M.R.O. 1—30,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1809 Press Mis.

561-562

Dated 25th June 1869

Not to be folded or roughly handled

561. Read the following Proceedings of the Board of Revenue, dated 19th June 1868, No. 4,556 :—

Read the following letters, being replies to Board's Proceedings, dated 4th January 1867, No. 21.

From	Collector	of Ganjam,	dated	31st	January 1867,	No. 128.
,,	,,	of Vizagapatam,	,,	28th	,, ,, ,,	48.
,,	,,	of Godavery District,	,,	16th	,, ,, ,,	8.
,,	,,	of Kistna District,	,,	23rd	March ,, ,,	76.
,,	Acting ,,	of Nellore,	,,	3rd	May ,, ,,	123.
,,	,,	of Bellary,	,,	11th	February ,, ,,	25.
,,	,,	of Cuddapah,	,,	18th	Januray ,, ,,	7.
,,	,, ,,	of Kurnool,	,,	14th	,, ,, ,,	6.
,,	,, ,,	of ,,	,,	8th	March ,, ,,	41.
,,	,, Sub-Collr.	in charge of Madras,	,,	28th	May ,, ,,	133.
,,	,,	of North Arcot,	,,	29th	,, ,, ,,	131.
,,	,,	of South Arcot,	,,	26th	March ,, ,,	70.
,,	,,	of Tanjore,	,,	22nd	February ,, ,,	45.
,,	,,	of Trichinopoly,	,,	18th	January ,, ,,	16.
,,	,,	of Madura,	,,	24th	,, ,, ,,	20.
,,	,,	of Tinnevelly,	,,	16th	April ,, ,,	197.
,,	,,	of Coimbatore,	,,	9th	February ,, ,,	40.
,,	,,	of Salem,	,,	23rd	January ,, ,,	20.
,,	,,	of South Canara,	,,	4th	April ,, ,,	59.
,,	,,	of Malabar,	,,	30th	January ,, ,,	21.

Resolved that the letters above recorded be submitted to Government, with reference to their Order, under date 18th December 1866, No. 3,412.

2. With their Proceedings, dated 11th October 1866, No. 7,347, the Board submitted to Government a report from the Collector of Tanjore on the operations of the Department of Public Works in that district for the official year 1865-66. This was communicated with Government Order, dated 25th October 1866, No. 3,414, to Captain Oakes, the Superintending Engineer of the Sixth Division, whose attention was called specially to the Collector's remarks regarding the state of the irrigation works on the Cauvery river. Captain Oakes replied to this order in a letter, dated 26th November 1866, No. 1,078.

3. In this letter it was pointed out that great difficulty was experienced, by the Officers of the Public Works Department, in the execution and repair of Irrigation works, owing to the opposition of the ryots, etc. who, whenever they imagined their rights to be invaded, threw all manner of difficulties, legal and other, in the way of the servants of Government; and Captain Oakes proposed that "An Act "be passed for the protection of Officers (both Revenue and Public Works Depart- "ments) acting in good faith for the improvement of the country, especially pro- "viding that they shall not be amenable to the Civil Courts for injuries, real or "imaginary, under the following circumstances:—

"*First.*—In carrying out new works, under competent authority, for the improvement of the c[illegible]y.

"*Second.*—In enlarging or reducing the dimensions of existing works; and
"*Third.*—In regulating the supply of water in the channels at all times, and "especially in times of temporary scarcity, and power might be given to the "Magistrate to punish resistance to the constituted authorities in these points "summarily, and without appeal except to Government."

4. Captain Oakes' letter was forwarded to the Board with Order of Government, dated 18th December 1866, No. 3,412, calling upon the Board to obtain the opinions of the Collectors on the subject, and to submit the same with their own remarks. The letters recorded above are the replies to the Board's requisition.

5. The Collectors of Tanjore, Kistna District, Ganjam, Cuddapah, Kurnool, Madras (Acting Sub-Collector in charge,) North Arcot, South Arcot, Trichinopoly, Madura, Tinnevelly, Coimbatore, Salem, and South Canara, are all more or less in favor of the proposed Act. The remaining five, namely, those of Godavery, Vizagapatam, Nellore, Malabar, and Bellary, are either strongly opposed to any such measure, or do not see any necessity for its introduction at present.

6. The Collector of Tanjore refers to his previous letter, and further observes that, after consideration of the subject, he is of opinion that what is required is not merely such an Act as that suggested by Captain Oakes, but a special Legislative Enactment, in which it shall be distinctly laid down that the jurisdiction of the Civil Court is not to extend to suits regarding irrigation works, of the supply and distribution of water for irrigation purposes.

7. Mr. Morris argues that Government must be considered the proprietor of all the water which is supplied from public rivers, channels, etc., because it charges a rate for its use, and grants remissions in cases where wet crops have failed through an insufficient supply of water; and he maintains that, therefore, Government should decide how such water should be allotted, Government being specially interested in its proper distribution.

8. In illustration of his objection to the decision of irrigation disputes by the Civil Courts, Mr. Morris points out that the Civil Judges are obliged, and properly so, to confine themselves to the point in dispute, and that the general question of irrigation, as affecting lands situated many miles off, is consequently, as a rule, lost sight of, to the prejudice of the general interests of Government and the country.

9. Should it be enacted, as the Collector desires, that all irrigation disputes are to be decided by the Revenue Authorities subject to appeal to the Board, he recommends (as a precaution against the hasty decision of minor disputes on the reports of Tahsildars and other subordinate Officers) that the rules, laid down in Act No. VI. of 1857, for referring disputes regarding the amount of compensation to be paid for land taken up for public purposes, should be applied to all disputes regarding irrigation, thus enabling the disputants, if dissatisfied with the decision of the Revenue Authorities, to refer their cases to the determination of arbitrators.

10. The late Collector of Ganjam points out that, as the due supply of water to lands classed and leased to ryots as "irrigated," is a recognised condition of the lease, and as the interests of a great multitude of ryots are dependent on the wise and timely distribution of water, it is necessary that the Revenue Officers should equally on behalf of Government and the ryots, exercise an arbitrary control over the details of water-supply.

11. Mr Forbes observes that liability to legal process hampers unduly the free action of Collectors, and he forwards a Memorandum, showing the necessity for a law based on an entirely different principle from that which obtains in England.

Two letters have been received from the Acting Collector of Kurnool, dated 14th January and 8th March 1867, respectively. In the first of these he states that as regards the Godavery, Kistna, and Nellore Districts, he considers the proposed Act most desirable; and he mentions cases where lands which might be irrigated are not so, because the landholders will not allow a passage for water through their fields. In his second letter he observes that in Kurnool District there appears to be no necessity for the Act, the ryots being of a more accommodating disposition.

12. The Collector of South Arcot is strongly in favor of the Act. He dwells much on the fact that in many cases ryots raise objections to the execution or alteration of irrigation works, not on account of any injury which they can possibly anticipate to themselves, but simply because their neighbours are likely to be benefitted thereby, and he draws the Board's attention to a suit instituted against himself and the Superintending Engineer, Fifth Division, (recorded in Board's Proceedings, dated 8th February 1867, No. 794,) concerning the supply of water to the village of Paloor, as illustrative of the necessity which exists for some legislative measure for the protection of Government Officers, when acting impartially and "bona fide" for the public good.

13. The Collector of Trichinopoly, in advocating the introduction of the Act, observes that large landholders are frequently led by their desire to secure not merely water on their fields, but running water, to raise objections to works which are likely to deprive them of this advantage; and he points out the waste of water entailed by allowing a constant flow over the fields, and also the fact that by such a system the poorer classes are deprived of what should fall to their share.

14. The Collectors of Salem and South Canara, although not considering that there is any necessity for the Act in their districts, nevertheless recognise the desirableness of some such legislation in such districts as Tanjore and South Arcot.

15. The Collector of Malabar, although doubtful as to the expediency of the Act proposed by Captain Oakes, considers it not undesirable that it should be laid down clearly that Government is the owner of the public water supplies, and has the power, through its Officers, to make the best distribution that can be made for the public good. He would not, however, deprive persons who may consider themselves aggrieved of the protection of the Civil Courts.

16. The Collector of Vizagapatam is opposed to the introduction of the Act: he has apparently experienced no difficulty in his district, such as the Collectors of Tanjore and other districts have complained of. He encloses a letter from the Principal Assistant Collector, who also deprecates any further legislation. Mr. Boswell maintains that to exempt Revenue and Public Works Officers from liability of being sued for acts done in carrying out new works, or enlarging or reducing existing ones, would be a serious infringement of the rights of private individuals. With regard to resistance to the constituted authorities in these points, he considers the Section 188 of the Indian Penal Code is sufficient to meet all the wants of the case.

of their duty, is founded on a principle which does not apply to the case of Public Works Officers.

26. The law should also, in the Board's opinion, provide that the objections of those whose interests are likely to be affected by any work, shall be heard and considered, *before* the work is commenced, or carried out, so as not to render such objections, if well founded, futile.

27. With reference to the Superintending Engineer's remarks in paragraph 6 of his letter of the 26th November 1866, it is unnecessary for the Board on this occasion to say more than that the land tenure of Tanjore, however peculiar or inconvenient it may seem, cannot now be disturbed.

28. The Board request the attention of Government to the enclosure to their third Member's letter of the 31st January 1867, which touches on a question of great importance.

No. 562. ORDER THEREON, 25th June 1869, No. 1,809.

Irrigation, No. 15.

THE Right Honorable the Governor in Council is not of opinion that sufficient has been adduced to support an application to the Legislative Department for aid in passing an Act to exempt Revenue and Public Works Officers from the jurisdiction of the ordinary Courts when carrying out irrigation or other public works having for their object the general benefit of the country. Act VI of 1857 is held sufficient for the acquisition of any lands which may be required for the purpose of constructing irrigation works, and this seems to be all that is required at present. As observed by the Board, there is little doubt that by the common law of the country, the State has the power of dealing with irrigation from public sources, and the Government believe that the established Courts will so decide whenever a case arises which admits of the point being formally and judicially determined.

(True Extract.)

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

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

Exd. E. C. Shunker.

17. The Collector of Bellary does not give a decided opinion either for or against the Act; but he mentions a case, wherein a suit would have been avoided had such an Act as that proposed been in existence.

18. The Acting Sub-Collector in charge of Madras, although not expressing an opinion in favour of the Act as proposed by Captain Oakes, recognises the necessity for some legislation on the point, and offers some suggestions. As an instance of the unsatisfactory state of the law at present, he refers to the case of the Nattapettah channel, near Conjeveram, (recorded in Board's Proceedings, dated 20th July 1865, No. 4,218,) and he proposes that irrigation works should be, as in Holland, in the hands of Local Councils, who should collect and levy cesses, and have powers to keep the works in repair and to improve them. He is in favor of the Act so far, that he considers that "as regards single works in districts where a Local Council or Court would be impracticable," persons with grievances against Officers carrying out improvements should be referred to Collectors and the Board.

19. The tenor of the replies from the other District Officers may be gathered from paragraph 5 of these Proceedings; but the letters themselves do not call for special remark.

20. The Board would observe that any actual necessity for a law of the nature proposed by the Superintending Engineer of the sixth Division has scarcely been shown.

21. The Superintending Engineer complains of being opposed by the Merasidars in his schemes for the improvement of irrigation. This opposition seems to consist in threats of Civil actions. No instance is adduced of any such action having been brought to a final issue in the Courts, or of the Courts having decided that the right of dealing with irrigation from *public* sources does not rest in the State.

22. The Board entertain no doubt that, by the common law of the country, the State has this power and right inherent in itself; and until the Courts decide otherwise, it would perhaps be premature to resort to special legislation.

23. Two suits in which this issue is distinctly raised are now pending; and there can be no difficulty in bringing the question before the Courts, in Tanjore, by proceeding at once with some of the works alluded by the Superintending Engineer.

24. If, however, Government consider it undesirable to await the result of these suits, the Board would recommend that the proposed Act be merely declaratory of the right of the State to the water of rivers and streams, and of its right to deal with and regulate irrigation from rivers, streams, channels, tanks, and other public sources of irrigation as it deems best for the public interests, all parties injured by any act of the State under this law being entitled to compensation to be determined by the Civil tribunals, if the claims cannot be amicably adjusted otherwise.

25. The Board cannot advocate the Superintending Engineer's proposal that, in respect to acts connected with irrigation, the Officers of Government should be placed beyond the law. Such a measure would be contrary to every principle of justice, and would deprive the people of a proper and necessary safeguard against official misconduct. The limited and guarded protection granted to Judicial Officers, in respect to functions which they are bound to exercise in the discharge

Govt. of (1869) Madras.

REVENUE.

To

THE BOARD OF REVENUE,

&c., &c., &c.

Dated June, 25th.

Read.

G. O., 25th June 1869, No. 1,809.

JUNE.

Nos. 561-562.

Act to exempt Revenue and Public Works Officers from the jurisdiction of Civil Courts when carrying out irrigation and other public works having for their object the general benefit of the country.—Its introduction considered premature.

No. 21.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 4th January 1867.

Read the following Proceedings of the Madras Government, dated 18th December 1866, No. 3,412, Revenue Department.

Read the following letter from the Superintending Engineer, Sixth Division, to the Secretary to Government, Department of Public Works, dated Tanjore, 26th November 1866, No. 1,018:—

1. With reference to Government Order, No. 3,414, dated 25th October, I have the honor to inform you that I am well aware of the condition of the first three streams, mentioned in paragraph 14 of Mr. Morris's report, and of the methods by which they may be improved, but in each case existing rights must be interfered with, and the improvements proposed by me are strongly opposed.

2. I may state, briefly, the chief cause of the bad condition of the streams, and the remedy I would propose in each case:

FIRST. *The Mooliyaur, or Mooliyaur and Iyenar*, for the streams unite.—These streams derive their supply from a dam across the Coriyaur, the headsluices being situated about a quarter of a mile from the dam; the floor of the Mooliyaur sluice is 2 feet 11¼ inches, that of the Iyenar 5 feet 5¼ inches below the bed of the Coriyaur, at the site of the dam, which is one foot above the river-bed, and has damstones 1½ or 1¾ feet high. How can the beds of the streams be kept clear under such circumstances? Raising the floors is a simple and obvious remedy; this is opposed. Again, about two miles below the head of the Iyenar, is a dam for the supply of the Puniyoor, a high-level village; the crown of this dam is 1 foot 8¾ inches above the floor of the headsluice, and the damstones are two-and-a-half feet high. It is useless clearing the head under these circumstances. The dam must be removed. The supply for the Puniyoor village must be obtained by carrying a channel up to the head of the Mulliyaur, and it will cross the Iyenar by a syphon-sluice. The Puniyoor Mirassidars oppose this, and do not wish their dam to be removed; while the Kundamungalum Mirassidars, through whose land the extended channel will pass, object most strongly to the new channel passing through their lands. I estimate the cost of the work required at Rupees 7,500 to Rupees 8,000.

SECOND. *The Hurrischendranuddy*.—This channel takes its head from the Coriyaur from above the dam adverted to above. Here, again, the floor of the sluice is far below the river-bed; at about one-and-a-half and three-and-a-half miles below the head, the Kunniyoor and the Pullivirty channels cross the Hurrischendranuddy by aqueducts: old massive native-works, over which the waters of the Hurrischendranuddy pass during floods, and which act as dams, and cause the bed of the river to silt. The former should have been removed some ten or twelve years ago, when the Kunniyoor village was supplied with a headsluice in the Hurrischendranuddy; the aqueduct conveys water from the Atheveraramanar, and when I saw the work, the drainage-water from the Kunniyoor village was passing over the aqueduct, instead of water for the supply of the village. The villagers objected to the removal of the aqueduct. The villagers of Pullivirty also object to the removal of their aqueduct. Nearly midway between the aqueducts is the Trichitinuttum syphon surplus-sluice, the crown of which is about four feet above the bed of the Hurrischendranuddy. Unless these works are removed, clearing the bed is comparatively useless: from Rupees 5,000 to Rupees 7,500 would probably be required for this channel.

20 Valies.
12 Valies.

THIRD. *The Adappaur*.—Some eighteen or twenty years ago a dam was placed across this river in the Pamany limits, and Rajah-voikals were taken from it. About three-and a-half or four miles below the dam, the Rajahvoikals pass through a ridge of sand, and here it is impossible to keep the channels clear, especially the north Rajah-voikal, the supply is chiefly required on the north for lands formerly irrigated by the Tulnoyer Cotagum, which was drained and cultivated

to lands dependent upon the tail of a channel when the water in the rivers was low; but, in consequence of the Department of Public Works having since then taken charge of irrigation works in Tanjore, and Revenue Officers having more than once been included as defendants in Civil Suits, by reason of having issued such orders as abovementioned, they have lately abstained from interfering as they did formerly.

7. It is only of late years that this practice, of dragging the Officers of Government into the Civil Courts in these matters, has sprung up; and, though I am not aware that any authoritative decision has as yet been passed as to how far they are liable to be sued for acts done, or orders given regarding the distribution of water for irrigation, yet, I have no hesitation in stating, that the number of such suits, unless legislative measures are adopted to check them, will very much increase, and be productive of serious inconvenience to the public service.

8. There is no doubt whatsoever that the regulation of irrigation from river-channels is not a matter affecting individual interests only, but that the general welfare of the agricultural population in this district, as well as the interests of the public revenue, are greatly dependent thereon. The closing or removing for a day or two, at a critical period, of some particular sluice, or dam, by which 10 valies in one village are irrigated, may be the means of saving 100 valies of land in villages lower down, which would otherwise be irrecoverably lost, without at the same time affecting, to any serious extent, the cultivation of those 10 valies, and I certainly think that a law should be passed to prevent Government Officers from being sued in the Civil Courts when they interfere in such cases.

* * * *

6. The Government is supposed to be the proprietor of the soil in the District of Tanjore, but the only rights of a landlord, which the Government exercises, is that of receiving the land tax, and of keeping irrigation works in repair. Government is precluded from improving its property under the existing Mirassi right, which consists, firstly, in the right of occupancy and ownership in cultivated land, with absolute control over, and power of alienation of the same as long as the Government assessment on such land is paid; and, secondly, in the right to the refusal of the waste-land in the village by all the landholders therein, in proportion to their several holdings. Not only is Government precluded from improving its property, when, by so doing, a portion of its property may be more or less injured, but even when the improvement entails no injury, but because it is obstinately, or blindly, opposed by Mirassidars who, as I have stated on a previous occasion, too often regard any benefit to their neighbours as an injury to themselves. Again, as the law now stands, Government Officers cannot even make arrangements to save crops on which Government revenue depends, as shown by Mr. Morris in paragraph 8 of his letter quoted above.

7. It must be borne in mind that the rivers and channels are more or less in their natural state, and that a uniform depth of water throughout a season cannot be maintained; consequently, the sluices provided for irrigation are capable of carrying off a far larger supply than the lands dependent upon them require, and this in a measure cannot be remedied; but, on the other hand, there are large native-built sluices through which, even with a few inches of water in the main stream, a far larger supply can be drawn off than the lands under them require, and these sluices are, as a rule, on so low a level, that the channels below them become silted up, and require constant clearing.

8. Under the circumstances described above, I would submit, for the consideration of Government, the necessity of passing an Act for the protection of their Officers* acting in good faith for the improvement of the country, especially providing that they shall not be amenable to the Civil Courts for injuries, real or imaginary, under the following circumstances:—

* Both of Revenue and Public Works Departments.

First.—In carrying out new works, under competent authority, for the improvement of the country.

some years ago. A second dam, in the limits of Woombalachary, might be built, which would be below, and avoid the sand-ridge, and yet which would command the lands requiring a supply of water. To this the Pamany Mirassidars object, on the plea that it would interfere with their drainage, and, though provision would be made to prevent injury to their drainge, they still oppose the construction of the dam.

3. Though the condition of the three streams, as described above, is such as to tend to diminish the supply which the lands under them receive when the rivers are low, I have no hesitation in asserting that more than fifty per cent. of the remissions were due to the nonregulation of the supply the streams themselves actually received.

4. Before the transfer of the Executive to the Public Works Department, in 1858, at times when the supply of water in the rivers partially failed, the members of the Revenue Department were in the habit of closing the upper-sluices in a river or channel to admit of a supply of water passing down to the lands dependent on the tail of the river or channel, and so the supply was regulated alternately, and the crops were, perhaps, just kept alive till a rise of the waters, or local rains, rendered any interference on the part of the Government servants unnecessary. When the transfer of the Executive took place in 1858, the Tahsildars and others ceased to take that interest in the welfare of the district which had hitherto prevailed, especially in connection with the public work, and their results and the custom of attempting to regulate the supply to lands, as described above, gradually fell into desuetude, and any interference now is either opposed and resisted, or legal proceedings are threatened; and the Collector, with whom I have discussed the matter, states that there is no law by which he can insist upon a regulation of the supply of water according to the actual requirements of lands in times of scarcity, or of partial failure of the water supply.

5. The Collector, on a reference from me, writes as follows:—

* * * *

I beg to state that the only law bearing on this point, at the present time, which I am aware of, is Chapter XXII. of the Code of Criminal Procedure.

3. In Section 318 of this Chapter, whenever the Magistrate of the district, or other Officer exercising the powers of a Magistrate, shall be satisfied that a dispute, likely to induce a breach of the peace, exists concerning any water within his jurisdiction, he can, after taking certain proceedings, and after satisfying himself as to which party is in possession of the subject of dispute, declare the party, whom he may decide to be in such possession, to be entitled to retain possession until ousted by due course of law, at the same time forbidding all disturbance of possession until such time.

4. Again, in Section 320 of the same Chapter, if a dispute arise concerning the right of use of any water, the Magistrate, or other Officer as aforesaid, within whose jurisdiction the subject of dispute lies, may inquire into the matter, and order that possession thereof shall not be taken, or retained, by any party to the exclusion of the public, or of any person, or class of persons, to whom its use has been hitherto open, until the party claiming such possession shall obtain the decision of a competent Court adjudging him to be entitled to such exclusive possession. Provided that the Magistrate, or other Officer as aforesaid, shall not pass any such order if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of inquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised during the last of such seasons before the complaint.

5. You will, therefore, perceive that the law, as it exists at present, does not lay down such rules on this subject as are unquestionably desirable.

6. Some years ago, the Revenue Officers of this district were in the habit of interfering in cases like those you mention, and of ordering sluices or temporary dams at, or near, the head of a channel to be closed or removed for a time, in order to admit of a supply being carried down

Secondly.—In enlarging, or reducing, the dimensions of existing works ; and

Thirdly.—In regulating the supply of water in the channels at all times, and especially in times of temporary scarcity, and power might be given to the Magistrate to punish resistance to the constituted authorities in these points summarily, and without appeal except to Government.

9. With regard to compensation for real injury, I would observe that, were it found necessary to cut off the water supply entirely from a few acres of lands, for the purpose of bringing a large tract under cultivation, a case which would seldom or never occur, the land thus injured should be purchased, or the difference of its value, when cultivated with dry and wet crops, might be paid to the proprietor, and the land be thereafter assessed as dry land: but, in cases in which the excavation of new channels is opposed on the plea of injury to the lands through which the channel would pass, the Magistrate should be empowered to dispose of the matter magisterially, or without appeal except to Government.

10. Were an Act with the provisions I have suggested passed, the Public Works Officers, unfettered by considerations of legal penalties and annoyances, to which they are now subjected, would be able to improve the district very materially, especially the eastern portions, and the revenue of the Tritrapundy taluk alone might be increased, in a few years by upwards of a lac of rupees. At present, everything in that taluk is in a state of stagnation, and sluices built ten or twelve years ago are still unused, owing to captious opposition on the part of certain Mirassidars, while the Government Officers are unprotected and helpless.

Transferred to the Revenue Department, with a view to the opinions of Collectors being obtained on the subject referred to.

FORT SAINT GEORGE,
8th December 1866.

(Signed) C. A. ORR, Colonel, R. E.,
Secretary to Government.

ORDER THEREON, 18th December 1866, No. 3,412.

Forwarded to the Board of Revenue, who will obtain the opinions of the Collectors on the subject, and submit the same with their own opinion as soon as practicable.

(True Extract.)

(Signed) J. D. SIM,
Secretary to Government.

Forwarded to all Collectors, for early report.

(True Extracts.)

(Signed) W. HUDLESTON,
Secretary.

(True Copy.)

(Signed) J. T. MAYNE,
Acting First Assistant.

To all Collectors.

Exd. J. Wright.

13 6

From G. S. FORBES, Esq., Collector of Ganjam, to the Secretary to the Board of Revenue, dated Circuit Office at Russelconda, 31st January 1867, No. 128.

1. In reply to the Board's Order, No. 21, of the 4th January, desiring me to express an opinion as to the expediency of exempting Collectors from process of Law, for acts done by them in regulating the details of irrigation, whether in order to prevent loss from injudicious diversion or obstruction, or to extend irrigation, I would observe that, as the due supply of water to lands classed and leased to ryots as "irrigated," is a recognised, though not an expressed condition of the lease, and as the interests of a great multitude of ryots are dependent on the wise and timely distribution of water, it is evidently necessary that the Revenue Officers of Government should on their behalf, as well as on that of the ryots at large exercise an arbitrary control over all the details of water supply, whether permanent or emergent. Now as the Government recognise a ryot's claim to remission on failure of water supply however casued, there remains little ground for the intervention of a Court of Law, and it naturally follows that the Board of Revenue should be the sole Court of Appeal for ryots claiming to have suffered loss either from acts of the Collector, or by default of supply attributable to other causes.

2. If this is conceded, it is of course desirable to bar legal process, the liability to which would hamper the free action of Collectors in a matter of such vital importance to the ryots at large and to the Government. Closely connected with this matter is the question of water rights as between Zemindars and other large proprietors, and I would request the attention of the Board to the accompanying Memorandum, in which I lately endeavoured to show the necessity for a Law based on an entirely different principle from that which obtains in England. Whether such an Act, after affirming a principle in accordance with the practice of this country, should refer litigants to the Courts, or to the Revenue Board, is open to discussion.

ENCLOSURE No. 1.

An Act to define the rights of Landed Proprietors in running waters passing through or bordering their Estates.

1. The following remarks are designed to show that the rules, which have been adopted by English Courts of Law, for the decision of disputes relating to the diversion of water, cannot be applied to litigation on this subject occurring in India:—

2. These rules proceed on a principle which was specially devised to meet the cases which presented themselves in the countries where the subject first received attention, and is wholly inapplicable to a country where water is absolutely and permanently appropriated by riparian proprietors for purposes of irrigation.

3. Mr. Justice Storey, the American Jurist, and others who have followed him on the same subject both in that country and in England, adopt the principle that the *bed* of a stream, as far as its central thread, is the property of the proprietor who owns the bank and adjoining land, but that his interest in the water of the stream is limited to a title to use the water temporarily only.

4. In the collection of legal maxims, edited by Mr. Herbert Broom, the right is defined as follows:—

"Each proprietor of the land has a right to the advantage of the stream flowing in its natural course over his land, and to use the same as he pleases for any purposes of his own, provided they be not inconsistent with a similar right in the proprietor of the land above or below, so that neither can any proprietor above diminish the quantity or injure the quality of water which would otherwise naturally descend &c., &c."—Page 334.

5 Thus, there obtains in England, and the United States, a rule of law fitted solely to the case of riparian proprietors diverting water for temporary uses, such as Mill-works, and with this rule has grown up the dogma that there can be no property in running water, a fiction which claims to be founded on the obvious design of Providence. It will naturally be asked, what then was that design in countries like India, where the diversion of rivers and streams to irrigation is practised on a scale which not merely diminishes but sometimes exhausts the whole body of running water, as is exemplified to the letter in the case of the river Cavery.

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From D. F. CARMICHAEL, Esq., Collector of Vizagapatam, to the Secretary to the Board of Revenue, dated Camp at Gunapur, 23th January 1867, No. 48.

1. I beg to acknowledge Board's Proceedings, No. 21, of 4th January instant, referring for the opinion of Collectors a proposal from the Superintending Engineer, Sixth Division, to pass an Act for the protection of Officers acting in good faith for the improvement of the country. Such Officers are to go about their work, "unfettered by consideration of legal penalties;" they are not to be amenable to the Civil Courts "for injuries real or imaginary."

2. The first observation it occurs to make is, that no sufficient reason is shown for the legislation suggested. Three cases are put by the projector,

1*st*.—New works.
2*nd*.—Enlarging or contracting existing works.
3*rd*.—The regulation of the irrigating channels.

In the first and second instances the Government would have only to declare, as with a very good conscience it might, that the land was required for public purposes, and the thing is done (Act VI. of 1857). In the third case, it seems we do not know what the law is; "I am not aware," says the Collector of Tanjore at paragraph 7 of his letter quoted in the correspondence, "that any "authoritative decision has as yet been passed as to how far Officers are liable to be sued for acts "done, or orders given regarding the distribution of water for irrigation." There can be no doubt, I imagine, that in the absence of any enactment to the contrary, they are liable; but where is the "serious inconvenience to the public service" therein involved, when the Chief Executive Officer of the most highly irrigated district in the country is unable to give us any particulars? The fact is, ryots are not so apt to sue Collectors and Colonels, as might be supposed from the alarmed tone which this gentleman and the Engineer adopt. Let us have some statistics. We may depend upon it, that so long as our decisions in these cases follow the *Mamool*, or established custom of the country, which must be known by this time in Tanjore, (or there is nothing for it but to apportion and sell up the delta in lots under the Zemindary system,) we have nothing whatever to fear. The people of this country are more reasonable than we give them credit for.

3. Enclosing an original letter from the Principal Assistant on the same subject.

ENCLOSURE No. 1.

From J. A. C. BOSWELL, Esq., Principal Assistant Collector, to the Collector of Vizagapatam, dated Waltair, 21st January 1867, No. 6.

1. I have the honour to acknowledge receipt of the Proceedings of the Board of Revenue, No. 21, dated 4th January 1867, which you have forwarded to me, for my opinion, on the proposal of the Superintending Engineer, Sixth Division, for the passing of an Act for the protection of Officers both of the Revenue and Public Works Departments, acting *bonâ fide* for the improvement of the country, especially providing that they shall not be amenable to the Civil Courts for injuries real or imaginary under the following circumstances:—

1*st*.—In carrying out new works under competent authority for the improvement of the country.

2*nd*.—In enlarging or reducing the dimensions of existing works.

3*rd*.—In regulating the supply of water in the channels at all times, and especially in times of temporary scarcity.

4*th*.—It is also proposed that powers might be given to Magistrates to prevent resistance to the constituted authorities in these points, and without appeal except to Government.

2. In the two first cases, I am of opinion that to confer such powers on Revenue and Public Works Officers, and to exempt them from the liability of being sued for all acts so done in good faith, would be a serious infringement of the rights of private individuals. When land is taken up for public purposes, the Legislature have provided a particular course to be pursued by the Officers of Government in Act VI. of 1857, and the question of settling the amount of compensation to be

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6. In the numerous cases where estates in this countty are visited successively by the same river, and are irrigated by it, either the volume of water must be diminished by successive diversions, or else no one must use the water at all for purposes of irrigation, a result which no one in India would desire to see.

7. As therefore the English rule of practice can have no application in this country, and as a property is recognised in running water, which is not limited to a temporary employment, but extends to an absolute appropriation, it is desirable that a law should be framed declaring this principle, and laying down rules to govern its application, so that the disputes which occur between neighbouring proprietors on this point should be settled on a uniform principle having legal authority.

8. It will not be possible to treat this subject without notice of the seigniorial rights exercised by Government in dealing with the waters of great rivers, and indeed of all natural sources excepting those on private estates.

9. In view, therefore, of the actual practice of Government, and the occurrence of frequent disputes in the exercise of these rights, there arises a strong case for legal action, for while no one questions the existence of a right to appropriate water, its exercise by neighbouring proprietors is not under formal regulation of any kind, and prescriptive right is sometimes pushed to an absurd extent, and in the event of litigation of sufficient magnitude bringing such cases in appeal before the High Court, there is little doubt that English Barristers would bring forward the English rule, which has already been stated by Messrs. Norton and Collett in works published for use in India without remark on its nullity here.

(Signed) G. S. FORBES,
Collector.

Exd. J. Wright.

awarded to parties whose lands may be taken up under that Act, is to be referred to arbitration if the amount offered by the authorities is not accepted by the landholder. It appears to me that a similar course would be the proper one to pursue in laying down a course of procedure to be pursued in dealing with individual rights in regard to water, when new arrangements for the public benefit may be under contemplation. The acquisition of land or interference with established rights in respect of water, for public purposes, should both be dealt with on similar principles, and nothing appears fairer when the parties cannot agree on terms than a final resort to arbitration.

3. In regard to the third point the case is different. In a Ryotwar district, Government is the great Landlord, and as such, has to look after and protect the ryots of all tenants of the State. Government undertake the responsibility also of keeping irrigation works in repair, and it falls upon their Officers to distribute the water. This is primarily the duty of the village authorities when there is not a special Nirgunti Establishment, but parties are at liberty to complain to the Tahsildar, and appeal again from his decision to the Collector and the Board of Revenue. In the exercise of this duty, therefore, it is desirable that Revenue Officers should be protected, and similarly Officers of the Public Works Department, when the duty of the distribution of water, as in some cases, falls upon them. The same principle may be extended to the case of Zemindars and Inamdars of all sorts, when they are dependent for water upon Government sources of irrigation. And yet even in the case of the distribution of water, I would not go further than merely to protect the individual Officers acting *bonâ fide*, and Government, from being sued *for damages* in acts done, for any injuries that parties may consider themselves to have sustained. I should still leave it open to the parties to establish their rights to the use of any water as for land by recourse to a Civil Suit, and such decisions would, of course, bind for the future those Officers on whom the duty of distributing water falls. Lastly, with reference to the special powers which it is proposed to confer on Magistrates to deal summarily with cases of resistance to the constituted authorities, in making arrangements for the distribution of water, allowing no appeal except to Government, I apprehend that Section 188 of the Indian Penal Code is quite sufficient to meet all the wants of the case. This provides for the punishment of disobedience to an order duly promulgated by a public servant, and if the sentence passed does not exceed imprisonment for one month, or a fine of Rupees 50, there is no appeal from the sentence of a Magistrate exercising full powers.—(Sec. 411 C. C. P.)

Erd. J. Wright.

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From J. FRASER, Esq., Collector of the Godavery district, to the Secretary to the Board of Revenue, dated Tanuku taluk, 16th January 1867, No. 8.

1. In reply to the Proceedings of the Board of Revenue of the 4th instant, No. 21, I beg to state that I have had no experience of a district where things are in such a state as is described by the Collector of Tanjore.

2. In this district, the entire management and control of the anicut channels and sluices is in the hands of the Public Works Department, who open or close them and divert or alter the latter as occasion may require, without any of the ryots whose lands are watered by them dreaming of making an objection.

3. So far, therefore, as my experience goes, I consider the Act applied for by Mr. Morris unnecessary.

Exd. J. Wright.

From G. THORNHILL, Esq., Collector of the Kistna district, to the Secretary to the Board o
Revenue, dated Circuit Cutcherry at Pomarru, in Gudewada taluk, 23rd March 1867, No. 76.

1. In reply to the Board's Proceedings, No. 21, dated 4th January, I have the honour to state that, although the difficulties which have been experienced by Public officers in Tanjore, in regard to carrying out new works of public benefit, in altering the dimensions of existing works and in regulating the supply of water from irrigation channels, have not been felt here to any appreciable extent, I am of opinion that the passing an Act such as that contemplated by the Collector of Tanjore would be certainly beneficial.

2. The rights connected with anicut irrigation in this district are as yet young, and the people generally are willing to submit to the decision of the Revenue authorities; but it is probable that, in future, they may not be so readily satisfied, and it will then certainly greatly strengthen the hands of the officers of the Department Public Works to be freed from the chances of vexatious litigation,

Exd. T. Cartledge.

vide Local Madras Law Journal

From J. A. C. BOSWELL, Esq., Acting Collector of Nellore, to the Secretary to the Board of Revenue, dated 3rd May 1867, No. 123.

1. I have the honour to acknowledge receipt of the Board's Proceedings, No. 21, dated 4th January 1867, requesting my opinion as to the necessity for passing an Act to protect officers of the Revenue and Public Works Department in carrying out new works and improvements for the benefit of the country.

2. As I have already *individually* expressed my opinion as to this proposed measure when Principal Assistant Collector of Vizagapatam, in my letter to the Collector of Vizagapatam, No. 6, dated 21st January, which has been recorded in the Board's Proceedings, No. 991, dated 18th February 1867, I presume that it is unnecessary for me to do so again.

Exd. J. Wright.

From A. WEDDERBURN, Esq., Collector of Bellary, to the Secretary to the Board of Revenue, dated Camp at Guntacul, Taluk Gooty, 11th February 1867, No. 25.

1. In reply to the Proceedings of the Board of Revenue, dated 4th January 1867, No. 21, requesting an opinion, as to the necessity of a special Act, to protect the Executive Officers of Government from vexatious suits, in connection with the distribution of water from Government irrigation works, I have the honour to state, that my own experience of the necessity of such an Act is very slight, as I have chiefly served in districts, where an inferior state of civilization prevails, and where resort to law for fancied injury, was infrequent.

2. I remember, however, one case in Cuddapah, where I had authorized the rebuilding of the bend of a channel, which supplied water to a Government tank, which had been destroyed by the railway embankment. The Railway officials were anxious to restore the damage, but as, in the meantime, the escaped water had found its way into another, and a private tank, the proprietor set up a claim, and, having left the district before the suit was decided, I believe the cause was lost. It was with the utmost reluctance, that I passed an order on the subject, as I knew that a suit would be the result, whichever way I decided the case; but if I had not decided it as I did, the Government tank would have lost its primary supply.

3. The right of Government in the control, and distribution of water, stored in its reservoirs, has not, as far as I am aware, been denied in a Court of Law. If it should be, it would be advisable to bring the case in appeal before the High Court. A remedy for vexatious suits might be applied by the Courts themselves, and thus obviate the alternative anomaly of placing Government Officers above the control of the law.

Exd. J. Wright.

From T. A. N. CHASE, Esq., Acting Collector of Kurnool, to the Secretary to the Board of Revenue, dated 14th January 1867, No. 6.

1. With reference to the Proceedings of the Board of Revenue, No. 21, dated 4th January 1867, I have the honour to inform you I consider it very necessary that the Revenue and Public Works Officers should be protected by a legal enactment, when they act, in regard to the distribution of water for irrigation purposes.

2. I have had experience on this subject in the Godavery, Kistna, and Nellore districts, where irrigation is carried on to a very great extent under the influence of the anicuts. I have known cases frequently happen when the lands which might be irrigated are not irrigated, because the landholders would not allow, for a passage, for water being made through their fields, and in which no settlement could take place against the will of the landholder, without the risk of an action in the Civil Court; and I have no doubt if the Officers of Government were protected from such actions before the Civil Courts, more lands would in consequence be irrigated.

Exd. J. Wright.

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From A. C. BURNELL, Esq., Acting Sub-Collector in charge of Madras, to the Secretary to the Board of Revenue, dated Sydapet, 28th May 1867, No. 133.

1. Referring to the Board's Proceedings, dated 4th January 1867, No. 21, requesting an opinion as to the necessity of an Act for protecting Government Officers carrying out new works, &c., and providing that they shall not be amenable to Civil Courts, I have the honour to make the following suggestions:—

2. Mr. Morris has described very justly the state of the irrigation works in Tanjore; but actual experience can only enable one to comprehend the deplorable condition to which they are reduced.

3. I was six months in North Tanjore, during which I examined carefully the chief Vayakals. I am not sure that the Engineers will agree with me, but I could only come to one conclusion, viz., that greater part of North Tanjore must sooner or later become partly marsh, and partly a sandy desert, while the Coleroon will carry off the water that is so precious there.

4. I attribute this entirely to the interference of the Mirasidars with the Vayakals, upheld as it is by pernicious decrees passed by District Munsiffs on unreliable evidence as to what they are pleased to term custom, and in suits between Mirasidars in which the Government is not a party.

5. There can be no doubt that legislation is needed; but I am not prepared to say that cases of the kind mentioned by Mr. Morris should be excluded from the jurisdiction of all Courts. The case of the Nattapettah channel near Conjeveram, (*vide* the Board's Proceedings, dated 20th July 1865, No. 4,218,) shows what extraordinary opinions some Munsiffs can form; and on what utterly worthless evidence they will give decrees against the Government Officers. Besides, if, as is commonly assumed, the Government is the owner of the water, &c., and irrigation works, then on what principle do Munsiffs decide upon the claims of ryots against one another respecting water, &c. If the above assumption be correct, such decrees must be utterly wrong; and yet numbers of such have been passed. Such cases as these, and many others I recollect in Tanjore, are sufficient proofs that it is a mistake to leave such cases to the ordinary Civil Courts, and that many officers, who are excessively tender as regards rights of the ryots which exist only in their fancy, forget that the Government has also rights which it is also their duty to protect.

6. For my part, I would venture to suggest that, if the people have some rights to protect for themselves, (and this is, I believe, admitted,) that they should not be altogether prevented from suing the Government Officers, but that they should be referred to special tribunals; and that they should not be allowed to sue except in a particular way.

7. Perhaps an illustration will not be out of place. I would refer especially to the peculiar legislation respecting the Bedford Level in England, and the Codes respecting the irrigation works in Holland. I regret that I am unable to refer to these Codes as I am sure that the great experience of the Dutch would be valuable; but if my memory serves me right, (I speak from a recollection of several years ago,) in all cases irrigation works are entirely in the hands of Local Councils who collect and levy cesses, and have powers to keep the works in repair and to improve them. If Municipal Councils succeed, I cannot see why such Councils as these should fail; and the interference with the people would be less than in the former case.

8. The works in India, and Holland, and England differ as regards their purposes; but it seems to me that the principles of the peculiar legislation, found successful in Europe, would be found the same here; and that an Act worked by Local Councils would be found the best possible remedy for the present disorders.

9. As regards single works in districts where a Local Council or Court would be impracticable, I certainly am of opinion that persons with grievances against Officers carrying out improvements should be referred to Collectors and the Board. If Government has a right to the land, this includes a right to improve it, and I consider that the Government is the best judge of what is required. There can be little doubt that ninety-nine out of a hundred suits of the nature referred to against Government Officers, are not instituted for any *bonâ fide* reason, but merely because the perverse acuteness of the ryots sees a way through trickery to getting the better of an adversary, or to a small extra profit.

Exd. J. Wright.

From J. D. ROBINSON, Esq., Collector of North Arcot, to the Secretary to the Board of Revenue, dated Palmanair, 29th May 1867, No. 131.

1. In reply to the Proceedings of the Board, dated 4th January 1867, requesting an opinion as to the necessity of a special Act to protect the Officers of Government acting in good faith for the improvement of the country, I have the honour to state that the difficulties which have given rise to this reference in the district of Tanjore have never been practically experienced in North Arcot.

2. Taking into consideration the fact that three important anicut projects, with their intricate network of subsidiary channels, have been carried out and been in more or less activity for the last five or six years, and that this has been effected without difficulty, or, as far as I can remember, even threat of legal proceedings, the conclusion at which I naturally arrive is, that there is no present necessity, as far as the question concerns this district, of any special regislation.

3. I can point out cases, where, in order to develope the system of channels to its fullest extent, it has been found necessary to lower the bunds of existing tanks, and even in one or two instances where the channel has been carried through a tank at the level of its bed to sacrifice it entirely to the larger and more general interest of the tracts lying at the further extremity of the channel. A case of this kind is that described in the Proceedings noted in the margin, in which the arrangements, transferring the registered wet land under the Nellikupum tank which had been drained by the passage through it of the main Ponne anicut channel, were effected with ease and without threat of legal proceedings on the part of those whose rights in the water had to be sacrificed in the general interests. My opinion, then, is that, although there is no local necessity for further legislation than the existing law provides, it may yet be desirable that a special law be framed which shall afford Revenue Officers and Officers of the Department of Public Works, *when acting under the instructions of the former*, fuller protection and more summary powers than they now have.

* Not with Circuit Cutcherry

4. A Bill so framed, and enacted, would then be ready for application under the orders of Government in any district where the necessity may already exist, or to which under the pressure of drought and famine, or other exceptional cause, it may be found expedient to extend it.

5. The delay in submitting this report has arisen from my having mislaid a draft of a letter on this subject written months ago, and which I was supposing had been then despatched.

Ordered that the foregoing papers do lie over pending the disposal of the subject.

(True Copies and Extract.)

(Signed) J. R. COCKERELL,
Sub-Secretary.

Exd. J. Wright.

From C. W. READE, Esq., Collector of South Arcot, to the Secretary to the Board of Revenue, dated Circuit Cutcherry at Punrooty, 25th March 1867, No. 70.

1. In reply to the Proceedings of the Board of Revenue of the 4th January last, No. 21, I have the honour to state that I fully share in all that is stated in the letter to Government from the Superintending Engineer of the sixth division. I have for long felt that the opposition and difficulties frequently experienced by the local authorities in their legitimate interference with irrigation works, in order to secure ryots as well as the State from loss, must eventuate in some legislative action.

2. If the opposition and difficulties I speak of originated in nothing more than a desire to preserve the due rights of the parties opposing, or if the acts of the local authorities really damaged those rights, such opposition would be only natural and commendable, and I should be the last to advocate any enactment to suppress the privilege of seeking redress in the Courts against local officers; but the opposition usually offered is purely factious, and, in fact, is simply in view to injure neighbouring interests, for unhappily the "dog-in-the-manger" principle, (so to designate it,) is a marked characterestic amongst the cultivating classes in this country, and a ryot would ordinarily prefer to see the surplus water for which he has no use running to waste, rather than allow his neighbours to benefit by it; and while this state of feeling prevails, it is clear that agricultural interests generally, to say nothing of the public revenue, are liable at all times to be unnecessarily sacrificed.

3. It is obvious that the Public Works and the Revenue Departments can have but one object in controlling and managing works of irrigation, and that object is the general good of all, and the legitimate conservation or increase of the public revenue; and in the exercise of their joint functions in this matter, I conceive it to be a paramount duty to see that water is not wasted, that it is properly distributed, and that no lands, no matter where or to whom belonging, are needlessly left waste or uncultivated for want of water, when water in abundance is to be had; and it seems to me that the question may safely be left to them, and that they should be legally empowered jointly to over-rule all obstructive and vexatious opposition, and in every instance of the kind calling for interference, they should have discretionary authority to act without being subject, as at present, to actions at law.

4. To secure water to one party at the loss of another, or to the damage in any way of the vested or previous rights of others, would, of course, be an obvious abuse of power, and no one would advocate the exemption of public officers from legal responsibility in such a case; but exposed, as officers now are, at every turn to legal proceedings when acting in good faith and without injury to any, the interests of all, as well as of the Government, demand, I think, that the two departments named should be protected from Civil action. As a case in point, I may instance the recent legal proceedings* against myself and the Superintending Engineer of the fifth division in the matter of the supply of water to the village of Paloor from the Trivady anicut which, I think, is sufficiently illustrative of the necessity there exists for some legislative measure for the protection of local officers acting impartially and strictly *bonâ fide* for the common good; and I have, therefore, no hesitation in expressing my general concurrence in the suggestions, and of the Superintending Engineer, sixth division, as intimated in paragraphs 8 and 9 of his letter, recorded in the Proceedings of the Board under present acknowledgment.

* Vide Board's Proc. 8th February 1867, No. 79½.

Exd. T. Cartledge.

From G. L. MORRIS, Esq., Collector of Tanjore, to the Secretary to the Board of Revenue, dated Vellum, 22nd February 1867, No. 45.

1. In accordance with the Proceedings of the Board of Revenue, dated 4th January 1867, No. 21, I have the honour to report on the necessity which exists, in my opinion, for an Act which shall provide that Government Officers, carrying out new irrigation works and improvements for the benefit of the country, are not to be amenable to the Civil Courts.

2. In the letter from the Superintending Engineer, Sixth Division, to the Secretary to Government, which forms a part of the aforesaid Proceedings, a communication from me to that Officer describing the difficulties which exist regarding the distribution of water for irrigation at the present time in this district, is quoted at full length, and I need not, therefore, recapitulate the facts therein stated.

3. After carefully considering this subject, I am of opinion that what is required, is not merely such an act as is suggested by Captain Oakes, but a special Legislative Enactment in which it shall be distinctly laid down that the jurisdiction of the Civil Courts is not to extend to suits regarding irrigation works, or the supply and distribution of water for irrigation purposes.

4. In this country, the Government is, I consider, the undoubted proprietor of all the water which is supplied from public rivers, channels, &c., for the purposes of irrigation; for it charges a water-rate for its use, and grants special remissions whenever wet crops are proved to have received an insufficient supply therefrom.

5. Such being the case, it seems to me only fair and equitable, that Government should decide how such water should be allotted or used; for Government is specially interested in its proper distribution, since the stability of its revenue depends upon every piece of land getting its fair share of water and no more, each share being calculated according to the character of the season and the quantity which may be available.

6. My objection to the Civil Courts being allowed to adjudicate in irrigation disputes is based on the fact that they have not the means of forming a correct judgment on such matters, when these disputes affect, as they almost invariably do, the interests of a large extent of the country. In deciding suits filed in their Courts, the Civil Judges are obliged, and very properly so, to confine themselves to the actual points in dispute: the general question of irrigation, as affecting lands situated many miles off, is consequently as a rule lost sight of, and a judgment is passed, which may be fair enough as regards the rights of the contending litigants, but is extremely disastrous when the general interests of Government and of the country are taken into consideration.

7. In order to meet this difficulty there are, in my opinion, two available remedies. The first is to make it compulsory on all plaintiffs to include the Government as one of the defendants, in all suits brought before the Civil Courts, regarding the supply or distribution of water for irrigation purposes. The second is to pass such an Act as I have proposed in paragraph 3.

8. The first remedy I cannot advocate, and for two reasons; firstly, because the time of the Revenue Officers of Government would be taken up in attending the Courts and in defending such suits all over the country; and secondly, because the Civil Courts would not even then be in a position to decide such suits equitably, since a knowledge of the localities and of the levels of the surrounding lands are essentially necessary before a correct judgment can be formed regarding an irrigation project on any large scale.

9. The one great objection which I have heard urged against all disputes regarding irrigation being decided by the Revenue authorities, subject to appeal to the Board of Revenue and the Government, is the fear lest minor disputes of this nature should be decided hastily, and on the reports of Tahsildars and other subordinate officers. I do not think, however, that much fear need be apprehended on this score, for it must be remembered that of all officials, the Revenue Officers of Government are the most interested in seeing such disputes properly decided, since the efficient performance of a very important part of their duty, viz., the collection of the Government demand, very materially depends upon water for irrigation purposes being on the whole fairly distributed to all. In order, however, to altogether prevent anything of the kind, I would propose that the Rules laid down in Act VI. of 1857, for referring disputes regarding the amount of compensation to be paid for land taken up for public purposes, should be applied to all disputes regarding irrigation; thus leaving it in the power of every individual interested in an irrigation work, or the distribution of water for irrigation purposes, to refer the same to the determination of arbitrators, if he should be dissatisfied with the decision of the Revenue authorities.

Exd. J. Wright.

From G. BANBURY, Esq., Collector of Trichinopoly, to the Secretary to the Board of Revenue, dated 18th January 1867, No. 16.

1. In reply to the Board's Proceedings, dated 4th instant, I have the honour to remark that every Revenue Officer, whose lot has fallen amongst extensive irrigation, must have experienced the difficulties represented by Captain Oakes. Practically our hands are tied when we desire to make improvements, or when we wish to save acres and acres of perishing crops, by diverting an excessive supply to tracts where it is urgently needed. In the latter case I have no doubt orders are frequently passed through pity or expediency, although knowingly at the risk of a Civil Suit.

2. It is, however, in improvements that the want of protection is felt most keenly. I am sorry to say that as a rule, ryots do not like to see their neighbours rise in the world, and if any scheme of improvement can be checked or thwarted by any claim regarding injury to vested rights, it will be most certainly urged; although this asserted injury may be pure fiction. In ninety-nine cases out of one hundred, the efforts of the Engineers are hampered by objections of this nature.

3. Then as to the division of water, the large landholders are not content with the water merely remaining on their fields, but like trout, they delight in running streams. No doubt this constant flow over the rice-fields enriches the crops, but it is sad waste and deprives the poorer classes of what should fall to their share. The Tahsildars and Revenue Inspectors, with the dread of civil actions before them, are naturally afraid to interfere, and thus matters are allowed to go on anyhow.

4. It is true these cases can to some extent be settled magisterially, but it seems to me that this is twisting the clauses of the Penal Code and Criminal Procedure to a purpose they were never intended.

5. I may be in error, but I apprehend that the State should have a paramount right to apportion, and to regulate most advantageously the distribution of water, which is unquestionably State property, and that measures of improvement should not be hindered, as at present, by mean and vain objections on the part of selfish or grasping holders of what they deem vested and unassailable privileges.

6. Finally, in offering my opinion that the Act as advocated should be introduced, it seems open to doubt whether these cases, when they do come before Courts as at present, are likely to be satisfactorily determined. Many of the Judicial authorities know little of Revenue and Irrigation matters, and still less of Engineering, so that both Revenue Officers and Engineers now hesitate acting even on good and sufficient grounds, as they are by no means sure of the view which will be taken of their proceedings by the Courts.

Exd. J. Wright.

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From the Honourable D. ARBUTHNOTT, Acting Collector of Madura, to the Secretary to the Board of Revenue, dated 24th January 1867, No. 20.

In reply to the Board's Proceedings, No. 21, dated 4th instant, I have the honour to report that the passing of an Act as that suggested by the Superintending Engineer, Sixth Division, is, in my opinion, absolutely necessary for the protection of officers carrying out new works and improvements in good faith for the benefit of the country, from endless troubles and annoyances to which they will otherwise be subjected.

Exd. T. Cartledge.

From R. K. PUCKLE, Esq., Collector of Tinnevelly, to the Secretary to the Board of Revenue, dated 16th April 1867, No. 197.

1. In reply to the Board's Proceedings, No. 21, dated 4th January 1867, I have the honour to inform you that I consider that the passing of some enactment to confer summary powers on Revenue Officers to adjudicate in land and water disputes, and to make the Board of Revenue the Court of Appeal is very much needed here; from the want of such an enactment both the interests of Government and, individuals suffer, and as described by Mr. Morris, the few often stand in the way of the many, and bar improvements without any assignable reason beyond ancient usage or fear of the chance of injury.

2. No Mirasi right to the occupation of waste land without payment, to the exclusion of those who are willing to take it up and pay for it, can exist under a Revenue Settlement, which confers on occupants the right of holding only the lands they pay for; and if the Government has a right to do what it likes with its own, I conceive that the Executive Officers need be under no obligation to supply a small tract only with Government water, when they are of opinion that a larger tract might be supplied, without damage done to any one, by diverting a portion of the supply.

I would go further than this in certain peculiar cases and empower Executive Officers to divert the water-supply altogether from any given tract, provided it can be supplied at greater advantage elsewhere, and provided that dry assessment only be charged on the land cut off from its water-supply, and that compensation be granted when the loss is likely to be permanent; but should the water-supply be merely reduced to what is really sufficient to raise a crop of rice, or be only temporarily diverted to secure some public benefit, the parties affected should not be considered to have any real cause of complaint, if their assessment for that year is adjusted with reference to the actual state of the case.

3. The old system of charging wet-tax for ever on a field that has once been irrigated no longer exists after settlement, as lands are denominated wet if irrigated or dry if unirrigated in the year when the settlement is made, and a table is laid down for the subsequent conversion of wet to dry, or dry to wet at any time, according to the state of the season.

4. It would not be sufficient to act as above on mere reports, without personal investigation, and the power of determining what is necessary in each individual case should, I think, be vested in Covenanted Officers only after they have inspected the spot.

Exd. J. Wright.

From P. GRANT, Esq., Collector of Coimbatore, to the Secretary to the Board of Revenue, dated Ootacamund, 9th February 1867, No. 40.

In reply to the Board's Proceedings of the 4th ultimo, No. 21, I have the honour to inform you that I consider that the control of the water supply for all purposes of irrigation connected with Government works, should rest with Government to the fullest extent, and that in the event of any private rights being interfered with, or injured, due compensation should be made to the parties injured. A modification of the provisions of Act XII. of 1866, passed by the Governor General of India in Council, might be usefully adopted in framing a Bill on the subject. The time has passed when the Collector could issue an order without any chance of its being questioned. The Schoolmaster and Lawyer in these days of Railroads and Telegraphs are abroad, and the sooner an Act to protect Government servants from being sued in the Civil Courts for acts done with reference to the regulation, &c., of irrigation, is passed, the better.

Exd, J. Wright.

From C. N. POCHIN, Esq., Acting Collector of Salem, to the Secretary to the Board of Revenue, dated 23rd January 1867, No. 20.

With reference to the Board's Proceedings of the 4th instant, No. 21, requesting opinions of Collectors as to the necessity for an Act providing that Government Officers carrying out new works and improvements for the benefit of the country, shall not under certain circumstances be amenable to Civil Courts for injuries, real or imaginary, that may be caused, I have the honour to state that, in my opinion, an enactment of the kind referred to, will no doubt be of great use to districts situated similarly with Tanjore. As far as this district is concerned, hitherto no difficulty of the kind referred to has ever been experienced, and with regard to carrying public works over private property, the provisions of Act VI. of 1857 have proved sufficient for all our purposes.

Exd. T. Cartledge.

From W. S. WHITESIDE, Esq., Acting Collector of South Canara, to the Secretary to the Board of Revenue, dated Mangalore, 4th April 1867, No. 59.

1. I have the honour to observe, with reference to the Proceedings of the Board of Revenue, No. 21, dated the 4th January 1867, that, in my opinion, the existence of an Act protecting officers in the Revenue and Public Works Departments from liability to Suits in the Civil Courts on account of changes or improvements made by them in irrigation and other public works, will be a most valuable assistance to such officers in the discharge of their duties, and will supply a want that in some districts has long been felt.

2. In Canara, where there are very few public irrigation works, and the wet crops are dependent almost invariably on the ordinary rainfall for their supply of water, the necessity for such an Act is, doubtless, not much perceived; but in Tanjore and South Arcot, and in other districts on the east coast, where I have had some experience as a Revenue Officer, the case is vastly different.

3. In the two districts I have just named, I have observed that the villagers who have in the first instance benefitted by a new irrigation work constructed at the expense of Government, in the course of time come to believe that they alone have a vested right to the whole of the water so enjoyed by them; and they are ready to resent and oppose any alterations or improvements in the work which will have the effect of distributing the water more widely over the country, just as vigorously, and obstinately, as if the work had really been constructed at their own expense, and was their *bonâ fide* property.

4. This is especially the case in South Arcot, where I have observed the people to be more inclined than elsewhere to have recourse to the Courts for their own defence against imagined injuries of this kind at the hands of the officers of the district; and this practice, I think, has extended considerably of late years.

5. Such a state of things is undoubtedly bad for the country. The ryot by nature is churlish to the last degree; he knows very well indeed when he is well off, and invariably resists any attempt to make others share in his good things. This is especially the case in regard to water, and I fancy almost every Revenue Officer will admit that no official act requires more cautious consideration than interference with, or alteration of, an irrigation work of any standing or importance.

6. The waste of water by the villagers all over the country is notorious. It is my belief that nearly double the proper quantity is made use of that is really required to bring the wet crops to maturity.

7. But the Revenue and Engineering Officers are the best judges of the capabilities of a work of irrigation, and if they find changes therein advisable, in order to extend the distribution of water to greater advantage, it is most important that they should be protected from the annoyance of civil actions and the trouble necessarily occasioned in their defence, and I feel assured that many officers have hesitated to set about improvements of this kind, knowing what a hornet's nest they would disturb the moment their plans of alteration become known.

Exd. J. Wright.

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From G. A. BALLARD, Esq., Collector of Malabar, to the Secretary to the Board of Revenue, dated Calicut, 30th January 1867, No. 21.

1. I have the honour to acknowledge the Board's Proceedings,* calling for the opinion of Collectors on the subject, as set forth by the Collector of Tanjore, of "an Act for the protection of Officers acting in good faith for the improvement of the country."

* Dated 4th January 1867, No. 21.

2. I am under the impression that the Revenue and Public Works Officers of a district have ex-officio the general superintendence and management of Government Irrigation works, with discretional control in the interests of the public over the regulation of the supply of water from public sources, which I apprehend include all rivers or natural water-courses supplying more than a petty local area, as well as tanks and channels constructed or maintained from the public purse.

3. Government servants may, in the exercise of such controlling functions, lay themselves open to an action at law by persons conceiving themselves injured. It does not follow the suitors will get a verdict, but if they have had rights infringed, I cannot see on what just grounds they can be debarred from seeking redress in the regular Courts of the country.

4. If it was shown that the officers of Government had acted in good faith, and with ordinary discretion, the Government would doubtless bear any damages and costs adjudged.

5. If the cultivators of any locality have a legal right to a supply of water at all seasons, positively and independently of the requirements of other localities, then I should deprecate their being deprived by an arbitrary enactment of the usual means of defending that right.

If they have not such right, I do not see that a new legal enactment is required.

If, as I suppose, the general control of public waters rests with the Government Officers, the waters are in the possession of Government, and forcible interference with, or disobedience of, the orders of Government Officers, as to the regulation of their distribution, is now punishable by law.

If land for a new channel or other works of a public nature is required, it can be taken by law; but the land being so acquired, if new works entail contingent damage on private individuals, as argued above, the latter should not be debarred from seeking redress in the Courts.

6. It might be a relief to Public Works and Revenue Officers to know that their actions could not be made subject of Civil Suits, and public improvements might often in such case be pushed on more quickly; but the opening given for undue interference with private rights would, in my opinion, be far too dear a price to pay for the possible advantages that might be secured.

7. If it is considered desirable to lay down more clearly that Government is the owner of public water supplies, and that it is bound and has the power through its Officers to make the best distribution that can be made for the public weal, I should have no objection to offer. But this being declared, I would certainly not deprive persons, thereafter considering themselves aggrieved, of the protection of the Civil Courts.

Exd. T. Cartledge.

I have carefully perused and considered the answers from Collectors which accompany the Board's Circ: 19 June 1868. No 4556.-

Although several of these officers, whose opinions are entitled to weight, are in favor of an Act such as Captain Baker would wish shaped, there does not appear to me to be enough in their statements & the reasons assigned to justify special legislation. Such too, is the opinion of this R. Board who however, (para 24) suggest in what manner a declaratory law may be passed, if Govt. are indisposed to await the result of two suits now pending, in which the question is raised, whether the State has not the right & power inherent in itself of dealing with Crown claims from public sources.

Her desirable I think, to obtain some knowledge of any new law on the subject intended we are informed in what manner the suits in question have been decided. Should the two mentioned happen, effectually & distinctly enforce the universal acknowledged Govt right of ownership in water frontages, & were then to be found sufficient to determine on bringing forward a general Enactment.

I may add that a third action is now on the File of the Civil Court at Trincomalee, in which the Trincomalee Cabinet, Captain Forbes R.E. has been sued as Govt Agent, which will be determined whether, in contravention of the view of the Govt execution in this class of offences that an embankment between two tracts of salt land, should need not be restored, the local Magistrate can demand any

enforce its restoration.
There can be but one judgment on the point submitted; - it must be in favor of the Pod^a officer - and will come to determine other litigious Mussulmans from entering with the matter which are best left in the hands of conventions, impartial, independent tribunals of Pod^a.
The Board might be requested to procure, consider & submit to Pod^a with any observ^ns deemed necessary, copies of this judgment, & applicable laws in the three enclosures.
The papers connected with the three Pod^a I have already alluded; are in the P.W. table awaiting on them now for a few days only.

18 Nov. 1856.
No 3412.

Adverting to para 10 Captain Dalrymple's letter, I would instruct him to make all enquiry, all such preparations as may have been attended by his Assistant Commissioner on the part of Mussulmans & then afford to such persons the earliest possible opportunity of trying the validity of their objections, in one of the Courts. Hesitation and dread of men of this class, quickly calculated to embolden them & lead to more bad example being unnecessarily imitated.
In a letter from Mr. Barnell, Ag^t Salt Coll^r in charge of Madras District, in para (4) it seems to be mine notice. - Mr. B admits to pernicious decree by Dest^e Mufts which withhold (Mr. B is writing here of the Tanjore District) the right of entrepenure of the Mussulmans with the (Bayaholy) irrigation channels; and these judgments we seem to have been trapped in such dilemma Mussulman, in which post has not been a party. -
The Collector ought with propriety be

directed to ascertain & report in more precise terms, whether any of the statements which Mr. Burnell has referred, are of any real importance in regard of the rights belonging only to the State:- and it ought to be observed in making this reference on the Collector, that as the Collector is stated not to have been a party to the actions in question, it is not understood how his knowledge can legally have affected detriment.

In the closing para of their Lors the Bd draw attention to a paper annexed to the report from the late Collector of Tanjore upon their Board's minute -

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Mr. Connell's pencilled note in a pencil note on the paper of the late Rev: Secy: Mr. Hudleston, that the dictum of Mr. Justice Morris advanced in para 3 of the paper in question, does not apply to navigable rivers streams such as the Coleroon; and referring to the possibility of such litigation arising as is contemplated in the last para of the paper, I would observe that there could be no difficulty in pleading & establishing that the English rule is only made applicable to the circumstances which had originated in India & on account of water passing in drain streams.

There seems to be no reason however why the Bd in disposing of the matter immediately under reference, should enter upon the subject of this third minute & memorandum -

18 Dec 68.

I concur.

W. 1809 R.D.

Proceedings of the Madras Govt
Under date the 28th June 1869

Read the following Ltr
of the 3d Novemb
No. 19th June 1868 No 4556

The Rt Honble the

Govr in Council is

not of opinion that

sufficient has been

adduced to (confirm)

the application to

the Legislature kept

open in the

Revenue & Public Works

Depts from the proceedings

of the Madras Govt

which carrying into

effect the

(irrigation) works for

the benefit of the country.

Rec. Prov. 25 June 69 Ln 2 541

c. 22 July 69.

Act of 1857 is held
sufficient for the acquisition
of any lands which may
be required for purposes
of constructing irrigation
works, and that seems
to be all that is required
at present. As observed
by the Board this is
little more than that of the
common law of the
country, that State has
the power of dealing
with irrigation from
public sources and
the first ~~has undoubtedly~~ established
that the Courts of the
will so decide whenever

The right may be dis
Granted

Ans.

14 To the Reg[ister] Dec: 28.

M.E.O. 1—89,000—16-10-39.

CE.

A.O. 1810 Review - 24.6.69
563-564

Registered 9/10/22

M.R.O. 1—89,000—16-10-29.

MADRAS RECORD OFFICE.

அனுப்புநர்
திரு சு. ரங்கமணி, இ.ஆ.ப.,
தமிழ்நாடு ஆவணக்காப்பகம் மற்றும்
வரலாற்று ஆராய்ச்சி ஆணையர்,
தமிழ்நாடு ஆவணக்காப்பகம்,
சென்னை 600008.

பெறுநர்
அரசு சார்புச் செயலர்,

தலைமைச் செயலகம்,
சென்னை 600009.

ந.க.எண். /ஆ.அ.4( )/8 நாள்

ஐயா,

பொருள்: ஆவணங்கள் – சில அரசாணைகள் பெற்றுக்கொண்டதற்கு ஒப்புதலளித்தது அல்லது அரசாணைகளைத் திருப்பி அனுப்புதலாணை கேட்டல்.

பார்வை: 1. அரசு கடிதம் எண். நாள் துறையின் ந.க.எண். /ஆ.அ.4( )/8

2. இக்காப்பகக் கடிதம் எண். நாள்

...

பார்வை 2ல் காணும் இக்காப்பகக் கடிதத்துடன் அனுப்பப்பட்ட கீழ்க்கண்ட அரசாணைகளைப் பெற்றுக்கொண்டதற்கு ஒப்புதலை விரைவில் அனுப்பும்படி கேட்டுக் கொள்கிறேன். அல்லது இந்த அரசாணைகளின் தேவை முடிந்திருப்பின் அவற்றைத் திருப்பி அனுப்பும்படி கேட்டுக்கொள்கிறேன்.

நம்பிக்கையுள்ள,

ஆணையருக்காக.

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செயல்

Not to be folded or roughly handled