collector	of Vizagapatam,	dated	12th Oct.	1878,	No.	1,555.
„ „	of the Godavari Dist.,	„	12th „	„	„	303.
„ „	of the Kistna	„	20th Jan.	1879,	„	115.
„ „	of Cuddapah,	dated	5th December	1878,	„	776.
„ „	of Bellary,	„	10th January	1879,	„	6.
„ „	of Kurnool,	„	14th November	1878,	„	439.
„ „	of Madras,	„	14th October	1878,	„	318.
„ „	of North Arcot,	„	5th March	1879,	„	83.
„ „	of South Arcot,	„	10th February	„	„	50.
„ „	of Trichinopoly,	„	6th March	„	„	72.
„ „	of Madura,	„	8th „	„	„	96.
„ „	of Tinnevelly,	„	21st „	„	„	184.
„ „	of Coimbatore,	„	25th February	„	„	29.
„ Commr.	of the Nilgiris,	„	23rd October	1878,	„	156.
„ Collector	of Salem,	„	19th December	„	„	527.
„ „	of South Canara,	„	12th October	„	„	1,859.
„ „	of Malabar,	„	8th „	„	„	277.

From J. F. PRICE, Esq., Collector of the Chingleput District, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Saidapet, 1st November 1878, No. 333.

ADVERTING to the correspondence embodied in the Proceedings of Government, Revenue Department, No. 1,453, dated 6th September 1878, I have the honor to transmit a copy of a Proceedings of the High Court declaring that fish in a tank the property of Government, cannot be made the subject of theft, and reversing two decisions convicting of that offence persons who abstracted fish from Government tanks.

2. It will not be long ere the news as to what is the law on the subject of carrying off fish from Government works of irrigation is widely known. As soon as it is, Government and Local Fund Boards may bid adieu to any revenue which they have hitherto derived from fisheries.

3. It is evident that if Government desire that fisheries should any longer constitute a source of income, and that fish, which form a very important item of food, should be protected from the wholesale destruction which has overtaken game of all kinds, a legislative enactment upon the subject should, with as little delay as possible, be passed.

4. I enclose copies of the calendars in the cases referred to above and of my letter to the High Court. I took the only ground under which I thought that the judgments of the Lower Courts might possibly be upheld, but this, as will be seen, was negatived.

ENCLOSURE No. 1.

From J. F. PRICE, Esq., Acting Magistrate of the Chingleput District, to the Registrar of the High Court, Appellate Side, dated Saidapet, 26th August 1878, No. 899.

AT the request of the Acting Joint Magistrate, I have the honor to submit, under Section 296, Code of Criminal Procedure, for the orders of the Honorable the Judges of the High Court, Calendar No. 266 of 1878 on the file of the Magistrate, 2nd Class, Madhurantakam, and Calendar No. 169 of 1878 on the file of the Magistrate, 3rd Class, Uttramerur.

2. As the point upon which the legality of the decisions in both these cases, which are of a similar nature, is questioned does not depend upon the evidence, I do not consider it necessary to trouble the Court with the records.

3. The facts of the cases are briefly as follows:—The accused abstracted fish from certain tanks, the property of Government, and the right of catching which is periodically rented out;

the Magistrates tried and found them guilty of theft punishable under Section 379, Indian Penal Code.

4. The ground taken by the Acting Joint Magistrate is that the fish being *Feræ Naturæ* could not be the subject of theft.

5. I think this doubtful.

6. There can be no question as to the actual possession on the part of Government of the tanks and the water therein. It appears to me that so long as the fish remain in the tanks they are confined, and are consequently in the sole possession of the person so confining them, which is, in the present instance, Government; and in this case they could be made the subject of theft.

7. The Acting Joint Magistrate quotes in support of his view the annexed extract from Sir James FitzJames Stephen's Digest of the Criminal Law, Article 291, page 204 :—

"Living wild animals in the enjoyment of their natural liberty, whether they have escaped from confinement or not, are not capable of being stolen, although they may be game, and although it may be an offence to pursue or kill them."

8. The objection which may be raised to this is that a fish living in an artificial lake, which may at any moment be drained by the owner in such a way as to render his capture a matter of absolute certainty, is not in the enjoyment of his "natural liberty."

(True Copy.)

(Signed) J. F. PRICE,
Collector.

ENCLOSURE No. 2.

Proceedings of the High Court of Judicature at Madras, dated 23rd October 1878, No. 1,759.

Read letter, dated the 26th August 1878, No. 899, from the Magistrate of Chingleput, referring, for the orders of the High Court, under Section 296 of the Code of Criminal Procedure, the Proceedings of the 2nd-Class Magistrate of Madhurantakam in Case No. 266 of 1878 and those of the 3rd-Class Magistrate of Uttramerur in Case No. 169 of 1878 as contrary to law.

(Here enter H. C. No. 7,331 of 1878.)

In these two cases a number of persons have been convicted of stealing fish from certain Government tanks. The right of capturing the fish in the particular tanks in question had been sold by Government at auction to persons other than the accused.

The tanks were, it is understood, the ordinary open irrigation tanks of Southern India; and the question is whether fish living in reservoirs of this kind are in possession in such a sense as to render their capture and removal from the reservoirs a theft. The High Court are of opinion that they are not. If any right (as the right of catching the fish) is violated by the removal of them, the remedy is a civil action.

In England, it is observed, it is only under special statutes that such an act is punishable. The conviction and sentences are accordingly hereby annulled. The fines levied from the accused must be refunded.

(True Extract.)

(Signed) T. WEIR,
Acting Registrar, Appellate Side.

(True Copy.)

(Signed) J. F. PRICE,
Collector.

ENCLOSURES Nos. 3 and 4.—Copies of Magisterial Calendars.

From E. F. WEBSTER, Esq., Collector of Tanjore, to J. STURROCK, Esq., Acting Secretary to the Board of Revenue, dated 22nd March 1879, No. 1,002.

IN reply to Board's Proceedings, dated 1st October last, Miscellaneous No. 10,069, communicating G.O. of the 6th September, No. 1,453, I have the honor to state that there are in this district five fisheries in the vicinity of anicuts, and that the remainder are open river fisheries.

2. Until the year 1857 the right of fishing in rivers, tanks, or channels vested in Government, and was leased by the Collector to the inhabitants of the district.

3. The condition of the fisheries in Tanjore attracted the notice of Government in the year mentioned above, and it was then that the different methods of dealing

with sea and inland fisheries was first brought to notice by Mr. H. Forbes, the Collector, who recommended the abolition of all rents derived from tank and channel fisheries—first, on the general principle that the Mirasidar having paid for the water to his land, should be allowed to take all that the water may produce, and should not be annoyed by strangers renting the fisheries within his farm; secondly, on account of the mischief done to Public Works by the methods of fishing then adopted; and, lastly, because he considered it unjust that such fisheries should be burdened with a tax, while sea fisheries which lead to no disputes and to no injurious results to Public Works are wholly untaxed.

4. This reasoning commended itself to Government, who sanctioned* the abolition of all taxes on tank and channel fisheries at a sacrifice of revenue to the extent of Rs. 14,950 per annum.

*G.O., 11th June 1857, No. 576, paragraph 29.

5. The fisheries in the Cauvery and its main branches, however, are still retained under Government control, and in the twenty-one years that have elapsed since the date of the Proceedings just quoted their annual value has increased from Rs. 9,067 to Rs. 22,169.

6. The right to fish is put up to auction and given to the highest bidder, and the provisions of Act II of 1864 are enforced when it is necessary to proceed against a renter for recovery of fish-rent.

7. In pursuance of the instructions contained in G.O., No. 1,478, dated 25th October 1872, no person is allowed to fish within 100 yards of a calingulah, bridge, or anicut.

IN G.O., dated 6th September 1878, No. 1,453, the Government desired a report on the details of existing fishery rents throughout the Presidency, distinguishing whether tank, anicut, or open river, and the mode in which the present system of renting had grown up. This order was communicated to all Collectors in Board's Proceedings, dated 1st October 1878, Miscellaneous No. 10,069, and the above letters are the replies.

2. The Collectors of eight districts report that there are no fisheries rented out on behalf of Government.

Vizagapatam.	Madras.
Godavari.	Nilgiris.
Cuddapah.	Canara.
Kurnool.	Malabar.

3. The Collectors of Ganjam and Nellore have not replied, but the Board will not further delay on their account, and will take the figures shown in their Local Fund Reports for 1877-78.

4. The revenue derived in the other districts is shown in a tabular statement under the several heads desired by Government, to wit, tank, anicut, and open river, so far as information is available, and as the rents under tanks are realized in different ways that head is subdivided.

5. It will be observed from this statement that the total of assets from fisheries in the Madras Presidency is Rs. 93,143-6-11. In Board's Proceedings, dated 8th August 1878, No. 2,192, it was given roughly at Rs. 80,000 per annum. But when consideration is given to the further point of Government inquiry, "the mode in which the present system has grown up" it will be seen below that these sums do not adequately represent the value of the fisheries.

6. All Collectors are agreed that fisheries have been a source of Government revenue from the earliest dates traceable. Some Collectors speak of their existence before the Fysal, others particularize a very early date in which they are spoken of as habitually pre-existent, others class them as part of the old Moturpha Tax, and others again refer them to Mohamedan times. Fisheries are to be found among the items of revenue collected in the times of Akbar, and so far from having grown up under our rule, the reports of Collectors show that they have steadily fallen off under British administration. There is no evidence of their ever having been seriously and intelligently considered by us as a source of food-supply. They have been dealt with only financially, and the unform tendency has been to consider

them as a legacy from our predecessors which it was perhaps not well to throw away unnecessarily, but still as a legacy of such minor financial importance that it might very readily be abandoned or commuted in the presence of any complaints of hardship or trouble connected with its collection.

7. Thus it appears that when the ryots of Tinnevelly complained that the fish renters who were strangers and not villagers caused them loss by letting off water required for irrigation, the fisheries complained about were rented to the villagers at an average of the previous five years' rents, and a putta was granted in the common name of the village, or in the name of the village deity. As others desired, this system of transmuting open auctions into fixed village payments was extended, till, in 1872, uniformity and diminution of trouble in collection were attained by imposing this system in the remaining villages which had not voluntarily desired it; and at the introduction of the new settlement all tank fisheries were permanently made over to the ryots.

8. Modifications of this financial manner of treating the fisheries were similarly adopted by the Collectors of North Arcot, South Arcot, and Madura.

9. In Tanjore the Collector represented that as the people had paid for the water which they used for irrigation, they were entitled to the fish contained in that water, and fisheries worth Rs. 14,950 a year were accordingly abandoned at a stroke.

10. In 1848 the Revenue Board made a financial inquiry whether all fisheries could not be leased uniformly, but, when the Collector of Bellary proposed to give it effect, they objected to his embracing minor tanks which had not previously been rented.

11. In Madura the fishery rents were commuted by the Collector to an annual cess on the cultivators individually of 2 annas per cawny irrigated, and this cess was entered in their puttas. That it was a low rate is clear from its being voluntarily adopted by preference, for rents by auction were simultaneously maintained, and it was open to the ryots to decline the cess in favor of an auction.

12. Thus have rights in fisheries bequeathed to the Government by its Mussalman predecessors gradually grown up among the people from the action of individual Collectors, and of the Revenue Settlement, and from the generally adopted view that, except financially, fisheries were of no importance, and that as an item of Revenue they were too small to be worth maintaining at the cost of any friction to the people or the collecting officials.

13. Whether the fisheries are of importance as a food-supply is not now under reference, but that they might yield a larger revenue seems to be within the scope of the Government inquiry, and is deducible from the foregoing reports.

14. The identical rents which in Tanjore were annually worth Rs. 9,067 came, after the lapse of twenty years, to be worth Rs. 22,169. This increase in value has arisen from no preservative action of Government or the people, and seems to be mainly the result of increased demand from improved communications. If the other fisheries worth Rs. 14,950 a year, which were abandoned at a stroke, may be calculated to have risen in value at the same rate they must now be worth Rs. 36,552, and the abandoned and continued fresh water fisheries of the Tanjore District alone must together be worth of Rs. 58,721 per annum without any conservation whatever.

15. If the proceeds of all the fisheries which have been commuted to fixed rates were similarly raised to present auction values, the total income would be over two lakhs a year, and if to them were added the fisheries which have been given away as in Tanjore and presumably in the majority of the eight districts that report no rents, the total would be considerably more.

16. These enhanced values have been lost in all the places in which rents have been commuted and all power of control for improvement has been equally lost. In Coimbatore, for instance, which is not wanting in rivers and river-fed tanks, the rents are for the reasons above stated insignificant; and in eight districts some of which are well watered rents are for unknown reasons non-existent.

17. Though the unauthorized commutations of Collectors and even those of a former Board might be disallowed, and the auction system revived under orders of the

Board and Government, the enhanced rents thus arrived at could not be secured without special legislation: for the legal difficulty which has arisen in Tanjore and Chingleput would be open to recurrence everywhere. Mr. E. F. Webster has quoted the ruling of the Calcutta High Court which led to this inquiry, and Mr. Price has added a similar ruling of the Madras High Court. Mr. Price has submitted the matter to that Court from the standpoint which seemed most defensible, but the High Court observed that "In England it is only under special statutes that such an act is punishable."

18. Mr. Price's conclusion is, "It is evident that if Government desire that fisheries should any longer constitute a source of income, and that fish, which form a very important item of food, should be protected from the wholesale destruction which has overtaken game of all kinds, a legislative enactment on the subject should with as little delay as possible be passed."

19. The Board presume it is with this view that the Government have made the present inquiry, and the Board's view is the same.

20. The Government has made some outlay on the erection of an experimental fish-ladder and fish-lock at the Coleroon anicut, and contemplates further expenditure there and at other anicuts to save from destruction that valuable migratory fish the Hilsa (*Clupea palasah.* C and V.) It has also passed orders prohibiting netting within a certain distance of the anicut. But the want of law which gives immunity to those who set at naught the rights of Government fish-renters will equally shield those who may hereafter elect to disregard the Government itself, and the Board have already had to instruct the Collector of Tanjore to make what composition he thinks fair with the renter who complains that he cannot realize profits wherefrom to pay his rent, because the magistracy are legally powerless to protect him from the open and deliberate poaching of the close fisheries which the Government have rented to him—Board's Proceedings, dated 14th June 1879, No. 1,673.

21. In 1875 the Government (G.O., dated 24th May 1875, No. 792,) directed the Board of Revenue to prepare a draft Fishery Bill, and their orders being communicated to Presidents of Local Fund Boards and Municipalities, a heavy file of reports is the result. These the Board have hitherto been unable to dispose of, and the whole subject seems to require more close and special study than is possible in the intervals of the current work of the Board's Office, notwithstanding that its urgency is instanced by the position reported from the Tanjore and Chingleput Districts.

22. The Board recommend that arrangements be made to allow of their Third Member giving his undivided attention for about a month to the subject in view to his being able at an early date to lay before the collective Board for consideration and submission to Government a résumé of the several proposals together with his opinion thereon and a draft Act with a Statement of Objects and Reasons.

(True Copies and Extract.)

Acting Secretary.

To the Secretary to Government, Revenue Department, with 17 original reports and their enclosures, and two enclosures in No. 9,667 of 1878 to be returned, a statement and copy of Board's Proceedings, 14th June 1879, No. 1,673.

Copy to all Collectors.

Exd. A. F. Goodall and A. Grubert.

Revenue Department.

No. 5162.

From Revenue Board

Dated 14th June 1879. no. 1674

FOR ORDERS.

Submitted for orders with reference to G.O. 6th September 1878 no. 1453 R.D. and the Hon: Members' remarks attached thereto.

I am not disposed to advocate special legislation in view to raising a revn. from fishries. altho measures to prevent injury to a source of food supply may possibly be

[illegible]

Revenue Department

No. 5162

1879.

Board of Revenue,

MADRAS.

To

THE SECRETARY TO GOVT.,
REVENUE DEPARTMENT.

Dated June 14th.

Printed 30th.

Received 6/7/79

PROCEEDINGS, 14TH JUNE 1879, No. 1,674.

Dup 6/7/79 [illegible] 19 Oct

JUNE.

No. 1,674.

S.O. 1730. 20 August 1879

Fishery Rents — throughout the Madras Presidency.—Reviewing reports from Collectors on the details of existing — and the mode in which the present system of renting had grown up.

Rev. Proc. by 20 August 79

FOR ORDERS.

[illegible] on [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] Presidency

C15-7-70
R31-7-70
[illegible]
R20-8-73

17

L.O. No 1730
dy 20 August 1877

Bd. Bgs: 14 June 1879 No 1674, and
17 July 1879 No 2054

14 June 1879 No 1674

14 To the Board of Revenue do encls
on 7 Sept

Omit.

The Govt. ~~[illegible]~~ are ~~[illegible]~~ unable to sanction the arrangement proposed by the Board in para 22 of their Pgs but would be glad if Mr. Thomas would indicate through the Board the points on which he considers legislation advisable. The papers might then be referred ~~[illegible]~~ ~~[illegible]~~ with an expression of the

Views of Govt.
to the Legislative
Depart. for the
preparation of
a bill

[illegible] 11/8/7

L.O.
Fishery Laws
& proposed Legislation

Circ

circulated for approval with Effd to His face the Governor's note. L

257 & 259

5-8-79
20-8-79.

21

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

20th August 1879, No. 1,730.

READ THE FOLLOWING PAPERS:—

No. 327. Proceedings of the Board of Revenue, dated 14th June 1879, No. 1,674.

Read the following letters:—

From the	Collector	of Vizagapatam,	dated	12th Oct.	1878,	No. 1,555,
„	„	of the Godavari Dist.,	„	12th „	„ „	303.
„	„	of the Kistna	„	„ 20th Jan.	1879, „	115.
„	„	of Cuddapah,	dated	5th December	1879, „	776.
„	„	of Bellary,	„	10th January	1878, „	6.
„	„	of Kurnool,	„	14th November	1878, „	439.
„	„	of Madras,	„	14th October	„ „	318.
„	„	of North Arcot,	„	5th March	1879, „	83.
„	„	of South Arcot,	„	10th February	„ „	50.
„	„	of Trichinopoly,	„	6th March	„ „	72.
„	„	of Madura,	„	8th „	„ „	96.
„	„	of Tinnevelly,	„	21st „	„ „	184.
„	„	of Coimbatore,	„	25th February	„ „	29.
„	Commr.	of the Nilgiris,	„	23rd October	1878, „	156.
„	Collector	of Salem,	„	19th December	„ „	527.
„	„	of South Canara,	„	12th October	„ „	1,859.
„	„	of Malabar,	„	8th „	„ „	277.

From J. F. PRICE, Esq., Collector of the Chingleput District, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Saidapet, 1st November 1878, No. 333.

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2. It will not be long ere the news as to what is the law on the subject of carrying off fish from Government works of irrigation is widely known. As soon as it is, Government and Local Fund Boards may bid adieu to any revenue which they have hitherto derived from fisheries.

3. It is evident that if Government desire that fisheries should any longer constitute a source of income, and that fish, which form a very important item of food, should be protected from the wholesale destruction which has overtaken game of all kinds, a legislative enactment upon the subject should, with as little delay as possible, be passed.

4. I enclose copies of the calendars in the cases referred to above and of my letter to the High Court. I took the only ground under which I thought that the judgments of the Lower Courts might possibly be upheld, but this, as will be seen, was negatived.

ENCLOSURE No. 1.

From J. F. PRICE, Esq., Acting Magistrate of the Chingleput District, to the Registrar of the High Court, Appellate Side, dated Saidapet, 26th August 1878, No. 899.

AT the request of the Acting Joint Magistrate, I have the honor to submit, under Section 296, Code of Criminal Procedure, for the orders of the Honorable the Judges of the High Court, Calendar No. 266 of 1878 on the file of the Magistrate, 2nd Class, Madhurantakam, and Calendar No. 169 of 1878 on the file of the Magistrate, 3rd Class, Uttramerur.

2. As the point upon which the legality of the decisions in both these cases, which are of a similar nature, is questioned does not depend upon the evidence, I do not consider it necessary to trouble the Court with the records.

3. The facts of the cases are briefly as follows:—The accused abstracted fish from certain tanks, the property of Government, and the right of catching which is periodically rented out; the Magistrates tried and found them guilty of theft punishable under Section 379, Indian Penal Code.

4. The ground taken by the Acting Joint Magistrate is that the fish being *Feræ Naturæ* could not be the subject of theft.

5. I think this doubtful.

6. There can be no question as to the actual possession on the part of Government of the tanks and the water therein. It appears to me that so long as the fish remain in the tanks they are confined, and are consequently in the sole possession of the person so confining them, which is, in the present instance, Government; and in this case they could be made the subject of theft.

7. The Acting Joint Magistrate quotes in support of his view the annexed extract from Sir James FitzJames Stephen's Digest of the Criminal Law, Article 291, page 205 :—

"Living wild animals in the enjoyment of their natural liberty, whether they have escaped from confinement or not, are not capable of being stolen, although they may be game, and although it may be an offence to pursue or kill them."

8. The objection which may be raised to this is that a fish living in an artificial lake, which may at any moment be drained by the owner in such a way as to render his capture a matter of absolute certainty, is not in the enjoyment of his "natural liberty."

(True Copy.)

(Signed) J. F. PRICE,
Collector.

ENCLOSURE No. 2.

Proceedings of the High Court of Judicature at Madras, dated 23rd October 1878, No. 1,759.

Read letter, dated the 26th August 1878, No. 899, from the Magistrate of Chingleput, referring, for the orders of the High Court, under Section 296 of the Code of Criminal Procedure, the Proceedings of the 2nd-Class Magistrate of Madhurantakam in Case No. 266 of 1878 and those of the 3rd-Class Magistrate of Uttramerur in Case No. 169 of 1878 as contrary to law.

(Here enter H. C. No. 7,331 of 1878.)

In these two cases a number of persons have been convicted of stealing fish from certain Government tanks. The right of capturing the fish in the particular tanks in question had been sold by Government at auction to persons other than the accused.

The tanks were, it is understood, the ordinary open irrigation tanks of Southern India; and the question is whether fish living in reservoirs of this kind are in possession in such a sense as to render their capture and removal from the reservoirs a theft. The High Court are of opinion that they are not. If any right (as the right of catching the fish) is violated by the removal of them, the remedy is a civil action.

In England, it is observed, it is only under special statutes that such an act is punishable. The conviction and sentences are accordingly hereby annulled. The fines levied from the accused must be refunded.

(True Extract.)

(Signed) T. WEIR,
Acting Registrar, Appellate Side.

(True Copy.)

(Signed) J. F. PRICE,
Collector.

ENCLOSURES Nos. 3 and 4.—Copies of Magisterial Calendars.

From E. F. WEBSTER, Esq., Collector of Tanjore, to J. STURROCK, Esq., Acting Secretary to the Board of Revenue, dated 22nd March 1879, No. 1,002.

IN reply to Board's Proceedings, dated 1st October last, Miscellaneous No. 10,069, communicating G.O. of the 6th September, No. 1,453, I have the honor to state that there are in this district five fisheries in the vicinity of anicuts, and that the remainder are open river fisheries.

2. Until the year 1857 the right of fishing in rivers, tanks, or channels vested in Government, and was leased by the Collector to the inhabitants of the district.

3. The condition of the fisheries in Tanjore attracted the notice of Government in the year mentioned above, and it was then that the different methods of dealing with sea and inland fisheries was first brought to notice by Mr. H. Forbes, the Collector, who recommended the abolition of all rents derived from tank and channel fisheries—first, on the general principle that the Mirasidar having paid for the water to his land, should be allowed to take all that the water may produce, and should not be annoyed by strangers renting the fisheries within his farm; secondly, on account of the mischief done to Public Works by the methods of fishing then adopted; and, lastly, because he considered it unjust that such fisheries should be burdened with a tax, while sea fisheries which lead to no disputes and to no injurious results to Public Works are wholly untaxed.

4. This reasoning commended itself to Government, who sanctioned* the abolition of all taxes on tank and channel fisheries at a sacrifice of revenue to the extent of Rs. 14,950 per annum.

* G.O., 11th June 1857, No. 576, paragraph 29.

5. The fisheries in the Cauvery and its main branches, however, are still retained under Government control, and in the twenty-one years that have elapsed since the date of the Proceedings just quoted their annual value has increased from Rs. 9,067 to Rs. 22,169.

6. The right to fish is put up to auction and given to the highest bidder, and the provisions of Act II of 1864 are enforced when it is necessary to proceed against a renter for recovery of fish-rent.

7. In pursuance of the instructions contained in G.O., No. 1,478, dated 25th October 1872, no person is allowed to fish within 100 yards of a calingulah, bridge, or anicut.

IN G.O., dated 6th September 1878, No. 1,453, the Government desired a report on the details of existing fishery rents throughout the Presidency, distinguishing whether tank, anicut, or open river, and the mode in which the present system of renting had grown up. This order was communicated to all Collectors in Board's Proceedings, dated 1st October 1878, Miscellaneous No. 10,069, and the above letters are the replies.

2. The Collectors of eight districts report that there are no fisheries rented out on behalf of Government.

Vizagapatam.	Madras.	
Godavari.	Nilgiris.	
Cuddapah.	Canara.	
Kurnool.	Malabar.	

3. The Collectors of Ganjam and Nellore have not replied, but the Board will not further delay on their account, and will take the figures shown in their Local Fund Reports for 1877-78.

4. The revenue derived in the other districts is shown in a tabular statement under the several heads desired by Government, to wit, tank, anicut, and open river, so far as information is available, and as the rents under tanks are realized in different ways that head is subdivided.

5. It will be observed from this statement that the total of assets from fisheries in the Madras Presidency is Rs. 93,143-6-11. In Board's Proceedings, dated 8th

August 1878, No. 2,192, it was given roughly at Rs. 80,000 per annum. But when consideration is given to the further point of Government inquiry, "the mode in which the present system has grown up" it will be seen below that these sums do not adequately represent the value of the fisheries.

6. All Collectors are agreed that fisheries have been a source of Government revenue from the earliest dates traceable. Some Collectors speak of their existence before the Fysal, others particularize a very early date in which they are spoken of as habitually pre-existent, others class them as part of the old Moturpha Tax, and others again refer them to Mohamedan times. Fisheries are to be found among the items of revenue collected in the times of Akbar, and so far from having grown up under our rule, the reports of Collectors show that they have steadily fallen off under British administration. There is no evidence of their ever having been seriously and intelligently considered by us as a source of food-supply. They have been dealt with only financially, and the uniform tendency has been to consider them as a legacy from our predecessors which it was perhaps not well to throw away unnecessarily, but still as a legacy of such minor financial importance that it might very readily be abandoned or commuted in the presence of any complaints of hardship or trouble connected with its collection.

7. Thus it appears that when the ryots of Tinnevelly complained that the fish renters who were strangers and not villagers caused them loss by letting off water required for irrigation, the fisheries complained about were rented to the villagers at an average of the previous five years' rents, and a putta was granted in the common name of the village, or in the name of the village deity. As others desired, this system of transmuting open auctions into fixed village payments was extended, till, in 1872, uniformity and diminution of trouble in collection were attained by imposing this system in the remaining villages which had not voluntarily desired it; and at the introduction of the new settlement all tank fisheries were permanently made over to the ryots.

8. Modifications of this financi[illegible]nner of treating the fisheries were similarly adopted by the Collectors of North A[illegible], South Arcot, and Madura.

9. In Tanjore the Collector represented that as the people had paid for the water which they used for irrigation, they were entitled to the fish contained in that water, and fisheries worth Rs. 14,950 a year were accordingly abandoned at a stroke.

10. In 1848 the Revenue Board made a financial inquiry whether all fisheries could not be leased uniformly, but, when the Collector of Bellary proposed to give it effect, they objected to his embracing minor tanks which had not previously been rented.

11. In Madura the fishery rents were commuted by the Collector to an annual cess on the cultivators individually of 2 annas per cawny irrigated, and this cess was entered in their puttas. That it was a low rate is clear from its being voluntarily adopted by preference, for rents by auction were simultaneously maintained, and it was open to the ryots to decline the cess in favor of an auction.

12. Thus have rights in fisheries bequeathed to the Government by its Mussalman predecessors gradually grown up among the people from the action of individual Collectors, and of the Revenue Settlement, and from the generally adopted view that, except financially, fisheries were of no importance, and that as an item of Revenue they were too small to be worth maintaining at the cost of any friction to the people or the collecting officials.

13. Whether the fisheries are of importance as a food-supply is not now under reference, but that they might yield a larger revenue seems to be within the scope of the Government inquiry, and is deducible from the foregoing reports.

14. The identical rents which in Tanjore were annually worth Rs. 9,067 came, after the lapse of twenty years, to be worth Rs. 22,169. This increase in value has arisen from no preservative action of Government or the people, and seems to be mainly the result of increased demand from improved communications. If the other fisheries worth Rs. 14,950 a year, which were abandoned at a stroke, may be calculated to have risen in value at the same rate they must now be worth Rs. 36,552, and the

abandoned and continued fresh water fisheries of the Tanjore District alone must together be worth of Rs. 58,721 per annum without any conservation whatever.

15. If the proceeds of all the fisheries which have been commuted to fixed rates were similarly raised to present auction values, the total income would be over two lakhs a year, and if to them were added the fisheries which have been given away as in Tanjore and presumably in the majority of the eight districts that report no rents, the total would be considerably more.

16. These enhanced values have been lost in all the places in which rents have been commuted and all power of control for improvement has been equally lost. In Coimbatore, for instance, which is not wanting in rivers and river-fed tanks, the rents are for the reasons above stated insignificant; and in eight districts some of which are well watered rents are for unknown reasons non-existent.

17. Though the unauthorized commutations of Collectors and even those of a former Board might be disallowed, and the auction system revived under orders of the Board and Government, the enhanced rents thus arrived at could not be secured without special legislation: for the legal difficulty which has arisen in Tanjore and Chingleput would be open to recurrence everywhere. Mr. E. F. Webster has quoted the ruling of the Calcutta High Court which led to this inquiry, and Mr. Price has added a similar ruling of the Madras High Court. Mr. Price has submitted the matter to that Court from the standpoint which seemed most defensible, but the High Court observed that "In England it is only under special statutes that such an act is punishable."

18. Mr. Price's conclusion is, "It is evident that if Government desire that fisheries should any longer constitute a source of income and that fish, which form a very important item of food, should be protected from the wholesale destruction which has overtaken game of all kinds, a legislative enactment on the subject should with as little delay as possible be passed."

19. The Board presume it is with this v[illegible] that the Government have made the present inquiry, and the Board's view is the same.

20. The Government has made some outlay on the erection of an experimental fish-ladder and fish-lock at the Coleroon anicut, and contemplates further expenditure there and at other anicuts to save from destruction that valuable migratory fish the Hilsa (*Clupea palasah.* C and V.) It has also passed orders prohibiting netting within a certain distance of the anicut. But the want of law which gives immunity to those who set at nought the rights of Government fish-renters will equally shield those who may hereafter elect to disregard the Government itself, and the Board have already had to instruct the Collector of Tanjore to make what composition he thinks fair with the renter who complains that he cannot realize profits wherefrom to pay his rent, because the magistracy are legally powerless to protect him from the open and deliberate poaching of the close fisheries which the Government have rented to him—Board's Proceedings, dated 14th June 1879, No. 1,673.

21. In 1875 the Government (G.O., dated 24th May 1875, No. 792,) directed the Board of Revenue to prepare a draft Fishery Bill, and their orders being communicated to Presidents of Local Fund Boards and Municipalities, a heavy file of reports is the result. These the Board have hitherto been unable to dispose of, and the whole subject seems to require more close and special study than is possible in the intervals of the current work of the Board's Office, notwithstanding that its urgency is instanced by the position reported from the Tanjore and Chingleput Districts.

22. The Board recommend that arrangements be made to allow of their Third Member giving his undivided attention for about a month to the subject in view to his being able at an early date to lay before the collective Board for consideration and submission to Government a résumé of the several proposals together with his opinion thereon and a draft Act with a Statement of Objects and Reasons.

(True Copies and Extract.)

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

STATEMENT showing the Revenue derived from Fisheries under the several heads desired by Government in their Order, dated 6th September 1878, No. 1,453.

Districts.	Tank. Auction.	Tank. Commutation.	Anicut.	Open River.	Total.	Remarks.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	
Ganjam	..	..	..	..	5,364 0 0	Taken from the Local Fund Report, 1877-78.
Nellore	..	..		..	472 0 0	
Kistna	28 8 0	..		4,161 0 0	4,189 8 0	
Bellary	1,271 0 0	..		..	1,271 0 0	
Chingleput ..	..	..		..	90 0	Collections are not given. The amount was taken from the Local Fund Report for 1877-78.
North Arcot ..	..	..		..	8,136 13 4	This is the average collection for the last six years. Details are not given.
South Arcot ..	631 8 0	6,342 11 3		736 7 9	7,710 11 0	
Tanjore	..	..		..	22,169 0 0	Details are not given.
Trichinopoly ..	..	..		..	5,486 0 0	Collections are not given. The amount was taken from the Local Fund Report for 1877-78.
Madura	..	..		..	23,000 0 0	The rate of commutation in this district is two annas per cawny.
Tinnevelly ..	944 12 4	11,518 15 7		528 2 0	12,991 13 11	
Combatore ..	..	..		..	751 6 0	Details are not given.
Salem	..	..		..	1,511 2 8	Do.
Total ..	..	..		..	93,143 6 11	

No. 328. Endorsement of the ...ting Chief Secretary to Government, dated Ootacamund, 2nd Augu... No. 1,539.

Proceedings of the Board of ...ue, dated 17th July 1879, No. 2,054.

Read the following letter from J. GR... Esq., Collector of Nellore, to C. A. GALTON, Esq., Acting Secretary t... Board of Revenue, dated 27th June 1879, No. 2,218 :—

WITH reference to G.O., No. 1,453, dated 6th September 1878, communicated to me with the Board's Proceedings, No. 10,069, dated 1st October 1878, I have the honor to submit a statement showing the details of the existing fishery rents in this district, together with the rents collected for Fasli 1281 to 1287.

2. It will be observed from the statement that fishery rents exist only in three out of the nine taluks of this district, viz., Nellore, Gudur, and Rapur.

3. Up to Fasli 1281 only eig...ks and one river in the Nellore Taluk used to be let to the fishermen of the places concerned for a fixed annual payment of Rs. 61. But in Fasli 1282, on the introduction of the Madras Local Fund Act IV of 1871, competition was introduced, and the same nine fisheries were rented out for that year for Rs. 190. In Fasli 1283 the number of recognized fisheries in the Nellore Taluk was 148, and there were six others in the Gudur Taluk and one in the Rapur Taluk, and the total rent realized for Fasli 1283 was Rs. 1,583-10-0. The rent for Faslis 1284 and 1285 was Rs. 1,508-12-0 and Rs. 1,325 respectively. Fasli 1286 being a famine year, only Rs. 56-8-0 were collected on account of fishery rents. The fish having diminished in number during the famine, the rent of the next year (Fasli 1287, was only Rs. 954.

ENCLOSURE No. 1.—Statement.

SUBMITTED to Government in continuation of the Board's Proceedings, dated 14th June 1879, No. 1,674.

(A true Copy and Extract.)

(Signed) J. STURROCK,
Acting Sub-Secretary.

TRANSFERRED to the Revenue Departmen... with reference to that Department Order, No. 1,453, dated 6th September 187...

(Signed) C. G. MASTER,
Offg. Chief Secretary.

No. 329. ORDER THEREON, 20th Augu... 1879, No. 1,730.

Miscellaneous.

* 14th June 1879, No. 1,674.

THE Government are unable to s... tion the arrangement proposed by th... e Board in paragraph 22 of their Pro- ce... edings,* but would be glad if Mr. Th... omas would indicate through the Board the points on which he considers legis... ation advisable.

(True Ext... ct.)

(S... gned) J. H. GARSTIN,
Acting Secretary to Government.

To the Board of Revenue.

Exd. W. H. French.

Original

Govt. of (1879) Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated August 20th.

Printed September 4th.

Recd.

Encl

AUGUST.

Nos. 327—329.

Pilgrim Rents—Informing the Board of Revenue that the Government are unable to sanction their arrangement to allow of their Third Member [illegible] proposals before them in connection with [illegible] but that they would be glad if Mr. [illegible] indicate through them the points [illegible] legislation advisable.

[illegible] 13/3/10
30/1/13
25/6/15
15-6-17
20/8/19
6-4-21
17.2.34 II
11-2-35 II
15/12/38
5-12-37 II
25.4.40 II

7/Cpp 6673/79