

MADRAS RECORD OFFICE.

Government of Madras.

Revenue

DEPARTMENT.

G.O. No.	<i>802</i>	Press Mis.
Dated	<i>17th June</i>	<i>1859.</i>

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
from 11th to 17th June 1859.*

No. 61. Read the following letters.

From J. D. SIM, Esq., Secretary to the Board of Revenue; to J. D. BOURDILLON, Esq., Secretary to Government Revenue Department; dated 31st May 1859, No. 2032.

In Extract Minutes Consultation 9th May 1855, R. D., No. 560, Government authorized the defence of O. S. No. 287 of 1854 on the file of the Civil Court of Rajahmundry brought by the Proprietor of the Gopaulpooram Mootah in that District for the recovery of 10 Pooties of land being an Island which had formed in the bed of the river Godavery and mesne profits (Rupees 13,000) for 9 years.

2. The Plaintiff claimed the Island as having been formed within the limits of his village, Comaráz lunkah; the Collector's defence on the other hand, mainly rested on its formation within the limits of the Government village, Ravoolapalem as fixed by mutual agreement by the inhabitants of that village and Comaráz lunka in Fusly 1236, A. D. 1826-27, and on its enjoyment continuously from Fusly 1249, A. D. 1839-40, by the Ravoolapalem villagers.

3. The decision of the Civil Court was in favor of Government, and grounded on the long enjoyment of the disputed land by the Ravoolapalem ryots, and Plaintiff's failure to prove that the land was within the limits of his village.

Board's Proceedings 1st March 1858, No. 753.
Ex. Mins. Con. 22d March 1858, R. D.
No. 371.

4. From this decree Plaintiff appealed to the Court of Sudr Udalut and that tribunal, Mr. Purvis now reports, has reversed the original judgment, affirming that "Plaintiff is entitled to whatever land has been formed in the bed of the river opposite to his own shore."

5. The Court has further adjudged Government to pay all costs, and awarded Appellant the net profits of the lands, from the time of their coming into cultivation. These profits are to be ascertained by the Civil Judge, and are not to exceed what appellant originally claimed.

6. The Board have ascertained, that the Government Pleader is about to report on the case to Government, and as his communication will doubtless set forth fully the legal features of the case, it will be sufficient for the Board to draw attention to the importance of the principle involved in the decision.

7. It has hitherto been generally considered that the beds of rivers appertain wholly to the state, but this right, which is peculiarly important when its bearing on the Government works of irrigation is considered, has been entirely set aside by the Sudr Udalut. In confirmation of the above views respecting the rights of the state

the Board would adduce the case of Fisheries which belong to and rented out by the Government without question.

8. The decision of the Court only reached the Collector in March last and the time for appeal expires on the 20th June.

No. 62. From J. D. SIM, Esq., Secretary to the Board of Revenue; to J. D. BOURDILLON, Esq., Secretary to Government, Revenue Department; dated 10th June 1859, No. 2196.

In continuation of my letter dated 3d June 1859, I am directed by the Board of Revenue to submit for the consideration and orders of Government the accompanying report from the Government Pleader on the decree of the Sudr Udalut in Appeal Suit No. 89 of 1856.

O. S. 287 of 1854 on the file of the Civil Court of Rajahmundry.

2. The subject of the Suit, as already explained, is the right to an Island formed in the Godavery by the action of the river.

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3. Mr. Dale states that the defence in the Civil Court was, in his opinion, "most grossly mismanaged;" but he considers the decision of the Civil Court, dismissing the Suit, correct, on the ground that Plaintiff had not made his title sufficiently clear and strong to warrant the ejectment of Government from its possession of the disputed Island.

4. With regard to future proceedings in the matter, now the Sudder Udalut has decided the appeal Suit in the Plaintiff's favor, Mr. Dale states, that he would decidedly advise a private client, to whom possession of the Island was of great, and expense of secondary, importance, to appeal to Her Majesty in Council, and he is of opinion that the original decision (in favor of Government) would be upheld in the Privy Council. Considering it however very undesirable that Government should carry on litigation where no important question of law is involved and where the result, upon the facts, as raised in the case, is doubtful, he advises, though reluctantly, that no appeal should be preferred on behalf of Government in this instance.

5. In my letter of the 3d June 1859, the Board pointed out the great importance of the principle which seemed to them to be involved in the decision of the Sudder Udalut, but as Mr. Dale is of opinion that the real question of law could not be argued in the Privy Council, as it was not raised in the Civil Court, and that, owing to mismanagement of the defence in the first instance, the result of an appeal, even on the facts of the case, is doubtful, the Board cannot recommend that further proceedings should be adopted.

6. An adverse decree in the Privy Council would make matters infinitely worse, and it may therefore be advisable to wait for a better opportunity before bringing a legal issue the important question of the right of Government to the beds of rivers.

7. The time for preferring an appeal to Her Majesty in Council will expire on the 20th instant and early orders are therefore requisite, if an appeal is to be instituted.

8. The plans referred to by Mr. Dale are herewith submitted, but they are drawn up in such a manner as to confuse rather than elucidate the question at issue.

9. Mr. Dale, it will be seen, condemns in very strong terms the management of the original defence by the Government Vakeel, on whose part, he states "there has been the most culpable negligence, or the grossest ignorance of the most elementary rules of evidence, if not both."

No. 63. ORDER THEREON, 17th June 1859, No. 802.

Joghí Jugganatha rauze proprietor of Gopaulpooram filed a suit against Mr. G. N. Taylor, Sub-Collector in charge of Rajahmundry, for about 10 pooties of island land in the bed of the Godavery together with value of produce for nine years from Fusly (1255 1845-46) to Fusly 1263 (1853-54) amounting to Rs. 13,000. Authority was granted by Government for the defence of this suit in the first instance at the public expense, and plaintiff's claim was rejected by the Civil Court, as he could not prove that the new formation was within the boundary of his village. The case was appealed to the Sudr and the decision of the lower Court has been reversed, on the ground that plaintiff is entitled to whatever land has been formed in the bed of the river opposite to his own shore.

2. The question now for Government to decide, is whether an appeal should be made to the Privy Council or not. The Government Pleader states that though he would urge a private client to appeal, he does not recommend that course to Government, because he thinks that Government ought not to appear in Court as a plaintiff except with very clear right on its side. The Board are of the same opinion chiefly because they find from Mr. Dale's letter that the general question concerning the right of Govern-

*Proceedings of the Madras Government, Revenue Department,
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ment to all land newly formed in the bed of rivers, a question which they regard as of great importance, could not be argued in the Privy Council, because it was not raised in the Civil Court, they therefore think it advisable to wait for a better opportunity to bring this point to a legal issue. In accordance with the opinion of their legal adviser, the Government resolve to abandon the case; the Collector will be directed to make over the land, and to disburse the sum due as soon as it shall be ascertained by the Civil Judge. The amount so paid to be eventually reported to Government.

3. The Government Pleader considers the case to have been "grossly mismanaged" in the Civil Court. He states that certain exhibits specified ought not to have been admitted; and

Govt. Pleader's letter to Board 8th June 1859, para. 19, No. 70.

Para. 12. do.

Para. 16.

in the oral evidence, adduced by the plaintiff, the witnesses were examined, he says, only as to the boundaries of the lunka in question, and its occupation; nothing was brought forward to identify the lunka of which they spoke as being "Voota lunka" claimed by the plaintiff, and although the evidence is full of discrepancies the witnesses do not appear to have been cross examined.

4. He also points out that the answer put in by the Collector was very badly prepared, and he particularly notices paras. 2 and 8. The Board will report to Government who prepared the answer and who is responsible for the mistakes noticed by Mr. Dale, as well as for the omission of the general plea of the right of Government to new land in the beds of rivers which the Board consider so important. The Board will also call the attention of the Collector to the very unintelligible character of the plan sent up by him.

5. Under the opinion given by Mr. Dale of the qualities evinced by the Government Vakeel, the Governor in Council resolves to dismiss him from that employment.

6. Government cannot close these proceedings without remarking on the long delay which has occurred in bringing this decree to their notice. The date of the decree is 30th October 1858, but was not signed and sealed till the 20th December; the term of appeal expires on the 20th instant. It was not received by the Government Pleader till March, and this delay much shortened the time; but three months cannot really have been necessary to him to report on it, especially as he had but a short time before made himself fully acquainted with the case. It is not only inconvenient but highly reprehensible that when the law allows six months for appeals, Government by the delay of their officers, should obtain only ten days of that time for deliberation and decision.

(Signed) J. D. BOURDILLON,
Secretary to Government.

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Memo

Requested to be returned for immediate
reference the original letter from Govt.
Pleaser dated 8th inst 10th June /59. No.
2689. Forwarding copy of the Decree of
Sub. Resolution A. S. No. 89 of 15th June, sub.
mitted to Govt. with Board's Pro. of 10th
June 1859 No. 2196 -

Rev B^d Office
2^d July 1859

Mabell.

To The Manager
Govt. Office P. Dept.

Rev. Sep.

N^o 802.

Proceedings of the Madras Government

Under date the 17th June 1854

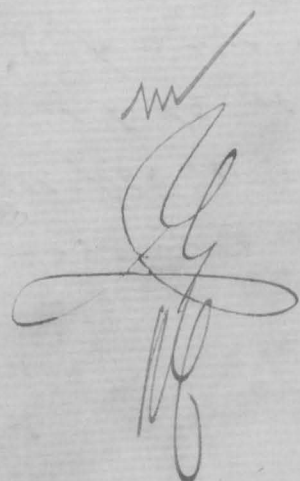
Read the following letters

From the Secretary to the Board of Revenue.

(Here enter 3^d June 1859 N^o 2032)

From the Secretary to the Board of Revenue.

(Here enter 10th June 1859 N^o 2190)



Commissioner's letter
N^o 17.23^d April 1855

Joghi Jugganatha Rao
proprietor of Gopaulpoo Rao
filed a suit against Mr.
G. W. Taylor Sub Collector in
charge of Rajahmundry
for about 10 footies of island
land in the bed of the Go-
davery together with value
of produce for nine years
from July 1835 to July
1853-54 amounting to
Rupees 13000. Authority
was granted by Government

Ext. Min. Secy 1856
9th May 1855

in the first instance at
the public expense, and
plaintiff's claim was
rejected by the Civil Court, Board's letter 1st March 1858
as he could not prove
that the new formation
was within the bounda-
ry of his village. The case
was appealed to the Sudr:
and the decision of the
lower Court has been re-
versed, on the ground
that plaintiff is entitled
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2 The question now
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Government Pleader states
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Decision of S. W.
O. S. N. 287 of 1854.
M. S. N. 89 of 1856
30th October 1858

from Govt. Pleader to the Board
No 70. 8th June 1859 paras 22-23

Board's letter N. 2032 3rd June 1859
paras 6-7

Board's letter 10th June para 6. 1859
No 2196

that though he would
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Gov. Pleader's letter to Board 8th Jan
1859 para 19 No 70

Para 12 - do

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Para 25. Mr. Dale's letter

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The date of the decree is
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W. H.

J. H.

6 Copies to the Bd. of Dir.
P. 17
1 - Genl. Pleaders

Cons: 15th May/55 N^o 56.
 23 March/58 - 20-21
 8 June/58 - 29-30.
 27 May/56 - 1-2-Parag.

Revenue 1859 Departt.
 Pro: of Govt: 17th June.

N^o 802.

Pro: of the Madras Government.
 D^y 17th June/59.

From Board of Rev: of 12th August/59
 C. N^o 1478 - in Pro: 26th August/59
 Pro: of the B^od of Rev: of 12th Jan'y/60
 in Proceedings
 1st Jan'y/60. N^o 38-39

744. Sub. 1139/59 to Para 5.

Beards Pro: 19 January 1865
 C. N^o 212.

Passing orders on
 Loghi Lagannath Rao's
 claim for a certain portion
 of island land in the bed of
 the Godavery with value
 of produce for nine years.

N^o 61 at 63.

15 June