M.R. G. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1725	Press ~~Mis.~~
392-98		
Dated	17th June	1869.

Not to be folded or roughly handled

No. 392. Read the following Proceedings of the Board of Revenue, dated 9th June 1869:—

Read the following letter from the Collector of North Arcot, to the Sub-Secretary in charge of the Office of Secretary to the Board of Revenue, dated Palamanair, 1st June 1869, No. 158.

I HAVE the honor to forward copy of the notice received from the Chittoor Civil Court, and of the draft answers prepared with reference thereto on the subject of the suit filed by the villagers of Avalur in the Wallajah Talook. In submitting these with translation of the plaint, I beg to state that the time originally fixed for filing answers was, at my request, extended for two months longer, and expired on the 16th May 1869.

2. The Court being now adjourned, these answers will have to be filed on the day on which it re-opens, namely 26th June 1869.

3. I therefore request that the Board will be pleased to accord their early approval to the draft answers which I now proposed to file for myself and Mr. Lee-Warner, and sanction the defence of the suit at the cost of Government.

SUBMITTED for the Orders of Government, the amount involved in the suit being more than Rupees 1,000.

2. The answer should be modified in the following manner.

3. The defendants deny that the plaintiffs have suffered or will suffer any damage by the embankments and sluice of which they complain.

4. They assert that these works were necessary for the protection of lands in Sithandi.

5. Even if any loss of water were caused to plaintiffs by these works, (which the 1st defendant denies) a full equivalent would be given by a channel which has recentlybeen made to the Avalur Tank from the Palur anicut through lands belonging to villagers of Sithandi.

6. The Government as owner of sources and works of irrigation, have a right to exercise their control for the benefit of the public, and in this case they have done so without causing damage to the plaintiffs.

7. The defendants, therefore, pray that this suit may be dismissed with costs.

No. 393. ORDER THEREON, 17th June 1869, No. 1,725.

Miscellaneous.

THE Right Honorable the Governor in Council sanctions the defence of the suit on the usual terms, and approves of the modification of the answer proposed by the Board of Revenue.

2. It is not understood why a copy of the "Summons" issued by the Civil Court has been included as an enclosure to the Collector's letter to the Board.

(True Extract.)

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

To the Board of Revenue.

Exd. E. C. Shunker.

No. 4,167A.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 9th June 1869.

Read the following letter from J. D. ROBINSON, Esq., Collector of North Arcot, to the Acting Secretary to the Board of Revenue, dated Palmanair, 1st June 1869, No. 158:—

I HAVE the honor to forward copy of the notice received from the Chittoor Civil Court and of the draft answers prepared with reference thereto, on the subject of the suit filed by the Villagers of Avalur, in the Wallajah Talook. In submitting these with a translation of the plaint, I beg to state that the time originally fixed for filing answers was, at my request, extended for two months longer and expired on the 16th May 1869.

2. The Court being now adjourned, these answers will have to be filed on the day on which it re-opens, viz., 26th June 1869.

3. I, therefore, request that the Board will be pleased to accord their early approval to the draft answers which I now propose to file for myself and Mr. L. Warner, and sanction the defence of the suit at the cost of Government.

ENCLOSURE No. 1.

Summons under Sections 41 and 43 of Act XIII. of 1859.

CIVIL COURT AT CHITTOOR.

Original Suit No. 26 of 1868.

Plaintiffs, by Vakeel Nagayya.

1. Ayya K[illegible] Chariyar.
2. Chinna Rungah Chariyar.
3. Chekravarti Achariyar.
4. Ayya Ayyavayyangar.
5. Seshadri Ayyangar, son of Ayya Ramanuja Iyyangar.
6. Sreerama Kristnayyangar.
7. Pondicherry Vijiaragava Charriyar.
8. Rungayyangar.
9. Sreenivasa Venkata Charriyar.
10. Sama Sreenivassayyangar.
11. Akur Sreenivasa Ragava Charriyar.
12. Teruvengada Charriyar, son of Terumale Kistnama Charriyar.
13. Vijiaragavayyangar, son of Vadiyar Sreenivassa Iyengar.
14. Peria Vijiaragava Charriyar.
15. Kistnama Charriyar, son of Sreenivasa Ragava Ayyangar, and
16. Parasurama Gurakkal of Brahmin caste, Cultivators, residing at Avaloor, in Wallajah Talook, and
17. Syed Modin Sahib a Mussulman of the

Defendants.

1. J. D. Robinson, Esq., Collector of North Arcot.
2. J. Lee Warner, Esq., Head Assistant Collector of North Arcot, residing either at Nagalapuram in the Trivalore Talook, Madras District, or at Madras.
3. Varanasi Lukshmaya Naidoo, Tahsildar of Wallajah Talook.
4. Mr. D. Booth, in charge of Wallajah Range, North Arcot, residing at Ranipett.
5. Ragava Charriyar, Brahmin, Cultivator and Monigar of Avaloor, in Wallajah Talook.
6. Teruna Sreenivasayyangar of Avaloor, in Wallajah Talook.
7. Attipattu Vijiaragava Charriyar of do.
8. Avaloor Tillanayagam Pillay of Kalatttur, in Wallajah Talook.
9. Maniyam Narasima Gounden, Vannya caste, Cultivator, residing at Chittandi, in the said talook.

same profession and residence as other plaintiffs.

10. Umapatti Moodelliar, guardian of Aligappa Moodelly and his brother Teruvengada Moodelly minors, Monigars of Chittandi, residing at Karivedu in the said talook.
11. Chendra Goundan, Vannya caste, Cultivator, and residing at Chittandi.
12. Parasurama Gounden, do. do.
13. Chelamba Gounden do. do
14. Mutta Pillai, shepherd do. do.
15. Venkatachella Gounden, Vannya caste, Cultivator and residing at Chittandi.
16. Rungappa Gounden, do. do.
17. Sreerunga Pillai, Curnum caste, residing at Karivedu, in the said talook.

To J. D. Robinson, Esq., Collector of North Arcot, (1st defendant.)

WHEREAS the abovenamed plaintiffs have instituted a suit in this Court against you and other defendants, of which the particulars are hereunder specified; you are hereby summoned to appear in this Court on the 17th day of March next, at ten o'clock in the forenoon, in person or by a Pleader of the Court, duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, to answer the said plaintiffs, and for the settlement of the issues; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you or send by your Agent, any document on which you intend to rely in support of your defence.

Given under my hand and the seal of the Court this 20th November 1868.

(Signed) E. F. ELLIOTT,
Acting Civil Judge.

Particulars of the claim.

To establish plaintiffs' right to the receipt and retention of a supply of water as mamool in front of the bed of their tank. To remove the bund and tunnel worth Rupees 500, newly raised across by the defendants, and to recover Rupees 600, the loss of produce for 1867.

(True Copy.)

(Signed) J. D. ROBINSON,
Collector.

ENCLOSURE No. 2.

Draft answer to be filed by Mr. Lee Warner, Acting Head Assistant Collector of North Arcot.

WITH reference to the summons of the Chittoor Civil Court, under date the 20th November 1868, I beg to state that, under the instructions of the Collector, I inspected Avalur Village, and that on the result of my report on the state of the irrigation works in that neighbourhood, final orders were issued by the Collector for the construction of the dam and sluice which form the subject of the present suit.

2. As my connection with the case has solely arisen out of action taken by me in obedience to the orders of my superior officer, I beg that my name may be removed from the list of defendants.

PALMANAIR,
1st June 1869.

(Signed) E. GIBSON,
Assistant Collector to Collector.

ENCLOSURE No. 3.

To

The Chittoor Civil Court.

Amount of Plaint, Rupees 1,110.

Plaintiffs. *versus.* *Defendants.*

By Pleader Nagayya.

1. Appa Krishnama Chari of Avalur, in Wallajah Talook, in North Arcot.
2. Chinna Runga Charriyar of do.
3. Chekravarti Achari of do.
4. Ayya Aiyavaiyangar of do.
5. Seshadri Aiyangar son of Aiyya Ramaunja Iyengar.
6. Sreerama Kristnayyangar.
7. P. Vijiaragava Charriyar.
8. Rungayyangar.
9. Sreenivasa Venkata Charriyar.
10. Sama Sreenivasa Ayyangar.
11. Akur Sreenivasa Ayyangar.
12. Teruvenkata Charriar, son of P. Kristnama Charriyar.
13. Vijiaragavayyangar son of V. Sreenivasa Ayyangar.
14. Periya Vijiya Raghva Charriyar.
15. Kristnama Charriyar, son of S. Raghava Ayyangar.
16. Parasurama Gurukkal, and
17. Syed Mohideen Saib.

1. J. D. Robinson, Esq., Collector of North Arcot.
2. J. Lee Warner, Esq., late Head Assistant Collector of North Arcot, now residing at Nagalapuram and Madras, in the Madras District.
3. V. Lakshmiah Naidoo, Tahsildar of Wallajah Talook.
4. Mr. D. Booth, in charge of the Wallajah Range.
5. Ragava Chari, Monigar of Avaloor Village.
6. T. Sreenivasa Ayyangar, of Avaloor.
7. A. Vijiaragava Charriyar.
8. Thillanoyagam Pillai, Curnum of Avaloor Village.
9. Narasima Gounden, Monigar of Sithandi.
10. Umapathy Moodelliar, guardian to Aligappa Moodelly and Teruvengada Moodelly, minor brothers of Aligappa Moodellp Monigar of Sithandi.
11. Chenara Gounden, ryot of Sithandi.
12. Parasurama Gounden of do.
13. Selamba Gounden of do.
14. Mutha Pillai of do. (Shepherd caste.)
15. Venkatachella Gounden of do. (Vaniya caste.)
16. Rungiah Gounden of do. and
17. Curnum Runga Pillai (Curnum caste.)

Plaintiffs bring this suit to have their right established to the usual storage of water in front of their tank and maintenance of its supply, and to remove the dam and the sluice constructed by defendants at a cost of about Rupees 500 to the prejudice of the customary storage and supply above alluded to. Plaintiffs hold the greater part of the sixty shares of the Avalur village. The village is large and yields a revenue of some Rupees 3,000. To the west of this village is a tank supplying the means of irrigation. Defendants Nos. nine to seventeen who are inhabitants of Sithandi village, possess thirty cawnies of one crop nunjah land in front of that tank. These defendants and other ryots of their village are wont to cultivate those fields whenever there is no water in the aforesaid tank (belonging to the plaintiffs).

2. When the tank is full, the defendants fields (thirty cawnies) are inundated to the depth of one or one and a half yards. The surplus water from Sithandi and Karivedu villages has hitherto passed into the spring channel and tank and irrigated the plaintiffs fields.

3. Defendants nine to seventeen raised a vain objection that the flood channel which has been supplying the plaintiffs tank for the last 15 years deposits silt and sand on their nunjah fields; and with a view to entail loss on the plaintiffs and to secure their own interests, have, with

the aid of defendants one to four and with the connivance of defendants five to eight raised an embankment* to the east and north of their nunjah fields contrary to long existing usage and prejudicial to the rights of the plaintiffs. The defendants in question have also constructed a sluice† on the northern side to convey the water pent up by the embankment into a channel which supplies a different village, instead of allowing it to flow as usual to the benefit of the plaintiffs. This work was commenced in October 1867, and completed in December of that year.

* Two or two and a half yards high and four yards broad.

† Three feet broad and three feet high.

4. By so doing there is a deficiency of two months supply to the plaintiffs tank and a proportionate loss of produce.

5. Notwithstanding that plaintiffs objected to the said work both before its commencement and during its execution, defendants one to four took no notice of their representations but aided defendants nine to seventeen in the execution of the work in question to the prejudice of the rights of the plaintiffs.

Plaintiffs, therefore, pray that the embankment raised by defendants at a cost of some 500 Rupees may be removed together with the sluice, that their right to the storage of water one or one and a half yards deep in the fields of defendants nine to seventeen in front of their tank may be established, that there right in the usual surplus water of Sithandi and Kariyala villages may be secured by allowing it to fall as usual on the nunjah fields of defendants nine to seventeen, and ultimately into the plaintiff's tank and spring channel, and that the loss of cultivation and produce which has been entailed on the plaintiffs during 1867, amounting in all to Rupees 600, owing to the construction of the said work, may be recovered from the defendants with interest and costs.

(Signed) AIYA KRISTNAMA CHARI, and others.

(True Copy)

(Signed) J. D. ROBINSON,
Collector.

ENCLOSURE No. 4.

Draft Answer.

Plaintiff's assertion that the new embankment obstructs the water supply to their tank and fields is factious and groundless, as will now be shown.

The Avalur tank has heretofore been fed from a spring and flood channel, but the water from the latter when full, inundates nearly 30 Cawnies of the Sithandi arable land, as the plaintiffs themselves admit.

The Sithandi villagers complained of the damage sustained owing to their fields being thus inundated from the flood channel and covered with deposit of sand and silt. On this, the Range Officer Mr. Booth, inspected the spot and recommended that an embankment should be raised and a sluice opened in it for the purpose of drawing off the water which might stand on the Sithandi fields. This suggestion was accordingly adopted and the work was executed. By these works the Sithandi fields are protected from inundation without obstruction to the supply of water to the Avalur tank or prejudice to the agricultural interests of that village. The spring channel flows as heretofore into the Avalur tank and the surplus water which forms the subject of this suit is, when excessive, carried into the spring channel and eventually to the Avalur tank; or may be taken direct to the plaintiffs' fields as formerly by the sluice opened in the new embankment now objected to by the Avalur party. In addition to the customary water supply which has thus been secured to the Avalur villagers, a feeder has also been recently provided for their tank from the Palar anicut. This feeder passes through the arable lands of the Sithandi village, and benefits the Avalur villagers at an actual loss of cultivable land to those Sithandi ryots through whose fields it has been carried. It will thus be apparent to the Court that the Avalur villagers not only get their customary supply from both the "spring and flood channels" as above pointed out, but have also the advantage of a new feeder from the Palar anicut, which has enabled them to extend the irrigable area of their village.

Mr. Booth, whose professional opinion should have great weight, speaks of the Avalur complaint as "a most groundless interference."

From the above facts it will be clear to the Court that the innovation on mamool which forms the burden of grievance in the present suit has not entailed any loss on the Avalur ryots, but has only been made for the protection of the Sithandi fields from inundation, and in the *bona fide* interests of the ryots of that village and of Government. The new works which form subject of litigation, merely provide for the drainage of surplus water which was injuriously impeding the cultivation of profitable land in an adjoining village, and by facilitating the passage of the water so drained to the Avalur tank, actually benefit that village, whilst at the same time they remove a serious obstruction to the industry of their neighbours in Sithandi.

The Government have an absolute right in the disposal of water supplied at their own cost and in all water which has not been stored at the expenditure of private capital. The right to improve such water supply or to dispose of it in such manner as may be most beneficial to the general interests of the country vests exclusively in the Government. Out of the exercise of such rights, no civil action can properly arise, as in the event of any diminution of water supply being caused and as will often happen by the prosecution of works of general utility, the ryots thereby affected have their claim for remission of the nunjah assessment and obtain it.

Thus even had there been a diminution of water supply in the present instance, the plaintiffs have no case to go to a Civil Court with. Far less have they such a case, when as shown above, not only has the customary supply not been diminished, but an additional source of irrigation been provided by the excavation of a new channel from the Palar anicut.

Prays therefore, that the suit brought by the plaintiffs may be dismissed with costs, as groundless and vexatious.

(Signed) E. GIBSON,
Assistant Collector for Collector.

SUBMITTED for the orders of Government, the amount involved in the suit being more than Rupees 1,000.

2. The answer should be modified in the following manner:—

3. The defendants deny that the plaintiffs have suffered or will suffer any damage by the embankments and sluice of which they complain.

4. They assert that these works were necessary for the protection of lands in Sithandi.

5. Even if any loss of water were caused to plaintiffs by these works (which the first defendant denies) a full equivalent would be given by a channel which has recently been made to the Avalur bank from the Palur anicut through lands belonging to Villagers of Sithandi.

6. The Government as owner of sources and works of irrigation have a right to exercise their control for the benefit of the public, and in this case they have done so without causing damage to the plaintiffs.

7. The defendants therefore pray that this suit may be dismissed with costs.

(True Copies and Extract.)

Sub-Secretary.

To the Acting Secretary to Government, Revenue Department,
with four enclosures to be returned.

Copy to the Collector of North Arcot.

Exd. G. A. Turton.

H. 1725. P.D. 5

Proceedings of the Madras Govt
Under date the 17th June 1869
Read the following
Pr: of the Board of Revenue
H.S. 9th June 1869, Nº

The Rt Honble the
Govr in Council sanctions
the defence of the
Suit in the usual
terms, and approves
of the modification
of the answer proposed
by the Board of Revenue

WD.

It must be understood that
a copy of the "Summons"
issued by the Court Court
has been included as the
Enclosure to the Collrs
Letter to the Board &c.

In To the Govt of Fort St. Geo: Dec: 17
with the Evidence

1929

1869.

Board of Revenue,

MADRAS.

PROCEEDINGS, 9TH JUNE 1869, No. 4,167A.

Rec^d 9 June 1869 Encl.
Received

17 June 69

1725

JUNE.

No. 4,167A.

Suit—No 26 of 1868, instituted in Chittoor Civil Court, by Villagers of Avalur in Wallajah Talook, North Arcot District, regarding a tank, —Letter from Collector requesting sanction for defence of, at public cost, submitted for orders of Government.—Certain modification to be made in proposed draft answer.