

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 2325

DATED 8th May

[Despatch Abstract.]

Concurrence to the B. & N. P. Co. P. W. D.
According letter from the Sup. & Engineer, IV. P. D.
forwarding copy of the judgment of the
D. Court in the Pallapalliem Channel case,
Commissaire D. D.

BACK PAPERS.

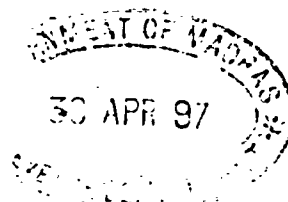
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

IRRIGATION.

Government {1897} of Madras.
PUBLIC WORKS.



Recd. 30.4. } 1897.
Regd. 1.5.

Enclosures

Spare copies

G.O., No. 328 I., 29th March 1897.

MARCH.

Up. Mis. no. 2325 of 8th May 97.
Communicated to the
Board of Rev. 11/8/97.

Lib

15 Is the B^d of Rev (CR) no. 11-5-97
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7-5-97

Pallapolliem Channel Case

Recording letter from Superintending Engineer, IV Circle, forwarding copy of the judgment of the District Court in the —, Coimbatore division, and drawing the attention of officers of the department to certain parts of the judgment asserting the right of Government to control the distribution of water for irrigation purposes.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Irrigation.

READ—the following papers :—

From J. HANNAN, Esq., Superintending Engineer, IV Circle, to the Chief Engineer for Irrigation, dated 12th February 1897, No. 28/I.

With reference to your memorandum No. IV—31/C.I., dated 11th November 1896, I have the honour to forward, herewith, copy of the judgment in Original Suit No. 925 of 1894 on the file of the District Munsif, Karúr, in the Pallapolliem channel case, with a copy of the appellate judgment and decree on the same.

ENCLOSURES.

IN THE DISTRICT COURT, COIMBATORE.

Decree on Appeal.

PRESENT :

G. T. MACKENZIE, Esq., Acting District Judge.

Appeal Suit No. 84 of 1896.

Appeal from the decree of the Court of the District Munsif of Karúr in Original Suit No. 925 of 1894.

Memorandum of Appeal.

W. C. Lewis, Esq., late Executive Engineer, Coimbatore District ... { Appellant (First Defendant),

Versus

1. Putti Rangannachar, son of Putti Chinna Venkataroyer, Brahmin, ryot, aged 55, living in Andan Kovil,
2. Putti Krishtnier, son of Subbaroyar, aged 54, Brahmin, ryot, living in Andan Kovil,
3. Munusami Naidu, aged 47, son of Ramanjalu Naidu, Vaduga, ryot, living in Karúr,
4. Singa Aiyangar, aged 50, son of Narasimmiengar,
5. Kooa Venkataroyer, aged 30, son of Narasinga Rao, Brahmin, ryot, living at Pallapolliem,
6. Ragunatha Narasinga Rao, aged 30, son of Devaji Rao, Brahmin, ryot, living at Pallapolliem,
7. Raghavendra Rao, son of Seshagiriachar, aged 47, Brahmin, ryot, residing at Viswanathapuri, Karúr taluk,
8. Muthuswami Mudaliar, son of Kuppana Mudaliar, aged 52, Vellala, ryot, residing at Viswanathapuri, Karúr taluk,

Respondents (Plaintiffs 1 and 2 and 4 to 9).

W. C. Lewis, Esq., the abovenamed appellant (first defendant) appeals to the District Court of Coimbatore against the decree of the said District Munsif in the above suit, dated 21st day of December 1895, for the following reasons, viz :—

- (1) The judgment and decree of the Lower Court is against law and against the weight of the evidence adduced in the case.
- (2) The Lower Court ought to have held that the suit as framed was unsustainable.
- (3) The Lower Court ought to have held that the suit ought to have been instituted against the Secretary of State for India in Council.
- (4) The Lower Court ought to have held that the suit was unsustainable in the absence of due notice required by section 424, Civil Procedure Code.
- (5) The Lower Court is wrong in considering the above two objections to the suit were taken too late.

(6) The reasons given by the Lower Court for overruling the above two objections are unsound and untenable.

(7) The Lower Court has not correctly understood the real points of dispute between the parties in the case.

(8) The Lower Court has failed to see that the question is not whether anything less than 5 feet of water would be an adequate or inadequate supply, but that whether plaintiffs can claim as a matter of right to have 5 feet of water.

(9) The Lower Court has failed to see that it gives a relief to plaintiffs which was never claimed by them.

(10) The Lower Court has failed to notice that the plaintiffs never alleged they were entitled to or always received 5 feet of water, but that what the plaintiffs asserted was that they are absolutely and exclusively entitled to the channel and to all the water flowing into it by means of the said anicut, &c. [vide paragraph (c) of the plaint].

(11) The Lower Court has failed to notice that the first relief claimed by the plaintiffs was for a declaration of plaintiffs and other ryots' rights to the exclusive use of all the water flowing into and in the said channel.

(12) The plaintiffs having abandoned the contention of the anicut being a private one, and the Lower Court not having found that the plaintiffs have proved the absolute and exclusive ownership set up and further finding the fifth issue in favour of the appellant, the Lower Court ought to have dismissed the suit.

(13) The Lower Court has failed to see that the Government has represented by the Engineering Department does not and cannot undertake always to give an adequate supply of water to any particular section of ryots to the prejudice of other ryots.

(14) The right claimed by the plaintiffs must be based on either contract or prescription.

(15) If on the former such contract is not alleged nor proved.

(16) If on prescription and from the plaint it is to be presumed that it is so, then the plaintiffs have not proved that they have enjoyed a right to 5 feet of water for the statutory period.

(17) That the Lower Court has entirely overlooked that the plaintiffs could not possibly acquire any prescriptive right to 5 feet of water, for in paragraph 14 of its judgment, the Lower Court itself admits that the head sluice was only constructed in 1876, i.e., about 18 years before suit.

(18) There is nothing to show that before that date the channel had 5 feet of water in it or that the plaintiffs got such supply.

(19) The Lower Court has entirely overlooked that Exhibit E, the order of the Superintending Engineer, was overruled by the Chief Engineer (vide Exhibit III).

(20) The Lower Court has not correctly appreciated the documentary and oral evidence in the case, and is wrong in holding that the evidence of the plaintiff's 6th witness helps the plaintiffs.

(21) The Lower Court has failed to notice that the plaintiffs, as against the Government, cannot acquire and have not acquired any easement rights.

(22) The decree of the Lower Court "that plaintiffs are entitled to 5 feet of water" without any qualification is one that cannot be given effect to, for the channel does not always have 5 feet of water.

(23) The suit is a premature one, for it cannot be now confidently asserted that there would be a diminution in the quantity of the water usually received by the plaintiffs and to which they are entitled, if the proposed notch were opened.

(24) The Lower Court is wrong in considering that the opening of the notch would prejudice the existing rights of the plaintiffs.

(25) The plaintiffs have not alleged or proved any act of damage.

Appeal amount RS. 100

Decree.—This appeal coming on for hearing on the 26th day of October 1896, and having stood over for consideration till this day: upon perusing the grounds of appeal, the judgment and decree of the Lower Court and the material papers in the suit; and upon hearing the arguments of Messrs. C. V. Narasiah, Counsel, and T. S. Balakrishnier, Vakils for the appellant, and of Mr. C. C. Venkatramanier, Vakils for the third to seventh respondents, the first second and eighth respondents not appearing either in person or by Vakils, this Court doth order and decree that the decree of the Lower Court be, and the same hereby is set aside and plaintiff's suit dismissed. This Court doth further order and decree that the respondents (plaintiffs 1, 2 and 4 to 9) do pay to the appellant (first defendant) his costs as specified below in this Court and in the Court of first instance.

Memorandum of Costs.

Appellant's (first Defendant's) costs.	Amount.	Respondent's (Plaintiff's) costs.	Amount.
In the Court of first instance.	RS. A. P. 202 6 0	In the Court of first instance ..	RS. A. P. 243 13 0
In this Court—		In this Court—	
Stamp for vakalatnamah ..	0 8 0	Third to seventh respondents' costs—	
Do. appeal memo. ..	7 8 0	Court fee for vakalatnamah.	0 8 0
Do. copies of judgment and decrees.	1 8 0	Vakil's fee	5 0 0
Do. process	6 0 0		
Counsel's fee	200 0 0		
	215 8 0		5 8 0
To be paid to appellant (first defendant) by respondents (plaintiffs 1, 2 and 4 to 9).	417 14 0	To be borne by 3 to 7 respondents (plaintiffs 4 to 9).	249 5 0

Given under my hand and the seal of the Court this 27th day of October 1896.

N.B.—The parties should apply as soon as possible for the return of all exhibits which they may wish to preserve, as the record will be liable to be destroyed after three years from this date.

(Signed) G. T. MACKENZIE,
Ag. District Judge.

IN THE DISTRICT COURT OF COIMBATORE.

Tuesday the 27th day of October 1896.

PRESENT :

G. T. MACKENZIE, Esq., Acting District Judge.

Appeal Suit No. 84 of 1896.

W. C. Lewis, Esq. Appellant (First Defendant),

Versus

1. Putti Rangannachar	...	...	...	...	...	} Respondents (Plaintiffs 1, 2 and 4 to 9).
2. Putti Krishtnier	...	...	...	...	...	
3. Munisami Naidu	...	...	...	...	...	
4. Singa Aiyangar	...	...	...	...	...	
5. Koos Venkataroyer	...	...	...	...	...	
6. Itagunatha Narasinga Rao	...	...	...	...	...	
7. Raghavendra Rao	...	...	...	...	...	
8. Munthuswami Mudaliar	...	...	...	...	...	

Appeal from the decree of the Court of the District Munsif of Karur in Original Suit No. 925 of 1894.

This appeal coming on for hearing on the 26th day of October 1896, and having stood over for consideration till this day, the Court delivered the following

Judgment.—This is an appeal against the decision of the District Munsif of Karur in Suit No. 925 of 1894 on his file.

2. Certain ryots obtained an injunction against the Executive Engineer forbidding him to make a vent in an anicut. Against that decision he appeals.

3. The facts of this dispute are as follows :—

The Amaravati river flows along the south-east corner of this district and enters the Cauvery river at Karur. A stone dam or anicut in old times was thrown cross the Amaravati river to hold up the water and divert the water down a channel to the villages of plaintiffs. The water which flowed through this rough stone anicut in ordinary weather or over it in times of flood went downstream to supply channels that took off at points lower down the river. In 1892 the Public Works Department erected a puddle-wall in front of the anicut and this made the anicut almost water-tight. The cultivators who depended upon lower channels got no supply except when the water flowed over the anicut and they complained of this. The Executive Engineer proposed to make an opening in the anicut to meet the wants of these petitioners. The Superintending Engineer forbade this saying that he could recognize no claim founded on leakage. The Chief Engineer for Irrigation took a different view and ordered that an opening be made. In obedience

to this order the Superintending Engineer directed the Executive Engineer to make a vent one and a half feet square three feet below the crest of the anicut. Plaintiffs at once filed this suit against the Executive Engineer by name. They prayed for an injunction forbidding any such opening, and the District Munsif gave a decision in their favour.

4. It appears to me that the technical objections to this suit are fatal to it. After the hearing had commenced and after the plaintiffs had given their evidence the defendant took the point that notice under section 424 was necessary. The District Munsif held that this objection was too late, but I think that it may be taken at any time. The plaintiffs got out of the difficulty by contending that their suit was not against the Secretary of State, but against defendant personally, but this contention places them in the dilemma that an injunction against Mr. Lewis in person is valueless. Mr. Lewis has since been transferred to another district and a personal injunction would not bind his successor, the present Executive Engineer of this district.

5. At the hearing of this appeal it is contended that section 56 (d) of the Specific Relief Act prevents this injunction. To this it is replied that the injunction does not interfere with the duties of the Public Works Department. It forbids defendant to commit a tortious act. It appears to me that the department certainly has duties to provide water for the lower channels, and that this contention, if successful, would place plaintiffs in this dilemma that they cannot sue jointly if a tort is the cause of action. I am of opinion that both these objections must prevail and that plaintiff's suit, without notice, for an injunction is bad.

6. Also I am of opinion that upon the merits this suit must fail. In the first place I have a difficulty in understanding upon what principle plaintiffs can demand, as of right, any supply of water. Plaintiffs are ryots whose lands are irrigated from a channel which leads off from the river at this anicut. The attempt in the plaint to establish proprietary rights in this anicut and channels has failed. It may be admitted for the purposes of this discussion that plaintiffs and their predecessors have received water for a hundred years or more, but the fact remains that this anicut and this channel are under the control of the Public Works Department and are the property of Government. The custom or common law of the Madras Presidency, except, perhaps, in Malabar and Canara, is that Government distributes for irrigation the water of rivers. From time to time Government erects anicuts or dams across rivers and excavates channels to distribute water. We see such works at Dowlaisweram on the Godavari, at Bezvada on the Kistna, and at Nellore and Sangam on the Pennéru. It seems to me that the ryots who receive water from these works cannot compel Government to continue the irrigation projects, and I cannot see how a different principle applies to old anicuts on the Cauvery or its tributaries, which anicuts the present British Government has taken over from the previous Governments which constructed them. My attention is drawn to several cases in the reports, but I think that these cases may be distinguished as relating to proprietary channels. The view which I take of the question is broadly this. If Government throws an anicut across a river and excavates channels to send water to irrigate certain lands, the cultivators of these lands do not thereby acquire a right to demand that Government shall continue this supply of water undiminished for ever and ever.

7. If ryots who receive river water have this right, it will be a fatal blow to many schemes for the extension of irrigation. The anicut at Nellore existed for many years before the anicut at Sangam, higher up the river, was constructed. The ryots of the Nellore delta under this idea could have protested. Sir Arthur Cotton wishes an anicut higher up the Godavari than the present anicut at Dowlaisweram. A similar scheme has been discussed in the Kistna district. In this district there has been a scheme to store the flood waters of the Bhavani. The ryots of the Godavari, Kistna and Cauvery deltas can wreck these schemes, if this suit is successful.

8. In the second place, if it be admitted that plaintiffs may demand their usual supply there is no evidence here that plaintiffs will receive less than their usual supply. They received a supply of the water which was held back by a leaky anicut. The Public Works Department are of opinion that the proposed vent will let through as much water as formerly passed through the leaks, and on this point I accept the opinion of the department.

9. It appears to me that the District Munsif in calculating how much water is required to irrigate all the wet land under this channel has approached the question from the wrong side. It is arguable that plaintiffs can claim the amount which has usually passed down this channel. I understand that argument, although I do not yield to it. But I do not see upon what principle plaintiffs can claim water sufficient to irrigate all the lands commanded by this channel, which plaintiffs have chosen to bring under cultivation in the hope of getting water.

10. Also I think that the District Munsif has misunderstood the evidence of Mr. Hannan, the Superintending Engineer. Five feet deep is a full channel. Mr. Hannan said that the plaintiffs ought to have 5 feet of water in this channel for a certain number of days during the cultivation season. But the District Munsif has given plaintiffs a decree for 5 feet of water always.

11. With regard to the amount of water which is required to irrigate paddy, it is difficult to lay down any rule. Some varieties of paddy require very little water and some varieties take a great deal. My own idea is that cultivators take much more water than the plants require, because the silt which is deposited by this muddy river water is a potent fertilizer of the field. In the Kistna district I heard 2 cubic yards per acre per hour quoted as the amount of water

required, but Mr. Hannan in his evidence in this suit speaks of a cubic foot per second to 44 acres. This would be 3 cubic yards per acre per hour. Mr. Hannan says that the average supply by this channel in 1893 was 72 cubic feet per second which would suffice for 3,168 acres at 3 cubic yards per acre per hour or for 4,702 acres at 2 cubic yards per acre per hour. The area to be irrigated under the channel is said in the judgment to be 3,350 acres, but the Tahsildar, as 1st witness, says that the area is 3,547 acres. I give these figures in order that the whole case may be on record, but I think that nothing turns on these figures.

12. The view I take of this dispute is as follows:—The Public Works Department has the duty of distributing the water of this river and has to think of the claims of all the channels, high and low, on this river. Plaintiffs' contention is that this anicut, which was made water-tight in 1892 shall remain water-tight, so that no water shall pass downstream except in times of flood when the water flows over the crest of the anicut. I am of opinion that plaintiffs have no legal claim to demand this.

13. This appeal is allowed. The judgment of the Lower Court is set aside, and this suit is dismissed with costs throughout.

Pronounced in open Court this 27th day of October 1896.

(Signed) G. T. MACKENZIE,
Acting District Judge.

IN THE COURT OF THE DISTRICT MUNSIF OF KARÚR.

Saturday the 21st day of December 1895.

PRESENT:

M.R.Ry. S. SWAMINATHA SASTRI AVERGAL, B.A., B.L., District Munsif.

Original Suit No. 925 of 1894.

1. Putti Rangannachar,	} By Messrs. Varada Chariar, N. Desikachariar, and L. Kuppoo Row, Pleaders ... Plaintiffs.
2. Putti Krishna Iyer,	
3. Muthooveerana Chettyar (died),	
4. Munisamy Naidu,	
5. Singa Ayengar,	
6. Koos Venkata Royer,	
7. Regunatha Narasinga Row,	
8. Ragavandra Row, and	
9. Muthoosawmy Mudaliar.	
1. W. C. Lewis, Esq.,	} No. 1 by T. R. Ramachandra Iyer and Counsel Narasiah ... Defendants.
2. Ramachandra Sastri,	
3. Kuppooamy Iyer,	

1. This suit coming on for hearing, the Court delivered the following judgment:—

The following plaint was filed:—

(a) Plaintiffs above named for themselves, and on behalf of all the ryots of the villages of Andangovil, Lakshminarayanasamudram, Pallapoliem and Visvanathapuri, Karúr taluk, desire to state as follows:—

(b) Plaintiffs and other ryots of the villages named above are holders and proprietors of all wet lands in the above-said villages within the jurisdiction of the Court.

(c) These lands have, for the last 200 or 300 years, been irrigated by a channel known as the Pallapoliem channel, which is fed by the river Amraoti by means of an anicut across the river near the village of Anaipoliem.

(d) Plaintiffs are informed and believe it to be true that the said anicut was built by 1st Plaintiff's ancestor Ramachar 200 years ago and the channel dug by him at considerable cost and labour.

(e) That by reason thereof and by virtue of enjoyment, as of right, of the water flowing into and in the said channel for more than 200 years, plaintiffs and the other ryots are absolutely and exclusively entitled to the channel and to all the water flowing into it by means of the said anicut for irrigational, domestic and other reasonable purposes.

(f) That plaintiffs beg to state that for the last 16 or 17 years, owing to insufficient supply of water in the river during the greater part of every year, the supply in the channel has been greatly insufficient for a proper irrigation of these lands.

(g) That your plaintiffs understand, and believe it to be true, that 2nd defendant under orders of the 1st defendant has directed the 3rd defendant to make a notch or otherwise an opening in the anicut for the purpose of diverting the water flowing into and in the channel, and that 3rd defendant is about to commence work.

(h) Defendants have no right to make any such opening. And the opening, if made, will be a direct infringement of plaintiffs' and the other ryots' ancient and prescriptive rights to the exclusive use of the water flowing from the river to the channel.

(i) The said opening will besides be contrary to long-established usages and would materially diminish the quantity of water required for irrigation of their lands, and that heavy and incalculable damages are likely to result from it.

(j) Plaintiffs' cause of action arises on the 6th November, when 2nd defendant gave orders to 3rd defendant to open the notch.

(k) Plaintiffs humbly pray that the Honourable Court will be pleased:—

(a) to declare plaintiffs' and other ryots' rights to the exclusive use of all the water flowing into and in the said channel for irrigational, domestic and other reasonable purposes;

(b) to restrain defendants by issue of a perpetual injunction from making any notch or other opening on the anicut;

(c) to order defendants or such of them as may be found liable to pay plaintiffs' costs; and

(d) to grant such other reliefs as may be necessary.

2. The following defence was filed by the 1st defendant:—

(a) That the plaint, though purporting to be on behalf not only of the plaintiffs but of other ryots, does not disclose whether the provision of section 30 of the Civil Procedure Code has been complied with.

(b) That the plaint is insufficiently stamped, and, if properly stamped, this Court would cease to have jurisdiction.

(c) That the present suit is beyond the jurisdiction of this Court.

(d) That the plaintiffs are not entitled to the reliefs prayed for in the plaint.

(e) That it is not stated in the plaint that any actual damage has been suffered by the plaintiffs; nor is it clear that any substantial injury would follow as a natural consequence from the action complained of.

(f) That the defendants deny that by the making of the plaint-mentioned "notch," there will be any diminution in the quantity of water to which the plaintiffs are entitled.

(g) That the defendant denies that the plaint-mentioned channel is the private property of the 1st plaintiff or that the plaintiffs and other ryots are absolutely and exclusively entitled to the channel.

(h) That the plaintiffs have not acquired any such easement as is claimed in the plaint.

(i) That the defendant asserts that the Government has the right to distribute and regulate the water of the plaint channel in any manner it pleases, so long as it does not prejudice the plaintiffs.

(j) That before 1892, there was considerable leakage of water through the plaint-mentioned anicut, which was then of rough stone only and which water used to form one of the main sources of supply to the Thirumanilaiyur channel, lower down the river, which has existed from time immemorial.

(k) That in 1892, the plaint-mentioned anicut had a puddle wall put in all along the front, and was thus made almost entirely water-tight, thereby depriving the said Thirumanilaiyur channel of the usual supply of water which it used to receive from time immemorial.

(l) That thereupon the Thirumanilaiyur ryots petitioned the Collector and other authorities, and it was finally decided to have a small vent 1 foot 6 inches square made 3 feet below the crest of the plaint-mentioned anicut, which is the notch mentioned in the plaint.

(m) That this vent cannot draw off enough water to cause any diminution in the water usually received by the Pallapoliem channel, but merely provides for passing the supply of water to the Thirumanilaiyur channel which it usually received and of which it has now been deprived by the repair mentioned in paragraph 10.

(n) That the plaintiffs, as claimed in the plaint, are not entitled to so use the water as to materially diminish the supply of the water to which the ryots of Thirumanilaiyur village are entitled.

(o) That the use of the water claimed by the plaintiffs is not a reasonable use, and is more than is required for their purposes as occupiers of the plaint-mentioned lands.

(p) That save and except as to the admissions specifically made herein, the defendant denies the statements made in the plaint and puts plaintiffs to the proof of the same.

(q) The defendant prays that the suit may be dismissed, and that he may be awarded all costs of the suit.

3. The following defence was filed by the 2nd defendant :—

- (a) That your defendant has been unnecessarily made a party to this suit.
- (b) That your defendant is a subordinate of the 1st defendant and bound to obey the orders of such 1st defendant and, in all that he has done, he has only obeyed orders.
- (c) That the 1st defendant having been made a defendant, there was no necessity to make your defendant a party to the suit.
- (d) That the plaint discloses no cause of action as against your defendant.
- (e) Your defendant therefore prays that his name be struck off from the list of defendants and that he be awarded his costs.

4. On the date of the settlement of issues, the suit as against defendants Nos. 2 and 3 was withdrawn.

5. The following issues were recorded in the case :—

- (1) Whether the claim is undervalued?
- (2) Whether plaintiffs and those for whom they sue have an exclusive right to the water of the channel up to the crest of the dam in question?
- (3) Whether by the notch proposed to be opened, the supply of water plaintiffs, &c., are entitled to would be diminished?
- (4) Whether till 1892 any water was escaping by leakages from the old dam year after year, and whether the quantity of water so escaping is larger or smaller than the water that could be let out through the notch proposed to be opened?
- (5) Whether 1st defendant has the right of distributing the water in any fashion he chooses so long as it does not prejudice the rights of the plaintiffs? and
- (6) Whether plaintiffs are entitled to the injunction claimed?

6. *First issue*.—The learned counsel, who appeared for the 1st defendant, did not press this issue at the hearing.

My finding is that the claim is not undervalued.

7. *Issues 2 to 4*.—This is a case of great delicacy. The Executive Engineer of the district is the 1st defendant. His views are opposed to the views of his superior officer Mr. Hannan, the Superintending Engineer of the circle within which the Coimbatore district is situate. The two officers do not agree on almost all material points in the case. Even as regards nomenclature they differ. What is proposed to be opened is styled a notch by the Executive Engineer. That name was accepted by the plaintiffs and myself. The Superintending Engineer, as plaintiffs' witness No. 6, stated in his deposition that an opening in a dam is called a notch only when the opening commences from the crest of the dam. It is a matter of very little consequence for the purposes of this suit whether the opening proposed to be made in the plaintiff-mentioned anicut is a notch or a vent. It is the opening that is the matter in dispute in this suit.

8. The following facts are admitted or proved beyond doubt. The sill of the head sluice of the plaintiff-mentioned or Pallapoliem channel is one foot above the sill of the sand sluice in the dam and 6 feet below the crest of the dam. The opening to be made in the dam is to be 1½ feet square and 3 feet below the crest of the dam. It must therefore commence from a point 1½ feet above the sill of the head sluice.

9. The quantity of lands under the irrigation of the plaintiff-mentioned channel is approximately 3,350 acres, and the kist due on the same is Rs. 19,919. The quantity of lands in Thirumanilaiyur is 434 acres with a beriz of Rs. 2,504-7-0. Taking all the lands which lie under the irrigation of the Thirumanilaiyur channel, there is 775 acres with a beriz of Rupees 4,308-7-0. Thus, the lands under the irrigation of the plaintiff channel are nearly eight times the lands of Thirumanilaiyur.

10. It is within our experience and proved by evidence, both oral and documentary, that very often silt collects itself in the channel as well as in the head sluice (*vide* Exhibit C, an estimate for the removal of silt). So says the Tahsildar of the taluk examined as plaintiffs' 2nd witness. He states that at the time of the floods silt will gather itself around the head sluice. Plaintiffs' 3rd witness Hanumantha Rao, water registrar, states that silt will gather itself to the depth of one foot. Plaintiffs' 4th witness Kolandaipalayal, a watchman at the head sluice appointed by Government, states that there will be silt to a depth of 1 or 1½ feet. It would be superfluous to refer to any more evidence on this matter. Plaintiffs' vakils made a point of this silt as showing that even when 5 feet of water may be supposed to pass through the channel, the water carried in their channel could not be 5 feet, but would be 5 feet *minus* the depth of silt. I do not believe that this is a very important point after all. From the recorded evidence, plaintiffs contend only for 5 feet of water, and they must take it *minus* the silt unless themselves or the Engineering authorities remove the silt.

11. Two points of great importance demand adjudication with reference to the issues under consideration. They are whether plaintiffs are absolutely entitled to all the 5 feet of water, and whether the opening could be made at the height fixed for it by the 1st defendant without injury to plaintiffs.

12. As regards the first point—The dam in question has been in existence for a very long time. No doubt it has received improvements from time to time. Such improvements have been made by the officers of the Engineering Department. That the dam has been in existence for a very long time, that it has been allowed so to exist and that improvements were made to it from time to time, give rise to a very reasonable presumption that plaintiffs and those for whom they sue are entitled to the water below its crest.

13. When in 1892-93, a puddle wall was put up which seems to have, in a manner, caused this suit, neither the Engineering authorities nor the lower riparian proprietors seem to have thought that it was a wrong or wrongful act. It seems to have so transpired that during the past few years, the seasons have been unfavourable and that even the plaintiffs were not getting an adequate supply of water for irrigation purposes. It is needless to say therefore that the lower down riparian proprietors, viz., the villagers of Thirumanoor, suffered very much from want of water. The sufferings of the Thirumanoor people could be no justification for injuriously affecting the rights of the plaintiffs.

14. The head sluice for the plaintiff channel seems to have been built in 1876, and in one of the stones forming a side pavement is the following inscription: "Five feet is the full supply for the plaintiff channel." The Superintending Engineer Mr. Hannan expressly lays down in his endorsement, No. 530, dated 16th September 1894 (filed as Exhibit E), that the Pallapoliem channel has a claim to all the water which does not pass over the anicut and that Thirumanellore channel is only entitled to what goes over the anicut. The presumptions I have above referred to, as well as the express admission of the Superintending Engineer, establish beyond all manner of doubt that plaintiffs are certainly entitled to 5 feet of water.

15. Mr. Lewis, the 1st defendant, himself does not state in his deposition that plaintiffs are not entitled to 5 feet of water. His theory only seems to be that the opening proposed would be some compensation to the Thirumanellore people for the closing of the leakages in the dam owing to the recent construction of the puddle wall.

16. I shall now briefly refer to the oral evidence in the case. Mr. Krishniah, the Tahsildar of this taluk, as plaintiffs' witness No. 2, states that 5 feet of water is the required supply for the plaintiff villages. He also affirms that the action of the Sub-Collector in allowing water to the river through the sand sluice is against *manul* (immemorial custom). Plaintiffs' 3rd witness Hanumantha Rao, water registrar, states that full supply to Pallapoliem channel is noted down to be 5 feet. Plaintiffs' 4th witness Kolandaipalayal, a watchman at the head sluice, avers that 5 feet of water is to go through the plaintiff channel. This man has been in employ for the past 19 years. The 1st defendant himself, as plaintiffs' 5th witness, states that the dam was of loose stones till 25 years ago.

17. The Superintending Engineer is plaintiffs' 6th witness. He seems to have carefully considered the facts, studied the papers, and made calculations. He does think and admit that plaintiffs are entitled to 5 feet of water.

18. Mr. John Kelly, examined as defence 5th witness, states that the dam was made up of rough stones till 1872 and that Pallapoliem channel was receiving all the water in the river excepting what escaped through the leakage and what overleaped the anicut. He says he was in charge of this taluk then.

19. Plaintiffs' 12th witness Subramaniya Iyer, Supervisor, who was once in charge of this taluk, states that 5 feet is the full supply, and that if under 5 feet, the supply will be insufficient and crops will suffer.

20. Plaintiffs' 7th witness Nageswara Iyer, Superintendent of Pallapoliem channel, affirms that the water-supply of the channel is 5 feet, and that if it falls below 4 feet, irrigation will suffer. Not one witness for plaintiffs or 1st defendant states that plaintiffs are not entitled to 5 feet of water. In this state of evidence and probabilities I think it is only idle to contend that plaintiffs are not entitled to the same.

21. One other point I am requested to consider in connection with this matter: that is, that the crest of the dam was raised by 1½ feet and that therefore plaintiffs could not be entitled to all the water under the dam. As regards the raising of the crest, no documentary evidence is forthcoming. Mr. Lewis himself states that he heard from Mr. Kelly that there was that raising in 1872.

22. Mr. Kelly, as defendants' 5th witness, states that the height was raised from 18 to 24 inches. He cannot, however, recollect if he sent any estimate for such raising. He, however, admits that such raising was not complained of by anybody. It would appear that Mr. Kelly has had a conversation with the 1st defendant regarding the raising since the institution of this suit. Plaintiffs' vakils want me to believe that the matter of raising the height of the dam was only an afterthought on the part of Mr. Lewis, as the same was not made a point of attack in the written statement. Seeing that Mr. Lewis has no personal interest at stake, I fail to see how I can take that view.

23. Probably some portion of the dam has sunk as is usually the case when dams do not rest on rocky basis. Mr. Subramaniya Iyer, Supervisor (plaintiffs' 12th witness), states that, when the foundation of an anicut is not strong and not on rocky bed, the crest will sink in course of time. It was probably to make up for this sinking that the raising was made, if at all. It must have been therefore also that the lower down riparian proprietors did not object to such raising.

24. Even on the assumption of such raising, I fail to see any improvement in favour of plaintiffs or any deterioration to the villagers of Thirumanilaiyur. We may fairly allow about 6 inches, if not 1 foot, for raising the sunken portions. Then there may be an increase in the height by 1 foot taking the version of Mr. Kelly to be true and his memory to be accurate. It must be remembered that plaintiffs contend only for 5 feet of water and the crest of the dam is 6 feet above the sill of the head sluice. Thus only 5 feet of water is allowed to pass through the head sluice, the excess whenever there is, being allowed to pass through the sand sluice into the river. I have hereto observe that the phrase "the crest of the dam in question" in the 2nd issue must be read as "5 feet." In these circumstances it follows that the raising of the crest, if it was a fact, is no argument in favour of the defence.

25. Mr. Hannan, the Superintending Engineer, states that the year 1893 was a fair year and that in that year the water plaintiffs got was 72 cubic feet per second. According to him the irrigation duty of 1 cubic foot of water per second is 44 acres. So says the Local Overseer Mr. Ramachandra Sastry also. Applying this test, it appears that plaintiffs did not get sufficient water even in what may be called a fair year, viz., 1893. The water which plaintiffs got having been sufficient only for 3,168 acres, while the lands under the irrigation of the plaintiff channel are 3,350 acres. It must also be remembered that plaintiffs got this supply when they were allowed all the water up to 5 feet without any notch or opening.

26. One other point that was sought to be relied upon is what is called the upper dam. I saw the same in person. It does not get its water from any distinct source of supply. It gets its water mainly from the plaintiff channel. It appears that instead of using the water of the plaintiff channel from it directly, plaintiffs take it along what is called the upper dam and the water so taken is utilized only in irrigating the lands which depend for their legitimate supply on the plaintiff channel itself.

27. One other argument is based on what is called the Tadampolliem tank. This point was not thought of at the time of the written statement nor when the 1st defendant gave his evidence. It was the defendants' 7th witness who was examined some weeks after the other witnesses and who wanted to raise this into a huge tank with sufficient capacity to irrigate thousands of acres of land. He seems to my thinking to have more drawn from his imagination than from existing facts. The tank does not receive its supply from any river or other such permanent source of water-supply. It depends for its water upon the rain-water which falls on its surface and on a few acres of land surrounding it. It has not been referred to as a safe source of supply in any of the numerous documents filed in the case. From what I saw myself personally, there would be water in it when the whole of the taluk receives its full supply of water from the river.

28. The next point I have proposed to consider is whether the opening could be made at the height proposed without causing injury to the plaintiffs. On this point the evidence is all one way and in favour of the plaintiffs.

28A. It must be observed at the very outset that even the 1st defendant in his deposition does not state that the opening of the notch would not injure the plaintiffs. There is very good positive testimony to show that serious loss would be caused to the plaintiffs by making the proposed opening.

29. It must be remembered that the opening is to be between 18 and 36 inches above the sill of the head sluice. That is to say it will affect the water-supply to the plaintiff channel when the water in it is above 18 inches from the sill of the head sluice. The Local Tahsildar affirms that, when the supply is 3 feet or below irrigation by turns (morai) is ordered to the plaintiff villages and that water does not reach the tail end villages under the Pallapolliem channel when the supply falls to below 2 feet. Exhibits A to A₅ amply make out this fact. He states that the opening of the notch will prejudice the plaintiffs.

30. First defendant himself admits in one part of his deposition that the opening of the notch will affect the plaintiffs. He believes that in some parts of the year the irrigation is by turns. This is emphatic evidence that at times there is not sufficient water-supply to the plaintiffs. The Superintending Engineer as plaintiffs' 6th witness states that the opening of a notch as proposed will diminish the supply to the detriment of the Pallapolliem channel people.

31. Plaintiffs' 7th witness Nageswara Iyer states that water will be utterly insufficient if it goes below 3 feet. Plaintiffs' 8th witness states that water will be insufficient when the supply is below 5 feet. Plaintiffs' 9th witness Sunda Mudaly states that lands will suffer when there is only 4 feet of water. Plaintiffs' 11th witness Venkatakuppiar, a land-holder, who pays a kist of Rs. 3,300, swears that the lands will suffer if the supply were below 5 feet.

32. Plaintiffs' 12th witness Subramania Iyer, Supervisor, states that if under 5 feet the supply will be insufficient and crops will suffer. There is no evidence *contra*.

33. Thus the evidence, both oral and documentary, goes to confirm the contention of the plaintiffs that the opening will prejudice them. The Superintending Engineer in his order Exhibit E wrote to the 1st defendant as follows: "The Pallapolliem channel has a claim to all the water which does not pass over the anicut. . . . If you can show that Pallapolliem channel is getting more than its theoretical supply, then I will consider the question of a vent in the anicut." The 1st defendant never seems to have satisfied the Superintending Engineer regarding the above point. It is doubtful if he at least satisfied himself. His evidence on this point is as follows: "Superintending Engineer asked me to submit calculations. I did not go through the calculations carefully and did not submit my calculations. I did not satisfy the Superintending Engineer as regards the necessity to open." "I did not take calculations of discharge through the headsluice before I gave permission for the opening of the notch." I am sorry to have to express my regret at the rather careless manner in which the 1st defendant has thought fit to make an opening. Even if the 1st defendant thought that Thirumanilaiyur people were injured by the construction of the puddle wall, he could have removed the same and saved this suit. The Superintending Engineer states that one way to obey the order of the Chief Engineer would be the removal of the puddle wall.

34. My findings on issues two and three are that plaintiffs are entitled to 5 feet of water and that the opening proposed to be made would diminish the supply of water which is necessary to plaintiffs and to which they are entitled.

35. *Fourth Issue.*—The contention to rest a claim on indefinite leakages seems, in my opinion, to be not well founded. The Superintending Engineer seems to have taken the only sensible view that is possible on this matter. In Exhibit E, an endorsement by him to the 1st defendant, he (the Superintending Engineer) expresses himself as follows: "I cannot consider any claim founded on the leakage through or under the anicut." In his evidence before the Court he states as follows: "It is not possible to calculate the amount of leakages. We try to prevent leakages in the anicuts we build now. I have seen all the anicuts above the Chinnadarapuram anicut. I should describe them all to be fairly water-tight."

36. Mr. Ramachandra Sastry, Acting Supervisor in charge of this taluk, at present expresses himself thus: "I cannot say whether the flow of water through the notch would be greater or smaller than through the leakages. No approximation of leakages could be arrived at."

37. First defendant has never seen the leakages himself. So he admits in his deposition. He, however, states as follows: My idea is that 30 cubic feet was escaping per second. I deduced it from *no known facts*. The number of crevices, their length and extent, I had no idea of. I had not seen the anicut before the construction of the puddle wall. That the leakages went to irrigate, I found from the Tahsildar's report. I cannot say who was the Tahsildar that made the report. The report was in the latter end of 1893. I cannot pick out the particular report referred to. Even if I saw the report, I should not know it now. It is unnecessary and perhaps undesirable to comment on evidence like the above.

38. The 1st defendant afterwards went on to add that he had seen the anicut after the construction of the puddle wall, and found no leakages. Exhibit F is a report submitted by the Divisional-officer at Erode to the Executive Engineer. First defendant admits having known this report before. It is, dated 9th March 1894, and runs as follows: "I, however, beg to say that the state of the puddle wall on the upside of the anicut is already leaking and I expect it to leak in sufficient quantity after the next flood and that the Thirumanellore village will have enough water without the notch. In the face of this report by the Sub-divisional officer, the Executive Engineer would still believe there were no leakages. I myself inspected the locality last September in the presence of the vakils for plaintiffs and 1st defendant and of the plaintiffs' 3rd witness. I found a number of leakages and some of them were big ones too. I am sorry to have to observe that 1st defendant has been misled by somebody to give the evidence he has done regarding the leakages."

39. Defendants' witnesses Nos. 1 to 4 are connected with Thirumanellore irrigation and their evidence cannot be acted upon. There are portions of their evidence which it would not be difficult to show to be quite false, to wit, the statement that water when more than 3 feet overleaped the anicut, &c.

40. Defendants' 5th witness Mr. John Kelly had charge of this taluk in 1872, 1873 and 1874. He states: "The leakage was all along the anicut. During the period I was in charge, repairs were made to this anicut. I do not recollect that any body complained to me about stopping the interstices. I was never called upon to make any calculation of leakage discharge. I made repairs several times. The first repair was the putting up of the concrete wall. I cannot say what proportion the discharge through the leakage would bear to the water in the river."

41. Defendants' 6th witness Mr. Taylor states as follows:—

The water that went through leakage would be about the quantity going through a section 2 or 3 square feet. It may be $\frac{1}{4}$ th or $\frac{1}{2}$ th of the water going through the plaint channel. I do not think I was called upon to furnish a report concerning the leakages.

42. From the recorded evidence as well as from the only sensible view that could be taken of the matter and which has been done by the experienced Superintending Engineer, it follows that leakages could form no definite data for any practical scheme or action. The leakages must vary from time to time. They must vary again according to the quantity of water in the channel. They must also vary every time repairs are made. That repairs have been made to the channel on various occasions and of various descriptions and effects can be gathered from several of the estimates filed in the case—*vide* Exhibits G. X. U. W. LLL. and MM.

43. Again, even granting that the quantity of leakage water could be calculated and that the same would afford definite data for practical schemes, it has been proved, and not denied that plaintiffs have all been used to close up the leakages whenever they found it necessary to do so. There is no evidence that they were prevented from doing so either by the Engineering Department or by the lower down riparian proprietors.

44. Mr. Taylor himself examined, as defendants' 6th witness, states that ryots are in the habit of closing leaks. Even defendants' 7th witness Mr. Dhairianatha Mudaly, who is said to have induced the Executive Engineer to create this suit, states that leaks are sometimes closed. He states that he did so himself with reference to Sundakapoliem anicut. He admits that people will close up the leakages.

45. Defendants' 3rd witness Srinivasa Raghava Iyengar admits that Pallapolliem people will also close up the leakages.

46. Defendants' 4th witness Muthoosamy Pillai states: "We used to dam up water (in our korambu). The plaintiffs would also do similar work to their dam." He has admitted that plaintiffs used to close the leakages as himself and others used to dam up water.

47. Plaintiffs' 3rd witness Hanumantha Row, employed under the Public Works Department, states that plaintiffs used to come to the anicut and heap sand, &c., to prevent leakages. He states that even now after the construction of the puddle wall, sand sluice, &c., the ryots would take steps to prevent even the leakages through the sand sluice.

48. Plaintiffs' 4th witness Kolandaipalay states that the plaintiffs would prevent leakages by putting up straw leaves, padal, &c., and that the villagers have been doing so all along. This man puts up 19 years' service in the Public Works Department. Plaintiffs' 7th witness Nageswara Iyer, Superintendent of the Pallapolliem channel, states that the plaintiffs used to repair the dam by closing up the holes. So says plaintiffs' 8th witness Ragavandra Row and plaintiffs' 9th witness Sundara Mudaly.

49. Plaintiffs' 10th witness states that the leakages, if any, in the anicut used to be closed up by the plaintiffs. Plaintiffs' 11th witness Mr. Venkatakuppiar, one of the richest landlords of this district, swears that the plaintiffs used to make repairs, such as closing the leaks, &c.

50. Thus there is ample evidence on the record that plaintiffs have been in the habit of closing the leaks, whenever they found it necessary to do so. This fact is proved not only by plaintiffs' witnesses, but also by officers directly subordinate to the 1st defendant and by some of the defence witnesses. There is no suggestion even that the people of Thirumanellore ever objected to such closing. In the first petition Exhibits V and VI, Tirumanilayur people presented to Engineering authorities in 1893, they never thought that they could complain of the puddle wall or other repairs. They seem to have thought that plaintiffs were entitled to close the crevices as they thought. They only prayed in their petitions that their old anicut called Kochikoil anicut might be repaired and kept in proper order as that would enable them to get their required supply of water. Even the petitions Exhibits VII to X presented in 1894 seem more to support plaintiffs' case than the contention of the 1st defendant.

51. My finding on the fourth issue is that the leakages varied from time to time and according to circumstances and that they could be rightfully closed by the plaintiffs. The opening of a notch would give to the Thirumanellore people, a sure and definite supply of water such as the people for whom the 1st defendant and defendants' 7th witness contend never enjoyed.

52. *Fifth issue*.—I think the law is now settled that the Government could distribute water in any fashion it pleases so long as it does not prejudice existing rights and customs, having the force of rights. If the 1st defendant had contended for absolute power of distribution and had gone to issue on such absolute power, the point may require some discussion. Without discussing the authorities on the matter I may observe that the rulings of the High Court are against such absolute power. For the purposes of this suit it has been sufficiently established that interference of the kind proposed would prejudice the rights of the plaintiffs. It therefore follows that neither the Government nor the 1st defendant has the power to interfere in the fashion proposed.

53. *Sixth Issue*.—With reference to my findings on the above issues it follows that plaintiffs are entitled to the injunction prayed.

54. I must here observe that 3rd plaintiff in this case did more than six months ago and his representatives have not been brought in. But the suit is lodged not only on behalf of the plaintiffs actually on the record, but also on behalf of all the people interested in the irrigation of the plaint channel. Technically, however, the suit as against the 3rd plaintiff has abated.

55. After the evidence on plaintiffs' side was over, 1st defendant's counsel filed petition stating that the plaintiffs questioned the action of the 1st defendant in his capacity as a representative of the Government, that the suit ought therefore to have been lodged against the Secretary of State for India in Council, that the provisions of section 424, Code of Civil Procedure, had not been complied with, and that therefore the suit ought to be dismissed.

56. The two contentions thus raised are—(1) That the Secretary of State for India in Council should have been sued and (2) that he should have been served with notice of suit two months before institution.

57. As regards the 1st objection—This objection was not taken in the written statement of the 1st defendant. If, as the 1st defendant's counsel contends the evidence let in by the plaintiffs do not support their case as brought, the suit should be dismissed on the ground that the case is not proved. The section does not say and does not make it imperative that all suits against public servants in their capacity as a representative of the Government should be lodged only against the Secretary of State for India in Council. On the contrary, the section provides for suits against the Secretary of State as well as against public officers. Section 426, Code of Civil Procedure, also provides for Government undertaking the defence of the public officer. I fail to see how the plaintiffs were bound to institute their suit against the Government. Plaintiffs' vakils state that they have no objection to a decree being passed only against the 1st defendant, and that they do not want a decree against Government. In this view of the matter also the 1st objection falls to the ground.

58. Again section 424, Code of Civil Procedure, relates to an act purporting to be done by, &c. Act may include also illegal omission. In this particular case the complaint is not against any act or omission, but against something which the 1st defendant intended to do at a future time, viz., the opening of a notch or vent. The objection will be well founded if the opening had been made. In this view of the case the section does not apply at all.

59. It also appears that the villagers of Pallapolliem, &c., seem to have sent notices to the 1st defendant, Sub-division officer and others, that they would bring a suit for damages for an unlawful letting of water through the sand sluice. *Vide* Exhibits J.J. and K.K., dated 16th September 1893. In bringing this suit before the opening of the notch, they have only tried to save themselves similar damages to themselves and consequent loss to the 1st defendant and Government. I should think that in the peculiar circumstances of this case the plaintiffs did well in having rushed into Court before they were put to any loss owing to the wrongful act of 1st defendant. It would not be easy to assess the damages and even when assessed the particular ryots who suffered might not get their adequate compensation with reference to the loss each suffered.

60. As regards the 2nd objection—This objection also is fully met by a reference to the meaning of the word "act."

61. Further in the ruling in *Shahebzadee Shahunshah Begum, versus Ferguson* (I.L.R. 7 Cal. 499), the Calcutta High Court decided that, under section 424, a public officer was entitled to notice only when he is sued for damages for some wrong inadvertently committed by him in discharge of his official duties. Mr. Justice Cunningham states further that the object of giving notice is that if a public body or officer entrusted with power happens to commit an inadvertence, irregularity, or wrong before any one has a right to require payment in respect of that wrong, he shall have an opportunity of sitting himself right, making amends, restoring what he has taken or paying for the damages he has done. See also *Bhan Balapa, versus Nana* and others (I.L.R. XIII B. 343). This suit is not for damages nor for any act done. The objections were also taken too late. I have to overrule them which I hereby do.

62. I have also to observe in this connection that the 1st defendant or Government are not particular about getting the suit dismissed; but what they seem to require is an adjudication regarding the rights of the plaintiffs and themselves. Hence it was that the Government authorized the defence only under the heads of (1) their right to distribute water and (2) of plaintiffs incurring no injury or loss—*Vide* Exhibit II.

63. Under Rule 35 of the rules regarding the fees payable to pleaders, &c., and with reference to the important character of the suit and the time and labour the vakils had to give to the same, I would fix Rs. 125 as the fee, that being the highest amount this Court could grant with reference to its pecuniary jurisdiction.

64. My decree, therefore, is that the suit is not undervalued, that plaintiffs are entitled to 5 feet of water, that the making of the proposed opening will prejudice their rights and cause loss to them, that no claim could be founded on leakages, that the opening of a notch would

carry a surer supply, and that 1st defendant is permanently interdicted from making the proposed opening. First defendant shall pay the costs of plaintiffs within six months from this date and bear his own.

(Signed) S. SWAMINATHA SASTRY,
District Munsif.

Plaintiff's Exhibits.

A₁.—Letter, dated the 29th September 1893, from the Tahsildar of Karúr, to the Sub-Collector of Coimbatore, reporting on the petitions of Tirumanilaiyur villagers regarding their complaints about water distribution.

A₂.—Letter, dated 12th August 1894, from the Tahsildar of Karúr, to Sub-Collector of Coimbatore, reporting on the petition presented by the ryots owning lands under the Pallapolliem channel regarding the cutting of a notch in the anicut.

A₃.—Letter, dated 19th August 1894, from the Tahsildar of Karúr, to the Sub-Collector of Coimbatore, reporting that arrangements have been made to let the water to the Tirumanilaiyur channel.

B.—Water-register book of the Pallapolliem channel headsluice anicut kept from the year February 1890 to 7th March 1895.

C.—Report accompanying estimate for annual clearance of Pallapolliem channel for the year ending 1893-94 and signed by the Accountant in the Executive Engineer's office.

D.—Copy of endorsement, dated the 31st August 1894, passed by the Superintending Engineer, on a petition received from L. Kuppoo Row, vakil on behalf of the ryots of Andankovil, &c., villages, directing the Executive Engineer of Coimbatore not to make any notch or other opening in the Pallapolliem anicut and to close it if already made.

E.—Copy of endorsement, No. 550/C.I., dated 16th September 1894, on Executive Engineer's letter, No. 3722 of 12th idem, calling upon the Executive Engineer to submit calculations and to show the propriety for making a vent in the Pallapolliem anicut.

F.—Letter, No. 339, dated 9th March 1894, from Erode Sub-divisional officer, to the Executive Engineer, with an estimate for making a notch in the Pallapolliem anicut and making other suggestions.

G.—Report accompanying the deviation estimate 83 of 1891-92 for repairing the Pallapolliem anicut.

H.—Report accompanying estimate for repairs to the Uppar anicut and channel surpluses of Pallapolliem channel stating that about 1,250 acres were inadequately supplied with water and suggesting measures.

K.—Karúr Tahsildar's report, dated 19th September 1893, to the Sub-Collector pointing out the inadvisability of supplying water to the Tirumanilaiyur channel through the sand sluice in the manner suggested by the Sub-divisional officer.

L.—Letter, dated 15th October 1893, from the Sub-Collector, to the Collector of Coimbatore, reporting on the petition of the ryots of Tirumanilaiyur, &c., villages, about the channel affair.

M.—Letter, No. 173, dated 16th March 1894, from Overseer of Karúr, to the Tahsildar of Karúr, informing that any supply less than 3 feet in the Pallapolliem channel will not reach the tail end of the channel and requesting to instruct the water-registrar to supply Tirumanilaiyur channel only when the gauge reads more than 3 feet.

N.—Letter, No. 488/C.I., dated 21st August 1894, from Superintending Engineer, IV Circle, to the Executive Engineer, calling for a further report and the original correspondence regarding the Pallapolliem channel.

O.—Endorsement, No. 550/C.I. of the Superintending Engineer, dated 16th September 1894, on Executive Engineer's No. 3722 of 12th idem, to the effect that Pallapolliem channel has a claim to all the water which does not pass over the anicut and that Tirumanilaiyur channel is only entitled to what goes over the anicut and that the notch should be closed.

P.—Letter, dated 5th October 1894, from the Collector of Coimbatore, to the Executive Engineer, requesting to be informed whether he is able to show the necessity for a vent in the Pallapolliem anicut and whether the anicut has been raised as stated by the petitioners.

Q.—Letter, dated October 1894, from the Collector of Coimbatore, to the Executive Engineer, enquiring whether he can show that the Pallapolliem channel is getting more than its theoretical supply.

R.—Collector's reminder, dated 8th November 1894, to Executive Engineer enquiring whether he can show that the Pallapolliem channel is getting more than its theoretical supply.

S.—Letter, dated 25th January 1895, from the Collector of Coimbatore to the Sub-Collector, informing that the ryots of Pallapolliem succeeded in obtaining an injunction order against the opening of a notch in the anicut and that no water can be let down the channel.

T.—Ayacut account for fasli 1301.

U.—Report accompanying estimate 86 of 1893-94, regarding the urgent repairs to be done to Thathampolliem tank, Karúr taluk.

V.—Report accompanying estimate 16 of 1890-91, for repairing the Pallapolliem anicut.

W.—Report accompanying estimate 50 of 1888-89, for repairing the Pallapolliem anicut.

X.—Report and specification accompanying estimate 97 of 1884-85, for repairing damages to the Pallapolliem anicut.

Y.—Report accompanying estimate 106 of 1884-85, for improving the last 8½ miles of the Pallapolliem channel showing calculations of discharge to the headsluice and the capacity of the Pallapolliem channel and suggesting improvements for the better supply of water for the tail end villages of Pallapolliem channel.

Z.—Statement showing the expenditure on Pallapolliem channel during the last 30 years.

AA.—Reports made by the Channel Superintendent and takids issued to him by the Tahsildar of Karúr in connection with the distribution of water in the Pallapolliem channel.

BB.—Notice, dated 29th December 1890, to the effect that the water in the Pallapolliem channel must be distributed by turns for the villages of Pallapolliem, Visvanathapuri, Andankovil and Lakshminarayanassamudram.

CC.—Petition addressed to the Superintending Engineer by the ryots of Andankovil Lakshminarayanassamudram, Visvanathapuri and Pallapolliem, Karúr taluk, dated 31st August 1894, requesting to issue immediate orders to the Executive Engineer to stop the work of the sluice in the Pallapolliem anicut.

DD.—Copy of telegram sent by the ryots of Pallapolliem to the Superintending Engineer, IV Circle, dated 6th August 1894, requesting orders to stop immediately the above work.

EE.—Estimate, dated 5th June 1894, for cutting a notch in Pallapolliem anicut for Rs. 25.

FF.—Memorandum to Sub-divisional officer, Erode, by the Executive Engineer, dated 6th July 1894, directing that the face wall of the gap in Pallapolliem anicut must be built up again and that in relaying the apron a channel 3 feet wide with floor at 4½ feet below crest of anicut should be made of large stone.

GG.—Calculation sheet.

HH.—Calculation sheet.

JJ.—Notice given by the ryots of Andankovil and Lakshminarayanassamudram to the Executive Engineer, dated 16th September 1893, stating that they are to file a suit in a Civil Court for damages to be incurred by them by letting water to Tirumanilaiyur village through the Pallapolliem sand sluice.

KK.—Notice given by the ryots of Andankovil and Lakshminarayanassamudram villages to the Superintending Engineer, dated 16th September 1893, stating that they are to file a suit in a Civil Court for damages to be incurred by them by letting water to the Tirumanilaiyur village through the Pallapolliem sand sluice.

LL.—Letter from Erode Sub-division officer, to the Executive Engineer, No. 1195, dated 28th September 1893, reporting that he did not take steps to irrigate Tirumanilaiyur channel as the Pallapolliem channel supply was daily falling.

MM.—Copy of endorsement of the Executive Engineer to the Collector of Coimbatore, No. 3678, dated 30th September 1893, stating that water should be supplied to the lower channel by opening the sand sluice in Pallapolliem channel when necessary.

NN.—Letter from Erode Sub-division officer to the Executive Engineer, No. 1286, dated 18th October 1894, reporting in detail regarding the alleged opening of the Pallapolliem channel headsluice to irrigate Tirumanilaiyur channel crops.

OO.—Letter from the Executive Engineer to the Collector of Coimbatore, No. 4022, dated 27th October 1893, forwarding remarks on the opinion of the Tahsildar and Sub-Collector regarding the allowing of water from Pallapolliem channel to pass through Tirumanilaiyur channel.

PP.—Copy of endorsement by the Executive Engineer, No. 611, dated 16th February 1894, on the petition from the ryots of Tirumanilaiyur village requesting to build a small masonry notch in the anicut above the level of Pallapolliem headsluice.

QQ.—Petition from the ryots of Tirumanilaiyur village to the Collector of Coimbatore, dated 28th February 1894, requesting to execute certain repairs to the Pallapolliem channel.

RR.—Letter from the Executive Engineer to the Collector of Coimbatore, No. 1061, dated 21st March 1894, stating that necessary orders to cut a notch at the Pallapolliem anicut and channel have been issued.

SS.—Letter from the Executive Engineer to the Collector, No. 1315, dated 5th April 1894, enquiring what orders have been issued regarding the cutting of a notch in the Pallapolliem anicut and channel.

TT.—Memorandum issued by the Executive Engineer, to the ryots of Tirumanilaiyur village, No. 1618, dated 30th April 1894, informing them that orders have been issued by the Collector to the effect that sufficient water should be allowed to escape back into the river from the Pallapolliem channel headsluice.

UU.—Memorandum from the Executive Engineer, to the Sub-division officer, Erode, No. 1715, dated 7th May 1894, requesting to send the estimate for cutting a notch in the Pallapolliem anicut.

VV.—Letter from Erode Sub-division officer, to the Executive Engineer, returning the estimate for cutting a notch in the Pallapolliem anicut, as directed by the Executive Engineer.

WW.—Memorandum from the Executive Engineer, to the ryots of Tirumanilaiyur village, No. 2436, dated 24th June 1894, informing them that an estimate for opening a vent in the Pallapolliem channel has been sanctioned.

XX.—Letter from the overseer of Karúr to the Sub-division officer, Erode, No. 311, dated 26th May 1894, reporting the levels of the Pallapolliem channel, &c.

YY.—Letter from the Executive Engineer, to the Superintending Engineer, No. 3250, dated 14th August 1894, reporting that the anicut is not being demolished and that a small notch is being made at the request of the Collector to supply water to Tirumanilaiyur channel.

ZZ.—Telegrams sent to Executive Engineer, by L. Ruppoo Row, dated 22nd August 1894, requesting to wire Overseer to stay construction of sluice until the matter is finally settled.

AAA.—Copy of Executive Engineer's letter, to the Collector of Coimbatore, No. 3575, dated 4th September 1894, reporting that the work is being carried out.

BBB.—Letter from the Executive Engineer, to the Superintending Engineer, No. 3722, dated 11th September 1894, submitting a further report and original correspondence on the subject of opening a vent in the Pallapolliem channel and giving the dimensions of the notch and the level of its site below crest of anicut.

CCC.—Endorsement by the Executive Engineer, to the ryots of Tirumanilaiyur village, No. 3964, dated 27th September 1894, on a petition presented by the Tirumanilaiyur ryots, stating that he is unable to consider any further application for water from Tirumanilaiyur channel.

DDD.—Endorsement on the petition of Tirumanilaiyur ryots, No. 3869, dated 22nd September 1894, stating that the question of making a notch in the Pallapolliem anicut is under consideration.

EEE.—Letter from the Executive Engineer, to the Collector of Coimbatore, No. 4259, dated 18th October 1894, stating that the Pallapolliem anicut has been made water-tight and that the irrigation under the Tirumanilaiyur channel is suffering in consequence.

FFF.—Letter from the Executive Engineer, to Erode Sub-division officer, No. 4526, dated 4th November 1894, requesting to make arrangement for completing the vent already commenced in the Pallapolliem anicut as soon as the river permits.

GGG.—Letter from the Executive Engineer, to the Collector of Coimbatore, No. 4751, dated 18th November 1894, informing that the Chief Engineer for Irrigation has ordered the gap to be opened.

HHH.—Copy of endorsement by Executive Engineer, No. 5087, dated 5th December 1894, stating that the sand sluice in the Pallapolliem channel is under the control of the Sub-Collector and not under his control.

JJJ.—Estimate, No. 53 of 1884-85, for improving the Tadampolliem tank.

KKK.—Estimate, No. 54 of 1884-85, for demarcating the Pallapolliem channel bank 16½ miles.

LLL.—Report and specification accompanying the estimate No. 91 of 1885-86, for examining and closing the leakage at 4½ mile of Pallapolliem channel.

MMM.—Report and specification accompanying the estimate, No. 38 of 1886-87, for repairing the Pallapolliem anicut.

NNN.—Report and specification accompanying the estimate, No. 54 of 1886-87, for repairing the Tadampolliem tank bund.

OOO.—Report accompanying the estimate, No. 80 of 1886-87, for extending the revetment of Tadampolliem tank, Karúr taluk.

PPP.—Report accompanying the estimate, No. 65 of 1887-88, for repairing the five old sluices in the lower half of Pallapolliem channel.

QQQ.—Report accompanying the estimate, No. 51 of 1888-89, for cutting side channel from masonry sluices of Pallapolliem channel within the limits of the Visvanathapuri village.

RRR.—Estimates No. 64 of 1890-91, for closing breaches in Pallapolliem channel.

SSS.—Report accompanying the estimate No. 115 of 1891-92, for closing the breach near the Singattoo Odaippoo in Pallapolliem channel.

TTT.—Report accompanying the estimate No. 40 of 1892-93 for repairing the Pallapolliem channel bank at 7½ mile.

UUU.—Estimate No. 61 of 1892-93, for lowering sill of ten Government sluices in the Visvanathapuri village, Pallapolliem channel.

VVV.—Report accompanying the estimate No. 43 of 1893-94 for repairing the Pallapolliem anicut and headsluice.

WWW.—Report accompanying the estimate No. 36 of 1894-95 for fixing level stones in the bed of the Pallapolliem channel.

Defendant's Exhibits.

I. Notices issued to the ryots of Pallapolliem by the Tahsildar of Karúr, and also containing accounts showing the extent acreage in the villages of Visvanathapuri, Pallapolliem, Andankovil and Lakshminarayanasamudram.

II. Proceedings of the Madras Government, No. 993, dated 11th December 1894, sanctioning the defence of this suit.

III. Chief Engineer's memo. No. IV/61 C.I., dated the 17th October 1894, in regard to the leakages through the Pallapolliem anicut and the supplying of water to Tirumanilaiyur channel.

IV. Letter from the Sub-Collector to the Collector of Coimbatore, No. 574 C.R., dated 25th April 1894, agreeing to the proposal of the Executive Engineer to open a notch in the Pallapolliem anicut.

V. Petition, dated 21st September 1893, from the ryots of Tirumanilaiyur and other villages, to the Collector of Coimbatore, requesting that the old Kochikoil anicut may be ordered to be reconstructed and containing also the order of Executive Engineer thereon.

VI. Petition, dated 21st September 1893, from the ryots of Tirumanilaiyur and other villages, to the Executive Engineer of Coimbatore, requesting that the Kochikoil anicut may be reconstructed and also requesting supply of water from Pallapolliem channel.

VII. Petition, dated 16th February 1894, from the ryots of Tirumanilaiyur and other villages, to the Executive Engineer, requesting that the Kochikoil anicut may be reconstructed and also requesting supply of water from Pallapolliem channel.

VIII. Petition, dated 18th June 1894, from the ryots of Tirumanilaiyur village, to the Executive Engineer, requesting to supply water to their channel from the Pallapolliem channel through the sand sluice.

IX. Petition, dated 16th February 1894, from the ryots of Tirumanilaiyur village, to the Executive Engineer, praying for a division of water in the Pallapolliem channel and for the construction of a tank and for the repairs of Kochikoil anicut.

X. Petition, dated 8th April 1894, from the ryots of Tirumanilaiyur village, to the Collector of Coimbatore, making certain suggestions and requesting some alterations in the anicut.

XI. Letter from Erode Sub-division officer, to the Executive Engineer, No. 1149, dated 18th September 1893, reporting upon the state of the Tirumanilaiyur and other villages watered by the Tirumanilaiyur channel and requesting co-operation of the Revenue Department in regard to supply of water to the Tirumanilaiyur channel.

XII. Letter from Erode Sub-division officer, to the Executive Engineer, No. A., dated 15th September 1893, offering suggestions for the supply of water to Tirumanilaiyur channel from Pallapolliem channel.

XIII. Pallapolliem channel headsluice readings during September 1892 and September 1893.

XIV. Letter from Erode Sub-division officer, to the Tahsildar of Karúr, No. B., dated 15th September 1893, submitting suggestions to supply water to Tirumanilaiyur channel from Pallapolliem channel.

XV. Erode Sub-division officer's report accompanying the estimate for repairing the Pallapolliem anicut.

XVI. Estimate of 1891-92 for repairing the Pallapolliem anicut.

Witnesses for Plaintiffs.

- | | |
|-------------------------------------|----------------------------|
| (1) Munisamy Naidu (4th plaintiff), | (9) Sundra Mudali, |
| (2) Krishnaiyer, | (10) Marudanayagam Pillai, |
| (3) Hanumantha Row, | (11) Venkata Kuppier, |
| (4) Kolundaippayal, | (12) Subbramaniam Iyer, |
| (5) Mr. Lewis, | (13) Ramachendra Sastrial, |
| (6) Mr. Hannan, | (14) Kaliyana Goundan, and |
| (7) Nageswara Iyer, | (15) Ramaiyer. |
| (8) Raghavandra Row, | |

For Defence.

- | | |
|-------------------------------|---------------------------|
| (1) Subramania Iyer, | (5) Mr. John Kelly, |
| (2) Rama Iyer, | (6) Mr. J. M. Taylor, and |
| (3) Srinivasa Ragava Iyengar, | (7) Dyrianatha Mudaly. |
| (4) Muthoosamy Pillai, | |

(Signed) S. SWAMINATHA SASTRY,
District Munsif.

No. 30 K.S.

Forwarded in original to Mr. W. C. Lewis, Executive Engineer, for perusal and return with reference to his No. 464 S., dated 18th January 1897.

(By order.)

(Signed) F. J. WILSON,
Asst. Chief Engineer for Irrigation.

25th February 1897.

ORDER—No. 328 I., dated 29th March 1897.

Recorded with reference to G.O., No. 993 I., dated 11th December 1894.
2. The attention of the officers of the Public Works Department will be drawn to paragraphs 6, 7, 8, 9 and 12 of the District Judge's judgment which will be noted for future use. This decision asserts the right of Government to control the distribution of water for irrigation purposes.

(True Extract.)

For file
Under Secretary to Government,
Irrigation Branch.

To Superintending Engineers of Circles.
" the Superintending Engineer on Special Duty,
Cauvery Completion Estimate, Tanjore.
" the Chief Engineer for Irrigation.
" the Revenue Department.

T. K. Narayana Aiyangar.

When given for copying _____
When copied _____ } 189
When examined _____
When signed _____

READ AGAIN G.O., No. _____ DATED _____
189

CURRENT

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

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