

20-3-09.

22-3-16

21-11-17

5-8-17

26/11/97

16/9/35 II

12-1-64 II

24-9-07 II

Revenue (1899) Department.

PRESS SERIES.

G.O., No. 587-588

DATED 1<sup>st</sup> Sep. 1899

[Despatch Abstract.]

Considering that Madras Act III of 1865 should be amended; requesting the Board of Rev: to favour govt with its remarks on the draft bill prepared for the purpose and stating that the Govt of India will be advised on the subject



# BACK PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|------|-----|-------------|-------|
|      |     |             |       |      |     |             |       |

## FURTHER PAPERS.

| G.O.           | No.             | Department.    | Date.    | G.O. | No. | Department. | Date. |
|----------------|-----------------|----------------|----------|------|-----|-------------|-------|
| fo.            | 3333            | Rev            | 19-9-99  |      |     |             |       |
| <del>fo.</del> | <del>3629</del> | <del>Rev</del> |          |      |     |             |       |
| fo.            | 678-9           | Rev            | 6-10-99  |      |     |             |       |
| fo.            | 3629            | Rev            | 13-10-99 |      |     |             |       |

Code  
Class.

INDIAN



TELEGRAPHS.

Monthly  
Number.

To  
(Office)

Telephonic

From

Message

Words

Day

Hour.

Minute.

Official  
Instructions

To

(Person)

Mr. Macfarlane

From

(Person)

Hon. Mr. Macfarlane

There has been a lot of correspondence  
about the amendment of the  
Act of 1865. Irrigation Act. Will you  
please send me the file

at

Office

When is this? If no sub. on

is in a file form at present

Please let me know & meantime have a file

made of the file made up. The file

necessary to write the Governor

Set for return on the file

To

9/6/99

Recd. from

LN.

Sent to

LN.

At

Hrs.

Mts. by

At

Hrs.

Mts. by

Telegraph Master

To Under Secy

The question will be  
found discussed in paras 116  
to



| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|------|-----|-------------|-------|
|------|-----|-------------|-------|------|-----|-------------|-------|

12 38  
p  
Telep  
Merrif

Mr. Merrif  
Hon. Mr. Merrif

There has been a lot of correspondence  
about the amount of money that  
the 11th of 1885. I have been  
the file.

To  
To under

Code

INDIAN TELEGRAPHS. Monthly Number.

| From | LN | Sent to |    |    |
|------|----|---------|----|----|
| At   | By | At      | By | At |

The question will be  
found discussed in paras 114  
to



to 119 of Mr Davidson  
159-60 of Mr Davidson's  
note on the Godavari Resettle-  
ment. The papers referred  
to therein as well as a copy  
of the note are submitted

Original with  
the draft go in case

BMM  
10. VI. 99

H.M.

The H.M. has Mr Davidson  
note & the notes thereon.

Please see G.P. 2625-  
8 22.5.97. This is an  
intermediate order  
on the B.P. 143 & 5.5.97

Which in paras 7 & 8  
makes suggestions for  
amending the act VII of 1865.

It will be seen that the  
whole question has been  
hung up pending the  
order on Godavari  
Resettlement.

Submitted however  
that the order on the  
Resettlement need not be  
delayed pending the amendment.  
It would apparently suffice if the  
order contained an announcement  
that the act was going to be amended.  
When it is amended, revised rules as to  
charge for water to be drawn & main-  
tenance of mas. to be issued. The small form of the

Godavari file pp are  
set free? He  
10/VI/98

Hon Mr. Brandel.

Overleaf I have drafted  
a section wh. I wd. propose  
to add as Sec 2 to  
the Irrigationless Act  
VII of 1865 -

We have to meet the  
difficulty that when a wide  
level plain is placed under  
irrigation the water (to  
secure drainage) must be  
passed on from field to  
field, and that practically  
many an individual ryot can  
not exclude it -

The High Court has held

The judgments of the High  
Court have put about half  
the water cess of Godavari  
District into jeopardy -  
how many lakhs of revenue  
I cannot venture to say.  
If the ryots generally had  
availed themselves of their  
legal rights there would  
have been a calamitous  
fall in revenue.  
Act

(1) That the use contemplated  
by Act VII of 1865 is a  
voluntary one, & presupposes  
a freedom either to take  
or refuse the water  
(2) That the mere fact that the  
ryot derives a benefit from  
the water does not render  
him liable to water-rate  
if he had no option in the  
matter -  
To say that a ryot must  
pay for water forced on  
him against his will



looks ugly, but as the law stands a ryot has only to say that he does not want the water & he cannot be charged.

To veil the brutality of enacting that Govt. may charge for water forced on a man against his will I propose to provide

1. That the land should be cultivated
2. That the Col: should be satisfied that the supply is beneficial & sufficient.
3. That the order of the Col: should not be questioned by civil suit.

Probably the preamble of the act must be amended, but the proposed section alone would, I think, remedy the main evil - The necessity for amending the act is, as you know, urgent. By whom should the task be undertaken?

12-6-99

Proposed draft of Section to be added as Sec 2 of Madras Act VII of 1866 -

Adapted from Sec 48 Bombay Act VII of 1879 -

(Bengal - no person liable to water rate, otherwise than on his application - Sec 74 - Act III of 76)

If it shall appear to the Collector that any cultivated land has derived either by percolation or leakage from a channel distributing water, or by percolation, drainage or ~~surface~~ surface flow from <sup>or through</sup> adjoining ~~land~~ fields, a beneficial supply

Govt. of water sufficient for the requirements of the crop cultivated, he may charge on such land a water rate not exceeding that which would be chargeable if water had been supplied on the application of the landowner or cultivator -

No Civil Court shall take cognizance of the manner in which the Collector exercises the discretion vested in him by this section, or have jurisdiction to set aside his order charging water rate.

Sec 16 of Madras Act III of 1896 -

Not necessary

Mr. Chapman says

that he was dependent on the opinion of the Col:.

12-6-99



4-6

I entirely agree with  
the Hon. Mr. Winterbotham  
that Act VII of 1865  
should be amended at a  
very early date.

I have discussed the matter  
in much detail with the Hon.  
Bhaskaran Deynagar who has  
been good enough to draw  
up a Draft Bill wh. will  
I think meet every requirement.

If H. M. & H. C. approve  
it may be sent to the Leg.

Dept. to be sent thence  
to the Adv. Com. for approval.

It will then I presume have  
to go to India for approval  
with an explanatory letter.

When approved it may be  
published under Rule 33 <sup>under</sup> ~~with~~

H. C.'s order. By suspending  
the Standing order it may be  
passed at once without

ref. to a Select Committee. The Hon. Mr. Winterbotham

17.6.89.



4-6

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By suspending  
the Standing order it may be  
passed at once without

ref. to a Select Committee. The Hon. Mr. Winterbotham

At 7.6.84.

7 6

1. Since this File was returned  
to me by the Hon. Mr.  
Arundel I have not found  
time to remark on the  
Hon. Mr. Bhasyam's  
draft Bill -  
I spoke to the latter on  
the subject, and we  
agreed that the Amendment  
requires further  
consideration -

2. The first clause of Sec 1  
of the Act (VII of 65)  
can't stand as it is -  
I think it may be  
altogether omitted, &  
that the proviso may  
be appended to Sec 1.  
This will sufficiently  
indicate that Zemindari  
& Inam land are  
liable to water-cess.

3. There will still remain  
the defect that Sec 1  
does not authorise the  
levy of water-rate for



Second-crop grown on  
wet land paying a  
Consolidated Single-crop  
assessment -

Perhaps this might be met  
by omitting the  
clause "which also  
shall be additional to  
any land assessment that  
may be leviable on the  
said land as irrigated,  
or punjai," - and  
inserting the words  
"in cases in which  
the assessment upon  
the land does not  
already entitle the  
cultivator (or pattadar?)  
to the use of such  
water."

4. Sec 1. could then read  
as follows: -

Whenever water is supplied  
or used for purposes of  
irrigation from any river,  
stream, channel, tank  
or work belonging to, or  
constructed by, Govt.,  
and also whenever any  
land, under cultivation,  
receives by direct or  
indirect flow or by  
percolation or leakage  
from any such river,  
stream, channel, tank  
or work, or, receives  
therefrom by percolation  
or drainage or flow  
from or through the  
adjoining land,  
water which, in the  
opinion of the Collector,  
is ~~to~~ beneficial to and  
sufficient for the  
requirements of the  
crop on such land,  
it shall be lawful



for the Govt.,  
in cases in which the  
assessment upon the  
land does not  
already entitle the  
patladar, or Cultivator,  
to the use of such  
water, ~~a separate~~  
~~class~~ to levy, at  
 pleasure, on the  
 land so irrigated,  
 or benefited, a  
 separate class for  
such water; and  
 the Govt. may prescribe  
 the rules &c. &c. -  
 Provided always that  
 where a Zamindar,  
 inamdar or any other  
 description of landholder,  
 by virtue of engagements  
 with the Govt., is entitled  
 to irrigation free of  
 separate charge, no class  
 under this Act shall be  
 imposed for water supplied  
 to the extent of such right  
 & no more.

5. The Act if thus  
 amended will still not  
 provide for the  
 cases mentioned by  
 the Board in para 8  
 of B.P. (L.R.) <sup>143</sup> 5-5-97;  
 but perhaps these  
 complications need not  
 be provided for at  
 the present time -

6. The Hon. Mr. Bhasky and  
 thinks that the words  
 "in the opinion of the  
 Collector" are sufficient  
 but the jurisdiction of  
 the Civil Courts to decide  
 whether or not  
 water-rate is chargeable  
 with much respect for  
 his opinion I don't  
 agree - I apprehend  
 that the Collector will



W.H.

be liable to be summoned  
and examined as  
to the grounds of his  
opinion, & that it  
will be open to the  
Civil Court to find  
that "opinion" in  
the Act means a  
judicial opinion formed  
on proper & sufficient  
grounds, & that the  
Collector's opinion was  
not so formed -

I think it much  
safer & better that  
the jurisdiction of  
the Courts should be  
expressly barred

7. In the end I expect it  
will be found desirable  
to repeal the Act;

Vote foot of  
page 3

12 13

but I am content that  
it should be amended  
in the form suggested  
by the Hon. Mr. Bhaskar and  
if that be thought best -

Anyway my  
objections in pages 6  
& 7 above must be  
met -

8. The approval of H.E. to the  
amendment of the Act  
should now be sought;  
& if accorded, the  
proceedings sketched  
by the Hon. Mr. Arundel  
at page 4 above shd.  
be followed H.E.

4-8-99-

I think this measure shd.  
be introduced at the  
first meeting of the  
Leg. Council next  
session?

H.E. The fact  
H.E.  
5-8-99

I agree with Hon. Members that the  
Act must be amended, and I am  
generally in their proposals for affecting  
the amendment.  
H.E.H.

I am of the same opinion

H.E.H.

9-8-99

W.S.  
Mr. Radhakrishnan  
8-8-99



Secy

A draft Bill with an  
Explanatory memo to  
accompany it to the Ad Genl  
to put up.

1/10/11

Secy

The memo & draft Bill  
have gone to the Ad Genl.  
I now submit a draft  
G.O. & a draft letter  
to the Govt of India  
(Res & Agri). To save a  
possible hitch at a  
later stage it would  
beem necessary to  
obtain the approval  
of the Executive Dept  
to the Administrative  
Dept of the Bill. vide  
Note to Rule 1 of the  
"Instructions to L. Govt regarding  
legislation in L. Council". On  
(pamphlet put up). On  
receipt of India's reply  
a despatch must go to the  
Secy of State & copy with  
covering letter to the Legl Dept  
India. (Sub 2) The Bill can be

introduced 2 months after  
date of despatch to S of State  
or on receipt of his approval  
whichever is earlier (Rule 4)  
16/10/11

A Bill to amend Madras Act VII of 1865

"Whereas it is necessary to --  
"amend Madras Act VII of 1865 it is  
"hereby enacted as follows:-

"1. The following portions of Madras  
"Act VII of 1865 are hereby repealed:-

"(a) the words 'which cess shall  
"be additional to any land assessment  
"that may be leviable on the said --  
"land as unirrigated or punjah' occur-  
"-ing in section 1; and

"(b) Section 4."

"2. Section 1 of <sup>the said</sup> ~~Madras~~ Act ~~VII of 1865~~  
shall be read and construed as --  
"if at the time when it was passed the  
"words 'And also whenever any land, --  
"under cultivation, receives, by di-  
"rect or indirect flow or by percola-  
"tion or leakage from any such river,  
"stream, channel, tank or work, or,  
"receives therefrom, by percolation or  
"drainage or flow, from or through --  
"the adjoining land, water, which, in  
"the opinion of the Collector, is bene-  
"ficial to and sufficient for the re-  
"quirements of the crop on such land'  
"were and had been inserted between --  
"the words 'Government' and 'it', and  
"the words 'or benefitted' between the  
"words 'so irrigated' and 'a separate  
"cess' and as if the word 'such' were

55 and 56, Vict.  
C. 14, Sec. 3.



16  
and had been substituted for the --  
words 'the use of the' occurring bet-  
ween the words 'a separate cess' and  
'water'.

'Provided that no watercess pay-  
able for any period prior to the 1st  
of July 1898, in respect of any land  
so cultivated, which is in arrear at  
the commencement of this Act shall --  
be levied.'

'3. The following words shall be  
inserted between the words 'the Govern-  
ment' and 'to levy' in section 1 of the  
<sup>said</sup> Madras Act ~~III of 1885~~ --

'in cases in which the assessment  
upon the land does not already enti-  
tle the pattadar or cultivator to the  
'use of such water';

and the following <sup>words</sup> ~~proviso and~~ --  
~~clause~~ shall be added at the end of  
the said section:-

'Provided always that where a Za-  
mindar, inamdar or any other descrip-  
tion of landholder by virtue of engage-  
ments with the Government is entitled  
to irrigation free of separate charge,  
no cess under this Act shall be im-  
posed for water supplied to the extent  
of such right and no more.'

'No Civil Court shall take cog-  
nizance of the manner in which the --  
Collector exercises the discretion  
vested in him by this section, or --

Madras General Clauses Act  
1891, Sec. 3 sub-sec. 7

7  
'have jurisdiction to set aside his  
'order charging a cess for water'.

14/10/1888

15-8-99



16  
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'vested in him by this section, or --

Madras General Clauses Act  
1891, Sec. 3 sub-sec. 7

7  
'have jurisdiction to set aside his  
'order charging a cess for water'.

14/11/1888

15-8-99



18

19

Memo to accompany Draft Bill  
to amend Mad. Act VII of 1865  
to Adv. Genl.

• Reported in I.L.R., Madras, XII, pages  
407-411.

om. no 273  
confre no 119  
of 15<sup>th</sup> VIII 99  
Desk 15<sup>th</sup> 8 99

Construction  
placed on  
Water-cess  
Act by High  
Court.—1889.

1. Until 1889 it was upon the basis of ~~the~~ <sup>an</sup> ~~assumed~~ <sup>assumed</sup> that Govern-  
ment had the legal right to decide whether  
or not the ryot should be allowed the  
option of taking or refusing water. In  
that year, however, a case \* went on appeal  
before the High Court, in which the  
learned Judges (Collins, C. J., and Muttu-  
sami Aiyar, J.) held that Madras Act VII  
of 1865 "pre-supposed a freedom either to  
take or refuse the water." This decision  
was based partly upon the preamble which  
was said to "disclose only an intention  
that those who obtain a supply or use  
the water in view to deriving increased  
profits should be under an obligation to  
pay the water-cess," and partly on the  
"reasonable construction" of the term  
"use," which, it was said, ordinarily implies  
freedom to use or to abstain from using.

Importance  
of ruling  
brought to  
notice by Mr.  
Arundel

2. The importance of this judgment  
was at once brought to notice, by Mr.  
Arundel, the Collector of Kistna, who  
pointed out that certain passages in it  
"challenged the principles and practice  
of the revenue administration which are  
in force in every ryotwari district in the  
Presidency." Thus the learned Judges  
observed "We are aware of no usage  
whereby a ryot's land can be held to be  
lawfully inundated every year," a state-  
ment which ~~was~~ <sup>was</sup> criticized as  
follows: "The ordinary method of irriga-  
tion is from field to field in a system of  
terraces. The uppermost field is supplied  
direct from the irrigation sluice, and  
after inundation the water flows to the  
next field and then to the next until the  
last is supplied. In such cases, no ryot,  
except the first, who receives his supply  
from the sluice, has the power to refuse  
the water. It must inevitably flow from  
terrace to terrace until it reaches the  
lowest, and no ryot can keep it from  
flowing on to his field from the field  
above."

it was  
In most districts, as Mr. Arundel  
pointed out, all such lands are called  
"wet" and pay a consolidated assessment  
for both land and water at rates which  
are excluded from the cognizance of the  
civil courts by section 58 of Madras Act  
II of 1864, but in the Kistna and  
Gódáviri deltas all lands whether irri-  
gated or not are *prima facie* regarded as  
"dry," a separate water-rate being levied  
under Madras Act VII of 1865, and the  
construction placed upon that Act by the  
High Court jeopardized the whole revenue

P.T.O.



~~\* Dismissed as infructuous.~~

† I.L.R., Madras, XIX, 24-29.

derived from the irrigation works.\* This statement of the case was based on the idea that the Judges had held that the growing of a wet crop involuntarily irrigated was not a "use" of the water, but the Board and Government were of opinion that the effect of the ruling was to invalidate the levy of water-cess in cases where the water was not applied for or used *in view to profit*. Accordingly, no further action was taken at the time, because it was found on appeal, as a fact, that the water, which flowed on to the plaintiff's land, had done "damage, not good."

Action considered unnecessary by Government.

3. ~~110~~ Matters rested in this state until 1895 when another case † came before the High Court. At the preliminary hearing Shephard, J., referring to the case reported in I.L.R., Madras, XII, remarked that the *ratio decidendi* in that ruling was "not whether in the result the plaintiff derived benefit from the water, but under what circumstances he came to use it." If he had no choice in the matter, then as Mr. Justice Shephard understood the decision, he could not be said to have used the water within the meaning of the Act. Mr. Justice Best does not appear to have altogether concurred in this view, for while he substantially agreed with his learned colleague as to the meaning to be attached to the word "use," he also laid stress on the view that water-cess is only payable on account of the increased profit derived from the water. The case was referred again to the Lower Court which found that the plaintiff could not prevent the water from coming on to his land and that no increased benefit was derived from it. On these findings the Judges allowed the appeal "following the decision" in I.L.R., Madras, XII, but leaving unsettled the question upon what ground that decision was based. In G.O., No. 1446, Revenue, dated 9th April 1896, it was accordingly again decided to take no further steps. ~~Mr. Arundel, acting as the~~ ~~Secretary in his capacity as Revenue Secre-~~ ~~tary, then wrote:~~ "Until Mr. Justice Shephard's view is affirmed in a High

Further ruling by Shephard, J., 1895.

Was noted:

~~Note.~~—The rules of 1873 conceded option to take or refuse water in every case (Rule II), but it has evidently been the custom in cases where no application for water has been received and the land has been "involuntarily" irrigated to charge a penal water-rate under Rule V which runs thus: "When water is ~~taken~~ for land not previously irrigated, or of which the irrigation has been relinquished, or when it is taken for raising a second crop, wet or dry, on a registered single crop wet land, before a formal application for water has been made by the ryot concerned and accepted by the Tahsildar as prescribed in Rules II and IV, or after an application has been refused, a water-rate equal to twice the rate chargeable according to Rule I will be exacted."



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Court judgment, Government is safe as regards the bulk of its revenue from irrigation in Gódvári and Kistna for the ryot undoubtedly profits and profits greatly by the water. . . . No legislation seems therefore necessary." The Collectors of Gódvári and Kistna at the time furnished approximate figures of the areas irrigated by involuntary flow. In Gódvári this was estimated at some 5,000 acres; the Collector, however, added "all the low-lying tracts on the delta bordering on the sea and the Colair are lands from which the ryots cannot practically exclude water." These tracts, *it is estimated,* *according to Mr. Clerk, cover an area of 214,005 acres. In the Kistna Mr. Atkinson considered that three-fourths of the total revenue from water-rate (over 18 lakhs) was involved.*

Shephard, J.'s ruling upheld in 1896.

177. The contingency apprehended has now arisen for in second appeals 973 to 977 of 1895 decided in November 1897; it has been held by Subramania Aiyar and Boddam, JJ., that "as pointed out by Shephard, J., in Indian Law Report XIX, Madras, 24, the mere fact that the plaintiff derives a benefit from the water does not render him liable if he had no option in the matter." The judgment continues. "The facts found in this case show that the plaintiffs had no option and the finding of the District Court that they may have derived some benefit from the water is not sufficient to justify the judgment in favour of the defendant." *Judgment (1897) attached.* The Bench which reported the case in its Resolution, No. 237, dated 20th January 1897, requested the Government Pleader to state whether there is any reasonable prospect of getting the ruling modified on review or otherwise, but that officer's reply has not yet been communicated to Government. His reply was in the negative; \* this is what one might have expected, for, now that two judges have followed Mr. Justice Shephard's view which is only an exposition of a judgment to which Sir Arthur Collins was a party, there is little chance of getting a different ruling from a Full Bench. It is significant that not one of the judges who are responsible for the present ruling has any revenue experience.

Consequences of the last ruling.

5. 113. The Government thus now finds itself face to face with the difficulties of *which Mr. Arundel draws so vivid a picture in his letter read in G.O., No. 332, Revenue, dated 19th November 1899.* Much of the irrigation in the deltas is in one sense involuntary, and, if the ryots so

23

choose, they have it in their power materially to decrease the irrigation revenue. ~~As in the case of the~~ they have "merely to file statements declining to have water any more, and then, if the upper field of a terraced series is irrigated direct from the sluice with the consent of the owner thereof, the owners of all the fields below must, under the new ruling, receive their supply of water free of charge, because they have no option of refusing it," and "the same course can be adopted for all fields or plots but one irrigated from any single inlet."

6. As it has been now finally decided that Govt cannot levy water-rate under Act VIII of 1865 on lands irrigated by "involuntary flow", the question arises how the loss of revenue which must be the logical result of this ruling can best be avoided.

7. One of the courses open to Govt is to replace the existing system of levying by a separate charge for water by the imposition of a consolidated wet assessment on all irrigated lands as in other districts; for, when consolidated wet rates are introduced the water law Act VIII of 1865 will cease to be applicable & the Civil courts jurisdiction to adjudicate on questions relating to the rate of assessment



ment with the omitted under  
 Sec 58 of Act II of 1864. These  
 revenue with, however, continued  
 to be caused in the case of  
 lands reported as dry  
 & of main & zamindari lands  
 not only in Godavari & Krishna  
 but also in all other districts  
 & this can be remedied only  
 by resort to legislation.

8. It has accordingly  
 been decided to amend  
 Madras Act IV of 1865 & a  
 draft bill for the purpose  
 is forwarded to the Advocate  
 General for favour of  
 criticism & advice.

9. It is necessary firstly  
 to provide for the levy of  
 the tax due when water  
 reaches the field ~~periodically~~  
~~period~~ otherwise than after  
 application by the cultivator,  
 clause 2 of the draft bill is  
 intended to effect this object.  
 Secondly it is necessary to  
 provide for the levy under  
 the Act of the charge made  
 for a second crop grown & irrigated  
 on ~~single~~ land reported & assessed

as single crop wet land; clause  
 1 of the draft bill therefore  
 repeals the words in Sec 1 of the  
 Act referring to the water cen  
 as additional to any  
 assessment leviable on  
 land as "dry" land, & clause  
 3 of the draft bill inserts  
 the necessary words to be  
 substituted. Thirdly, the  
 substantive part of sec 4 of  
 the Act seems superfluous,  
 clause 1 of the draft bill  
 therefore repeals sec 4 of  
 the Act & clause 3 adds  
 the proviso in the section  
 to section 1 of the Act.  
 Lastly, it is thought  
 necessary ~~to be~~ expressly  
 to bar the jurisdiction of  
 the civil courts; clause 3  
 of the draft bill provides  
 for this.

*Ms  
 submitted*  
*15-8-99*

To the Honble the Adv. Genl.



26

Revenue (1899) Department.

CURRENT No. 5386  
Confidential No. 140

27

For Orders

See

From The Hon: the  
Advocate General  
I think the Council  
additions including Civil  
Saves. H.T. 8.99.  
May the Advocate Genl's redraft  
of the Bill be accepted? (If this is not to go  
into Select Committee, perhaps  
No. It will  
mark the paper for  
full copy)

The changes made by the Adv.  
Genl are explained in his opinion  
accompanying the redraft

Dated 19<sup>th</sup> 1904  
Received 22<sup>nd</sup>  
Registered 22<sup>nd</sup> } August 1899

The only doubtful point  
I am to the omission of the clause

Enclosures 3  
Spare copies

During the jurisdiction of the Civil Court  
(vide H.M. No. 94-8-95 and 6 at p. 10 of the note, below)  
H.T.  
22/10/11

SUBJECT.

Forwarding a revised  
draft of the Bill to  
u. S. Please have  
Ad. Genl redraft etc amend Madras Act VII  
of 1865 (the water cess  
Act).  
I have  
draft an alteration  
in Council in this  
clause  
H.T.  
23.8.99.

This  
document is  
helping in  
the  
25/8/99  
Submitted  
22/8/99

Single land registers



26

BACK PAPERS.

| G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|
|      |     |             |       |
|      |     |             |       |
|      |     |             |       |

FURTHER PAPERS.

| G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|
|      |     |             |       |
|      |     |             |       |
|      |     |             |       |

27

West End Hotel  
Bangalore  
Aug. 19<sup>th</sup> 1899.

My dear Mr. [unclear]  
Bill to amend the [unclear] Act  
VII of 1865



I am  
sending these papers  
direct to you, instead  
of through the Government  
Secretary, in order to save  
time.

Yours sincerely  
[Signature]



To amend Trans Act VII of 1885

Opinion.

1. I have re-drafted this Bill and I send the draft herewith.

2. As the proposed amendments to s. 1 of the Act are rather numerous I think it would be more convenient to reframe the section altogether and re-enact it with the proposed amendments. The words "in cases in which the assessment is", which it is proposed to insert between the words "the Government" and "to levy" in s. 1 of the Act, are, of course, intended to apply to lands which pay a consolidated assessment for both land and water. But it seems to me that these words are unnecessary and I have accordingly omitted them.

3. I have made some alterations, which are submitted for consideration, in the wording of clause 2 of the



draft Bill submitted to me. I think cl. 1 (1) of the draft Bill sent herewith will meet the difficulty created by the decision referred to.

4. As at present advised I do not see the necessity of expressly barring the jurisdiction of the Civil Courts. The proposed clause, which is intended to effect this object, goes much further than s. 54 of Act II of 1864. This section merely precludes the Civil Courts from interfering with the discretion of the Collector as to the rate of assessment. There would be no objection to incorporating a similar enactment in Act VII of 1865; but this is not necessary, as, under the law as it stands, the discretion of the Government, as to the rate of assessment is absolute.

(Amendments)

Account General

Aug. 19<sup>th</sup> 1899.



Bice to amend Trans  
Act VII of 1865.

Opinion.

*Handwritten notes:*  
V. M. P. 1865  
22/8

Draft Bice  
Trans Act VII of 1865.

Whereas &c -

1. (1) Section 1 of Trans Act VII  
of 1865 is hereby repealed and  
the following section is substituted  
therein and shall be deemed  
to have been so substituted at  
the time when the said Act  
came into force; -

Whenever water is supplied or  
used for purposes of irrigation  
from any river, stream, channel,  
tank or work belonging to, or  
controlled by, Government, and  
also whenever water, by direct  
or indirect flow, or by percolation  
or drainage, from any such  
river, stream, channel, tank or work,  
(from or through adjoining lands, or  
otherwise,) irrigates any land under  
cultivation and such irrigation  
is, in the opinion of the Collector,  
beneficial to and sufficient for the  
requirements of the crop on such  
land, it shall be lawful for the



280  
Government to levy at fees on  
on the <sup>irrigated</sup> land ~~no irrigated~~ a  
separate cess for such water;  
and the Government may prescribe  
the rules under which, and the  
rate at which such water-cess  
as aforesaid shall be levied,  
and also a amount the same  
from time to time.

(2.) Provided that no water-cess  
which would not have been  
leviable if this Act had not  
passed shall be leviable for any  
period prior to the 1<sup>st</sup> of  
July, 1898.

(3.) Provided also that, where a  
garden, or inclosure, by virtue of  
agreements with the Government,  
is entitled to irrigation free of  
separate charge, no cess under  
this Act shall be imposed for  
water supplied to the extent of  
this right and no more.

2. Section 4 of the same Act VII of 1865  
is hereby repealed.

C.W.  
19.2.99.



to Mr. Bice to amend  
Act VII of 1865.

For circulation -

I don't see how the clause  
to the A.G. refers in  
para 2 can be dispensed  
with -

I incline to think it will be  
safer to refer the Bill to a  
Select Committee -

The A.G.'s draft may be  
accepted for the purpose  
of obtaining the Sec. of State's  
approval?

I think it highly desirable  
that the jurisdiction of the  
Civil Courts should be  
barred

mt  
25-8-99  
H.T.  
23-8-99

H.T.  
23-8-99

For Mr. Arnold.  
H.T. the for.

H.T.  
23-8-99

See

With ref to Lugs note  
on the docket of Cn  
No 5386 below a  
typed copy of the  
H.L's opinion & redraft  
of the Bill to amend  
Madras Act VII of 1865  
is herewith submitted  
(barring jurisdiction of C. Courts)  
The clause omitted  
by the H.L. is restored  
in pencil.

file  
23/8/99

H.T.  
23-8-99

Office

Please find the draft  
H.L. to India as revised inserting  
as para 9 what I have drafted in  
pencil; attach to it the typed  
copy of the A.G.'s Bill & submit  
I repeat

file  
23/8/99 submit



Typed copy of  
A.G.'s Opinion  
Vide Cn No 5386

Then it follows that the Act will  
permit Govt. to levy a separate  
water cess on land already  
assessed as well. I wish the  
A.G. had explained why he  
thought the words superfluous  
H.S.

41

Draft Bill  
to amend Madras Act VII of 1865.

Opinion.

1. I have re-drafted this Bill  
and I send the draft herewith.

2. As the proposed amendments  
to S. 1 of the Act are rather numerous  
I think it would be more convenient to  
repeal the section altogether and re-  
enact it with the proposed amendments.  
The words "in cases in which the asse-  
-ment &c.", which it is proposed to  
insert between the words "the Govt."  
and "to levy" in S. 1 of the Act, are,  
of course intended to apply to lands  
which pay a consolidated assessment  
for both land and water. But it seems  
to me that these words are not neces-  
sary and I have accordingly omitted  
them.

3. I have made some alterations  
which are submitted for consideration  
in the wording of clause 2 of the  
draft Bill submitted to me. I think  
clause 1 (1)



42  
clause 1 (1) of the draft Bill sent  
herewith will meet the difficulty creat-  
ed by the decisions referred to.

4. As at present advised I do not  
see the necessity of expressly barring  
the jurisdiction of the Civil Courts.  
The proposed clause, which is intended  
to effect this object, goes much fur-  
ther than S. 58 of Act II of 1864. This  
section merely precludes the Civil  
Courts from interfering with the discre-  
tion of the Collector as to the rate of  
assessment. There would be no objection  
to incorporating a similar enactment  
in Act VII of 1865; but this is not ne-  
cessary, as, under the law as it stands,  
the discretion of the Government, as to  
the rate of assessment is absolute.

Sd/ C. Arnold White,  
Advocate-General.

August 19th 1899.

*Yes, this has long been  
lamented by Rev. Officers as  
a blamish requiring  
amendment H.A. -*

43  
*Typed copy  
of A.G.'s redraft  
vide current No 538*

Draft Bill  
to amend Madras Act VII of 1865.

Whereas it is necessary to  
amend Madras Act VII of 1865 it is -  
hereby enacted as follows:-

1 (1) Section 1 of Madras Act VII  
of 1865 is hereby repealed and the fo-  
-lowing section is substituted there-  
-for and shall be deemed to have been  
so substituted at the time when the  
said Act came into force:-

Whenever water is supplied or  
used for purposes of irrigation from  
any river, stream, channel, tank or  
work belonging to, or constructed by,  
Government, and also whenever water,  
by direct or indirect flow, or by per-  
colation or drainage, from any such  
river, stream, channel, tank or work,  
from <sup>or</sup> through adjoining land, or ---  
otherwise, irrigates any land under  
cultivation and such irrigation is, in  
the opinion of the Collector, benefi-  
cial to and sufficient for the requir-  
-ments



44  
requirements of the crop on such land,  
it shall be lawful for the Government  
to levy at pleasure on the irrigated  
land a separate cess for such water:  
and the Government may prescribe the  
rules under which, and the rates at  
which such water-cess as aforesaid shall  
be levied, and alter or amend the same  
from time to time.]

(2) Provided that no water-cess  
which would not have been leviable if  
this Act had not passed shall be leviable  
for any period prior to the 1st of July  
1898.

(3) Provided also that, where a  
Zamindar, or inamdar, by virtue of en-  
gagements with the Government, is en-  
titled to irrigation free of separate  
charge, no cess under this Act shall  
be imposed for water supplied to the  
extent of this right and no more.]

Section 4 of Madras Act VII  
of 1865 is hereby repealed.

(Itld.) C.A.M.

19-8-99.

*Against this quote in margin  
Income Tax Act II of 1886 sec. 39-  
Madras Act II of 1884 sec. 58  
Madras Act III of 1896 sec. 16-  
H.S.*

*and the following section is  
Enacted therefor:-  
The civil court shall  
take cognizance of the matter in  
which the Collector exercises the  
discretion vested in him by section  
1 of this Act or has jurisdiction  
to make any order charging  
cess for water.*

*I think we had better follow the Income Tax Act  
of 1886  
"No suit shall lie in any Civil Court to set  
aside or modify any assessment of water cess  
made by a Collector under this Act."  
H.S.  
31-8-99*

Revenue Department.

45  
Read again G.O. No. 2625, dated 22nd -

May 1897.

also G.O. No. 436 d/7th July '99

G.O. No. 494 d/27th July '99

= \$ =

G.O., Press, No. d/ 1899.

*Hu  
H.S. The*  
The Government considers that  
Act VII of 1865 should be amended to  
provide for the realisation of the --  
Government dues in cases where Govern-  
ment water benefits a cultivator's  
crop though he cannot be said to "use"  
it under the interpretation of the --  
term in I.L.R., Madras, XII, 407-411,  
I.L.R., Madras, XIX, 24-29 and <sup>in the</sup> ~~I.L.R.~~  
~~Judgment in S.A. 973-977 of 1893, also,~~

to provide for the  
levy under the Act of charges made for  
a second irrigated crop on land asses-  
sed as single crop wet and to bar the  
jurisdiction of the civil courts. A  
draft Bill drawn up for these purposes  
is appended to this order. The Board  
is requested to favour Government

*For approval, may  
be useful and  
be considered by  
the Board.*



26

with its remarks thereon at a very early date.

2. The amendment of the Act for the purposes enumerated in para 8 of Board's Proceedings No. 143 dated 5th May 1897 may lie over for the present.

3. The following letter will be addressed to the Government of India.

18/8/99

To avoid complications and facilitate the early passing of the Bill, it is thought that the further...

18-8-99, 9.9.99, 20.8.99

The Board of Rev RSLR & A with draft Bill.

(To save myself trouble I would have passed this draft without alteration, but I don't think it puts the case with sufficient force R.S.)

Here enter my manuscript pages 1, 2, 3 -

There was a general acquiescence in the

water-rate was charged for water used, without regard to the volition of the cultivator.

27

Revenue Department.

Letter.

To The Secy. to the Govt. of India, Deptt. of Revenue & Agriculture.

Sir, I am directed to address the Govt. of India on the subject of the amendment of Madras Act VII of 1865 (an Act to enable the Government to levy a separate cess for the use of water supplied for irrigation purposes in certain cases.)

3 Until 1889 it was generally assumed upon the basis of uniform revenue custom, and usage that the Govt. had the legal right to decide whether or not the ryot should be allowed the option of taking or refusing water for irrigation. In that year, however, a case (L.L.R. Madras, XII, 407-411) went on appeal before the High Court in which the learned Judges held that Madras Act VII of 1865 "presupposed a freedom either to take or refuse the water." This decision was based partly on the



48  
preamble, which was said to "disclose  
"only an intention that those who ob-  
tain a supply or use the water in --  
view to deriving increased profits --  
should be under an obligation to pay  
"the water-cess" and partly on the --  
"reasonable construction" of the term  
"use", which, it was said, ordinarily  
implies freedom to use or to abstain  
from using.

3 ~~This judgment was important in~~  
that certain passages in it challenged  
the principles and the practice of the  
revenue administration which are in --  
force in every ryotwari district in this  
Presidency. Thus the learned Judges --  
observed "We are aware <sup>MRP</sup> of no usage --  
"whereby ryots' land can be held to be  
"lawfully inundated every year". The --  
ordinary method of irrigation, however,  
is from field to field in a system of  
terraces. The uppermost field is sup-  
plied direct from the irrigation sluice,  
and after inundation the water flows  
to the next field and then to the next  
until the last is supplied. In such

49  
cases no ryot except the first who re-  
ceives the supply from the sluice has  
the power to refuse the water. It --  
must inevitably flow from terrace to  
terrace until it reaches the lowest,  
and no ryot can keep it from flowing  
on to his field from the field above.  
After some consideration & discussion,  
the effect of the ruling was taken  
by this Court to  
invalidate the levy of water-cess in  
cases where the water was not applied  
for or used in view to profit. Accord-  
ingly as it was found in the parti-  
cular case that formed the subject of  
the judgment, that the water which --  
flowed on to the plaintiff's land had  
done "damage, ~~and~~ not good," no further  
action was thought necessary.

4 In 1895, another <sup>(ILK had XIX 24-29)</sup> case came on --  
before the High Court. The case was  
referred <sup>back?</sup> again to the lower Court --  
which found that the plaintiff could  
<sup>have</sup> not prevented the water from coming on  
to his land, and that no increased --  
benefit <sup>had been</sup> was derived from it. On these  
findings the High Court allowed the

Suit contesting the  
plaintiff's liability to  
pay water rate



appeal following the decision in I.L.B. Madras, XII, 24-29, but leaving <sup>still</sup> unsettled the question upon what ground -- that decision was based. It was accordingly again decided to take no further steps.

5 In second appeals 975-977 of 1895 decided in November 1896, it has been held by two Judges of the High Court that "as pointed by Shephard, J. in I.L.B., XIX, Madras, 24, the mere fact that the plaintiff derives a benefit <sup>from</sup> the water does not render him liable if he had no option in the matter". The judgment continues- "The facts found in this case show that the plaintiffs had no option and the finding of the District Court that they may have derived some benefit from the water is not sufficient to justify the judgment in favour of the defendant".

6 The question therefore has arisen how the danger of loss of revenue, which results from this ruling can best be avoided. If the ryots so choose, they have it in their power materially

as to whether the class was leviable in or proof that the water was beneficial to the cultivator -

Copy of judgment attached

The construction thus put on the Act has not as yet been widely made use of to evade payment of water-rate, but under the law as it stands the irrigation revenue is obviously in jeopardy -

Any cultivator holding fields in the midst of an expanse of wet cultivation from which, in the interests of the majority, water cannot be excluded, has merely to allege that he does not want the water, and it therefore becomes illegal to charge him for it.

under the various Irrigation Systems

and of Govt. land which during current settlements must remain registered as "dry", in respect of which no water rate can be levied if the cultivators choose to say that they do not want the water.

to decrease the irrigation revenue. They have merely to file statements declining to <sup>take</sup> have water any more and then if the upper field of a terrace series is irrigated direct from the sluice with the consent of the owner thereof, the owners of all the fields below will, under the ruling, receive their supply of water free of charge; because they have no option of receiving it. The same course can be adopted <sup>but one of the</sup> for all fields of plots but one <sup>outlet</sup> irrigated from any single inlet.

7 In most districts in this Presidency <sup>Govt</sup> lands <sup>provided with</sup> liable to such irrigation <sup>is</sup> are called "wet" and pay consolidated assessments for both land and water at rates which are excluded from the cognisance of the civil court by section 58 of Madras Act II of 1864. -- There are, however, <sup>large areas</sup> considerable tracts of land registered as "dry" and of inam and zamindari lands <sup>which</sup> are irrigated more or less regularly. In case of such lands the --



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The matter is specially urgent because the Govt. desires to substitute an enhanced and graduated water-rate for the ~~fixed~~ uniform water-rate now charged on a large area of mawar & Zemindari land in the Godavari & Krishna Deltas, and, with the law as it stands, is unable to do so —

170  
18-8-99

then

Handwritten: KWS-  
18-8-99  
A.2.H  
20.8.99

17 895



(To be inserted  
as para 2 -

18-8-99 -

20.5.99

The Govt of India is aware  
that under the great  
Irrigation Systems of  
this Presidency wide  
exposures of level  
country, including  
such as the Deltas of  
Tanjore, Kistna and  
Godavari, have been  
placed under irrigation  
to the extent of some  
millions of acres, to  
the immense benefit and  
satisfaction of the  
great majority of the  
cultivators - But  
in these wide exposures  
of wet cultivation it  
becomes impossible for  
each individual  
cultivator to exercise



an option as to whether  
he will or will not <sup>main</sup>  
<sup>accept</sup> ~~lose~~ of the water by  
which his fields are  
surrounded. To  
secure drainage the  
water must be  
passed from the  
higher fields to the  
lower, and where ~~in~~  
~~the~~ field is in the  
midst of wet cultivation  
any attempt to exclude  
the water is frustrated  
by percolation -

Thus the small minority  
of cultivators to whom the water may  
possibly be introduced  
have no alternative  
but to grow crops which  
will bear constant  
irrigation, ~~and the~~  
The circumstances <sup>thus</sup> render it  
necessary in the interests  
of the State that cultivators  
should not be able  
to claim exemption.

Such land became  
unfit for the cultivation  
of "dry" crops, and







the water rate on  
 the plea that the  
 water is forced  
 upon them -  
 18-8-99  
 20.8.99

such land becomes  
 unfit for the cultivation  
 of any crop, and

when the supply  
 is beneficial and  
 sufficient

from water rate on  
 the plea that the  
 water is forced  
 upon them -

18-8-99  
 20.8.99



*from letter dated 11th March 1899 in which the Government has been asked to consider the proposal for the amendment of the Madras Act VII of 1865.*

*the draft letter to India about the Bill to amend Madras Act VII of 1865 together with the draft Bill as accepted by the Council is submitted. Para 9 is the new matter for approval.*

*See A fair copy with para 9 newly inserted of the draft letter to India about the Bill to amend Madras Act VII of 1865 together with the draft Bill as accepted by the Council is submitted. Para 9 is the new matter for approval.*

*30/8/99*

*Am for approval.*  
*31.8.99*

*H.S.*  
*31-8-99*

*as a part of the Bill*

Read again G.O. No. 2625, dated 22<sup>nd</sup> May 1897.

also G.O. No. 436, dated 7<sup>th</sup> July 1899.

G.O. No. 494, dated 27<sup>th</sup> July 1899.

= \* =

Press. No. 583d/1<sup>st</sup> Sept. 1899

The Government considers of that Act VII of 1865 should be amended to provide for the realisation of the Government dues in cases where Government water benefits a cultivator's crop though he cannot be said to "use" it under the interpretation of the term in I.L.R., Madras, XII, 407- have I.L.R., Madras, XIX, 24-29 and in the judgment in S.A. 973-977 of 1895, to also to <sup>permit</sup> ~~provide~~ for the levy under the Act of charges made for a section of irrigated crop on land assessed for single crop and to bar the jurisdiction of the civil courts. A Bill drawn up for these purposes for



62

ended to this order. The Board is requested to favour Government with remarks thereon at a very early date.

To avoid complications and facilitate the early passing of the Bill, the further amendment of the Act for the purposes enumerated in para 8 of Board's Proceedings No. 143, dated May 1897, may lie over for the present.

The following letter will be addressed to the Government of India.

*W*  
30/10/1898

To the Board of Revenue, Rev. Sett.  
with draft Bill.

*Issued  
2.9.99  
copy to the Secy Secy*

63

Revenue Department.

Letter.

*Irrigation No. 16*

*Issued  
2.9.99*

*P.C. Dept.  
20.9.99*

*No. 588 Rev. Secy Secy*

The Secy. to the Govt. of India,  
Deptt. of Revenue & Agriculture

Sir,

I am directed to address the Government of India on the subject of the amendment of Madras Act VII of 1865 (an Act to enable the Government to levy a separate cess for the use of water supplied for irrigation purposes in certain cases).

*K.W.  
31-8-99*

2. The Govt. of India is aware that under the great Irrigation Systems of this Presidency wide expanses of level country, such as the Deltas of Tanjore, Kistna and Godavari, have been placed under irrigation to the extent of some millions of acres to the immense benefit and satisfaction of the great majority of the cultivators. But in these wide expanses of wet cultivation it becomes impossible for each individual cultivator to exercise an option as to whether



2 64  
will or will not accept of the water  
to by which his fields are surrounded. To  
to secure drainage the water must be pass-  
ks -ed from the higher fields to the lower,  
and where a field is in the midst of  
wet cultivation any attempt to exclude  
the water is frustrated by percolation.  
Such land becomes unfit for the culti-  
vation of "dry" crops, and a small mi-  
nority of cultivators to whom the water  
may possibly be unwelcome have no al-  
ternative but to grow crops which will  
bear constant irrigation. The circum-  
stances thus render it necessary in  
the interests of the State that cul-  
tivators should not be able to claim  
exemption from water-rate (when the  
supply is beneficial and sufficient)  
on the plea that the water is forced  
upon them.

3. Until 1889 there was a gene-  
ral acquiescence in the uniform revenue-  
custom, under which water-rate was  
charged for water used, without regard  
to the volition of the cultivator. In

65  
that year, however, a case (I.L.R.,  
Madras, XII, 407-411) went on appeal  
before the High Court at Madras in  
which the learned Judges held that  
the Act VII of 1865 "presupposed a  
freedom to take or refuse the water."  
This decision was based partly on the  
preamble, which was said to "disclose"  
"only an intention that those who ob-  
tain a supply or use the water in vi-  
to deriving increased profits should  
be under an obligation to pay the wa-  
ter-cess" and partly on the "reason-  
able construction" of the term "use"  
which, it was said, ordinarily implies  
freedom to use or to abstain from using.  
In 1895, another suit con-  
testing the plaintiff's liability to  
pay water-rate (I.L.R., Madras, <sup>XIX</sup> 24-29)  
came before the High Court. The case  
was referred back to the lower Court  
which found that the plaintiff could  
not have prevented the water from com-  
ing on to his land and that no in-  
creased benefit had been derived from



2  
A. 66  
will  
by On these findings the High Court  
sec owed the appeal following the deci-  
-ed in I.L.R., Madras, XII, 24-29,  
and leaving still unsettled the ques-  
wet on as to whether the cess was leviable  
the proof that the water was beneficial  
Such the cultivator.  
In second appeals 973-977  
of 1895 decided in November 1896, it  
may as been held by two Judges of the High  
tern court that "as pointed out by Shephard, J.,  
bear in I.L.R., XIX, Madras, 24, the mere  
stan fact that the plaintiff derives a --  
the benefit from the water does not ren-  
tivate der him liable if he had no option in  
exemp the matter". The judgment continues --  
supply The facts found in this case show that  
on the the plaintiffs had no option and the  
upon finding of the District Court that --  
they may have derived some benefit  
ral acc from the water is not sufficient to  
ustom, justify the judgment in favour of the  
charged defendant.

the v. The construction thus put  
the Act has not as yet been widely

407-411?

See that this is  
verified  
MS

verified  
MS

67 5  
made use of to evade payment of w.  
rate, but under the law as it stands  
the irrigation revenue is obviously  
jeopardy. Any cultivator holding  
in the midst of an expanse of wet  
tivation from which, in the interest  
of the majority, water cannot be ex-  
cluded, has merely to allege that he  
does not want the water, and it then  
-upon becomes illegal to charge him  
for it.

7. In most districts in this  
Presidency Government land provided  
with irrigation is called "wet", and  
pays a consolidated assessment for --  
both land and water at rates which are  
excluded from the cognizance of the  
civil court by section 58 of Madras  
Act II of 1864. There are, however,  
under the various Irrigation Systems  
large areas of inam and zamindari --  
land, and of Government land which du-  
ring current settlements must remain  
registered as "dry", in respect of --  
which no water-rate can be levied



68  
died if the cultivators choose to  
that they do not want the water.  
case of such lands the inconvenience  
used by the interpretation put upon  
the Act by the High Court remains and  
can be remedied only by resort to le-  
gislation. The matter is specially  
urgent, because the Government desires  
to substitute an enhanced and graduated  
for the uniform water-rate  
water-rate now charged on a large area  
of inam and zamindari land in the Go-  
davari and Kistna Deltas, and, with  
the law as it stands, is unable to  
do so.

H.E. the Governor in Coun-  
cil accordingly desires to amend Mad-  
ras Act VII of 1865. A draft Bill for  
the purpose has been prepared and is  
forwarded herewith. I am to request  
the approval of the Government of In-  
dia to the changes proposed to be ef-  
fected by this Bill.

First, it is necessary to  
provide for the levy of <sup>water cess</sup> ~~the Govt. due~~  
in cases where Govt. water reaches --

7. 69  
*a cultivated*

the field with beneficial effect other-  
wise than after application by the cul-  
timator. Clause / sub-clause (1) of  
the draft Bill is intended to effect  
this object. As it is proposed to give  
this amendment retrospective effect,  
sub-clause (2) of clause 1 of the ---  
draft Bill provides a period of limi-  
tation for claims for arrears. Second  
the substantive part of Sec. 4 of Mad-  
ras Act VII of 1865 seems superfluous.  
Clause 2 of the draft Bill therefore  
repeals this section, and sub-clause  
(3) of clause 1 reenacts the existing  
proviso in the section. <sup>In the last place,</sup> Lastly, it

appears to H.E. the Governor in Coun-  
cil <sup>expedient</sup> ~~most necessary~~ to bar the juris-  
diction of the Civil Courts over ques-

tions which may arise in the working  
of sub-clause (1) of clause 1 of the  
draft Bill. Clause 2 of the Bill ---  
therefore introduces a provision to  
this effect.

10. H.E. the Governor in Coun-  
cil considers it highly <sup>desirable</sup> ~~necessary~~ --

*to entertain suits brought  
to set aside or modify  
assessments of water cess  
made by the Collector  
under this Act* *HW*



WHEREAS it is necessary to amend Madras Act VII of 1865; It is hereby enacted as follows:—

1. (1) Section 1 of Madras Act VII of 1865 is hereby repealed and the following section is substituted therefor and shall be deemed to have been so substituted at the time when the said Act came into force:—

“Whenever water is supplied or used for purposes of irrigation from any river, stream, channel, tank or work belonging to, or constructed by, Government, and also whenever water, by direct or indirect flow, or by percolation or drainage, from any such river, stream, channel, tank or work, from or through adjoining lands, or otherwise, irrigates any land under cultivation and such irrigation is, in the opinion of the Collector, beneficial to and sufficient for the requirements of the crop on such land, it shall be lawful for the Government to levy at pleasure on the irrigated land a separate cess for such water: and the Government may prescribe the rules under which, and the rates at which such water-cess as aforesaid shall be levied, and alter or amend the same from time to time.”

(2) Provided that no water-cess which would not have been leviable if this Act had not passed shall be leviable for any period prior to the 1st of July 1898.

(3) Provided also that, where a zamindar, or inamdar, by virtue of engagements with the Government, is entitled to irrigation free of separate charge, no cess under this Act shall be imposed for water supplied to the extent of this right and no more.

2. Section 4 of Madras Act VII of 1865 is hereby repealed, and the following section is substituted therefor:—

Income Tax Act II of 1886, section 39.  
Madras Act II of 1864, section 58.  
Madras Act III of 1896, section 16.

“No suit shall lie in any Civil Court to set aside or modify any assessment of water-cess made by a Collector under this Act.”



that the amendment should be effected  
as soon as possible. I am accordingly  
to express the hope that the general  
approval of the Govt. of India now  
sought for may be communicated, if  
there be no objection, by telegram,  
so that the draft Bill may be forwarded  
to the Secretary of State two months  
before the next first session of the  
local Legislative Council at which  
it is proposed to introduce the mea-  
-sure.

#1  
31-8-99

HW  
31-8-99

*[Faint, illegible handwritten notes]*

21  
To Simla Revenue.

Geny

175 My letter 588 of  
first instant with  
draft Bill amending  
Madras Act ~~XXX~~<sup>Seven</sup> of  
~~1865~~ 65- would Govt  
of India object to  
this Govt addressing  
Secretary of State  
at once for approval  
subject to any  
modifications ~~made~~  
which may be made  
by Govt of India.  
Two months delay  
must in any case  
occur and course  
suggested would  
prevent longer delay  
if this Govt's proposals  
accepted by India.

WLL  
15-9-99

HW  
15-9-99



73

*Draft Bill to amend Madras Act VII of 1865.*

WHEREAS it is necessary to amend Madras Act VII of 1865; It is hereby enacted as follows:—

1. (1) Section 1 of Madras Act VII of 1865 is hereby repealed and the following section is substituted therefor and shall be deemed to have been so substituted at the time when the said Act came into force:—

“Whenever water is supplied or used for purposes of irrigation from any river, stream, channel, tank or work belonging to, or constructed by, Government, and also whenever water, by direct or indirect flow, or by percolation or drainage, from any such river, stream, channel, tank or work, from or through adjoining lands, or otherwise, irrigates any land under cultivation and such irrigation is, in the opinion of the Collector, beneficial to and sufficient for the requirements of the crop on such land, it shall be lawful for the Government to levy at pleasure on the irrigated land a separate cess for such water: and the Government may prescribe the rules under which, and the rates at which such water-cess as aforesaid shall be levied, and alter or amend the same from time to time.”

(2) Provided that no water-cess which would not have been leviable if this Act had not passed shall be leviable for any period prior to the 1st of July 1898.

(3) Provided also that, where a zamindar, or inamdar, by virtue of engagements with the Government, is entitled to irrigation free of separate charge, no cess under this Act shall be imposed for water supplied to the extent of this right and no more.

2. Section 4 of Madras Act VII of 1865 is hereby repealed, and the following section is substituted therefor:—

Income Tax Act II of 1886, section 39.  
Madras Act II of 1864, section 58.  
Madras Act III of 1896, section 16.

“No suit shall lie in any Civil Court to set aside or modify any assessment of water-cess made by a Collector under this Act.”



74

75

Government (1899) of Madras.  
REVENUE.

Recd. }  
Regd. } 1899.      Enclosures  
                                 Spare copies

G.O., No. 587, 1st September 1899.

SEPTEMBER.

Act VII of 1865.

Considering that — (an Act to enable the Government to levy a separate cess for the use of water supplied for irrigation purposes in certain cases) should be amended; and requesting the Board of Revenue to favour Government with its remarks on the draft Bill drawn up for the purpose, and stating that the Government of India will be addressed on the subject.



GOVERNMENT OF MADRAS.  
REVENUE DEPARTMENT.

READ—again G.O., No. 2625, Revenue, dated 22nd May 1897.

ABSTRACT.—Stating that the question of the early extension of the Kistna irrigation channels to the low-lying tracts in which irrigation by involuntary flow has occurred in the past will be considered in the Public Works Department and that the amendment of Act VII of 1865 will be dealt with separately.

READ—also G.O., No. 436, Revenue, dated 7th July 1899.

ABSTRACT.—Passing orders on the scheme submitted by the Deputy Commissioner and the Board of Revenue for the re-settlement of the Gódvári district.

READ—also G.O., No. 494, Revenue, dated 27th July 1899.

ABSTRACT.—Passing orders on the scheme for the re-settlement of the Masulipatam portion of the Kistna district.

ORDER—No. 587, Revenue, dated 1st September 1899.

Irrigation No. 15.

The Government considers that Act VII of 1865 should be amended to provide for the realisation of the Government dues in cases where Government water benefits a cultivator's crop though he cannot be said to "use" it under the interpretation of the term in XII. Indian Law Reports, Madras, 407-411, XIX. Indian Law Reports, Madras, 24-29, and in the judgment in S.A. 973-977 of 1895; and also to permit the levy under the Act of charges made for a second irrigated crop on land assessed as single crop wet and to bar the jurisdiction of the Civil Courts. A draft Bill drawn up for these purposes is appended to this order. The Board is requested to favour Government with its remarks thereon at a very early date.

2. To avoid complications and facilitate the early passing of the Bill, the further amendment of the Act for the purposes enumerated in paragraph 8 of Board's Proceedings, No. 143, dated 5th May 1897, may lie over for the present.

3. The following letter will be addressed to the Government of India:—

[Here enter Letter, No. 588, Revenue, dated 1st September 1899.]

(True Extract.)

(Signed) H. TREMENHEERE,  
Acting Secretary to Government.

To the Board of Revenue (Revenue Settlement, etc.), with draft Bill.  
Copy to the Legislative Department.

Ed. J. Henricus.

40 Copies.

1899.

DEPARTMENT OF REVENUE AND AGRICULTURE.

From

The Government of Fort St. George.

Recd.

Enclosures

Regd.

1899.

Spare copies

Letter, No. 588, 1st September 1899.

SEPTEMBER.

FORWARDING a draft Bill to amend Act VII of 1865 (an Act to enable the Government to levy a separate cess for the use of water supplied for irrigation purposes in certain cases); and requesting the approval of the Government of India to the changes proposed to be effected by the Bill.



REVENUE DEPARTMENT.

From

H. TREMENHEERE, Esq., I.C.S.,  
Acting Secretary to the Government of Madras,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,  
DEPARTMENT OF REVENUE AND AGRICULTURE.

Dated Ootacamund, 1st September 1899.

SIR,

I am directed to address the Government of India on the subject of the amendment of Madras Act VII of 1865 (an Act to enable the Government to levy a separate cess for the use of water supplied for irrigation purposes in certain cases).

Irrigation No. 16.

2. The Government of India is aware that under the great Irrigation Systems of this Presidency wide expanses of level country, such as the deltas of Tanjore, Kistna and Gódvári, have been placed under irrigation to the extent of some millions of acres to the immense benefit and satisfaction of the great majority of the cultivators. But in these wide expanses of wet cultivation it becomes impossible for each individual cultivator to exercise an option as to whether he will or will not accept the water by which his fields are surrounded. To secure drainage the water must be passed from the higher fields to the lower, and where a field is in the midst of wet cultivation any attempt to exclude the water is frustrated by percolation. Such land becomes unfit for the cultivation of "dry" crops, and a small minority of cultivators to whom the water may possibly be unwelcome have no alternative but to grow crops which will bear constant irrigation. The circumstances thus render it necessary in the interests of the State that cultivators should not be able to claim exemption from water-rate (when the supply is beneficial and sufficient) on the plea that the water is forced upon them.

3. Until 1889 there was a general acquiescence in the uniform revenue-custom, under which water-rate was charged for water used, without regard to the volition of the cultivator. In that year, however, a case (XII. I.L.R., Madras, 407-411) went on appeal before the High Court at Madras in which the learned Judges held that Madras Act VII of 1865 "presupposed a freedom either to take or refuse the water." This decision was based partly on the preamble which was said to "disclose only an intention that those who obtain a supply or use the water in view to deriving increased profits should be under an obligation to pay the water-cess" and partly on the "reasonable construction" of the term "use," which, it was said, ordinarily implies freedom to use or to abstain from using.

4. In 1895, another suit contesting the plaintiff's liability to pay water-rate (XIX. I.L.R., Madras, 24-29) came before the High Court. The case was referred back to the lower Court which found that the plaintiff could not have prevented the water from coming on to his land, and that no increased benefit had been derived from it. On these findings the High Court allowed the appeal following the decision in XII. I.L.R., Madras, 407-411, but leaving still unsettled the question as to whether the cess was leviable on proof that the water was beneficial to the cultivator.

5. In second appeals 973-977 of 1895 decided in November 1896, it has been held by two Judges of the High Court that "as pointed out by Shephard, J., in XIX. I.L.R., Madras, 24, the mere fact that the plaintiff derives a benefit from the water does not render him liable if he had no option in the matter." The judgment continues: "The facts found in this case show that the plaintiffs had no option and the finding of the District Court that they may have derived some benefit from the water is not sufficient to justify the judgment in favour of the defendant."

6. The construction thus put on the Act has not as yet been widely made use of to evade payment of water-rate, but under the law as it stands the irrigation revenue is obviously in jeopardy. Any cultivator holding fields in the midst of an expanse of wet cultivation from which, in the interests of the majority, water cannot be excluded, has merely to allege that he does not want the water and it thereupon becomes illegal to charge him for it.

7. In most districts in this Presidency Government land provided with irrigation is called "wet," and pays a consolidated assessment for both land and water at rates which are excluded from the cognisance of the Civil Court by section 58 of Madras Act II of 1864. There are, however, under the various Irrigation Systems large areas of inam and zamindari land, and of Government land which during current settlements must remain registered as "dry," in respect of which no water-rate can be levied if the cultivators choose to say that they do not want the water. In case of such lands the inconvenience caused by the interpretation put upon the Act by the High Court remains and can be remedied only by resort to legislation. The matter is specially urgent, because the Government desires to substitute an enhanced and graduated water-rate for the uniform water-rate now charged on a large area of inam and zamindari land in the Gódvári and Kistna deltas, and, with the law as it stands, is unable to do so.

8. His Excellency the Governor in Council accordingly desires to amend Madras Act VII of 1865. A draft Bill for the purpose has been prepared and is forwarded herewith. I am to request the approval of the Government of India to the changes proposed to be effected by this Bill.

9. First, it is necessary to provide for the levy of water-cess in cases where Government water reaches a cultivated field with beneficial effect otherwise than after application by the cultivator. Clause 1, sub-clause (1) of the draft Bill is intended to effect this object. As it is proposed to give this amendment retrospective effect, sub-clause (2) of clause 1 of the draft Bill provides a period of limitation for claims for arrears. Secondly, the substantive part of section 4 of Madras Act VII of 1865 seems superfluous. Clause 2 of the draft Bill therefore repeals this section, and sub-clause (3) of clause 1 re-enacts the existing proviso in the section. In the last place, it appears to His Excellency the Governor in Council expedient to bar the jurisdiction of the Civil Courts to entertain suits brought to set aside or modify assessments of water-cess made by the Collector under this Act. Clause 2 of the Bill therefore introduces a provision to this effect.

10. His Excellency the Governor in Council considers it highly desirable that the amendment should be effected as soon as possible. I am accordingly to express the hope that the general approval of the Government of India now sought for may be communicated, if there be no objection, by telegram, so that the draft Bill may be forwarded to the Secretary of State two months before the next first session of the local Legislative Council at which it is proposed to introduce the measure.

I have the honour to be,

Sir,

Your most obedient servant,

Acting Secretary to Government.

Exd. J. Henricus.

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