Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 2625

DATED 22nd May 97

[Despatch Abstract.]

Stating that the question of the Extension of the irrigation channels ~~within~~ to the Coving lying tracts in which irrigation by involuntary flow has occurred in past, will be considered in the Rev. Dept.

BACK PAPERS.

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

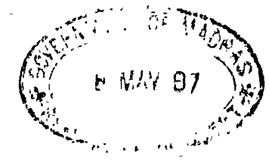
FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
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G.	587	Rev	1-9-97				

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Revenue (1897) Department.

CURRENT No. 3885



From The Board of Rev, Land Rev,

Order

No. 143

Dated 5-5-97

Received

Registered

Enclosures 4 two printed Progs.

Spare copies

SUBJECT.

Communicating to Govt. letter from the Govt. Pleader reporting that the High Court's ruling on the subject of the non-liability to water-rate of lands irrigated by the involuntary flow of water cannot be modified on review or otherwise

Kml 11.5.97

G.O.	No.	Department.	I

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Enc no 2

REVENUE DEPARTMENT.

1897.

Board of Revenue

(Land Revenue),

MADRAS.

Printed May 12th.

Proceedings, No. 143, 5th May 1897.

MAY.

Submitting to Government letter from the Government Pleader reporting that the High Court's ruling on the subject of the non-liability to water-rate of lands irrigated by the involuntary flow of water cannot be modified on review or otherwise, suggesting the remedies to be adopted for obviating the effect of the ruling, and requesting that instructions may be issued to the Public Works Department for extending the Kistna irrigation channels at an early date to the low-lying tracts in which irrigation by involuntary flow has occurred in the past.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE.)

READ—the following letter from E. B. POWELL, Esq., Government Pleader, Madras, to the Secretary to the Commissioners of Land Revenue, dated 25th January 1897, No. 100 :—

With reference to the question asked in paragraph 4 of the Board's Proceedings, Mis. No. 237, of the 20th instant, I have the honour to report that I did suggest a reference to a Full Bench in view of the important and far reaching results of the construction put upon the words used in section 1 of Act VII of 1865. The learned Judges altogether refused to refer the matter to a Full Bench and suggested that the shortest way of remedying any evils arising from the present language used in the Act would be by amending it. Moreover, a majority of the Judges have taken the same view and it would be quite useless to ask the Judges to re-consider a question on which they have expressed such a decided opinion.

2. The plea of limitation was not urged at the hearing, because I was satisfied it was hopeless to argue it. It is found as a fact by both Courts that the payment was made under protest and Article 16 of Schedule II of the Limitation Act would therefore clearly apply. In second appeals the Court would not allow such a finding to be questioned.

READ—also the following G.O., Mis. No. 1093, Revenue, dated 24th February 1897 :—

Read—the following Proceedings of the Board of Revenue (Land Revenue), Mis. No. 237, dated 20th January 1897 :—

Read—the following letter from E. B. POWELL, Esq., Government Pleader, Madras, to the Secretary to the Commissioners of Land Revenue, dated 9th January 1897, No. 30 :—

In continuation of my letter, No. 993, dated the 16th November last, I have the honour to forward herewith copies of the decree and judgment in Second Appeals Nos. 973 to 977 of 1895 on the file of the High Court, and to request that you will be so good as to obtain the Board's sanction for the payment of Rs. 11-8-10 (eleven rupees eight annas and ten pies) being my fee for opposing the same.

ENCLOSURE.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Thursday the 12th day of November 1896.

PRESENT :

The Honourable Mr. Justice SUBRAMANIA AIYAR, C.I.E.
and
The Honourable Mr. Justice BODDAM.

Second Appeals Nos. 973 to 977 of 1895.

Modali Sitharama Sastri	... Appellant	in S. A. No.	973	(*Plaintiff.*)
Kuruganti Venkateswarulu	...	„	in	„	„	974	(„)
Dhara Subbaramayya	...	„	in	„	„	975	(„)
Kuruganti Suriyanarayana	...	„	in	„	„	976	(„)
Dhara Suriyanarayana	...	„	in	„	„	977	(„)

The Secretary of State for India in Council by the Collector of the Kistna district ... ... Respondent in all cases (*Defendant.*)

Second appeals against the decrees of the District Court of Kistna, in appeal suits Nos. 250, 249, 251, 252 and 253 of 1894, reversing the decrees of the Court of the District Munsif of Guntúr in O.S. Nos. 110, 109, 114, 126 and 127 of 1893, respectively.

These second appeals coming on for hearing, the Court delivered the following :—

Judgment in S A. Nos. 973 of 1895.

We think there was no "supply" by Government "or user" by the ryot within the meaning of Act VII of 1865. As pointed out by Shephard J. in Indian Law Reports, 19, 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 facts found in this case show that the plaintiff 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.

We allow the appeal, reverse the decree of the District Court and restore that of the District Munsif with costs in this and the Lower Appellate Court. Second Appeals Nos. 974 to 977 of 1895 follow.

(By the Court.)

(Signed) J. T. GILLESPIE,
Ag. Deputy Registrar, Appellate Side.

Resolution—Mis. No. 237, dated 20th January 1897.

Communicated to the Collector of Kistna in continuation of Board's Proceedings Mis. No. 5229, dated 21st November 1896.

2. The payment of a fee of Rs. 11-8-10 to the Government Pleader is sanctioned.

3. A copy of the judgment will be submitted for the information of Government with reference to the correspondence ending with Government Order, Mis. No. 1446, Revenue, dated 9th April 1896. It will be seen that the High Court consisting of the Hon'ble Mr. Justice Subramania Aiyar, C.I.E., and the Hon'ble Mr. Justice Boddam have followed Mr. Justice Shephard's dictum in I.L.R., 19, Madras 24, and definitely ruled that in cases where a ryot has no option in the matter of excluding Government water from his lands and grows a crop, dry or wet, thereon, there is no "supply" by Government or "user" by him within the meaning of Act VII of 1865 and that the mere fact that the ryot derives a benefit from the water involuntarily flowing on to his lands does not render him liable to water-tax.

4. The Government Pleader is requested to report whether any steps were taken at the time of hearing of the second appeals in question to have them referred to a Full Bench as he appears to have suggested in his letter, No. 939, dated 25th September 1895 (submitted to Government in original with Board's Proceedings, Mis. No. 4950, dated 3rd October 1895), and whether there is any reasonable prospect of getting the ruling modified on review or otherwise. He is also requested to state whether the plea of limitation under section 59 of Act II of 1864 referred to in his letter, No. 912, dated 20th September 1895, was urged at the hearing.

(True Extract.)

(Signed) R. C. C. CARR.
Secretary.

To the Collector of Kistna,
with copy of the High Court's judgment.
„ Secretary to Government, Revenue Department, with copy of the High Court's judgment and the District Court's judgment in original to be returned (paragraph 2).
„ Collector of Gódávari, with copy of High Court's judgment.
„ Accountant-General.
„ Government Pleader, with the judgment and decree to be returned.

Order—Mis. No. 1093, Revenue, dated 24th February 1897.

Recorded with the remark that the Government Pleader's report should be submitted for the information of Government.

(True Extract.)

(Signed) LIONEL DAVIDSON,
Under Secretary to Government.

To the Board of Revenue (Land Revenue), with original enclosures returned.

READ—the following letter from J. N. ATKINSON, Esq., Collector of Kistna, to the Secretary to the Commissioners of Land Revenue, dated Masulipatam, 26th February 1897, No. 485 :—

Referring to the judgment of the High Court in Second Appeals Nos. 973 to 977 of 1895, copy of which was communicated with Board's Proceedings, Mis. No. 237, dated 20th January 1897, I have the honour to enquire whether in view of that decision I must alter the practice that has hitherto obtained in this district in regard to charge for what is ordinarily called "involuntary flow." The Board is aware, I think, of what that practice is and the accompanying copy of a letter, dated 18th August 1896, addressed by me to the Sub-Collector will show the attitude which I had taken up in the matter.

2. The recent ruling of the High Court has changed the situation completely and may have very far reaching effects. When a field is watered, without any previous application by the ryot for irrigation, it is no longer a question for consideration, whether he hoped that his crop would be benefited by the water; nor whether he planted his crop with the intention of its being benefited; nor whether the crop actually benefited; apparently it is even immaterial that he acquiesced in the flow of water to his field, and that he aided and regulated it by construction of field bunds and channels for ingress and egress of water. The High Court has now laid down boldly that if the ryot has no option in the matter, he is not liable to pay water-rate. The Board is aware that not for one wet field in a hundred is there any option, and I can see no reason why nine-tenths or even ninety-nine hundredths of the ryots in the district should not at once relinquish irrigation, and hereafter, while continuing to cultivate wet crops, claim exemption from water-rate on the ground that they had no option but to let the water flow over their fields.

3. Had the matter been taken in time, I doubt if it would ever have proceeded so far. Charge for irrigation by involuntary flow has been practically confined to a few villages in Tenali, and one or two in Bandur taluk. In each case the lands are situated in low-lying tracts locally called "badavas" which, towards the end of August, begin to fill with mixed anicut and rain water, gradually getting deeper and deeper till the rains cease. The ryots cultivate Velvadam and other dry species of paddy, because they cannot get water at the commencement of the irrigation season. It is not that they prefer to cultivate "dry" paddy. On the contrary, many of them have assured me that they want to have their land converted to wet and that, if given a proper supply of irrigation, they would grow wet crops and pay the water-rate without a murmur. On more than one occasion, I have communicated these requests to the Public Works Department officers, and asked them at least to extend an irrigation channel into these badavas. But the answer has always been the same disheartening declaration that, on account of insufficient allotments and establishments, the work cannot be carried out at present.

4. I am afraid the opportunity for remedying matters in this simple way has now passed; but still it would be worthwhile trying. I can indicate exactly to the Public Works Department the localities where "involuntary flow" irrigation has occurred in the past, and if they extend irrigation channels to these tracts, it may be that the ryots will be content to pay the charge for water. But if this remedy is to be tried, it should be undertaken at once in the working season now about to commence.

5. If these measures do not satisfy those who have hitherto been charged for involuntary flow or if any tendency become apparent on the part of owners of ordinary wet land to turn this new High Court ruling to account, it seems to me that the only course open to Government is to legislate.

ENCLOSURE.—Letter to the Sub-Collector.

RESOLUTION—No. 143, dated 5th May 1897.

The Government Pleader's letter first read above will be submitted to Government with reference to its order Mis. No. 1093 of 24th February 1897.

2. As already observed in paragraph 2 of the Board's Proceedings disposed of in Government Order, No. 1198, dated 2nd March 1897, the Government Pleader states that the High Court's present ruling on the subject of the non-liability to water-rate of lands irrigated by the involuntary flow of water cannot be modified on review or otherwise, and that his attempts to have the matter referred to a Full Bench have also proved fruitless. He adds that the learned Judges of the High Court suggested that the shortest way of remedying any evils arising from the present interpretation of the law would be to amend the law itself.

3. The Board will now proceed to give briefly the circumstances which led up to the present litigation, and will then suggest the remedies to be adopted for obviating the effect of the present ruling. The papers now dealt with refer to the Kistna and Gódávari deltas, but the question of the power to levy water-cess is one of general applicability.

4. (*a*) At the time of the original settlement of the Gódávari and Kistna districts, the assessment of ryotwari lands of all kinds was determined independently of irrigation, which was to be separately charged for by a uniform water-rate. If a ryot made an application for water which was granted, his field was registered as wet, and remained as such until he filed a relinquishment of the water. When water was so relinquished, the land was again entered in the accounts as dry and water-rate was levied only if the ryot used Government water.

(*b*) In fasli 1294 (1884–85) the holders of certain dry inam lands in the Kistna district grew a kind of wet paddy (called "Tiruvarangam"), which was sown broadcast and irrigated by means of the surplus water of the wet fields above. According to the practice of the district they were charged Rs. 2 per acre or half the full rate of water-tax, owing to the uncertain character of the irrigation. They thereupon filed a suit for the refund of the water-tax alleging that they had neither applied for nor voluntarily used the drainage water, which flowed into their lands from the fields higher up, and they pleaded that the water had been supplied against their will and that the crops grown on the lands had also been damaged by the overflow. The District Munsif found that the paddy crop grown on the lands could not come to maturity by rain water alone, but nevertheless decreed in favour of the plaintiffs, holding that they had not voluntarily used the drainage water, and that they had sustained loss by the involuntary flow. In reversing the above decision on appeal, the District Judge, Mr. Mackenzie, observed that on a proper construction of Act VII of 1865 the plaintiffs must be taken to have either been supplied with or used Government water, and that Government had the right to levy water-rate, whether the water used came to the plaintiffs' fields against their will or on their application. A second appeal was thereupon preferred to the High Court, which reversed the District Court's judgment, and restored that of the District Munsif. The Hon'ble the Judges observed that the preamble and section 1 of the Act, read together, disclosed only an intention that those who obtained a supply from Government irrigation works on application or who used the water thereof in view to deriving increased profit, should be liable to pay the water-cess, that the use contemplated by the Act must be a voluntary use whether preceded by an application or not, and that the law pre-supposed a freedom either to take or to refuse the water.

(*c*) Mr. Arundel, who was at that time the Collector of Kistna, pointed out that the ordinary method of irrigation in Kistna was to take the water from field to field in a system of terraces, and the High Court's judgment, which allowed a

free option to ryots in the matter of use of Government water, was likely to entail considerable loss of revenue to Government; for the ryots had merely to file statements declining to have water any more, and then, if the uppermost field of a terraced series was irrigated on the application of the owner thereof, the owners of all the fields below would, under the new ruling, receive their supply of water free of charge, because they could have no option of refusing it. Mr. Arundel suggested that either an appeal might be preferred to the Privy Council, or a reconsideration of the judgment obtained in a fresh case by getting the question referred to a Full Bench of the High Court. As an alternative course he proposed that the wording of Act VII of 1865 might be altered by an amending Act. The Board, however, thought that as in the particular case then in question the ryots had neither applied for nor used the water in view to profit, it was unnecessary to take any action on the judgment; but, at the same time, it requested Mr. Arundel to watch the effect of the ruling and to take into the Civil Courts cases in which ryots, who had really been benefited by the involuntary flow of water on to their lands, contested the legality of the charge. The papers were submitted to the Government who agreed with the Board (Government Order, No. 932, dated 18th November 1889).

(*d*) In later suits of the same nature, filed in 1892, the District Munsif decided in favour of the plaintiffs, but the District Judge found on appeal that, owing to the deficiency of rainfall in fasli 1300, the water which had flowed to the plaintiffs' fields did in fact save the crops. But on second appeal, the High Court remanded the cases to the Lower Courts for the submission of a clear finding on the question whether there had been a voluntary use of the water, such as would justify the levy of water-rate. Shephard, J., remarked that according to the decision referred to in clause (*b*) above, the question to be considered in such cases was, not whether in the result the plaintiffs derived benefit from the Government water, but under what circumstances they came to use it; and added that if they had no choice in the matter they could not be said to have used the water. A copy of this remand order was submitted by the Board for the information of Government. The learned Judge's observations in the case appeared to Government * to show the necessity for legislation in the matter. Government, however, awaited the final decision of the High Court in the case and in the meantime called for information from the Collectors of Gódávari and Kistna as to the amount of revenue at stake.

* Government Order, Mis. No. 4358, Revenue, dated 2nd November 1895.

(*e*) With reference to the above remand order the District Judge found that the plaintiffs had not derived increased profits from the use of the water and that the use could not therefore be said to have been voluntary. The High Court accordingly allowed the appeals and reversed the District Judge's decree. On receipt of a copy of the judgment, Government observed that the High Court had not adopted the Hon'ble Mr. Shephard's view that it made no difference whether the ryot profited by the water or not and considered that legislation was not called for (*vide* Government Order, Mis. No. 1446, dated 9th April 1896).

(*f*) In the case which forms the subject of the present reference, the District Judge upheld the levy of water-tax by Government, as he found that the plaintiff was likely to have benefited by the Government water which flowed over his land; but the High Court held that there was no supply by Government or use by the ryot within the meaning of Act VII of 1865 and that the mere fact that the plaintiff derived a benefit from the water, did not render him liable to water-rate, if he had had no option in the matter of excluding the water from his lands.

5. As it has now been finally decided that Government cannot levy water-rate under Act VII of 1865 on lands irrigated by involuntary flow of water, the question arises how the loss of revenue, which must be the logical result of this ruling, can best be avoided. One of the courses open to Government is to replace the existing system of levying a separate charge for water by the imposition of a consolidated wet assessment on all irrigated lands as in other districts. A suggestion to the above effect was made by the Collector of Gódávari in his letter recorded in Government Order, Mis. No. 1446, dated 9th April 1896. He observed that the question of

legislating in the matter might lie over "until the principles on which the district is to be resettled have been finally determined." In its Proceedings, No. 43, Revenue Settlement, dated 12th March 1896, submitting proposals for the resettlement of that district, the Board has recommended that the system of levying a consolidated wet assessment might be introduced in the case (*a*) of all lands from which, owing to their low level, Government water cannot be excluded and which are therefore unfit for dry cultivation, and (*b*) of all lands which have for five years been continuously under wet cultivation. The Government had previously approved of the proposal to levy a consolidated wet assessment in respect of lands falling under class (*a*), but orders have not yet been received upon the whole scheme. If the above change in the method of calculating the Government assessment be approved and extended to the delta taluks of the Kistna district also, the difficulty caused by the operation of the High Court's recent ruling will disappear in respect of the vast majority of Government ryotwari lands in the deltas; for, when consolidated wet rates are introduced, the Water-cess Act VII of 1865 will cease to be applicable and the Civil Court's jurisdiction to adjudicate on questions relating to the rates of assessment will be ousted under section 58 of Act II of 1864. Inconvenience will, however, continue to be caused in the case of lands registered as dry and of inam and zemindari lands, not only in Gódávari and Kistna, but also in all other districts, and this can be remedied only by resort to legislation.

6. As pointed out by Mr. Arundel in paragraphs 15 to 21 of his letter printed in Government Order, No. 932, dated 18th November 1889, legislation in the direction of authorizing the levy of water-rate in cases of actual use of Government water, whether voluntarily or otherwise, will only be in consonance with the rules which obtained in the Gódávari and Kistna deltas before the passing of Act VII of 1865 and with the concessions allowed under the orders of the Government of India and the Secretary of State after that Act had come into force.

7. On the question of legislation, Mr. Arundel thought it sufficient to insert a clause "whether with or without the consent of the proprietor or tenant" between the words "whenever" and "water" occurring in section 1 of the Act and to adopt the following as the preamble to the amending Act:—

"Whereas it is necessary to prevent a fraudulent use of the option that has been allowed by Government in the rules under Act VII of 1865 to take or refuse water for irrigation, it is hereby enacted as follows".

The Board considers that this slight amendment would not suffice for the purpose contemplated. In the first place, the latter part of the preamble requires to be modified by the amendment of the words "fit return" and "increased profits" occurring therein; for the Gódávari District Association urged it as one of the objections to the recent enhancement of the water-rate that the Government had more than recouped its outlay on the anicut works. Though the preamble to a legislative enactment cannot restrict the scope of the enacting words, it seems desirable to amend the words above referred to in view to avoid causing any possible misapprehension.

Secondly, the initial clause of section 1 should be amplified so as to authorize the levy of water-rate in cases of irrigation by overflow from channels or from lands higher up; and it should also be made clear that water-rate may be charged in cases of actual use of water, whether voluntarily or otherwise, and irrespective of any benefit derived therefrom.

Thirdly, the clause "additional to any land assessment that may be leviable on the said land as unirrigated or punjah," which occurs in the same section, is misleading, and should either be struck out or suitably amended; for doubts arise as to (1) whether the Act permits the levy of a charge for second crop on single crop wet inam and zemindary lands irrigated from Government sources, and (2) whether water-rate is leviable for the irrigation of zemindari and inam lands from a Government source when such lands are entered in the proprietors' accounts as "wet", but as depending upon other sources not interfered with by Government works and are not included in the mamul wet area for which Government is bound to supply irrigation free of separate charge (*vide* proviso to section 4 of the Act).

8. The Board takes this opportunity to submit, for the consideration of Government, a few other suggestions which occur to it in connection with the revision of the Act:—

(i) The Act (section 1) provides for the levy of water-rate only when water is supplied or used for purposes of *irrigation*. In cases where water is supplied or used for other purposes, *e.g.*, for indigo vats, the charge to be made by Government has to be arranged by mutual agreement (Board's Proceedings, No. 383, Settlement, dated 27th November 1895). The section should be amplified to provide for the levy of water-rate in such cases also.

(ii) Under Government Orders, No. 205, dated 9th March 1888, and No. 513, dated 19th June 1889, water-rate is levied on lands irrigated in ryotwari villages by intercepting and storing surface drainage water in such a way as to cut off, or tend to cut off, the supply to a Government source, or by using water obtained by percolation from a Government irrigation work when the supply thus derived is constant and full. The cess is also imposed in cases in which lands in ryotwari villages are irrigated from natural streams, which are not precarious in their nature, but afford a full supply for regular irrigation (Board's Proceedings, No. 952, dated 15th November 1888). The Board considers that an express provision should be embodied in the Act legalizing the levy of water-rate in such cases; for though the general right of the Crown to take a share of the produce in the shape of wet assessment cannot be questioned by Civil Courts, they have jurisdiction to adjudicate on the right of Government to levy a separate cess in the professed exercise of the power conferred by a special enactment (VII of 1865)—*vide* the penultimate paragraph of the High Court's judgment printed in Indian Law Reports, 12, Madras, page 407.

(iii) Further difficulties arise in a case where there are several irrigation works forming a common source of supply to both Government and proprietary lands, and where these works are improved either at the sole cost of Government or at the joint cost of both Government and the proprietor concerned. In the former case, Government has obviously a right to levy water-rate on all lands not classed as wet. In cases falling within the latter class, if the proprietor utilizes a larger supply than the proportion he is entitled to, *i.e.*, enlarges the wet cultivation in his estate to a greater extent than in the Government tracts benefited by the work, the Government is, according to the opinion of a former Government Pleader, entitled to charge water-rate on the excess area so irrigated. The Government Pleader observed that to justify the imposition of water-tax, it is unnecessary that the Government should be the *sole* owners of the river or work of irrigation from which water is taken, and that it is sufficient that the water which has been supplied or used was what the Government was entitled to draw from such sources and which therefore could not have been taken by such persons without the permission of Government (*vide* paragraphs 6 to 8 of the letter printed at page 10 of Board's Proceedings, No. 719, dated 29th December 1893). The Board considers that the Act may be amended so as to clearly confer a right to charge water-tax in such cases also.

(iv) The second section provides that arrears of water-cess may be realized in the same manner as arrears of land revenue. Clear provisions may be introduced on the following points relating to the realisation of water-rate payable to Government direct by the tenants of zemindari and whole inam villages, viz.:—

(*a*) Whether the tenant is a land-holder within the meaning of section 1 of the Revenue Recovery Act II of 1864; and

(*b*) Whether his interest in the lands irrigated and in the other immoveable property owned by him can be proceeded against for the recovery of arrears of water-rate—*vide* Government Order, No. 757, dated 28th December 1896.

9. In his letter of the 26th February 1897, No. 485, read above, the Collector of Kistna suggests that, in view to avoid the impending loss of revenue from water-rate, the Public Works officers may be instructed to extend the Kistna irrigation channels to the lowlying tracts, in which irrigation by involuntary flow has occurred in the past, and adds that if this remedy is to be tried, it should be undertaken in the

working season now about to commence. The Board requests that the necessary instructions may be issued to the Public Works Department for putting in hand the proposed extensions at an early date.

10. In certain letters which have been separately disposed of, the Collector of Kistna has recently reported that the District Judge has confirmed certain decisions of the District Munsif of Bápatla, disallowing the right of Government to charge water-rate for irrigation by involuntary flow, and that, in view of the recent decision of the High Court, there is no use in preferring second appeals. There can be no doubt that, as the law has now been interpreted, the orders passed by the District Judge are correct, and the Board has therefore accepted the Collector's conclusion and has informed him accordingly.

(True Copy and Extract.)

(Signed) R. C. C. CARR,
Secretary.

To the Secretary to Government, Revenue Department,
with copies of Board's Proceedings, No. 952, dated 15th November 1888, and No. 719, dated 29th December 1893, and with the enclosure to the Collector's letter No. 485, dated 26th February 1897, in original (to be returned).
„ Collector of Kistna with judgment and decrees returned.
„ Collector of Gódávari.
Copy to the Settlement Department.

Rgd. A. F. Eccleston.

MADRAS
8 MAY 97

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

THE HON. W. S. WHITESIDE.
THE HON. J. GROSE, M.A.

READ—the following letter from J. H. A. TREMENHEERE, Esq., Acting Collector of Coimbatore, to the Secretary to the Commissioners of Land Revenue, dated Coimbatore, 27th September 1888, Ref. on No. 1376-Board :—

With reference to Board's Resolution, Land Revenue, No. 641, dated 19th July last, I have the honor to state that there are many cases in the district where anicuts or temporary dams have been constructed by ryots without permission across streams from which water can be obtained for regular irrigation and a considerable extent of dry lands are being irrigated without any additional charge for water on the ground that the streams are simple jungle streams not interfering with any Government irrigation.

2. I think that it is just that all such lands should be charged with water-rate, and, with this view, I propose to issue the enclosed circular on the subject. As the matter is important, I request to be informed at an early date whether the Board approve of it.

ENCLOSURE No. 1.

Circular.

It appears to be the practice in this district to treat as jungle streams (for the purposes of Board's Standing Order No. 11) all streams not irrigating land at the time of paimaish. This is wrong.

2. A jungle stream is one *which is precarious and only flows for a few days at a time.* Other streams from which water can be obtained for regular irrigation are not "jungle streams" as meant by the Standing Order.

3. The points to be considered when irrigation of dry land from any stream comes in question are—

i. Whether it is a jungle stream according to this definition. If not, either second-class water-rate or penal water-rate should be charged, unless special concession by a competent authority can be proved.

ii. Whether its use interferes with the supply to any Government work: if so, water-rate should be charged.

iii. Whether the water is led off by a temporary or by a permanent work. If temporary, no water-rate may be charged.

iv. If permanent, whether permission has been obtained under Board's Standing Order No. 11. If permission has been obtained, no charge can be made; otherwise, water-rate should be charged. Any person feeling aggrieved may, in an appeal, represent any circumstances which call for special consideration.

RESOLUTION—dated 15th November 1888, No. 952.

The Board approve of the proposed circular as altered by them, and shown below, so far as concerns future operations; but would like to know particulars as to the extent of land now irrigated by anicuts which would be disallowed by it, the condition under which those anicuts were formed and the cost of them, before applying it to anicuts

already made. There seems to be a great number of these anicuts in Coimbatore. They have swallowed up a large amount of capital which will be lost if water-rate is charged. They were formed with the knowledge and tacit, though perhaps not explicit, permission of the authorities. They have also been in existence a very long time.

(True Copies and Extract.)

(Signed) H. A. SIM,
Acting Secretary.

To the Collector of Coimbatore.

Copy to the Commissioner of Revenue Settlement
and Director of the Department of Land Records and Agriculture.

APPENDIX.

It appears to be the practice in this district to treat as jungle streams (for the purposes of Board's Standing Order No. 11) all streams not irrigating land at the time of paimaish. This is wrong.

2. A jungle stream is one *which is precarious and only flows for a few days at a time.* Other streams from which water can be obtained for regular irrigation are not "jungle streams" as meant by the Standing Order.

3. Irrigation from a "jungle stream," as defined above, is permitted free in the following cases:—

(*a*) if it does not interfere with the supply to Government works below, and
(*b*) if the dam is a temporary one only; or
(*c*) if the dam is a permanent one, but has been made by permission.

4. Irrigation from streams which are not "jungle streams" as defined above, or from streams which are "jungle streams" but under conditions which do not satisfy the requirements of paragraph 3 above, must pay second-class water-rate, unless special permission can be proved.

5. Any person feeling aggrieved may, in an appeal, represent any circumstances which call for special consideration.

Exd. A. Aubert.

1888.

Board of Revenue

(Land Revenue),

MADRAS.

Printed November 30th.

Proceedings, 15th Nov. 1888, *No.* 952.

Approving, with certain alterations, the circular proposed to be issued by the Collector of Coimbatore regarding charge of *water-rate* on lands irrigated by means of anicuts or dams constructed across jungle streams; and calling for information as to the extent of such lands, &c., before applying it to anicuts already made.

GOVERNMENT OF MADRAS
8 MAY 97

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

READ—again the following Proceedings of the Board of Revenue (Land Revenue), dated 26th February 1892, Mis. 1375 :—

Read—Proceedings of the Board of Revenue (Land Revenue), dated 24th January 1884, No. 248, Press.

ABSTRACT.—Sanctioning the refund of Rs. 6,636-0-7 to the Zemindar of Singampatti, being the fasaljasti assessment erroneously collected from him, and approving the discontinuance of the imposition of fasaljasti on the zemindari lands in future.

Read—Proceedings of the Board of Revenue (Land Revenue), dated 1st December 1885, Mis. No. 10678.

ABSTRACT.—Communicating to the Collector of Tinnevelly Government Order stating that orders will issue in the Public Works Department for the provision of funds to pay the share due by Government and the Zemindar of Urkad of the cost of repairing certain irrigation works in the Singampatti zemindari, and directing the Board of Revenue to instruct the Collector to take necessary steps to recover the share due by the Zemindar of Urkad.

Read—the following Proceedings of the Board of Revenue (Land Revenne), dated 1st November 1890, Mis. No. 6985 :—

Read—the following letter from J. H. A. TREMENHEERE, Esq., Acting Collector of Tinnevelly, to the Secretary to the Commissioners of Land Revenue, dated Tinnevelly, 27th September 1890, No. 799 :—

I have the honour to take the Board's orders on the following points, first soliciting reference to Board's Proceedings, No. 248, dated 24th January 1884, and No. 2826, dated 8th October 1885.

2. It will be seen from the former Proceedings that fasaljasti charged on Singampatti zemin irrigation under the Perungal channel was disallowed on the ground that Rs. 36,000 * had been *spent entirely from estate funds* on the improvement of the irrigation. From the latter it will be seen that the estate was recouped Rs. 12,566 by Government. As the ground of the argument fails, should the order stand ?

* Really 33,293.

3. The question is a very important one. Personally, *primâ facie*, it seems to me that Mr. Pennington's view is correct—see enclosure 4 of the former Proceedings. But, if the Board allows the question to be re-opened, the zemindar must be given an opportunity of showing cause against.

4. The next point is the management of the channel. There is great waste of water, there being too many sluices, which are not shuttered. A scheme has been prepared, but the zemindar refuses to contribute unless the keys of his sluices be left with him. Then the regulation and closing of Government sluices would only drive more water down his sluices. So we had to drop the idea of shuttering his sluices, and the scheme is restricted to shuttering our own. This is equally objectionable on the same ground. On reconsideration, I am decidedly of opinion that Government

should assert its rights to regulate all parts of the channel, allowing the zemindar (subject to any water-rate to which he may be liable) as much water as will irrigate the extents of land recorded in Proceedings, No. 2826, dated 8th October 1885.

Resolution—dated 1st November 1890, Mis. No. 6985.

The Board does not consider it necessary to re-open the question of charging fasaljasti.

2. As regards the construction of sluices, the Collector has not explained sufficiently fully the necessity for them: from the enclosure to Board's Proceedings, dated 8th October 1885, No. 2826, a certain number appear to have been already built: it should have been stated also to whom the channel belongs, and what rights Government have over it.

(A true Copy and Extract.)

(Signed) H. A. SIM,
Acting Secretary.

To the Collector of Tinnevelly.

Read—the following letter from G. S. FORBES, Esq., Acting Collector of Tinnevelly, to the Secretary to the Commissioners of Land Revenue, dated Tinnevelly, 15th June 1891, No. 402:—

With reference to Board's Proceedings, dated 1st November 1890, Mis. No. 6985, regarding the regulation of the Perungal channel in the Ambásamudram taluk and the water rights of the Singampatti Zemindar, I have the honour to report that the construction of new sluices is not under contemplation. It was, on the motion of the Government ryots complaining that the zemindar is taking, by forcible means to his lands, an undue share of water from the Perungal channel, that the Superintending Engineer proposed to construct shutters for the existing open sluices, and to appoint additonal lascars, and thereby to place the water under effective control. My predecessors, Messrs. Thomson and Nicholson, after consulting the Head Assistant Collector, agreed with the Superintending Engineer and asked the zemindar to contribute towards the cost of the shutters and establishment proposed. The zemindar refused to pay any contribution unless the keys of the sluices that irrigate only his lands should be wholly entrusted to him. Hence Mr. Tremenheere's reference in question.

2. The channel is undoubtedly the property of Government; and the equitable distribution of the water rests with them. The work is included in the list and map of Imperial irrigation works circulated with Government Order, No. 407 I., dated 6th July 1887 (Revenue No. 477 of 14th May 1887). It is also entered in the village settlement register as a Government channel. The zemindar has, up to the present time, been contributing to Government a proportionate share of the repairs executed. The rivers Manimuthanadi and Pachaiyar, from which the channel receives its supply, take their rise in the Travancore hills and run through our forest in the Nánguméri taluk. Only a portion of the channel is situated within the limits of the zemindar. It supplies both Government and zemin lands. There are 30 sluices in the channel, of which 15 irrigate zemin lands, 9 Government, and 6 both zemin and Government lands. The zemindar's sluices are chiefly higher up the stream than those supplying water to the Government ryots, and this explains his desire to have the control of the keys.

Read—petition from TENNATTUPULY NALLAKUTTY SIVASUBRAMANIA THEVAR, Zemindar of Singampatti, Ambásamudram taluk, Tinnevelly District, dated 23rd June 1891.

ABSTRACT.—Praying that the control of water as regards the irrigation of his lands under the Perungal channel may be left to him, irrespective of any system of conservancy that may be introduced by Government.

Reference thereon, dated 18th July 1891, calling for certain papers quoted in the petition from the Zemindar of Singampatti.

Read—the following letter from G. S. FORBES, Esq., Acting Collector of Tinnevelly, to the Secretary to the Commissioners of Land Revenue, dated Tinnevelly, 4th August 1891, No. 507:—

Copy of Ambásamudram Tahsildar's arzi, No. 427, dated 27th June 1888.
Copy of Collector's letter, No. 2926, dated 15th December 1890, to the Head Assistant Collector.
Copy of Special Deputy Collector's letter, No 35, dated 26th May 1891.

Adverting to Board's reference on General Register and Petition Register Nos. 2036 and 2075 of 1891, respectively, dated 18th July 1891, I have the honour to submit herewith the papers as per margin regarding the regulation of water in Perungal channel and the alleged right of the Singampatti Zemindar thereto.

ENCLOSURE No. 1.—Copy of Ambasamudram Tahsildar's Arzi.

ENCLOSURE No. 2.

From the Collector of Tinnevelly, to the Head Assistant Collector of Tinnevelly, dated 15th December 1890, No. 2926.

With reference to the correspondence ending with your letter, No. 726, dated 21st October 1890, in connection with the regulation of water in the Perungal channel, I have the honour to observe that the necessity for the sluices is evidenced solely by the complaint of the ryots, and by the obvious *desirability* of obtaining control over and regulating the supply of water, so as to prevent (1) wastage and (2) undue advantages to the zemindari ryots. Personally I doubt if there is much in the ayan ryots' complaint: there has been singularly little trouble up to date, no reports or complaints that I am aware of having been received except the one in which they complained to the Engineer. Is it necessary or advisable to stir up the matter which at present is quiet: the channel is no worse off than hundreds of purely Government channels, and here we have the difficulty that the zemin and ayan lands are intermingled and the property in the channel and water undetermined.

2. This latter is the second and chief difficulty: the Board ask whose the channel is. Mr. Broadfoot seems to consider the channel as the zemin channel taking water from the zemin forests. Mr. Pennington, however, *doubts* this (see his letter to the Head Assistant Collector, No. 297, dated 24th February 1883). Moreover I note that the zemindar in his application for refund speaks of the Government as the previous repairers of the channel, in which case they used to collect a portion from the zemindar: this looks like an admission of Government right which indeed is most probable. But the data are insufficient. Please therefore inform me at the *very earliest possible date*—

(*a*) How is the channel entered in the settlement registers?
(*b*) Is it anywhere entered as Government channel? (The Superintending Engineer says that it is included in the list of Imperial works)?
(*c*) Is its head in zemin lands?
(*d*) Have Government exercised rights of repair?
(*e*) Is the water Government water? and
(*f*) Have we not admitted zemin right in reconstructing from zemin funds and merely refunding the Government share?

ENCLOSURE No. 3.

From M.R.Ry. C. MURUGASEM PILLAI, Special Deputy Collector, Tinnevelly, to the Collector of Tinnevelly, dated 26th May 1891, No. 35.

With reference to your letter, dated 15th December 1890, No. 2926, to the Head Assistant Collector, I have the honour, before proceeding to reply *seriatim* the queries promulgated, to make a few remarks regarding the doubt entertained in paragraph 1 as to whether there is any real cause for the ayan ryots to complain.

2. It must be remembered that the Zemindari of Singampatti was under the management of the Court of Wards from the year 1867 to 1881, and during that time, considerable improvements were made to the irrigation works, by the aid of which the zemin lands receive their water-supply. The expenditure was by mistake incurred from the estate funds, and so, after the zemindar attained his majority, he claimed the refund of the amount, *minus* the contribution due by him, from Government. As the channel was the property of Government, it was thought fair that the repairs made to it and to the anicut and sluices connected with it should have been carried out by Government. The amount claimed, Rs. 14,185-13-2, was accordingly refunded to the zemindar—*vide* Government Order, dated 14th November 1885, No. 1263, communicated with Board's Proceedings, dated 1st December 1885, Mis. No. 10678.

3. After the above improvements were effected, the then Collector, Mr. Puckle, issued an order (dated 12th December 1873, No. 1332) to charge on the zemin lands half fasaljasti of Rs. 2 per acre, on the consideration that the improvements were made at the cost of the estate. This rate continued to be collected from fasli 1282 to 1291, when the zemindar applied for a refund of the amount thus collected up to that year on the ground that the Government have no right to collect from him fasaljasti as the repairs to the irrigation works were carried out at his entire cost. A refund of Rs. 6,636-0-7 was made, and from that time, fasaljasti was discontinued for reason then urged by the Head Assistant Collector, viz., that Manimuthanadi, from which water is carried to the zemin lands, takes its source in the hills belonging to the zemindar, and that the works diverting the water of that river were constructed entirely at the cost of the estate—*vide* Head Assistant Collector's letter to the Collector, dated 6th November 1882, No. 491. As stated in paragraph 2 of this letter the greater portion of the cost of the above works was afterwards returned to the zemindar and the works themselves are mostly repairs to old works and not new works as the Head Assistant Collector's remarks seem to imply. Besides, the statement, that the river takes its source from the zemin hills, is unfounded—*vide* paragraph 7 below.

4. Now that no charge is made on zemin lands for water taken from Government sources, the zemin ryots are the gainers. They have not only greatly extended second crop cultivation of single crop lands, but have also converted considerable area of dry lands into wet. The result is that a large quantity of water, really due to the poor ayan ryots, are being taken to the zemin lands, tax free, under the cover of the influence and power of the zemindar.

5. I am, under these circumstances, decidedly of opinion that the ayan ryots really suffer and their complaints should be seriously considered.

REPLY TO THE QUERIES.

6. *Queries* (*a*) *and* (*b*).—The portion of the Perungal channel, running in the ayan Singampati village is numbered 161, 162, 288, 401, 405, 444 and 452 and entered as Government channel in the settlement register of the village—*vide* column 4 and remark column, while there is no ayacut on the zemindari side to show that the channel belongs to the zemindar—*vide* paragraph 2 of the Head Assistant Collector's letter, dated 12th July 1889, No. 376. This work is included in the list of Imperial irrigation works.

7. *Queries* (*c*) *to* (*f*).—The channel in question gets its supply of water from two rivers, Manimuthanadi and Pachaiyar, which are reported to take their rise in the Government forests to the west of Nángunéri and to run northward about 15 miles before entering the zemin Singampati forests. An anicut across the Manimuthanadi diverts its water into the Pachaiyar. A little below the confluence, another anicut has been constructed with sluices to let off excess water into Manimuthanadi. Then comes the head sluice in the Pachaiyar river wherefrom Perungal channel divides itself and runs through zemin and ayan lands. As the two anicuts and the head sluice from which this channel commences are constructed within zemin limits, the zemindar claims these as his own, but there is no real weight in his contention.

8. It cannot be denied that the water of the river belongs to Government and that the Government have, from time immemorial, exercised rights of repair to the works in question, levying from the zemindar his proportionate share of the cost—*vide* paragraph 4 of the Head Assistant Collector's letter to the Collector, dated 28th January 1889, No. 58. This right of repair has also been admitted by the zemindar in his petition demanding from Government their share of the cost which the Court of Wards had paid from the zemin fund when the estate was under their management.

9. Further a reference to paragraph 4 of the Head Assistant Collector's letter, dated 28th January 1889, No. 58, and to the records therein mentioned shows that a lascar has been appointed by Government to Perungal channel, doing duty under the Canadiyan Channel Superintendent prior to 1857 and that appointment continues up to date. It is stated that the zemindar also has a lascar of his own. The records in support of this assertion are not among the papers in this office. I am, however, almost sure that this lascar cannot have been appointed for the superintendence of distribution of water between ayan and zemin fields, but for the purpose of looking after the internal irrigation of the zemin lands. The records in your office may throw light on this point.

10. For these reasons, Mr. Thomson, the late Collector, passed an order to the effect that the channel should be placed under the conservancy of a separate establishment—*vide* his endorsement, dated 26th February 1889, on letter, dated 28th January 1889, No. 58, of the Head Assistant Collector. The several morais on each side have been admitted by all parties—*vide* paragraph 1 of the Head Assistant Collector's letter to the Collector, dated 12th January 1889, No. 376, and there is therefore no difficulty at present in regulating the distribution of water.

11. On receipt of information about the settlement of morai, Mr. Nicholson agreed with Mr. Thomson and wrote to the Superintending Engineer that the sluices in the Perungal channel, both zemin and ayan, should be under the control of the Superintendent of the Canadiyan channel—*vide* his letter, dated 6th August 1889, No. 288, to the Superintending Engineer, VI Circle.

12. It seems to me very necessary that the above order of Mr. Nicholson should be carried into effect without loss of time and that the proportionate cost of the repair referred to in the Superintending Engineer's letter, dated 21st July 1890, No. 374 T.N., collected from the zemindar as hitherto. If he refuses to pay contribution, he should be compelled to pay water-rate. Contribution has been paid all throughout and he is bound to pay it for taking water to the nunja lands included in his grant. Under ordinary circumstances, therefore, he should pay water-rate for water taken in excess, but the question having been once brought before the Board of Revenue and settled, I do not think it advisable to reopen it; but in the event of his refusing to contribute, it is but fair that water-rate should be charged.

Read—petition from VENCATARAMANA IYER and others, ryots of Ayan Singampatti village, Ambásamudram taluk, Tinnevelly district, dated 25th June 1891.

ABSTRACT.—Stating that the zemindar of Singampatti has not got the sole right to the control of the Perungal channel water, and praying that the channel and sluice be repaired at once and the distribution of water through it be kept in the hands of Government, so that both the zemin and ayan lands which it irrigates may get their supply as usual.

Reference on the above, dated 13th August 1891.

Forwarded to the Collector of Tinnevelly, in continuation of Board's Reference, dated 18th July 1891, on Petition Register No. 2075 of 1891, for remarks especially on the allegations contained in paragraphs 8 and 9 of the petition.

2. The report of the Special Deputy Collector referred to in paragraph 14 should be forwarded.

(Signed) W. S. MEYER,
Acting Secretary.

To the Collector of Tinnevelly, with petition and its enclosure to be returned.

Read—the following letter from G. S. FORBES, Esq., Acting Collector of Tinnevelly, to the Secretary to the Commissioners of Land Revenue, dated Tinnevelly, 19th September 1891, No. 618:—

I have the honour to return the petition received with the Board's Reference, dated 13th ultimo, on Petition Register No. 2098, regarding the regulation and distribution of water by the Perungal channel.

2. I have little to add to what I have already reported in my letter, No. 402, dated 15th June 1891. The orders quoted in paragraph 8 of the petition have reference to the execution of repairs to the Perungal channel by the Government and the collection of contribution to the cost thereof from the Singampatti Zemindar. But the enclosed copies of Collector's takids, No. 49, dated 26th February 1823, to the Bramadesam Tahsildar, and No. 3, dated 26th February 1823, to the zemindar, show that there was then a channel monigar whose duty it was to regulate the distribution of water to the zemin and ayan lands.

3. The petitioners' allegation in paragraph 9 of their petition is true—*vide* correspondence leading up to Board's Proceedings, No. 248, dated 24th January 1881, and No. 2826, dated 8th October 1885.

4. The Special Deputy Collector's letter, No. 35, dated 26th May 1891, called for in paragraph 2 of the reference, was forwarded to the Board with my letter No. 507, dated 4th August 1891.

Read—petition from NAMASIVOYAN TAMBIRAN and others, Ayan Singampatti ryots, Tinnevelly district.

ABSTRACT.—Stating that the Perungal channel belongs to Government, and praying that the Board will be pleased to retain the management of the channel and the control of its lascar and superintendent in the hands of Government, so that the distribution of water may be equitable and fair both to ayan and zemindari lands.

Reference on the above, dated 2nd December 1891.

The Collector is requested to report with reference to paragraph 1 of his letter, dated 15th June 1891, No. 402, whether the zemindar would object to the Government putting in shutters at its own cost so far as the sluices constructed at his expense are concerned, and, if so, what are the grounds of his objection.

(Signed) W. S. MEYER,
for Acting Secretary.

To the Collector of Tinnevelly.

Read—the following letter from G. S. FORBES, Esq., Collector of Tinnevelly, to the Secretary to the Commissioners of Land Revenue, dated Tinnevelly, 15th January 1892, No. 43:—

I have the honour to reply to Board's Reference, dated 2nd December 1891, on General Register No. 2036 of 1891, &c., regarding the water distribution of Perungal channel.

2. The Zemindar of Singampatti objects to the Government putting in shutters at its own cost, because, if the keys are in the custody of the servants of Government, his liberty to take water will be hindered and his rights prejudiced, but the zemindar is willing to provide keys for the existing shutters at his own expense.

3. A copy of the Head Assistant Collector's letter, No. 799, dated 23rd December 1891, on the subject, is enclosed.

ENCLOSURE.

From D. MURDOCH, Esq., Head Assistant Collector of Tinnevelly, to the Collector of Tinnevelly, dated 23rd December 1891, No. 799.

With reference to your foot-note, No. 2762, dated 10th December 1891, to Board's Reference, dated 2nd December 1891, on General Register No. 2036 of 1891, I have the honour to forward herewith the Singampatti Zemindar's yadast, dated 17th December 1891, No. 34, received with the Ambásamudram Tahsildar's arzi, No. 962, dated 18th December 1891.

2. The zemindar states that in 1874–75 (*i.e.*, when the zemindari was under the management of the Court of Wards) shutters provided with a key were put into the head sluice of the Perungal channel and that the key was entrusted to the estate servant who continues to keep it, and that the other sluices were provided with planks only. He objects to the Government's putting in shutters at its own cost, because if the keys are kept by a Government servant, his liberty to take water will be interfered with, and because it is opposed to his right and long-continued practice. But he says that he is willing to provide keys for the existing shutters at his own expense.

Read—petition from NAMASIVOYAN TAMBIRAN of Thiruvaduray Mutt, Tinnevelly district, dated 8th February 1892.

ABSTRACT.—Submitting supplemental petition in continuation of the appeal regarding petitioner's right to the water of the Perungal channel.

Resolution—dated 26th February 1892, Mis. No. 1375.

The papers read above will be forwarded to the Government Pleader for favour of opinion on the points noted below.

2. There is a channel, called the Perungal channel, in the Singampatti zemindari, which draws its supply of water from the Manimuttanadi and the Pachaiyar river and irrigates both zemindari and Government lands—*vide* plan enclosed. These lands were formerly irrigated only by means of annually erected dams thrown across the rivers; but when the zemindari was managed by the Court of Wards (1867—81), substantial anicuts were built and permanent improvements were also effected in the way of widening the channels and constructing sluices from the funds of the estate, which not only secured a perennial supply of water to the usual cultivation, but also enabled the zemindari ryots to raise a second crop on their single crop wet lands. The then Collector, Mr. Puckle, in consideration of the improved facilities of irrigation thus afforded, but at the expense of the estate, directed the levy of water-rate at half the usual rate, viz., Rs. 2. After the estate was handed over to the zemindar in 1881, he took exception to the fasaljasti assessment which amounted to Rs. 6,636–0–7 from fasli 1282 to 1291, as the irrigation sources were improved solely at the cost of the estate, and claimed a refund of the amount levied and exemption from such charge in future. The Board considered that the charge was unjustifiable and accordingly refunded the amount already collected, ordering at the same time its discontinuance in future—*vide* Board's Proceedings, dated 24th January 1884, No. 248.

3. Subsequently a second claim was put forward by the zemindar, viz., that Government should bear a proportionate share of the cost of the above-mentioned

improvements, as they benefited the zemindari and Government lands equally. This request was also complied with by a refund to the estate of Rs. 12,566-11-7 from Government, while Rs. 1,619-1-7 were to be recovered from the Urkad Zemindar whose estate had also profited by the works—*vide* Government Order, dated 14th November 1885, No. 1263, R.D.

4. The Collector inquired in September 1890 whether, in view of the refund thus sanctioned, the charge of fasaljasti disallowed in Board's Proceedings, dated 24th January 1884, No. 248, should not be restored. He also brought to notice that there was a great waste of water, there being too many sluices which were not shuttered. The Board considered it unnecessary to reopen the question of charging fasaljasti and called for a further report as to the necessity for providing shutters to the existing sluices—*vide* Board's Proceedings, dated 1st November 1890, Mis. No. 6985. From the Collector's report it would appear that on the complaint of the Government ryots lower down the Perungal channel that the zemindar was allowing an undue share of water to his ryots to the detriment of the complainants, the Superintending Engineer proposed in 1890 to provide the existing open sluices with shutters, to appoint additional lascars, and thereby to place the water under effective control. To this arrangement the zemindar would not agree, and refused to pay any contribution towards the cost of the proposed shutters and establishment unless the keys of the shutters irrigating his lands were entrusted to him.

5. The rivers from which the channel derives its supply take their source in the Travancore hills and run through *Government* forests in the Nángunéri taluk before entering the zemindari limits. The channel is provided with 30 sluices of which 15 irrigate zemin lands, 9 Government lands and the rest both zemin and Government lands. The sluices irrigating the zemin lands are mostly higher up the channel than those supplying water to the Government ryots, and this explains the anxiety of the zemindar to have the control of the keys. The zemindar can have no reason to object to the Government putting in shutters at its own cost to those sluices irrigating both zemin and Government lands and whose cost was borne equally by Government and the zemindar. But there are certain sluices which irrigate only zemin lands, and towards the cost of which Government did not make any contribution. On a reference recently made it appears that the zemindar objects to the Government putting in shutters for these sluices at its own cost, because if the keys are in the custody of Government servants, his liberty to take water will be hindered and his rights prejudiced, but he is willing to provide keys for the existing shutters at his own expense.

6. The channel is certainly a Government channel, having been entered as such in the village settlement register. It is also included in the list of Imperial works circulated with Government Order, dated 6th July 1887, No. 407 I., and its repairs were, till the execution of the works by the Court of Wards referred to in paragraph 2 *supra*, carried out by Government, the zemindar contributing a proportionate share of the cost of the repairs executed. The zemindar has at best only the rights of a riparian proprietor and must exercise these without detriment to the corresponding rights of Government lower down the stream; but Government has other rights also, and one of them is the immemorial right to control the use of the water for irrigation purposes, the zemindar having no exclusive title thereto. To comply with the proposal of the zemindar, viz., to entrust him with the keys of the shutters even of his own sluices would in effect mean the absolute control on the part of the zemindar of the water within the limits of his estate much to the detriment of Government ryots lower down.

7. The questions now referred for opinion are:—

(1) Whether, in the circumstances above explained, Government can regulate the flow of water in the channel by putting shutters and keys at its own cost against the zemindar's will for sluices which are on his land and were paid for solely by him?

(2) If the improvements can be carried out by Government, can the zemindar be charged water-rate for any water taken in excess of his proper rights under Act VII of 1865 (Madras)?

(A true Copy and Extract.)

(Signed) W. S. MEYER,
Acting Secretary.

To the Government Pleader, Madras, with G.R. No. 2036 of 1891, P.R. No. 2075 of 1891, P.R. No 2098 of 1891, and its 1 enclosure, P. R. No. 2701 1891 and its 3 enclosures, P.R. No. 2728 of 1891, P.R. No. 3285 of 1891, and its 4 enclosures, G.R. No. 117 of 1892, and its 1 enclosure, P.R. No. 509 of 1892 and its 2 enclosures, in original, to be returned, and copies of Board's Proceedings, dated 24th January 1884, No. 248 Press, 1st December 1885, Mis. No. 10678, and 1st November 1890, Mis. No. 6985.

Copy to the Collector of Tinnevelly.

READ—again the following Proceedings of the Board of Revenue (Land Revenue), dated 27th July 1892, Mis. No. 4569:—

Read—the following letter from M.R.Ry. S. SUBRAMANIA AYAR, Acting Government Pleader, to the Secretary to the Commissioners of Land Revenue, dated Madras, 26th April 1892, No. 428:—

Mis. No. 1375, dated 26th February 1892.

With reference to the Board's Proceedings noted on the margin, I have the honour to submit the following

OPINION.

1. The first question raised is whether the Government can regulate the flow of water in the Perungal channel (which irrigates some of the lands of the Zemindar of Singampatti as well as the lands in certain Government villages) against the will of the zemindar by putting shutters and keys for sluices constructed at the expense of the zemindar and on his land.

2. In Ponnusawmy Thevar *v.* The Collector of Madura,* it was claimed on behalf of Government that "the Government have full power and authority to regulate in such manner as may be deemed most desirable for the increase and protection of revenue and the right and interest of the State and of all persons concerned, the distribution of water for purposes of irrigation from rivers and channels constructed and maintained at the public expense." Referring to this contention, Scotland, C.J., observed, "the arbitrary power claimed for the Government has been rightly held by the Civil Judge not to be maintainable. However lawful the exercise of such a power may be in regulating the distribution of water among ryotwari villages held immediately of the Government or to the lands of propietors or their tenants whose enjoyment of it is simply permissive, there can be no doubt that the right to an easement in the flow of water through an artifical watercourse is as valid against the Government as it is against a private owner of land." Mr. Justice Innes, who took part in deciding that case, likewise observed, "I quite admit that the Government of this country has at all times assumed to itself and has the rights in the interest of the public to regulate the distribution for use of any portion of the water flowing in the natural channels in which rights have not as yet been acquired and to this extent the claim of the first defendant on behalf of the Government cannot be gainsaid. But where a channel has been constructed by Government acting as the agent of the community to increase the well-being of the country by extending the benefit of irrigation and in pursuance of that purpose a flow of water is directed to the villages designed to be benefited it becomes simply a question upon the circumstances of the case whether there has not been a conveyance to such villages

* 5 M.H.C.R., 6.

in perpetuity of a right to the unobstructed flow of water by the channel; looking at the permanency of such works and to the permanency attached to the object, that there was a transfer in perpetuity would seem an almost necessary conclusion unless there were other circumstances to lead to one of an opposite character. It might, of course, be capable of being shown that the privilege was granted as a mere license, and that before the water was allowed to flow to the villages it had been left open to Government by arrangements then made to obstruct the flow at will at any future period."

3. In a later case, in which the dispute related to the right of Government to regulate the distribution of water amongst their tenants, the decision in Ponnusawmy Thevar *v.* The Collector of Madura was referred to and distinguished on the ground that it was a case "of a proprietor entitled to claim an easement as against the Government" (Kristnasawmy Iyer *v.* Venkatachala Mudali *).

* 7 M.H.C.R., 60.

4. Now, in the first place, the channel in question is an *artificial* channel from which the zemindar has admittedly a right to draw water for his lands and not a natural water-course in which no right has as yet been acquired. In the next place the lands, irrigated by the water, form part of a *permanently*-settled estate belonging to him and are not held by him from Government on ryotwari tenure. Lastly, the zemindar's enjoyment is *not merely permissive but of right.* The position of the Government and the zemindar being thus that of proprietors possessing common interest in an artificial water-course, their mutual rights and obligations must be dealt with as regulated by contract either express or to be implied from user and such other circumstances [see remarks of Innes, J., already quoted—see also Ramasra Prakasa Narain Singh *v.* Kong Behari Putta, (L.R., 6 I.A., p. 33)].

5. If, however, the zemindar abuses his position as a joint owner of the channel, causes damage which cannot be compensated by money and acts in a manner likely to prove permanently injurious to Government, they may by suit obtain an injunction to restrain him from making such unlawful use of the channel. But beyond that, I am unable to say that the Government are entitled, without the zemindar's assent, to provide shutters and keys for the zemindar's sluices and *keep such shutters and keys under the control of their own servants*, merely because it would be to their interest to do so. The Zemindar, I think, would be justified in opposing any such action on the part of Government as an unlawful innovation materially interfering with his right as he has been enjoying it hitherto.

6. My answer to the next question, whether the zemindar can be charged under Act VII of 1865 (Madras) with water-rate for the use of water taken by him in excess of his rights, is in the affirmative. The Act authorises the levy of a rate whenever water, which in ordinary language may be described as belonging to Government, is taken for purposes of irrigation (water which the Government is under an engagement to supply free of charge being excepted). There can be no doubt that it is this ownership of the Government in water that the legislature has, in section I, indicated by reference to their interest in the sources or places, wherefrom the supply of water is drawn, I presume because, in law, property in water is taken to be in him who owns the land on which the water is found.

7. The language of section I is no doubt neither felicitous nor free from doubt; but looking at the aim and the scope of the Act, I am inclined to think that the Government can impose the tax in the present instance and that the channel in question, though common to the Government and the zemindar, falls within the purview of the Act.

8. In my opinion, it is unnecessary that the Government should be the *sole* owners of the river or work of irrigation from which water is taken. It is sufficient that the water which has been supplied or used (by persons from whom the rate is demanded) was what the Government were entitled to draw from such sources and which therefore could not have been taken by such persons without the permission of Government. The only parties entitled to use the water flowing in the Perungal channel are admittedly the Zemindars of Singampatti and Urkad and Government,

and therefore the water taken over and above the quantity to which the zemindars were entitled necessarily belonged to and could be charged for by Government.

Resolution—dated 27th July 1892, Mis. No. 4569.

The Government Pleader's opinion will be communicated (confidentially) to the Collector of Tinnevelly in continuation of the Board's Proceedings first read above.

2. It appears from the above opinion that Government cannot provide the Singampatti zemindar's sluices with shutters and keys at its own cost against his will, and that the only course open to it is to institute a suit against the zemindar, if he has used or hereafter uses the waters of the Perungal channel in excess of his rights.

3. From the records it appears that Government was, until the Court of Wards repaired the channel at the cost of the Singampatti Estate, in the habit of effecting the necessary repairs to the channel at its own cost and recovering proportionate contribution from the Zemindars of Singampatti and Urkad. It appears further that for a long time Government also exercised the right of regulating the water-supply. Subsequently, when the Court of Wards constructed anicuts and sluices and improved the channel at the cost of the Singampatti Estate, it made no express provision for the regulation of the water-supply. As the Singampatti Zemindar has, on attaining his majority, recovered proportionate contribution from Government and the Urkad Zemindar, on the ground that the improvements benefited them also, each of the three parties is, as a co-proprietor, entitled to extend the irrigation of his or its lands with the aid of the increase in water-supply due to those improvements in the relative proportions of the several extents which they were irrigating before the improvements. If, for example, the proportions of the original cultivation are $\frac{1}{2}$, $\frac{1}{3}$ and $\frac{1}{6}$ and the increased water-supply is sufficient for the irrigation of 300 acres, the proportionate areas to which the parties are entitled to extend their irrigation will be 150, 100 and 50 acres. If, therefore, the Singampatti Zemindar has increased his cultivation to such an extent as either to cause a diminution of water-supply for the cultivation of the extent *originally* irrigated by the other two proprietors or so as to prevent them from increasing their original cultivation in the same proportion as he has increased his, then a suit would, in the Board's opinion, lie against him; and while filing that suit, opportunity could also be taken to establish the right of Government to regulate the water-supply due to all the parties. It is, of course, true, as the Government Pleader says, that the Zemindar is not a ryotwari pattadar but the owner of an easement; but the easement of taking water from a source improved jointly by all the persons entitled to the water-supply may well co-exist with the right of regulation vesting in a particular one of the persons so entitled.

4. There is no doubt that the zemindar has extended his irrigation, but there is at present no information before the Board to show that by such extension the area of lands irrigated by Government has fallen off below its original extent, or that Government has been prevented from extending its irrigation in the same proportion in which the zemindar has extended his irrigation. The Collector is therefore requested to submit a further report on the subject, furnishing particulars of (1) the average extents of lands of the three co-proprietors (under first and second crop cultivation) as they stood before the improvements above referred to and as they stand at present, and (2) the average remissions granted by Government on account of waste and shavi before and after the execution of those improvements.

5. The Collector is also requested to ascertain and report what action the Urkad Zemindar intends to take in connection with this matter.

(A true Copy and Extract.)

(Signed) W. S. MEYER,
Acting Secretary.

To the Collector of Tinnevelly, with copy of letter (G R. No. 1197 of 1892), and one enclosure in P.R No. 2098 of 1891 (map) to be returned to petitioners Venkataramanaya and others, and (2) in P.R. No. 509 of 1892, to petitioner Namasivoyan Thambiran.

READ—again Proceedings of the Board of Revenue (Land Revenue), dated 23rd December 1892, No. 8466.

ABSTRACT.—Passing orders on the petition from Rama Iyer and others, ryots of Kalladakurichi village, Ambásamudram taluk, regarding the regulation of water-supply in the Perungal channel and the rights to water of the Zemindar of Singampatti.

READ—also the following letter from G. S. FORBES, Esq., Collector of Tinnevelly, to the Secretary to the Commissioners of Land Revenue, dated Tinnevelly, 17th October 1893, No. 834 :—

I have the honour to reply to Board's Proceedings, dated 27th July 1892, M.S. No. 4569, regarding the right of the Government to regulate the supply of water from the Perungal channel.

2. The improvements to the Perungal channel were made in faslis 1282 to 1284. Statistics of the cultivation of the lands belonging to the three co-proprietors under the channel, the Singampatti Zemindar, the Government ryots and the Urkad Zemindar, are given in the enclosed statement A, for a series of years from fasli 1281, the year prior to the improvements. Figures are not available for the Government lands for faslis 1282 to 1285, owing to the loss or destruction of the old irrigation accounts, nor are they available for the years prior to fasli 1281. The materials for a satisfactory comparison are therefore meagre. Particulars of first and second crop cultivation are also not available for the Singampatti zemindari. I have, however, calculated from the assumed ayakat and the figures for the kar and peshanum crops, approximate figures for fasli 1281 and faslis 1299, 1300 and 1301 for purposes of comparison. I take the figures of these last 3 years as giving a fair average, so far as materials are available, of the state of things in the lands of the three proprietors for the whole period from fasli 1286 downwards. An inspection of the figures in statement A will show this.

3. The figures for the Singampatti zemindari have been adopted from the original accounts kept by the zemindari karnams which, however, cannot be accepted as entirely trustworthy. Several of the accounts are not attested by the Zemindar or by any responsible agent on his behalf. Besides, the statistics of cultivation in the zemindari do not include dry lands irrigated. The Tahsildar reports that there is no record in the accounts of any such cultivation, and that no water charge has ever been levied. This is, however, no proof that such cultivation did not take place.

4. The subjoined statement compares the average cultivation under first and second crop in faslis 1299, 1300 and 1301, with that in fasli 1281, the year before the improvements, the accounts of earlier years, as already remarked, not being available :—

—	I. Fasli 1281.			II. Average of faslis 1299, 1300 and 1301.			Percentage of increase of II over I.		
	First crop.	Second crop.	Total.	First crop.	Second crop.	Total.	First crop.	Second crop.	Total.
1	2	3	4	5	6	7	8	9	10
	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.
Singampatti zemindari ..	1,078	92	1,170	1,122	500	1,622	4	443	39
Urkad zemindari	117	4	121	167	39	206	43	875	70
Government ..	952	92	1,044	1,002	303	1,305	5	229	25

5. The average of first-crop cultivation in faslis 1299 to 1301 shows an advance of 4 per cent. in the Singampatti and 5 per cent. in the Government villages over that of fasli 1281, while the increase under second-crop area was 443 per cent. and 229 per cent. respectively. As remarked in paragraph 3 *supra*, the zemindari figures do not include dry lands irrigated, while the figures for the Government villages include them. If the area of such lands be excluded from the Government figures, columns

(5), (6) and (7) reduce to areas of 994, 302, and 1,296 acres respectively, and the percentage comparison in columns (8), (9) and (10) to 4 per cent., 228 per cent. and 24 per cent. respectively. The figures for Urkad show a considerable increase, but the cultivation belonging to this estate under the Perungal channel is small compared with the holdings of the other two proprietors and may be left out of account in the comparison.

6. Taking first and second crop together, the average total cultivation in faslis 1299 to 1301 was 39 per cent. in the Singampatti and 25 (or 24) per cent. in the Government villages, respectively, over that in fasli 1281. Taking the total cultivation on the average of the figures from faslis 1286 to 1301, the increase over the area of fasli 1281 becomes 37 per cent. in Singampatti and 30 per cent. in the Government villages.

7. Statement B shows the extent of second-crop cultivation for several years in the three Government villages compared with the registered extent of compounded second-crop lands. The comparison begins from fasli 1287, the year after settlement. It would be difficult to infer from the figures that the variations observed are due to any other than seasonal causes. In no year have the ryots been able to reach the registered extent. The average extent cultivated during the past 15 years has only been 360 acres or 52 per cent. of the second-crop ayacut. This is evidently the real origin of the complaints. The ryots of Ayen Singampatti and Terkukallidaikurichi especially have suffered. There is nothing to show on what grounds so large an area of compounded second-crop cultivation was accepted by them, perhaps on nothing more than a too sanguine estimate of the advantages of compounding the assessment and of the irrigational capabilities of the channel.

8. Statement C shows the remissions granted to Government ryots. The amount is very insignificant. But the major portion of the Government lands are compounded for second crop and are not entitled to remission, unless in exceptionally bad years when both crops fail or the lands remain waste in both seasons.

9. It is clear from the statistics referred to in paragraphs 4 to 7 that the zemindar has advanced his cultivation in a larger proportion than the Government ryots, and this, no doubt, has conduced to prevent the latter from extending their original cultivation in the same proportion. At the same time it cannot be fairly asserted that, since the improvements were carried out, the relative advantages of the Singampatti and the Government ryots have on the whole materially changed.

10. I forward a plan of the Perungal channel showing the several sluices and outlets. Of 31 masonry sluices, 14 irrigate zemindari lands, 6 Government lands and 11 both Government and zemindari lands. Besides these there are pot sluices and open cuts, of which 7 are in zemindari limits and 4 in Government lands.

11. The Head Assistant Collector who inspected the channel with the Executive Engineer reports that all the higher sluices are utterly out of repair, the openings in many cases being much larger than the ayacut under them would warrant, and that fresh openings have also been cut in places. This was the case with the sluices irrigating the zemindari as well as Government lands. Every ryot—zemindari or Government—tries to "grab" as much water as he can, but the former, having a larger number of sluices and the advantage of the zemindar's influence, gets the best of it. It seems therefore desirable to come to an arrangement for putting the whole channel in thorough order, fixing proper sluices and placing the distribution in the hands of the Department of Public Works with a sufficient staff. There is at present only a lascar on Rs. 2.

12. The lands lower down the channel below the point marked A in the sketch are irrigated by a system of "morais" or turns throughout the month; and this further establishes the necessity for a proper regulation of the sluices higher up.

13. The Urkad Zemindar, who was asked what action he proposes to take in this matter, replied that he will first see what the Government decides to do. It will, however, be observed from the statistics that he has not much to complain of.

14. I regret the delay in submitting this report; but there has been the greatest difficulty in obtaining both the zemindari and the Government figures of cultivation.

READ—also petition from M.R.Ry. R. CHOCKALINGAM PILLAI and others of Singampatti zemin, Ambásamudram taluk, Tinnevelly district, dated 14th July 1893.

ABSTRACT.—Stating that there has been a dispute for a long time about the Singampatti Perungal channel between the ryots of the Government village and the Singampatti zemindari; that this channel is out of order and consequently does not supply water to their lands; that the object of the zemindar in trying to get hold of the channel as his own will be to supply water to those who may be in the zemindar's favour and not to supply to those like the petitioners who are not in his favour; and praying that the distribution of water through the channel may be kept in the hands of Government.

Reference on the above, dated 10th August 1893.

Referred to the Collector of Tinnevelly for report in continuation of Board's Proceedings, dated 27th July 1892, No. 4569, and 23rd December 1892, No. 8466, the reply to which should be expedited.

(Signed) W. S. MEYER,
Acting Secretary.

To the Collector of Tinnevelly, with petition to be returned.

READ—also the following letter from G. S. FORBES, Esq., Collector of Tinnevelly, to the Secretary to the Commissioners of Land Revenue, dated 3rd November 1893, No. 882:—

In continuation of my letter No. 834, dated 17th October 1893, I have the honour to return the petition from Chockalingam Pillai and others of the Singampatti zemindari forwarded to me for report with Board's Reference, dated 10th August 1893, on petition register No. 2259 of 1893.

2. The petitioners, who are ryots of the zemindari, holding lands lower down the channel complain that the higher sluices are in complete disrepair with openings much larger than necessary for the irrigation of the lands under them, and that consequently the higher zemindari ryots waste the water and cause a diminution of supply to the petitioners' lands. They request that the channel be repaired by Government and that the regulation of sluices be taken under its control.

3. The subject-matter of the petition has been dealt with in my letter quoted in paragraph 1 *supra* and no further remarks seem to be called for.

RESOLUTION—dated 29th December 1893, No. 719.

In the first of the letters read above the Collector of Tinnevelly submits his reply to Board's Proceedings, dated 27th July 1892, Mis. No. 4569, regarding the extent to which the Zemindar of Singampatti has exceeded his rights to irrigation from the Perungal channel.

2. The following points have been settled, on the advice of the Government Pleader:—

(1) That the Zemindars of Singampatti and Urkad and the Government are joint proprietors of the channel.
(2) That they are entitled to extend the irrigation of their lands in the relative proportions of the several extents which they had been irrigating before the channel was improved.
(3) That Government has no right to provide the Singampatti Zemindar's sluices with shutters without his consent.
(4) That if it appeared that the zemindar was using the waters of the channel in excess of his rights, the remedy open to Government was a civil suit.

3. In view to ascertain whether this remedy was called for, the Collector was requested to report the average extent of land irrigated by the three co-proprietors before the improvements were effected and since, and the average remissions, if any, granted by Government to its ryots.

4. It appears from the Collector's letter, dated 17th October 1893, No. 831, that the improvements were carried out in faslis 1282–84. The Collector accordingly takes the figures for fasli 1281, the statistics of the previous years not being available. His attention has apparently not been called to a statement furnished by the Sub-Collector with his letter, dated 5th July 1871, No. 119, and printed at pages 2 and 3 of Board's Proceedings, dated 24th January 1884, No. 248, in which the extent of single crop lands dependent on the channel during the five years preceding the date of that report was given as acres 910 of Government lands and acres 1,146 of Singampatti zemindari lands. There was apparently no second-crop cultivation. The subjoined statement compares the average extent irrigated by each of the co-proprietors during faslis 1299–1301 with the figures for fasli 1281 and those furnished by the Sub-Collector:—

	Singampatti zemindari.			Urkad zemindari.			Government villages.		
	First crop.	Second crop.	Total	First crop.	Second crop.	Total.	First crop.	Second crop.	Total.
1	2	3	4	5	6	7	8	9	10
	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.	ACS.
1. Extent irrigated during the five years preceding the Sub-Collector's report, dated 5th July 1871, No. 119	..	..	1,146	..	..	..	..	..	910
2. Extent irrigated in fasli 1281 ..	1,078	92	1,170	117	4	121	952	92	1,044
3. Average extent irrigated during the three faslis 1299–1301 ..	1,122	500	1,622	167	39	206	1,002	303	1,305
Percentage of increase in item (3) as compared with (1) ..	..	..	41·5	..	..	..	..	..	43 4
Percentage of increase in item (3) as compared with (2) ..	4	443	39	43	875	70	5	229	25

The Urkad lands being at the tail of the irrigation are not likely to get full supply until the Singampatti and Government lands have been supplied. Confining its attention to these latter, the Board observes that in faslis 1299 to 1301, there was, as compared with the figures for fasli 1281, a greater proportionate extension of cultivation in the Singampatti zemindari than in the Government villages, but that a comparison with the Sub-Collector's figures for the years preceding 1871 brings out a different result. Again, it is doubtful whether the information now furnished for faslis 1299–1301 is sufficient for filing a civil suit. The Government must be prepared to prove that the zemindari figures are correct; but as stated by the Collector himself these figures were taken from the original accounts kept by the zemindari karnams which were not attested by the zemindar or by any responsible agent on his behalf.

5. Lastly, it appears from the Collector's letter, dated 17th October 1893, No. 834, that below the point marked A on the plan, the channel water is distributed by an established *morai*, *i.e.*, by turns. So long as this is strictly observed neither party can be prejudiced. Above that point the irrigated lands appear to lie between the channel and the river and every acre of zemindari land available appears from the sketch submitted by the Collector to be already under wet cultivation. If all these lands are also cultivated with a second crop there is no room for further extension of cultivation on the part of the Singampatti Zemindar. Even so, however, there is the danger of large or damaged sluices and cuts through the bank drawing off needlessly large quantities of water which runs to waste back into the river to the detriment of lands lower down the channel.

6. The Board is of opinion that on the facts as now before it there is no ground for restricting the Singampatti Zemindar's irrigated area or for levying water-tax as suggested by the Government Pleader. As practically the whole area belonging to

the zemindar between the channel and the river has been brought under irrigation, the proportion cannot henceforth be further changed in his favour. The Urkad lands being, as already observed, at the tail of the irrigation, Government is not specially concerned with them. What is wanted now is to effect an amicable arrangement with the Zemindar of Singampatti by which all sluices should be repaired and the apertures regulated to the size actually needed. Open cuts should be closed or replaced by masonry sluices. The zemindar may keep the keys of the sluices for his lands. To decide upon the necessary alterations a competent engineer must be deputed to inspect the channel and sluices and prepare estimates. The Collector should effect an amicable arrangement with the zemindar on these lines by which the latter will meet the cost of the repairs he may agree to, while the Collector will do the same on his side. The object to be aimed at is to allow such flow of water as is necessary for the irrigation of the lands and to prevent such a discharge through the sluices as will mean the escape of a large surplus into the river to the detriment of other lands lower down the channel. The Urkad Zemindar should be invited to join in the arrangements in so far as his lands are concerned.

7. The petitioners of the Kalladakurichi village will be informed that instructions have been issued to the Collector with reference to the channel arrangements.

(True Copies and Extract.)

(Signed) W. S. MEYER,
Secretary.

To the Collector of Tinnevelly.
„ Petitioners (paragraph 7).
Copy to the Secretary to Government, Public Works Department (Irrigation Branch).

Exd. A. Grubert.

PUBLIC WORKS DEPARTMENT.

1893.

Board of Revenue

(Land Revenue),

MADRAS.

Printed February 13th, 1894.

Proceedings, 29*th December* 1893, *No.* 719.

Issuing certain instructions to the Collector of Tinnevelly in the matter of the regulation of the water-supply of the Perangal channel and informing Ramayyar and others, ryots of the Kalladakurichi village, Ambásamudram taluk, that orders have been issued to the Collector on the subject-matter of their petition.

No 3885 of 1897

G.O. Issue No. 2625 d/22nd May 97

Para 9 of the Board's Proceedings will be Considered in the Public Works Department.

2. The remaining portion of the Board's Proceedings will be disposed of separately.

19.5.97

No 6.

The papers Connected with the question of 'involuntary irrigation' and the amendment of Act VII of 1865 appear to have been put up with the Godavari Settlement file now with the Secretary to whom a copy of the present B.P. has been submitted.

As the Board requests early action ~~with for disposal~~ in the matter of the extension of the irrigation Channels, the above draft order is submitted.

P.T.O

the decision on paras 5-6-8 of the B.P. must depend considerably on the principles yet to be settled for the resettlement of the district.

To save the impending loss of revenue in the meantime the collector's suggestion might given effect to as soon as possible

Mlly
19.5.51

I submit the rule may issue as an ad interim rule. The question of the amendment of Act VII of 1865 is intimately connected with the Godavari Resettlement question. in this way. To enable a watercess to be levied in Godavari the Act VII of 1865 must be amended. Even if a enchanted wet work is on Govt. lands imposed then will remain the case of Zemindari and inam lands on which a water cess must be levied. but if the Govt land in Krishna & Godavari be taken under the operation of that Act the apportionment which is now to take place amendments on its will be very materially curtailed. If Govt. think fit to amend this Act as aforesaid and a water cess system be introduced into Godavari the result might be that Govt. do not realise its revenue

Mly 5/51.

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ENCLOSURES TO C. No.

ORDER OF GOVERNMENT	A	A	A	A	A	A	A	
LETTER OF GOVERNMENT.								
STATEMENT ... DITTO.								
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.								

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