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MADRAS RECORD OFFICE

Government of Madras

Public Works DEPARTMENT

G.O. No.	380	Press
B.P. No.		Mis. —
Dated	11 - 2 -	6875 —195—

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
11th February 1875*

Read the following papers —

No 250 From H G PRICHARD, Esq, Government Solicitor, Madras, to Colonel G W WALKER, R E, Secretary to Government, Public Works Department, dated Madras, 24th November 1874, No 602

I HAVE the honor to acknowledge the receipt of the Order of Government, dated 23th August 1874, No. 2,442, Public Works Department, requesting the Advocate-General's opinion as to whether the Government, as the Law stands at present, have a right to prevent any action on the part of individual proprietors of lands of navigable rivers for the purpose of forming accretions or rendering natural accretions permanent

2 I submitted the matter for the consideration of the Advocate-General, and I now forward, herewith, a copy of his opinion

OPINION.

There is no enactment in force in this Presidency corresponding to the Bengal Regulation XI of 1825, which supplies the rule on which the decisions of the Bengal Courts and the Privy Council as to the rights of riverain proprietors in that Presidency have, in most instances, been founded. It is not safe, therefore, to accept the rulings of the Privy Council upon cases in Bengal (as is done in the Government Proceedings of 2nd March 1871) as indicating with precision the state of the Law in other parts of India nor am I aware of any authoritative rulings of the Madras Courts which would support the inference that the same Law which has been legislatively enacted for Bengal exists by custom, though not by distinct enactment, in this Presidency

2 The Bengal Regulation, however, proceeds to a large extent upon local usage, accepting that as the basis upon which the rights of the Government on the one hand, and owners on the other, are founded, nor would it supply, except inferentially, any rule for replying to the first question now referred, viz, whether, as the Law now stands, Government has the right of preventing individual proprietors from taking measures on the banks of rivers, which their properties adjoin, either to cause the formation of accretions or to secure the permanence of an accretion spontaneously formed, when such action tends to alter the natural course of the river, to injure the riparian proprietors generally, and to interfere with the necessary river conservancy

3 Nor again is there any enactment, nor, so far as the reports show, any judicial decision as to the other question referred in the Government Order of 28th August 1874, viz, as to the extent of the rights of riverain proprietors to the portion of river beds which, in the dry season, is left uncovered by water and appears in the form of mud or sand banks

4 Both questions must, therefore, be decided on the general principles of law applicable to such cases, as, however, these principles are necessarily to a large extent borrowed from European systems of law, it is necessary, in applying them, to take into account the difference of the objects to which, and the conditions under which, they are to be applied, and the possibility of a resulting modification of the rule by which the matter must be governed. An instance of this was afforded in

the ruling in the Karvatinagger case recently decided in appeal by the Privy Council, in which the rule ordinarily applied by the English Courts in cases of damage resulting from accumulations of water was held inapplicable to India, owing to the different circumstances of the two countries.

5. With regard to the first question, it is clear that, in the absence of some special prescriptive right to do so, the proprietor of land on a river's side is not entitled to use the water in any way so as to interfere with the rights of others in connection with the river. He "may not dam up the water so as to flood or otherwise injuriously affect the lands of others, or by making embankments, or otherwise alter the ancient course of flood-water so as to throw it in greater quantity on the land of his neighbour," (Kerr on Injunctions, p 391), and, though proprietors on the bank of a river are entitled to protect their property from an invasion of water by building a bulwark, they may not do so in such manner as to inflict injury on other proprietors. In *Bickley v Morris*, L R, 1, Scotch Appeals, 47, the matter was discussed by the House of Lords, and the principle affirmed was that a proprietor on a river's side has not, as such, any right to use the *alicuius* of the stream in such a manner as to interfere with the natural flow of the water and that though an erection, incidental to the natural use of the water (such, e g, as a boat-house), might be made on the *alicuius*, so long as no infringement of the rights of others were involved, yet if this were its result it could not be permitted, still less could an erection invading the stream be allowed for the mere purpose of enlarging a proprietor's premises. Even a bulwark built *riparie muniendae causae* must conform to the requirement of involving no injury to the property of other proprietors. Lord Cranworth further indicated that the person complaining of an invasion ought not to be put to any strict proof as to the likelihood of damage, or of its character and extent. The proprietors have a right, his Lordship observed to say, "We all have a common interest in the unrestricted flow of the water and we forbid any interference with it." In *Williams v Morland*, 2, B and C, 913, the right to flowing water was described as being originally *publici juris*, "so soon as it is appropriated by an individual his right is co-extensive with the beneficial use to which he appropriates it." So also in *Bayley v Shaw*, 6, East, 208. See also *Attorney-General v Ferry*, L R, 9, C A., 423, where the rights of riparian owners were discussed and doctrines similar to the above enforced.

6 The doctrines enunciated in these cases are of course fatal to any claim of a riparian proprietor either to enlarge his bounds by any diversion of the stream, or even to protect his property from inundation or erosion by any barrier which has the effect of diverting the current in a manner injurious to others.

7. It must be remembered, however, that this rule is liable to modification by any prescriptive rights which the proprietor may have acquired, and that these may, in many instances, have become absolute and indefeasible under the Limitation Act, a point which would have to be decided on the merits of each case.

8 The second question, viz, what is to be considered the 'bed of the river' in cases when the river differs in width at various seasons of the year, does not admit of any absolutely definite and invariable answer. It must be decided in each instance by the facts of the case. There is, I believe, generally a clearly defined

channel, in which water flows for a sufficient space of time to leave clear evidence of its action, this channel may be overflowed at certain seasons and be left nearly dry at others, but there would, as a rule, be little difficulty in demarcating it, and the Courts would, I imagine, consider this to be "the river" in case of any dispute about it.

9 In the English Courts a distinction is made between navigable and non-navigable rivers, the *alicuius* of the former being considered to belong to the Crown, in the latter to be joint property of the riparian proprietors. Lord Advocate v Hamilton, 1, Macg, 46, quoted at p 46 of L R, 1, Ex Ap, 49. "This distinction appears to have been kept in view by the framers of the Bengal Regulation - but I do not know that there is any sound reason for applying it in the case of Indian rivers. The current opinion is, I believe, that all rivers are the property of the Crown, but the matter appears never to have received judicial exposition, and in the absence of this and of any legislative enactment there might, I apprehend, be serious difficulty in the case of a permanent formation in the midst of a stream being claimed by the opposite proprietors on the one hand and the Government on the other. The question is perhaps of less importance since it is quite clear that nothing may be done which in any way interferes with the natural flow of the river or the existing rights of other proprietors.

10 The above remarks will have indicated that, in my opinion, the subject is beset with considerable difficulty and uncertainty, and that with a view to a speedy and convenient action in matters of conservancy and the avoidance of possible litigation, it is expedient to have recourse to legislation.

(Signed) H S CUNNINGHAM,
Advocate-General

22nd November 1874.

No 251

No 49

MEMORANDUM

It may be useful, as a basis for discussion, to note some of the principal provisions which, it is thought, should be included in the bill for conservancy of rivers, which it is supposed will be brought forward, with reference to the Advocate-General's opinion that legislation will be desirable. An Act to enable the Government to deal effectively with this subject, should, the Chief Engineer for Irrigation thinks, confer on the Government

- I (a), full and definite powers of control over the beds of all deltaic rivers, and this definition should include those lower parts of all rivers the waters of which when in flood are liable to seek other outlets than the proper channel of the river, and which therefore require to be more or less embanked,
- (b), the property in all marginal or mid-stream accretions from the date on which the Act may become law,
- (c), the power of acquiring all land formations within the bed proper of a river, the removal of which formations may be necessary to its proper conservancy—

*Proceedings of the Madras Government, Public Works Department,
11th February 1875.*

1st on payment of compensation, if such formation be included in any puttah or other title deed granted by competent authority, or if it be shown by any Revenue Survey map or by Pymash or other similar accounts to be in proprietary or private occupation;

2nd without compensation otherwise

(d), the property in all land reclaimed by river conservancy operations carried out at the public expense,

II. the power to require that all protective works, which individual landholders on the banks of a river may desire to carry out, shall receive the sanction of officers appointed by Government to exercise this control, prior to the execution of such works.

2 The Act should prohibit all plantations or other works by private individuals, or by any one except the conservancy officers, or under their orders, within the river bed and banks

3 The Act should determine the bed of a river to be the defined channel within which its waters ordinarily flow, and which would be laid down on a chart or survey as the bed of a river. Generally the edge of the bank is clearly defined, and in the few places in which such definition may be imperfect the proper line is always ascertainable from defined banks above and below.

4 The Act should render penal any cutting or injury, by private individuals, of river flood embankments, whether such interference may or may not have occasioned damage.

5 The Act should provide the necessary penalties for infringement of its provisions, together with the procedure for the enforcement of the regulations contained therein

CAMP, TRIPATTOOR,
11th January 1875

(Signed) JOHN MULLINS, Lieut.-Colonel, R.E.,
Chief Engineer for Irrigation.

No. 252

ORDER THEREON, 11th February 1875, No 320

IRRIGATION, No 13

The opinion expressed by the Advocate-General upon the subject referred to in Proceedings Madras Government, No 2,442 of the 28th August 1874, indicates that the action which the Government desire to take in connection with the conservancy of the important deltaic rivers of this Presidency is not at variance with the general principles of law, but it is also shown that legislation must be resorted to in order to avoid difficulties

2 His Excellency the Governor in Council is pleased therefore to direct the preparation of a Bill, for the conservancy of rivers, by the Advocate-General in communication with the Chief Engineer for Irrigation and the Board of Revenue

3 It will be desirable that the opinions of the local Revenue and Public Works Officers also should be taken into consideration, so that no really important details may be overlooked, and this Order together with that of the 28th August last, will be communicated to the Superintending Engineers, Kistna and Tanjore,

*Proceedings of the Madras Government, Public Works Department,
11th February 1875.*

and to the District Engineers, Godavery, Nellore, North Arcot, Chingleput, South Arcot, and Tinnevely, for the submission by them of any observations regarding the rivers of their districts which they may deem to need consideration.

(True Extract.)

Colonel, R.E.,

Secretary to Government.

To the Chief Engineer for Irrigation.

„ Superintending Engineer, Kistna
Do Tanjore

„ District Engineer, Godavery.

„ Do. Nellore

„ Do. North Arcot.

„ Do. Chingleput

„ Do. South Arcot.

„ Do. Tinnevely.

„ Advocate-General

„ Revenue Department

„ Judicial Department.

Exd. S. T. Austin.

Spare Copies

Opinions.

There is no Enactment in force in this Presidency corresponding to the Bengal Regulation XI of 1825, which supplies the rule on which the decisions of the Bengal Courts and the Privy Council as to the rights of riverain proprietors in that Presidency have, in most instances, been founded. It is not safe, therefore, to accept the rulings of the Privy Council upon cases in Bengal (as is done in the Government Proceedings of 2nd March 1871) as indicating with precision the state of the law in other parts of India: nor am I aware of any authoritative rulings of the Madras Courts which would support the inference that the same law which has been legislatively enacted for Bengal exists by custom, though not by distinct enactment in this Presidency.

2. The Bengal Regulation, however, proceeds to a large extent upon local usage, accepting that as the basis upon which the rights of the Government on the one hand and owners, on the other, are founded, nor would it supply, except inferentially, any rule for replying to the first question now referred, viz. whether, as the law now stands, Government has the right of preventing individual proprietors from taking measures on the banks of rivers, which their properties adjoin, either to cause the formation of accretions or to secure the permanence of an accretion spontaneously formed, when such action tends to alter the natural course of the river, to injure the riparian proprietors generally and to interfere with the necessary river-conservancy.

3. Nor again is there any Enactment now, so far as the Reports show; any judicial decision as to the other question referred in the Government Order of 28th August 1874, viz. as to the

The extent of the rights of riparian proprietors to the foreshore is a legal question, which, in the dry season, is left uncovered by water and appears in the form of mud or sand banks.

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With regard to the first question it is clear that, in the absence of some special prescriptive right to do so, the proprietor of land on a river's side is not entitled to use the water in any way so as to interfere with the rights of others in connection with the river. The "may not dam up the water so as to flood or otherwise injuriously affect the lands of others, or by making embankments, or otherwise alter the ancient course of flood water so as to throw it in greater quantity on the land of his neighbour." (See on Injunctions p. 37) and, though proprietors on the bank of a river are entitled to protect their property from an invasion of water by building a culvert, they may not do so in such manner as to inflict injury on other proprietors. In Bickley v. Morris L. R. 1 Scotch appeals, the matter was discussed by the House of Lords, and the principle affirmed was that a Proprietor on a river's side has not, as such, any right to use the alluvium of the stream in such a manner as to interfere with the natural flow of the water: and

and that though an erection, incidental to the natural use of the water (such e. g. as a boat house) might be made on the alluvium, so long as no infringement of the rights of others is involved, yet if this were its result, it could not be permitted, still less could an erection, invading the stream, be allowed for the mere purpose of enlarging a proprietor's premises. Even a bulwark built "republice municipe causa" must conform to the requirement of involving no injury to the property of other proprietors. Lord Cranworth further indicated that the person complaining of an invasion ought not to be put to any strict proof as to the likelihood of damage, or of its character and extent. The proprietors have a right, his Lordship observed to say, "we all have a common interest in the unrestricted flow of the water and we forbid any interference with it. In Williams v. Morland, 2 B & C 913 the right to flowing water was described as being originally publici juris; "so soon as it is appropriated by an individual his right is co-extensive with the beneficial use to which he appropriates it." So also in Burley v. Shaw b. East 208. See also Attorney General v. Ferry L. R. 9, C. A. 423 where the rights of riparian owners were discussed and doctrines similar to the above enforced.

The doctrines enunciated in these cases are of course, fatal to any claim of a riparian proprietor either to enlarge his bounds by any diversion of the stream, or even to protect his property from inundation or erosion by any barrier which has the effect of diverting the current in a manner injurious to others.

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many instances, have become absolute and indefensible under the Limitation Act, a point which would have to be decided on the merits of each case.

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existing rights of other proprietors.

10. The above remarks will have indicated that in my opinion the subject is beset with considerable difficulty and uncertainty, and that with a view to a speedy and convenient action in matters of conservancy and the avoidance of possible litigation, it is expedient to have recourse to legislation.

/Signed/ H. L. Cunningham.

Adv. Genl.

22-11-74.

/True Copy/

H. L. Richard
Government Solicitor.

No 602.

Madras, 24th November 1874.

From J. G. Prichard
Government Solicitor
Madras,

To Colonel G. W. Walker, R. E.
Secretary to Government
Public Works Department
Fort St. George,

Sir,
1. I have the honor to acknowledge the receipt of the Order of Government dated 28th August 1874, No 2442, Public Works Department, requesting the Advocate General's opinion as to whether the Government as the Law stands at present, have a right to prevent any action on the part of Individual proprietors of lands of navigable rivers, for the purpose of forming accretions or rendering natural accretions permanent.
2. I submitted the matter for the consideration of the Advocate General, and I now forward herewith a copy of his opinion.

I have the honor to be,
Sir,

Your most Obedient Servant,

J. G. Prichard
Government Solicitor.

Enclosure in letter from
the Government Secretary
to the Secretary to Government
dated 24th November 1874
No 602.

J. G. Prichard

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the Presidency,

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mid-stream accretions from the date on which the Act may become law.

(C). the power of acquiring all land formations within the bed proper of a river, the removal of which formations may be necessary to its proper conservancy.

1st on payment of compensation, if such formations be not held in any further or other title duly granted by competent authority, or if it be shown by any Revenue Survey Map or by pyramah or other similar accounts to be in proprietary or private occupation.

2nd without compensation otherwise (d) the property in all lands reclaimed by river conservancy operations carried out at the public expenses.

2. the power to require that all protective works which individual landholders on the banks of a river may desire to carry out, shall receive the sanction of officers appointed by Government to exercise this control.

control, prior to the execution of such works.

3. The Act should prohibit all plantations or other works by private individuals, or by any one except the Conservancy Officers, or under their orders, within the river bed and banks.

4. The Act should determine the bed of a river to be the defined channel within which its waters ordinarily flow, and which would be laid down on a chart or survey as the bed of a river. Generally the edge of the bank is slightly defined and in the few places where such definition may be in doubt, the proper line is always ascertainable from defined banks above and below.

5. The Act should render penal any cutting or injury, by private individuals, of river flood embankments, whether such interference may or may not have occasioned damage.

6. The Act should provide the necessary penalties of the

P. W. 1875 Dept.
 App. of 500 for the
 from
 The Chief Engr.
 for Irrigation
 Dated 11 Jan 1875
 Recd. 16-11-1875
 No. 49

Note on some
 of the points to be
 dealt with in the
 proposed Act for the
 Conservancy of the
 Rivers of the Madras
 Presidency
 G.O. No. 380 11-2-75.

No 257

Feb 20-1875. 25 Jan 17.

penalties for infringement of its pro-
 -visions, together with the procedure for
 the enforcement of the regulations con-
 -tained therein
 Camp at Tripattur
 11 January 1875
 Mr. Under Secy
 Chief Engineer Irrigation

1875 Dept.
 Proceedings of the Madras Govt.
 Read the following:

From
 The Government
 Secy. Madras } (Here enter No. 602
 dated 26 Nov 74)

The opinion expressed by the
 Advocate General upon the subject
 referred to in Proceedings Madras
 Government, No. 2442 of the 28th above
 August 1874, clearly indicates
 that the action which the Govern-
 ment desire to take in connection
 with the Conservancy of the
 important Deltaic rivers of such
 the Presidency is in accordance
 with the principles of law laid
 down in many judgments -
 passed by the

passed in England, but it is shown that there is no positive law applicable to such cases in this Country, and it is suggested that, in order to clear the way, to the exercise of a proper Control over these rivers, it is desirable and necessary that legislation should be resorted to.

2. His Excellency the Governor in Council considers that it will be the best plan, under the circumstances stated, to adopt this course, and to introduce into the Legislative Council a bill for

1. Conferring on the Government (a) full and definite powers of Control over the beds of all Deltaic rivers, and this definition will include those lower parts of all rivers the waters of which

and therefore direct that the advocate of the bill prepare a Bill for the conservancy of Rivers in communication with the Ch. Inf. for Angkor and Board of Rivers

I am inclined that the Director of the most general kind of this first instruction seems to contravene some principles of law respecting accretion & alluvion - also protest in non-navigable rivers - in Ch. Inf

high to be considered & also with a view of the wants of the people referred to the advocate of the consideration - which can nothing for -

This is at variance with law - the bill from which it is derived is

when in flood are liable to turn such other outlets than the proper channels of the river, and which therefore require to be more independent of the property in all marginal al or mid stream accretions from the date on which the Bill becomes law, the power of acquiring all land formations within the bed proper of the river, the removal of which may be necessary to the proper conservancy of the river. 1- Compensation of compensation if such formation be included in any further or other title deed granted by competent authority, or if it be shown by any of Revenue the

Bill of Land under the law.

1. Revenue Survey maps, or by
pyramish or similar accounts
to be in private occupation.

2. without compensation
otherwise.

3. (d) the property in all lands
reclaimed by river conservancy

operations carried
out at the Public expense.

2. Giving the Government
the power to require that all
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or under their orders, within
the river bed and banks.

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and below.

5. Rendering penal any
cutting or injury, by private
individuals, of river flood
embankments, whether such
interference may or may not
have occasioned damage.

6. Providing the necessary
penalties for infringement of
the

visions of the Bill and
proceedure for the enforcement
of the regulations included
therein.

The foregoing outline
will serve to indicate the
general scope of the proposed
Bill and the subject will
now be remitted for early
consideration in the Revenue
Department, with a view to the
settlement of all the details
prior to a draft of the Bill
being prepared by the

It will be desirable that the
opinions of the local Revenue
and Public Works officers should
be taken into consideration, so
that no really important de-
tails may be overlooked, and
this order together with that
of

The Secy. to Govt. of India
may call for opinion
or Mr. Pore may be
retained as part of the
order. S/1 M

of the 28th August will be com-
municated to the Superintend-
ing Engineers of the Peshwa
and Tanjore, and to the
District Engineers of the Goda-
vary, Bellare, North Arcot,
Chingleput, South Arcot and
immediately, for the submission
of any observations regarding
the rivers of their Districts,
which they may deem to need
consideration.

W. 19/12/74
G. W. L.

This

6-12-74
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Noted with
the District Officer
under 25/11/75
and for the
revenue
Kaw...
28/12/75

12620-1-76 R. 282 11/75
C. 1-76 R. 19-1-76
C. 26-12-74

12620-1-76
Kaw...

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Proc. Madras Government.

From the Government Solicitor
Madras - (H.S. No. 602 - 2724th -
November 1874
" " Chief Engineer
for Irrigation (H.S. No. 49 of 11th Jan'y
1875)
380

J. D. L. 13/1
20/1

The opinion expressed by
the Advocate General upon
the subject referred to in
Proc. Madras Govt. No. 2642
of the 28th August 1874 indi-
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the Government desire to
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This

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observations regarding the rivers of their Districts which they may deem to need consideration.

by 11/1/76

to	Chief Eng ^r for Irrigation	✓
"	Asst Engineer Mysore	✓
"	" Bangalore	✓
"	" Bellary	✓
"	" Chingleput	✓
"	" Godavery	✓
"	" Limerick	✓
"	" North Arcot	✓
"	" South Arcot	✓
"	" Tanjore	✓
"	" Limerick	✓
"	Advocate General	✓
"	Revenue	✓
"	Judicial	✓

Recd 12-2-76 with 10 of 28th Aug 1875

7413
289

GOV. OF MADRAS
PUBLIC WORKS.



The Chief Engineer for
Madras

11 Feb.

380

250.252

Conservancy of the Coleroon
Rivers of the Madras

Presidency - Directing the
preparation of a Bill for
the Conservancy ~~of the~~ Rivers
by the Advocate Genl. in con-
munication with the Chief Engr.
for Engrs., and communicating
this order together with that of
the 28th August last to certain
Engrs. for the submission by them
of any observations regarding the
rivers of their districts which
they may deem to need consider-