M.R.O. 1—88,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 275 — Press Mis.

250-251
Dated 22 — 2 — 1870

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 22nd February 1870.

No. 250. Read the following Proceedings of the Board of Revenue, dated 7th January 1870, No. 105.

Read the following letters:—

From the Government Pleader, to the Acting Secretary to the Board of Revenue, dated Madras, 19th November 1869, No. 371.

With reference to the Board's Proceedings noted in the margin, and in continuation of my letter, dated 27th May 1869, No. 287, I have the honour to forward copies (which have been only just now furnished to me, though I applied for them some months ago) of the Decree and Judgment of the High Court in Regular Appeal, No. 122 of 1868, from the Decree of the Civil Court of Madura in Original Suit, No. 8 of 1867, relating to Poovandy Channel.

Dated 13th February 1869.

2. It will be seen that the Chief Justice and Mr. Justice Innes differ on the question of law as to the means by which the acquisition of an easement is to be proved in this country; the former holding that proof of uninterrupted enjoyment as of right for any period beyond the twelve years, prescribed by the Limitation Act for the limitation of suits for immovable property, is sufficient; while the latter holds that no such precise limit of time can be fixed, and that it is simply a question of fact in each case whether there is evidence direct or indirect of a transfer of a right connected with land. Both the learned Judges, however, agree in reversing the Decree of the lower Court, and decreeing for the plaintiff, with costs, on the ground that he has proved his title to an uninterrupted enjoyment of all the water which flows into the Poovandy Channel.

Enclosure No. 1.—Copy of Judgment.

Enclosure No. 2.—Copy of Decree.

From the Officiating Collector of Madura, to the Acting Secretary to the Board of Revenue, dated 20th November 1869, No. 352.

With reference to the Proceedings of the Board of Revenue noted in the margin, I have the honour to submit herewith copy of the Decree passed by the High Court of Madras in Appeal Suit No. 122 of 1868, and produced by the Agent of Ponnoosawmy Tever, the appellant, directing the Collector to abstain from interfering further with the Poovandy Channel.

15th May 1869, No. 3,347.
23rd June ,, ,, 4,538.

2. The Appeal Decree or Judgment has not been sent to me, but as the principle affected by the Decree is a very important one, I request the Board's instructions as to whether any further action is to be taken in the case.

3. I have written to the Superintending Engineer to let me know how and at what cost the Ungadimangalom tank may be supplied with water.

ENCLOSURE No. 1.

In the High Court of Judicature at Madras, Monday the 18th day of October, One thousand eight hundred and sixty-nine.

Present: The Honourable Sir C. H. SCOTLAND, Knight, Chief Justice.
The Honourable Mr. JUSTICE INNES.

Regular Appeal No. 122 *of* 1868.

Ponnoosawmy Tever, Appellant (Plaintiff.)

versus.

The Collector of Madura and twenty-five others, Respondents (Defendants.)

Regular Appeal against the Decree of the Civil Court of Madura in Original Suit No. 8 *of* 1867.

GROUNDS OF APPEAL.

I. Because the right alleged by the plaintiff to the disputed channel and the water thereof and injury to such right are proved.

II. Because actual loss need not be proved when the infraction of a legal right is established.

DECREE.

This regular appeal coming on for hearing. Upon perusing the grounds of appeal, the judgment and the decree of the lower Court, and the material papers in the suit, and upon hearing the arguments of Mr. Mayne, Counsel, and Parthasardy Iyengar, Vakeel for the appellant, and of Mr. Government Pleader for the 1st respondent, the other respondents not appearing in person or by Counsel, this Court doth order and decree that the decree of the lower Court be, and the same hereby is, reversed, and this Court doth adjudge and declare that the plaintiff is entitled to the right to an uninterrupted flow of water through the old channel which runs from the river Vigay to the tank of Poovandy, and that the diversion by the defendants of a portion of the water through the new branch channel to Ungadimangalom Tank by the use of the regulating sluices placed across the said channels, has been and is a substantial infringement of such right; and this Court doth strictly enjoin and command that the defendants do absolutely abstain from further obstructing the flow of the water through the said old channel to the Poovandy Tank and diverting any portion of it through the said new branch channel to Ungadimangalom Tank by the use of the said regulating sluices; and this Court doth further order and decree that the plaintiff's costs in the lower Court be paid by the defendants who appeared and defended the suit, and that his costs in this Court be paid by the 1st defendant.

(Signed) C. H. SCOTLAND,
Chief Justice.
(,,) L. C. INNES,
Judge.

MEMORANDUM OF COSTS.

Appellant's (Plaintiff's) Costs.

	Rs.	A.	P.
1 Stamp for Vakalutnamah	2	0	0
13 Do. used for Appeal Memorandum	595	0	0
3 Do. for copy of the Original Decree	1	0	0
1 Do. for copy of the Original Judgment	0	8	0
Vakeel's fee on Rupees 10,840	366	12	10
Printing charge	15	8	0
Batta and Postage	7	0	0
To be paid to the Appellant (Plaintiff) by the Respondent (1st Defendant)	987	12	10

(Signed) H. WIGRAM,
Acting Registrar, Appellate Side.

(True Copy.)
(Signed) T. WILKINS,
Deputy-Registrar, Appellate Side.

Dated	9th Oct.	1867,	No. 6,481.
,,	6th Nov.	,,	,, 7,247.
,,	22nd Oct.	1868,	,, 7,575.
,,	13th Feb.	1869,	,, 977.
,,	15th May	,,	,, 3,347.

RESOLVED that the foregoing papers, together with copies of the Board's Proceedings noted in the margin, be submitted for the information and orders of Government.

2. The Original Suit (No. 8 of 1867 in the Civil Court of Madura) was brought by the proprietor of Poovandy, an Inam village, against the Collector and the villagers of Ungadimangalom, a Government village in Madura Talook, both of which villages are supplied with water from Vigay River.

3. Previous to 1856 each village had a separate supply-channel, but in that year the channel, which had previously fed the tank of the Government village, being found insufficient, a branch was made leading from the Poovandy Channel, and certain sluices for the regulation of the supply of water to the Government village were constructed.

4. To these arrangements Ponnoosawmy Tever, the proprietor of the Inam village, objected on the ground that he had a right to all the water passing through the Poovandy Channel. Hence the suit.

5. The Board requested the advice of the Government Pleader, and in accordance therewith* directed an answer to be filed to the effect that the river Vigay and the space occupied by the Poovandy Channel are State-property, and that Government have full power to regulate the supply of water in such manner as they may deem most advantageous for all parties concerned; that, further, the plaintiff acquired the village of Poovandy after the construction of the sluices; and that his claim to the exclusive use of the water passing through the channel (if it ever existed) is now lost, being barred by lapse of time.

* *Vide* Board's Proceedings, dated 6th November 1869, No. 7,247.

6. It was also urged that the regulating sluices were works of public utility, and that plaintiff had sustained no loss thereby.

7. The suit was dismissed† on the ground that no injury to the plaintiff has been proved, and that a "full supply" to the Poovandy Tank was all that plaintiff was entitled to, and the plaintiff was ordered to pay all costs.

† *Vide* Board's Procs., dated 22nd October 1868, No. 7,575.

8. Notice of appeal to the High Court was forwarded to the Board (*vide* Proceedings of 13th February 1869, No. 977,) and the Government Pleader was requested to appear on behalf of the Collector.

9. The grounds of appeal were, first, that the plaintiff had proved his right to the disputed channel and the water therein, and that injury to such right had been proved; second, that actual loss need not be proved when infringement of a legal right is established.

Board's Proceedings, dated 15th May 1869, No. 3,347.

10. The appeal came on for hearing on 26th of May, and from the judgment now forwarded, it will be seen that the decree of the Civil Court has been reversed, and the Collector ordered to pay the plaintiff's costs in the appeal suit, amounting to Rupees 988-4-10.

11. The plaintiff's costs in the lower Court, amounting to Rupees 1,120-8-10, are ordered to be paid by the defendants who then appeared and defended the suit. Mr. Parker, the Collector of the day, placed the facts before the Board in applying to them for sanction for the estimate, the Irrigation Department being then under the Board, and while enunciating his own views as to the right of Government in such cases, pointed out the probability of a suit ensuing from the construction of the work, and obtained specific sanction.

12. The opening of the sluice amounted to tapping a Zemindar's channel kept in repair by the Zemindar, in order to save the expense of restoring one which was intended for the irrigation of the Iyen lands, but which was out of repair, and being just below the Zemindar's, drew naturally less water from the river.

13. The Chief Justice found that the plaintiffs have a prescriptive right to the whole of the water in the channel, the surplus of the Poovandy Tank passing as of right to the villages lower down, and that the erection by Government of regulating sluices contravened this right, diminished the flow, and thereby caused a substantial injury which might be inferred both from the evidence and circumstances. And he observed "that the right to an easement in the flow of water through an "artificial water-course is as valid against Government as against a private indi-"vidual." The Chief Justice apparently lays down that the continued use of a privilege as of right for the period prescribed by Section 1, Clause 12 of the Act of Limitation, constitutes prescription. As respects the nature of the relief to be given, the Chief Justice laid down that as the injury done is of a substantial and constantly recurring kind "which is not capable of being fully estimated in "pecuniary damages as respects the future as well as the past," the plaintiff is entitled to an injunction.

14. Mr. Innes concurred with the Chief Justice in the main, but apparently goes further. He considered that the right to the exclusive use of the water of the channel had been acquired of and against Government; and held that while Government has a right to regulate the distribution of water flowing in natural channels in which rights have not as yet been acquired, yet wherever a channel has been constructed by Government to extend the benefit of irrigation, and "in pursuance of that purpose a flow of water is directed to the villages "designed to be benefited, it became simply a question upon the circumstances "of the case, whether there has not been a conveyance to such villages in per-"petuity of a right to the unobstructed flow of water by the channel. Looking at "the permanency of such works and to the permanency attaching to the object that "there *was* a transfer in perpetuity, would seem an almost necessary conclusion, "unless there were other circumstances to lead to one of an opposite character."

15. The Board have carefully considered this case with reference to their Proceedings of the 19th June 1868, No. 4,556. They are of opinion that there are peculiar circumstances with reference to the fact that the channel supplied permanently settled villages, which prevent this case from being considered as a leading case, and that it will be necessary to await a decision in the South Arcot case, (*vide* Government Order, 13th July 1869, No. 2,020,) before again discussing the question of the rights of Government to distribute irrigation in ryotwary tracts.

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It must, however, be admitted that the case is of great importance. The suit is not one in which the Board would recommend an appeal to the Privy Council, as they do not consider the position taken up by the Collector a sound one. The Board request Government to sanction the costs amounting to Rupees 988-4-10.

No. 251. ORDER THEREON, 22nd February 1870, No. 275.

Miscellaneous.

THE Government sanction the costs of the suit, amounting to Rupees 988-4-10. They concur with the Board in deeming it unadvisable to prefer an appeal to the Privy Council in the present case, and resolve to defer again, taking into consideration the question referred to in the G. O., under date 25th June 1869, No. 1,809, until the result of the South Arcot case is known.

(True Extract.)

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

To the Board of Revenue.
„ the Accountant-General.

Exd. F. R. Bantleman.

No. 6,481.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 9th October 1867.

Read the following letter from the Honourable D. ARBUTHNOTT, Collector of Madura, to the Secretary to the Board of Revenue, dated Camp at Paumben, 23rd September 1867, No. 259:—

1. I have the honour to forward, herewith, translate of a plaint preferred by one Ponnoosawmy Taver in Original Suit No. 8 of 1867, on the file of the Civil Court, making the Collector also as a party to the suit, and a proposed reply, and I request the sanction of the Board to defend the suit at the public expense.

2. The time fixed by the Court for the hearing of the case is the 15th November next, on or before which the answer should be filed.

3. The following is a short history of the case:—

Angadimangalam referred to in the plaint is a Government village in the Madura talook, while Poovandy is an enfranchised Inam village in the Shevagunga estate.

The Angadimangalam tank was, till the year 1855, supplied with water by a separate channel from the Vigay river. In 1854, Captain Horsley suggested the abandonment of this channel, as its head was often choked up with sand, and water entered it only in tolerably high freshes, and to take a branch from the Poovandy channel, which has also its head in the Vigay, and to construct regulating sluices across each channel at the point of separation, on the understanding that the water is to be distributed between the two tanks under the arrangements stated below:—

1.—That no water was to be drawn off to Angadimangalam tank until the Poovandy tank had received a full supply of water, after which the shutters of the Angadimangalam sluice were to be opened, and those of the Poovandy sluice closed.

2.—In scarce seasons the water is to be divided between the two tanks in proportion to the extent of cultivation under each, with the understanding that if there is not sufficient water to bring the crops to maturity, the whole is to go to Poovandy.

4. This proposal of the Civil Engineer was submitted for the orders of the Board in a letter by Mr. Parker, the late Collector, dated 12th May 1855, No. 81, and the Board were accordingly pleased to sanction* the execution of the project.

* 28th May 1855, No. 471.

5. In 1856, the regulating sluices were constructed under an estimate framed by the Engineer Department.

6. The plaintiff is a person who has acquired the Poovandy village subsequent to the construction of the said works.

7. Under the above arrangements water is being now distributed between the two tanks, though on some occasions the Poovandy ryots acted in violation of them.

8. The plaintiff has brought the present suit to secure to himself the exclusive use of the water of the channel.

9. Extracts from the general observations made by Captain Horsley, Civil Engineer, 8th Division, during the month of February 1854 and 1855, relating to the Poovandy channel and tank, are enclosed for the perusal of the Board.

ENCLOSURE No. 1.

Translation of a Plaint presented to the Civil Judge of Madura by

Plaintiff *versus* *Defendants.*

Ponnoosawmy Taver, son of Poodoovay Sivagnana Taver of Ramnad, aged thirty-five years.

1. The Honourable D. Arbuthnott, Collector of Madura.
2. Ambala Rowthen, son of Mahomed Ally Rowthen, Nattanmai of Angadimangalam village, in Madura talook.
3. Soobramania Pillay, another Nattamgar of the said village.
4. Minatchisoondram Pillay, Curnum.
5. Moottoo Veloo Pillay.
6. Saminada Pillay.
7. Iyackannoo Pillay.
8. Iroolappa Pillay.
9. Vairavam Pillay.
10. Moosavoony Rowthen.
11. Mustan Rowthen.
12. Mooroo Rowthen.
13. Chinna Vellay Rowthen.
14. Perikaruppa Pillay.
15. Chinna Vellaya Rowthen.
16. Periasawmy Pillay.
17. Caroomalay Pillay.
18. Vairavam Pillay.
19. Pattalathoo Rowthen.
20. Aroonachellam Pillay.
21. Soobramania Pillay.
22. Somoo Pillay.
23. Minatchisoondram Pillay.
24. Aravamuthu Nadan of Tirooppoovanam.
25. Muthuramu Chetty; and
26. Soobban Shervay.

The plaintiff institutes this suit through Court Vakeel Gooroosawmy Sastry, under Section 26, Act VIII. of 1859.

Total amount of the claim is Rupees 10,800.

1. The object of the suit is to obtain a decree directing the removal of the sluices called "Samaranay," which have been constructed across and on the southern bank of the channel supplying water to the tank of Poovandy village which belongs to, and is in the possession of, the plaintiff in the Shevagunga Zemindary, thereby causing detriment to the full supply of water to the above tank; and further directing the cancelment of the order issued by the first defendant to the plaintiff on 3rd April last regarding the above channel.

2. The above sluices were constructed between April and October 1856 by the first defendant's predecessor, and in virtue of his order, dated 11th October 1856, the water of the above channel is carried to the tank of Ain Angadimangalam village.

3. The village of Angadimangalam has no right whatever either to the above channel or to its water. The said villagers have a separate channel for the supply of their tank. The repairs of Poovandy channel, &c., are executed by its owners from their pocket money.

4. From the above innovation the channel often becomes filled up with earth, and the plaintiff is subjected to loss for want of water to carry on cultivation in both seasons, and in consequence of non-cultivation of the entire extent of lands of the said village.

5. As the village is assessed with a quitrent of Rupees 1,084, the value of the suit amounts, under Act XXVI. of 1867, to Rupees 10,840, at 10 per Rupee.

6. The plaintiff, therefore, prays the Court will be pleased to pass a decree prohibiting the defendants from carrying the water of Poovandy channel to the tank of Angadimangalam village, and directing them to remove, at an outlay of Rupees 20, the sluices which are constructed across the above channel, south of the limits of Anunjceyur village and north of the road No. 14 leading to Tondy, and close up, with brick and chunam, the sluices constructed on the south bank of the channel, at an outlay of Rupees 30, and cancelling the order, dated the 3rd April last.

Dated 8th June 1867.

(True translation.)

(Signed) D. ARBUTHNOTT,
Collector.

ENCLOSURE No. 2.

Proposed Written Statement to be presented on behalf of the Collector, the first Defendant in Original Suit No. 8 of 1867, on the file of the Civil Court of Madura.

1. The plaintiff prays for a decree to remove the regulating sluice constructed across the Poovandy channel for the supply of Angadimangalam tank, because it is an impediment to the free flow of the whole quantity of water of the channel to the Poovandy tank.

2. Firstly Defendant begs to submit that previous to the year 1856 the Angadimangalam tank was fed by a separate channel, the head of which was not far below that of Poovandy. In his Diary of general observations for February 1854, the then Civil Engineer, Captain Horsley, pointed out the expediency of abandoning the channel on the plea that it did not admit of any water passing down it to the tank except in tolerably high freshes, and was often choked up with the sand, and suggested the desirability of taking a branch from the Poovandy channel and of constructing regulating sluices across each channel at the point of separation on the arrangements shown below:—

1.—That no water was to be drawn off to Angadimangalam tank until the Poovandy tank had received a full supply of water, after which the shutters of the Angadimangalam were to be opened and those of the Poovandy sluice closed.

2.—In scarce seasons the water is to be divided between the two tanks in proportion to the extent of cultivation under each, with the understanding that if there is not sufficient water to bring the crops to maturity the whole is to go to Poovandy.

3. Agreeably to the proposal of the Civil Engineer, which received the approval of the Board, the regulating sluices were in 1856 constructed.

4. Under the above arrangements which have been ordered to be observed by the late Collector, Mr. Parker, the plaintiff has no ground of complaint.

5. The river Vigay, from which water is conveyed to Poovandy tank, as well as the space occupied by the channel being the State property, the Collector as the representative of Government has a perfect right to make equitable arrangements with regard to the distribution of water without prejudice or injury to the existing interests of the parties concerned. This the first defendant begs to submit for the consideration of your Honourable Court.

6. Both the late proprietor of the village and the plaintiff have tacitly acquiesced in the arrangement under which the water is supplied to both the tanks for ten years. The regulating sluices in question were apparently built previous to the acquisition of the village of Poovandy by the plaintiff whose claim for their removal is, therefore, invalid.

7. The first defendant denies the truth of the plaintiff's statement in paragraph 4 of his plaint that he has sustained loss by the construction of the regulating sluices, but submits on the other hand that both the Government and the Angadimagalam ryots have in fact suffered loss from the tank not having received proper supply of water due to it under the arrangements alluded to in paragraph 2 of the above statement through the improper interference of the Poovandy people.

8. From a report submitted to the first defendant by the Madura Tahsildar on an inquiry held by him into the complaints of certain ryots of Angadimangalam, the defendant having satisfied himself that the plaintiff, with a view to deprive the Angadimangalam tank of the supply of water to which it is entitled under the original arrangements, has allowed the water of the Poovandy tank to pass to Yenady (belonging to him) and to other tanks; issued an order to the plaintiff on the 3rd April 1867, stating that with regard to the distribution of water the original arrangements should be adhered to, and that persons found acting contrary thereto will be held responsible for the loss resulting therefrom.

9. With regard to the plaintiff's allegation that the Poovandy channel is repaired at the expense of the proprietor of the village, the first defendant begs to observe that he is ready to bear a reasonable proportion of the outlay whenever the channel undergo repair.

10. The first defendant, therefore, prays that the Court will, in consideration of the foregoing facts, dismiss the plaint, and order the costs incurred by the defendant to be paid to him.

(Signed) D. ARBUTHNOTT,
Collector.

ENCLOSURE No. 3.

Extract from General Observations made by Captain W. H. HORSLEY, Civil Engineer, 8th Division, during the month of February 1854.

Channel from the Vigay river, supplying Angadimangalam tank.

This channel has its head near the village of Chackindy on the left bank of the river Vigay, and not far below that of the Poovandy channel. It follows the course of the river for some distance, and then turning to the north-east crosses road No. 14, and flows eastward for a further distance of about 1,500 yards, when it again intersects the road, and continues along its southern side till it enters the Angadimangalam tank. The head of the channel is very much choked up with sand, and it is only in tolerably high freshes that any water passes down it to the tank. As the fresh subsides, the sand accumulates, and though it may be removed once or twice during the year, it is of very little use, for it soon collects again. As a channel of supply to a large and important reservoir* it is very inefficient, besides being injurious to the road. In October last, it breached its banks in several places, and carried away the raised causeway between it and the river, along which the road passes. One of two things should be done; either the channel should have a new head cut through the high ground, lying to the south of the village and road, to join the present channel at the distance of 754 yards, and from thence continue on the south side of the road till it enters the tank, or it should be connected with the Poovandy channel at the point where it now crosses the road the second time, and receive its supply altogether from that channel; the latter would, in my opinion, be the best arrangement, and I believe it may be carried out without injury to the Poovandy tank proprietor. This latter tank is exceedingly well supplied. It has not only a channel of supply from the Vigay river, but receives also the surplus water of the large tank of Coonatoor, in the Meylur talook. At this present moment when there is not a drop of water in the Angadimangalam tank, the Poovandy tank is more than half full, and the cultivation under it, in no danger from want of water. As the Poovandy tank, however, is not a Government work, but belongs to the Padamattoor Zemindar, who has rented it out to Letchmunnan Chetty of Davacottah, it will be necessary to obtain the concurrence of these parties to an arrangement such as I have proposed. To ensure the Poovandy tank getting its full supply of water, it might be arranged that no water was to be drawn off to Angadimangalam until the Poovandy tank had received as much as it could with safety contain. It now receives a great deal more than it can hold, and hence it is that the road which runs for some distance in rear of its bund, is so frequently breached. To carry this arrangement into effect it will be necessary to construct a regulating sluice across each channel at the point of separation, one to be opened while the other is closed, and *vice versâ*. The cost of these works will be about

	Rs.
* Ayacut, Cawnies 564	4,395
Highest year, 235	1,659
Last year, 136	1,097

Rupees 975, while the estimate for opening a new head, as framed by the Maramut Superintendent, amounts to Rupees 888-8-0. I shall be glad if the Collector will take this matter into his consideration, and favour me with his opinion as to the course to be pursued. It is seen by the return of cultivation given in the margin, that the Government is losing about Rupees 3,000 per annum, in consequence of the want of water in Angadimangalam tank, while at the same time upwards of 100 cawnies of land under it are submerged every year by the surplus water of Poovandy tank—see my letter to Collector, No. 313, dated 30th October 1852, showing clearly that the latter has water to spare. In scarce seasons the water might be divided between the two tanks in proportion to the extent of cultivation under each tank, with the understanding that if there is not enough water to bring forth crops to maturity, that the whole is to go to Poovandy tank.

	Rs.
Ayacut, Cawnies 564 ...	4,395
Highest year, 235	1,659
Last year, 136	1,097

(True Extract.)

(Signed) P. SESHAGIRI RAU,
Deputy Collector.

ENCLOSURE No. 4.

Extract from General Observations made by Captain W. H. HORSLEY, Civil Engineer, 8th Division, during the month of February 1855.

POOVANDY TANK.

Limits of Poovandy.

In my letter to the Collector of 30th October 1852, I recommended the construction of two Calingulahs of discharge to this tank, one at the northern, and the other at the western extremity, the former to be used on all ordinary occasions, and the latter on extraordinary occasions, such as occurred in October and November last. The northern Calingulah was completed during the past year, but not so the western one. This latter is still incomplete, and it appears by a letter from the Collector of Madura to my address, No. 81, dated 27th ultimo, that the Poovandy ryots object to the body of the Calingulah being raised to the height allowed in my estimate, and wish it to be lowered nine inches. It is on this account that the work was delayed. On inspecting the two Calingulahs I find that the northern one has been raised nine inches at least higher than my estimate allowed, the object evidently being to reduce, as much as possible, the quantity of water to be discharged at this point, in direct contravention of the arrangement mentioned in my letter above referred to, namely, "that the surplus should ordinarily pass off by this work," and to make the western Calingulah the one in common use. This is the reason why the ryots wish the latter to be lowered. But this would not be fair to the Angadimangalam ryots, whose lands would thereby be constantly liable to inundation. Before, however, giving a decided opinion as to the level of the western Calingulah, I should wish to know exactly how much it is at present below the level of the northern one. This I have asked Assistant Surveyor Mason to ascertain correctly by means of the Levelling Instrument, and as soon as I receive his report, I will let the Collector know my opinion in the matter. The ryots of Poovandy are bent apparently upon doing as much injury as they can to their neighbours of Angadimangalam. During the heavy rains of October last, an extensive breach occurred in the Poovandy tank bund, which caused great injury to the road (No. 14) in rear of it, and also to the Angadimangalam lands lying to the south of the latter. The breach, the Angadimangalam people assert, was occasioned by the Poovandy ryots purposely cutting through the bund at this point, in order that it might not breach further to the north and cause injury to their own lands. I am inclined to think that such was the case, for the tank bund was higher at the site of the breach than at any other place. This extra outlay required for repairing the damage to road No. 14, is Rupees 94-13-10. It so happens that there is sufficient money remaining from the estimates already sanctioned to pay for this repair, otherwise I really think it would have been only right to make the Poovandy ryots pay for it. The proprietor of the tank

should be required to close the breaches in the bund, and to raise and widen these parts of it, which are less than two yards above the highest water-mark. This should be done during the present working season, or further injury may happen to the road next monsoon.

(True Extract.)

(Signed) W. H. HORSLEY, Captain,
Civil Engineer.

(Signed) P. SHESHAGIRI RAU,
Deputy Collector.

The Board resolve to request the advice of the Government Pleader in this case.

(True Copies and Extract.)

(Signed) R. A. DALYELL,
Secretary.

To the Government Pleader.

Copy to the Collector of Madura.

Exd. T. Cartledge.

Requesting advice of Government Pleader on subject of Suit No 8 of 1867 filed in Civil Court of Madura to secure exclusive use of water of certain Channel.

Dated 24th October 1867.

No. 6,492.

PROCEEDINGS OF THE BOARD OF REVENUE,

No.

1867. Department.

No. 7,247.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 6th November 1867.

Read the following letter from H. J. BROCKMAN, Esq., Officiating Government Pleader, to the Secretary to the Board of Revenue, dated High Court-House, Madras, 1st November 1867, No. 141:—

Dated 9th October 1867, No. 6,481.

1. With reference to the Proceedings of the Board noted in the margin, I have the honour to forward, herewith, for the perusal and approval of the Board, the draft Written Statement which I have prepared to be filed on behalf of the Collector of Madura by way of answer to the Original Suit No. 8 of 1867, on the file of the Civil Court of Madura, referred to in those Proceedings.

2. In drawing the Written Statement I have adhered, as nearly as the circumstances of the case would permit, to the line of defence which the Government in communication with the Board have, in the Proceedings noted in the margin, sanctioned with reference to the Original Suit No. 14 of 1867, on the file of the Principal Sudder Ameen's Court at Tanjore, relating to the Peruvalandan channel, to which the Collector of Tanjore is a party.

Proceedings of the Madras Government, Revenue Department, dated 26th August 1867, No. 1,991.

3. The particular attention of the Collector should be drawn to paragraphs 2, 4, 5 and 7 of the Written Statement. If the allegations contained in them are not strictly in accordance with the facts, they should be altered by the Collector. If he is unable to make the alterations without a reference to me, he should obtain further time to file the Written Statement.

4. It would be desirable that a plan of the two tanks mentioned in the plaint, the old Andimangalum channel, the Poovandy channel, with the regulating sluices and a portion of the river Vigay, showing the heads of those channels, should be laid before the Court. This plan should be caused to be prepared by the Collector. He should also file in support of his Written Statement, the observations of the Civil Engineer and all the Proceedings of the Board, relating to the alteration in the Poovandy channel in 1856, the order of the Collector, Mr. Parker, in 1856, the order of the Collector in April 1867, and all documents and public records in the Collector's custody, relating to the subject matter of the plaint and calculated to support and strengthen the defence set up in his Written Statement.

ENCLOSURE No. 1.

In the Civil Court of Madura.

Original Suit No. 8 of 1867.

Poonasawmy Taver, son of Poodoovay Sivaguana Taver, of Ramnad, aged thirty-five years ... ... *Plaintiff,*

against

The Honourable D. Arbuthnott, Collector of Madura, and twenty-six others, (naming them as in the plaint) ... ... *Defendants.*

The Written Statement of the first defendant, the Collector of Madura, in answer to the Plaint filed herein.

1. Sometime previous to the year 1856, the Angadimangalum tank in the plaint mentioned was supplied with water from the river Vigay by a channel separate and distinct from the channel from which, previous to the year 1856, the tank of the Poovandy village in the plaint also mentioned was supplied. The said two channels had their heads in the said river Vigay not far from each other. In the month of February 1854, Captain Horsley, the then Civil Engineer of the Eighth Division, in which the Angadimangalum tank and the Poovandy tank were situate, advised that the said channel, by which water had been supplied to the said Angadimangalum tank, should be abandoned, and that instead thereof a branch from the said channel, by which water had been sup-

N- observed

plied to the said Poovandy tank, should be constructed with regulating sluices across each channel at the point of separation, on the understanding and conditions following, that is to say—

First.—That no water was to be drawn off to the said Angadimangalum tank until the Poovandy tank had received a full supply of water, after which the shutters of the Angadimangalum sluice were to be opened, and the shutters of the Poovandy sluice closed.

Second.—That in seasons of scarcity the water was to be divided between the said two tanks in proportion to the extent of cultivation under each, but that if there was not sufficient water to bring crops to maturity, the whole of the water should go to the Poovandy tank.

2. The abovementioned suggestions were approved by the Board of Revenue, and the said regulating sluices accordingly constructed by the Government in 1866, and the two several conditions, contained and set forth in the first paragraph of this Written Statement, were duly publicly communicated by Mr. Parker, the former Collector of the District, to and by him ordered to be observed by the parties respectively interested in the said Angadimangalum and Poovandy tanks. Under the said orders of the said former Collector, the water supply from the said river Vigay to the said Angadimangalum and Poovandy tanks has been regulated uninterruptedly save as hereinafter in paragraph 6 of this Written Statement, is mentioned.

3. The said river Vigay, and the space occupied by the channel conveying water to the said Poovandy tank are State property.

4. The plaintiff has acquired the said village of Poovandy, in which the said Poovandy tank is situated, in the year 18 , a date long subsequent to the construction of the sluices hereinbefore and in the plaint mentioned.

5. The plaintiff has not, by reason of his having become the proprietor of the said village, or otherwise, either the exclusive right to water from the said river Vigay, or to the water supplied by the Poovandy channel. The said village of Angadimangalum, and those persons who are interested therein, are also entitled to the supply of water from the said river Vigay, and there is no proper channel or means for conveying such supply other than the Poovandy channel and the regulating sluices in the plaint and hereinbefore mentioned.

6. The plaintiff with the view (as the first defendant verily believes) of depriving the said Angadimangalum tank of the supply of water to which it has been for a long time past and now is entitled, has lately allowed the water of the said Poovandy tank to pass on and flow to Yenaday, a village belonging to the said plaintiff, and to certain other tanks. Whereupon, and after due inquiry, the first defendant did, on the third day of April 1867, issue an order to the plaintiff, stating that the original arrangements hereinbefore in paragraphs 1 and 2 of this Written Statement mentioned should be adhered to, and that persons found acting contrary thereto should be held responsible for the loss resulting therefrom which said order the first defendant submits that he was justified under all the circumstances hereinbefore set forth in issuing, and to which said order he craves leave to refer.

7. The first defendant is and always has been ready and willing, and to the best of his knowledge, information, and belief, the parties interested in the supply of water to the said village of Angadimangalum are, and always have been, ready and willing to bear a reasonable proportion of any expenses which may be properly incurred for the repairs of the said Poovandy channel. The regulating sluices therein, which are mentioned in the plaint and in this Written Statement, are and always have been since their construction repaired and maintained by the Government.

8. The regulating sluices hereinbefore and in the plaint mentioned, of which the plaint complains, are a work of public and general utility. The plaintiff has not sustained, and is not likely to sustain any loss by reason of the construction of the regulating sluices in the plaint and hereinbefore mentioned. On the contrary the Government and other ryots of the village of Angadimangalum have respectively suffered loss from the improper interference of the plaintiff, and the ryots of the said Poovandy village hereinbefore mentioned, whereby the proper supply to the said Angadimangalum tank has been prevented.

9. The first defendant submits that the said river Vigay, and the space occupied by the said channel being State property, as in paragraph 3 hereinbefore is mentioned, the Government have or the Collector of the District for and on behalf of the Government has full power and authority to regulate in such manner as may be deemed most desirable for the increase and protection of the revenue and the right and interest of the State, and of all persons concerned, the distribution of water for purposes of irrigation from rivers and channels constructed or maintained at the public expense.

10. The first defendant also submits that the plaintiff is, by the acquiescence of himself and of those through whom he claims, prevented from now setting up his present claim, and that if the exclusive right set up in his plaint ever did exist it has now been lost, and that he is also barred by lapse of time from suing for the injury which he alleges has been done to his alleged exclusive right.

I, D. Arbuthnott, the Collector of Madura, the first defendant abovenamed, do hereby declare that what is contained in the above Written Statement, is true to the best of my information and belief.

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1. Communicated to the Collector of Madura for information and guidance, with reference to his letter, dated 23rd September 1867, No. 259.

2. Mr. Arbuthnott's special attention is directed to paragraph 3 of the Government Pleader's letter.

(True Copies and Extract.)

(Signed) R. A. DALYELL,
Secretary.

To the Collector of Madura.

Copy to the Government Pleader.
" to the Accountant General,
with copy of Board's Proceedings, dated 9th October 1867, No. 6,481.

Exd. J. Wright.

N- observed

1867. Department.

No.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 6th November 1867.

No. 7,247.

Communicating to Collector of Madura, for information and guidance, letter from Officiating Government Pleader, forwarding draft written Statement to be filed in O. S. No 8 of 1867 on the file of Civil Court of Madura, for removal of certain Sluices.

No. 7,575.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 22nd October 1868.

Read the following letter from the Hon'ble D. ARBUTHNOTT, Collector of Madura, to the Acting Secretary to the Board of Revenue, dated 24th September 1868, No. 259:—

To the Board, 23rd September 1867, No. 259.
From do. 9th October ,, No. 4,681.
To do. by the Government Pleader at Madras, 1st November 1867, No. 141.
From do., 6th November 1867, No. 7,247.

WITH reference to the correspondence noted in the margin, I have the honour to submit, herewith, for the information of the Board, copies of Judgment and Decree passed in Original Suit No. 8 of 1867, on the file of the Civil Court, dismissing the suit with all costs.

ENCLOSURE No. 1.

Madura Civil Court.

Present.—G. R. SHARPE, Esq., Civil Judge.

Original Suit No. 8 *of* 1867.

Ponnoosamy Taver ... ... *Plaintiff,*

Vakeels.

Mr. M. Scott, Guroosamy Sastry, and Narayana Row.

versus

1, Honourable D. Arbuthnott, Collector of Madura; 2, Sooppea Rowten; 3, Subramanea Pillay; 4, Meenatchisoondrom Pillay; 5, Moottoovelu Pillay; 6, Saminada Pillay; 7, Iyacannoo Pillay; 8, Erulappa Pillay; 9, Virava Pillay; 10, Moojavooni Rowtten; 11, Mustan Rowtten; 12, Nooru Rowtten; 13, Chinna Vella Rowtten; 14, Pereacaruppa Pillay; 15, Chinna Vellia Rowtten; 16, Pereasami Pillay; 17, Karoomala Pillay; 18, Vyrava Pillay; 19, Pattalathoo Rowtten; 20, Aroonachellum Pillay; 21, Soobramanea Pillay; 22, Somu Pillay; 23, Meenatchisoondrum Pillay; 24, Aravamutto Nadan; 25, Muttooramen Chetty; and 26, Soobben Sairvai, } *Defendants.*

Vakeels.

Ramasawmy Iyer, for first defendant.

Ramasawmy Naick, for other defendants.

This suit was brought to procure the removal of the Samarany sluices constructed in the channel attached to plaintiff's Poovandy village, and on the southern bank of the said channel, whereby a full supply of water to the Poovandy tank is prevented, and also to cancel the order of 3rd April 1867, issued by first defendant to plaintiff, regarding the water of the said channel.

Decree.

The Court dismisses this suit. Plaintiff will pay all costs thereof.

Memorandum of Costs.

Costs incurred by plaintiff—

	Rs.	A.	P.
Value of Stamp paper	598	8	0
Notice batta, etc.	23	12	0
Witnesses' batta	30	8	0
Vakeel's fee	367	12	10
Batta for Commission	100	0	0
Total, Rupees	1,120	8	10

Costs incurred by first defendant—

	Rs.	A.	P.
Value of Stamp paper	4	5	0
Notice batta	5	4	0
Witnesses' batta	7	8	0
Vakeel's fee	367	12	10
Total, Rupees	384	13	10

N- observed

Costs incurred by defendants second to sixth, eleventh, and twenty-fifth.

	Rs.	A.	P.
Value of Stamp paper	7	8	0
Notice batta	2	12	0
Vakeel's fee	367	12	10
Total, Rupees	378	0	10
Grand Total, Rupees	1,883	7	6

Deduct—

	Rs.	A.	P.
Costs already paid by plaintiff	1,120	8	10
Do. to be paid by do. to first defendant ..	384	13	10
Do. to be paid by do. to second defendant and others	378	0	10

Given under my hand and the seal of the Court this 31st day of August 1868.

(Signed) G. R. SHARPE,
Civil Judge.

Appeal time expires on the 29th November 1868.

Judgment.

This suit was brought to procure the removal of the Samaranay sluices constructed in the channel attached to plaintiff's Poovandy village, and on the southern bank of the said channel, whereby a full supply of water to the Poovandy tank is prevented, and also to cancel the order of 3rd April 1867, issued by first defendant to plaintiff regarding the water of the said channel.

2. Plaint sets forth that the above sluices were constructed by first defendant's predecessor between April and October 1856, and under the order of the said predecessor the water of the channel is carried to defendant's village, (Angadimangalom,) which has no right to the above channel, or the water thereof, but has another channel, while the owners of Poovandy pay for the repairs, etc., of the channel in dispute; that plaintiff is endamaged by the defendants' acts, inasmuch as the Poovandy crops do not come to maturity, nor can all the lands of the village be cultivated.

3. First defendant states that, prior to 1856, the Angadimangalom and Poovandy tanks were supplied with water from the Vigay by two distinct channels having their heads not far from each other; that, in February 1854, the Engineer of that division recommended the abandonment of the Angadimangalom channel, and the construction of a branch from the Poovandy channel with regulating sluices at the point of separation, subject to the following conditions:—I. That Angadimangalom tank should have no water until Poovandy tank had got a full supply when the shutters of Angadimangalom sluice were to be opened, and those of Poovandy sluice closed. II. That in scarce seasons, water in proportion to the respective cultivation was to be divided between the two tanks, but that if the water was insufficient to bring the crops to maturity all the water should go to the Poovandy tank; that the Board of Revenue having approved the above recommendation the sluices were constructed by Government in 1856; and the former Collector (Mr. Parker) duly and publicly communicated the above condition to, and ordered their observation by, the parties interested in the Angadimangalom and Poovandy tanks; that the supply of water from the Vigay has been regulated under the above orders; that the Vigay and the space occupied by the channel conveying water to the Poovandy tank are State property; that plaintiff only acquired the Poovandy village in which the Poovandy tank is situated about 1860; that plaintiff by having become the proprietor of the Poovandy village, or otherwise, has not the exclusive right to water from the Vigay, or to the water supplied by the Poovandy channel; that Angadimangalom village and those interested therein are also entitled to the supply of water from the Vigay, and there is no proper channel or means for conveying such supply other than the Poovandy channel and the sluices mentioned in the plaint; that plaintiff with the view (as first defendant verily believes) of depriving the Angadimangalom tank of the water supply to which for long time past it has been, and now is, entitled, has lately allowed the water of the Poovandy tank to pass on and flow to his Yanady village and to certain other tanks; that thereupon, and after due inquiry, first defendant, on 3rd April 1867, issued an order to plaintiff, stating that the conditions above referred to should be adhered to, and that the persons found acting contrary thereto would be held responsible for the loss resulting therefrom; that the said order was justified under all the above circumstances; that first defendant and to the best of his knowledge, information, and belief, the parties interested in the supply of water to the Angadimangalom village are, and always have been ready and willing to bear a reasonable proportion of expenses properly incurred for the repairs of the Poovandy channel; that the regulating sluices mentioned in the plaint are, and always have been since their construction, repaired and maintained by the Government, and are a work of public and general utility; that plaintiff has not sustained, and is not likely to sustain, any loss by the construction of the sluices, but that Government and Angadimangalom ryots have suffered loss from the improper interference of plaintiff, and the Poovandy ryots, whereby the proper supply to Angadimangalom tank has been prevented; that the Vigay and space occupied by the channel being State property, Government and the Collector for or on behalf of Government have full power and authority to regulate in such manner as may be deemed most desirable for the increase and protection of the revenue and the right and interest of the State and of all persons concerned, the distribution of water for purposes of irrigation from rivers and channels constructed or maintained at the public expense; that plaintiff by acquiescence of himself and of those through whom he claims, is prevented from now setting up his present claim; that if the exclusive right set up in the plaint ever did exist, it has now been lost, and that plaintiff is now barred by lapse of time from now suing for the injury which he alleges has been done to his alleged exclusive right.

4. Second, third, fourth, fifth, sixth, eleventh, and twenty-fifth defendants stated that the Angadimangalom channel was, for some reason or other, blocked up by the Government; that with the consent of the original proprietor of Poovandy village, and of the inhabitants of Angadimangalom, regulating sluices were at Government expense constructed in Poovandy tank channel, (the space occupied by which belongs to Government,) namely, one sluice for the Angadimangalom tank, and one for the Poovandy village; that the condition of supply were pointed out by the Engineer in his Diary; that twelve years having elapsed since 1854, when both villagers consented to the construction of the sluices, the plaintiff's suit is barred by the Statute of Limitation; that after his acquisition of the Poovandy village plaintiff caused the Poovandy villagers (who collected together in great crowds) to let the entire water to the Poovandy tank, and for some time has thus made use of the water, not only for the lands depending upon the Poovandy tank, but also for other tanks recently constructed by him, and for other village lands, thus improperly diminishing the supply to the Angadimangalom tank, and causing loss of revenue to Government, and damage to the crops of these defendants; that plaintiff anticipating their suit has brought this action upon a right which the former owners of the village did not possess; that first defendant is the chief party liable in this suit, and they have been wrongly joined.

5. On the 27th November 1867, the following issues were recorded by the late Civil Judge, (Mr. Thomas,) who appears *proprio motio* to have raised a question as to the valuation of the suit and subsequently overruled it, (see his notes on record.)

(1.) That the Government has no authority to interfere in any way with the exclusive proprietary right of the plaintiff in the channel in question from the river to Poovandy tank.

(2.) That the plaintiff has suffered loss from the arrangements ordered and carried out by the Revenue Authorities.

(3.) Whether the claim of either party is barred by the Statute of Limitation.

(4.) That the plaintiff does not possess all the rights in this channel claimed by the former owner of Poovandy.

(5.) That it is possible to take off water from the Poovandy channel for Iyen land without injury to the Poovandy Nunjah lands.

6. Unable to see my way to a decision of the suit upon the above issues, I amended them and substituted the following:—

1*st*.—Whether the Vigay and the space occupied by the channel conveying water to Poovandy tank are State property.

N- observed

2*nd*.—If so whether the plaintiff has acquired a right to take a full supply of water for the Poovandy tank, and to allow the water of that tank, after irrigating the Poovandy lands, to pass on and flow to Yenady and Kannariruppoo villages through the said channel from the said river.

3*rd*.—Whether by the construction of the sluices named in the plaint, the plaintiff has suffered, or is likely to suffer loss.

4*th*.—Whether the Collector for and on behalf of the Government has full power and authority to regulate in such manner as may be deemed most desirable for the increase and protection of the revenue, and right and interest of the State and of all persons concerned, the distribution of water for purposes of irrigation from rivers and channels constructed or maintained at the public expense, and whether the Vigay and Poovandy channel are of that nature.

5*th*.—Whether by the acquiescence of himself and of those through whom he claims, the plaintiff is prevented from now setting up his present claim.

6*th*.—Whether the plaintiff's action is barred by lapse of time.

7*th*.—Whether the order of the 3rd April 1867 was justified by any acts on the part of the plaintiff.

8*th*.—Whether to the Angadimangalom village and to those interested therein, there is no proper channel or means for conveying the supply of water from the Vigay to which they are entitled other than the Poovandy channel and the sluices mentioned in the plaint.

9*th*.—Whether the said sluices are a work of public and general utility, and whether since their construction, they have been repaired and maintained by the Government.

5*th Issue*.—It is unnecessary to waste any time in discussing, whether, by the acquiescence of himself and of those through whom he claims, plaintiff is prevented from now setting up his present claim. Exhibit No. IV. (plaintiff's own letter) is certainly strong evidence of acquiescence in the arrangement under which the disputed sluices were constructed; but, however well-established, it cannot avail defendants, for in more than one Judgment of the High Court it has been held that the equitable doctrine of acquiescence is not applicable to suits in the Mofussil.

6*th Issue*.—As regards the question whether plaintiff's action is barred by lapse of time, I must again find for plaintiff. It is contended on first defendant's side that the case, not being otherwise provided for, falls under Clause 16th, Section 1 of Act No. XIV. of 1859. I am unable, however, to concur in this, for plaintiff's claim is one for an interest in immovable property, and as such must be held to be governed by the Rule of Limitation prescribed in Clause 12th of the above Section. Being brought within twelve years, as Exhibit No. VI. shows, it is, therefore, maintainable.

9*th Issue*.—It is admitted that the sluices were constructed for the benefit of the village of Angademangalom alone, and can benefit that village alone. It is difficult, therefore, to understand the first defendant's allegation of there being a work of public and general utility. I find this issue also against defendants.

4*th Issue*.—I deal with this issue prior to going into the merits of the case, because it is manifest that if the Government and its local representative do possess the power and authority to regulate the distribution of water as seems to them best, the suit must at once be dismissed. I am not, however, referred to any legislative enactment, nor is any authority quoted empowering a Collector to take or interfere with the property or rights of one village in order to benefit another; the former of those villages being a private village, and the latter a public one. Notwithstanding, therefore, "the increase of the revenue" which would doubtless accrue from giving to Angadimangalom, (a Government village), the water belonging to Poovandy, (a private one,) I am not prepared to run counter to the traditions of the Roman Civil Law which have been adopted in most civilized countries, nor am I inclined to permit the violation of the maxim *non potest rex facere gratiam cum damno et injuria aliorum*." Further, first defendant's own document, No. I, that is the Diary of the Engineer suggesting the arrangement by which the sluices in dispute came into existence, by no means supports the present claim. This is evident from the expressions contained therein, "the arrangement may be carried out without injury to the Poovandy tank proprietor," and "as the Poovandy tank is not a "Government work, but belongs to the Padamattoor Zemindar who has rented it out to Letchumanan "Chetty, of Devicottah, it will be necessary to obtain the concurrence of these parties to an arrangement such as I have proposed." The plaintiff's Document L also shows that the then Sub-Collector did not entertain such enlarged views of a Collector's powers as the present first defendant appears to do.

All that I have hitherto said, of course, proceeds upon the assumption that the plaintiff has a right to as much water as he likes, and can get through the Poovandy channel; but it remains to consider whether he has such right, and for the purposes of such consideration it will be convenient to deal with the remaining issues *en masse*.

Remaining Issues.—There is no dispute that the Poovandy channel has its head in the river Vigay, and before arriving at Poovandy passes through the villages of Chakkady, Adigara, and Anunjoor. As to the date of the construction of the channel, no evidence is adduced on either side; but that it is of long standing is clear from the public accounts of Fusly 1215, (B, C, and D.) Those accounts were produced to show that the land occupied by the channel was excluded from the cultivable area of the respective villages through which it passes; but I am unable to presume from that fact (as I am requested to do) that the site of the channel belongs to Poovandy. Equally unable am I to deduce anything in favour of plaintiff's claim from the fact of the channel's name, for the name merely indicates the terminus to which the channel leads, just as when in Madura we speak of the Dindigul or Palamcottah road, we do not mean roads *belonging to*, but roads *leading* to those towns.

It is clear also from the statements of his own eleventh, twelfth, thirteenth, and fourteenth witnesses, that plaintiff does not possess that absolute right over the Poovandy channel which he sets up in this suit, for those witnesses admit that Government officials constructed a channel carrying off water from the Poovandy channel for the benefit of the village of Anunjoor. It is, however, equally clear that until the Poovandy tank has received a full supply of water, the Angadimangalom villagers are not entitled to draw off any water from the Poovandy channel; this was the express arrangement made when the sluices complained of were constructed; nor does the first defendant by his order (A) the cancellation whereof is asked, seek to go beyond this, for he simply directs that plaintiff should "take measures so that the water may be left to Angadimangalom soon after the Poovandy tank is "full."

The chief question for determination is, whether by the construction of the sluices, such full supply is prevented or not; and upon this point the evidence of defendant's first witness, the Engineer in charge of the Range, and who has clearly well-studied the question, is that "there is nothing prejudicial to the Poovandy village," and "Poovandy lands will not be waste in consequence of those sluices." No doubt that witness admits that, "if there was no channel going to Angadimangalom, Poovandy would get more water." This, however, is beside the question of full supply or not, and is really nothing more than what every person would really understand without an Engineer to tell them it. The evidence of this witness appears to me worth a thousand witnesses of the kind produced by plaintiff to prove his damages. Take, for example, his twelfth witness, who has the effrontery to state that "in consequence of the sluices, Poovandy lands have become waste," but who in cross-examination is compelled to admit that he "never saw Poovandy villages before the sluices were constructed," and never went through Poovandy village until last year. What possible good can plaintiff expect from the thirteenth witness, who states that twenty cheys of land have been waste since the construction of the sluices, whereas only ten were waste before, or from the seventeenth witness who states that all the lands were cultivated before, whereas forty or fifty cheys are now waste, or from the sixteenth witness who concurs with seventeenth witness in stating that all were cultivated before, but makes up the uncultivated area to 70 or 80 cheys. Defendants' witnesses (let alone the first) are certainly entitled to equal credit, who declare that no loss of cultivation has ensued from the sluices; but indeed I required no such evidence on their part, for if damage had ensued what could be easier than for plaintiff to have produced reliable Village Accounts showing the losses sustained by him? but this he has entirely failed to do. It is unnecessary for me to say more upon this point, and I shall, therefore, forbear to ask whether plaintiff's antecedents evince such reluctance upon litigation as to render it probable that he would tamely have submitted through a course of years since his purchase of Poovandy in 1860, to so great a loss of income as his witness deposes to, or that he would in this suit have not claimed damages therefor.

observed

It is clear to me upon the whole case that this suit has its origin, not in any damages which the Poovandy crops have sustained, but in the desire on plaintiff's part to benefit other villages recently acquired by him as the defendants assert, and (as plaintiff's seventeenth witness gives ground for supposing) in a hankering after a water-rate from other independent villages.

There is nothing whatever in first defendant's order (the cancellation of which is prayed for) to indicate any desire on that defendant's part to deprive the Poovandy tank of its full supply of water. There is also nothing in the mere existence of the sluices to prevent that supply being obtained, nor are those sluices shown to have been made use of to the detriment of that right of full supply to the Poovandy tank alone upon which this suit is based.

I must, therefore, refuse to cancel the order of 3rd April 1867, or to direct the removal of the sluices.

This suit must be dismissed, and plaintiff must pay all costs thereof.

Pronounced in open Court this 31st day of August 1868.

(Signed) G. R. SHARPE,
Civil Judge.

(True Copy.)
(Signed) D. ARBUTHNOTT,
Collector.

ORDERED to be recorded.
(True Copies and Extract.)
(Signed) A. MACGREGOR,
Acting Secretary.

To the Collector of Madura.

BOARD OF REVENUE, MADRAS.
1868.

PROCEEDINGS, 22ND OCTOBER 1868, No. 7,575.

Read.

Encl.

OCTOBER.
No. 7,575.

Original Suit—No. 8 of 1867, filed in Madura Civil Court against Government to secure exclusive use of water of a channel,—Collector's letter forwarding copies of Judgement and Decree in favor of Government in, recorded.

Exd. J. Wright.

No. 977.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 13th February 1869.

Read the following letter from J. R. ARBUTHNOTT, Esq., Officiating Collector of Madura, to the Acting Secretary to the Board of Revenue, dated 2nd February 1869, No. 35:—

WITH reference to the Proceedings of the Board of Revenue, No. 7,575, dated 22nd October 1868, I have the honor to submit, herewith, copy of a Notice issued to me by the High Court at Madras, and to request that the Board will instruct the Government Pleader at Madras to appear on my behalf and defend the appeal.

2. A concise statement of the case will shortly be submitted to the Government Pleader.

ENCLOSURE No. 1.—Copy of High Court's Notice.

FORWARDED to the Government Pleader, who is requested to appear on behalf of the Collector and defend the interests of Government.

2. The Collector should lose no time in forwarding the statement promised in paragraph 2, and copies of the Proceedings of the Board marginally noted are herewith transmitted for Mr. Handley's information.

Dated 9th October 1867, No. 6,481.
„ 9th November „ „ 7,247.
„ 22nd October 1868, „ 7,575.

(A true Copy and Extract.)
(Signed) A. MACGREGOR,
Acting Secretary.

To the Government Pleader,
with copy of High Court's Notice and copies of Board's Proceedings, Nos. 6,481 and 7,247 of 1867, and No. 7,575 of 1868.

Copy to the Officiating Collector of Madura.

Exd. T. Cartledge.

1869. Department.

No.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 13*th February* 1869.

Received

No. 977.

Appeal preferred to High Court from decree of Civil Court of Madura in Appeal Suit No. 8 of 1867.—Government Pleader to conduct defence of—

No. 3,347.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 15th May 1869.

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, to the Acting Secretary to the Board of Revenue, dated Madras, 8th May 1869, No. 277:—

WITH reference to the Proceedings of the Board of Revenue noted in the margin, and in continuation of my letter dated the 19th February 1869, No. 226, I have the honor to forward, for the information of the Board, copy of Memorandum of Regular Appeal No. 122 of 1868, arising out of the Appeal Suit No. 8 of 1867, on the file of the Civil Court of Madura, relating to the use of water of a channel. The appeal will most likely come on for hearing at the end of this month.

Dated 13th February 1869, No. ——.

2. I have also sent this day to the Collector of Madura a similar copy.

ENCLOSURE No. 1.

Memorandum of Regular Appeal.

Before the Civil Court of Madura, Original Suit No. 8 of 1867.

Before the High Court at Madras, Regular Appeal No. 122 of 1868.

	In the Civil Court.	*In the High Court.*
Ponnusawmy Taver.....	*Plaintiff.*	*Appellant.*
versus.		
The Honorable D. Arbuthnott, and twenty others	*Defendants.*	*Respondents.*

Ponnusawmy Taver, the plaintiff abovenamed, begs to appeal regularly to the High Court of Judicature at Madras from the Decree of the Civil Judge in the aforesaid case, dated the 31st August 1868, for the following reasons:—

I. Because the right alleged by the plaintiff to the disputed channel and the water thereof and injury to such right are proved.

II. Because actual loss need not be proved when the infraction of a legal right is established.

2nd December 1868.

(Signed) JOHN D. MAYNE.
(„) S. PARTHASARATHY AYANGAR,
Vakeel.

(True Copy.)

(Signed) J. W. HANDLEY,
Government Pleader.

COMMUNICATED to the Officiating Collector of Madura.

(True Copies and Extract.)

(Signed) J. GROSE,
Sub-Secretary.

To the Officiating Collector of Madura, with an enclosure.

Copy to the Government Pleader.

Exd. T. Cartledge.

Rev. Dept.

Memo: for orders on No. 158.

In 1866 the difficulty felt by Public Works and Revenue Officers in dealing with irrigation works in which private rights to water supply were claimed was brought prominently to the notice of Govt. At the end of that year the expediency of passing a Legislative Enactment giving special powers to such officers, was referred to the Collectors of Districts for report.

2. The Board of Revenue when submitting to Govt the replies of these Officers observed

This is a very important decision adverse to the Govt. It may be as well before trying the right in a higher Court the Privy Council, to wait for the decision of the S. Arcot case.— This latter suit has been heard many months ago, but I believe no judgment has been pronounced.

The costs must be paid. BCL

N.

Encl. in the Pro. of the 23d Rev. to the Govt. to Govt. R.D. dated 9 January 1870 No. 105

Rev. 158/70.

1869.

Board of Revenue,

MADRAS.

PROCEEDINGS, 15TH MAY 1869, No. 3,347.

Received

Encl.

22nd Feb. 1870

No. 245

MAY.

No. 3,347.

Regular Appeal—No. 122 of 1868, filed in High Court, from Decree in Suit No. 8 of 1867 instituted in Madura Civil Court, to secure exclusive use of water of a channel in District,—Letter from Government Pleader forwarding Memo of, communicated to Collector.

Pro. 22 Feby 1870 L. do 250.

observed that they were not aware that the Civil Courts had ever decided, in any case, that the right of dealing with irrigation from public sources did not rest with the State. They also pointed out that two suits in which this issue was distinctly raised were then pending, and concluded by recommending that the result of these suits should be awaited before resorting to special legislation.

3. In their order under date 25th June 1869, No. 1809, the Govt. expressed an opinion that sufficient had not been adduced in the correspondence to

to shew the immediate necessity of application to the Legislative Dept. on the subject, and stated their concurrence in the Board's view that the Courts of the Country were likely to maintain the power of the State to deal with irrigation from public sources, whenever the question was specifically brought before them.

4. In the Proceedings now before Govt. the Board report that one of the suits adverted to in para 2 above has been decided adverse to the right of the State to distribute the water of irrigation works. They

[illegible] of [illegible], and

The Board give a complete summary of the case, and conclude by recommending that the result of the other suit be awaited before the question of special legislation is again taken into consideration. They make this recommendation on their present opinion that there are peculiar circumstances connected with the case which will prevent its being viewed as a leading one.

5. It will be observed that this opinion is not in accordance with that expressed by

by the Board in regard to this case in para 24 of their Proceedings dated 19th June 1868 No 4556 which is noticed in para 2 above. It is submitted that it would be difficult to promulgate a judgment more adverse to the power which, for the common weal, the Govt desire to retain, but at the same time it may be as well to adopt the Board's recommendation, directing them to bring forward the whole question again when the South Arcot Suit is finally decided.

The costs require the sanction of Govt, and

in 1858

Sapee N.

A.J.

Sd. W. Doll

Memo
Suit in Madura
Court regarding
certain Irrig.
works

18

Revl. Department

No. 275.

Proceedings of the Madras Government
Under date the 22d February 1870.

Read the following
Proceedings of the Board
of Revenue.

Subg. copies of Decree and Judgment in A.S. No. 122 of 1868 on the file of the High Court from the decree of the Madura Civil Court relating to Poovandy Channel. (H.E. 7th Jany/70, No. 105)

The Government
sanction the costs of the
suit amounting to Rs. 988
4-10. They concur with the
Board in deeming it un
advisable to prefer an
appeal

appeal to the Privy
Council in the present case,
and resolve to defer again
taking into consideration the
question referred to in the
G. O. under date 25th June 1869,
No. 1809, until the result
of the South Arcot case
is known.

14 Fr. Ass. Bro. of Revenue Ann. Enclo. Dept. 25
6 —— Acctt. Genl.

List

[illegible signature]