M.R. O. 1—33,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2526 Press ~~Mis.~~

21-22
Dated 1—10— 19 1868

Not to be folded or roughly handled

No. 21. Read the following Proceedings of the Board of Revenue, dated 16th September 1868, No. 6,608.

Read the following letters:—

From the Acting Sub-Collector in charge of the Godavery District, to the Acting Secretary to the Board of Revenue, dated Cocanada, 28th April 1868, No. 97.

With reference to the Proceedings of the Board of Revenue, dated 27th January 1868, No. 642, I have the honor to inform you that Suit No. 3 of 1867, therein referred to, was decided by the Civil Judge of Rajahmundry on the 22nd instant, in favor of the Zemindar of Vizianagram. The Court has been adjourned from the 23rd. Application has been made for a copy of the Decree and Judgment.

From the Acting Collector of the Godavery District, to the Acting Secretary to the Board of Revenue, dated Rajahmundry, 15th July 1868, No. 177.

In reply to your Official Memorandum, No. 744, dated 6th instant, I have the honor to transmit, herewith, copies of the Decree and Judgment in Suit No. 3 of 1867.

ENCLOSURE No. 1.

Original Suit No. 3 of 1867.

In the Court of the Civil Judge of Rajahmundry.

The 23rd day of April 1868.

Present:—H. MORRIS, Esq., Civil Judge.

Plaintiff.	*versus*	*Defendant.*
Muppavarapu Venkatanandam Puntulu, Accountant and Attorney to His Highness the Maharajah Mirja Stree Vijayaramagajapatirazu Maharaju Manni Sultan Bahadur, of Vizianagram, K.C.S.I.		J. Fraser, Esq., Collector of the Godavery district, on behalf of Madras Government.
Vakeels for the Plaintiff.		*Vakeels for the Defendant.*
Saripalli Sattenna, and Do. Gopalakristama.		Samineni Rungaprasad Naidu (since dead) and Chitrapu Kamarazu.

DECREE.

This is a suit for 390 acres of land paying a yearly shist of Rupees 1,200, and valued at Rupees 9,600, and for Rupees 16,618, being the mesne profits thereof, with subsequent produce and costs.

Judgment is given in favour of the plaintiff with costs.

	RS.	A.	P.
Past produce from Fuslies 1260 to 1276 as stated in the plaint	16,618	0	0
Stamp duty under Act XXVI of 1867...	1,114	0	0
Value of nine stamps filed by the plaintiff for miscellaneous purposes	5	0	0
Fees to the plaintiff's Pleaders, Saripalli Sattenna and Do. Gopalakristama under Act I of 1846...	612	3	0
Batta paid by the plaintiff for serving Notices and Summonses...	18	8	0
Amount of batta paid by the plaintiff to his witnesses	74	8	0
Value of six stamps filed by the defendant on account of statement, etc...	3	0	0
Fees to the defendant's Pleaders (Government Vakeels) under Act I of 1846. ...	612	3	0
One-fourth to Samineni Rungaprasad Naidu... ... ... 153 0 9			
Three-fourths to Chitrapu Kamarazu 459 2 3			
	19,057	6	0
Deduct amount of costs paid by the defendant...	615	3	0
Balance ...	18 [illegible]2	3	0

This sum of Rupees eighteen thousand four hundred and forty-two and Annas three is to be paid by the defendant to the plaintiff.

NOTE.—No process of execution will be issued to enforce this decree, unless some proceeding shall have been taken to keep the same in force within three years next preceding the application for such execution.

Date of filing plaint... ... 12th September 1867.
,, of first hearing ... 12th March 1868.
,, of final hearing ... 22nd April ,,
,, of Judgment ... ... 23rd ,, ,,

(Signed) H. MORRIS,
Civil Judge.

(True Copy.)
(Signed) N. LAKSHMINARAYANA,
Serishtadar.

ENCLOSURE No. 2.

Original Suit No. 3 *of* 1867.

In the Court of the Civil Judge of Rajahmundry.

The 23rd day of April 1868.

Present:—HENRY MORRIS, Esq., Civil Judge.

Plaintiff.	*versus*	*Defendant.*
Muppavarapu Venkatanandam Puntalu, Accountant and Attorney to His Highness the Maharajah Mirja Stree Vijayaramagajapatirazu Maharaju Manni Sultan Bahadur, of Vizianagram, K.C.S.I.		James Fraser, Esq., Collector of the Godavery district, on behalf of the Madras Government.

Vakeels for the Plaintiff.	*Vakeels for the Defendant.*
Saripalli Sattenna, and	Samineni Rungaprasad Naidu, (since dead) and
Do. Gopalakristama.	Chitrapu Kamarazu.

JUDGMENT.

1. This is a suit for 390 acres of land paying a yearly shist of Rupees 1,200, and valued at Rupees 9,600, and for Rupees 16,618, being the mesne profits thereof, with subsequent produce and costs.

2. The plaintiff is the Maharajah of Vizianagram, and owns the village of Kotipalli, on the left bank of the Godavery, adjoining the Government village of Kota. He claims the land as an accretion to an island called Betarulunka which belongs to his village.

3. The defendant is the Collector of the Godavery district, on behalf of Government. He pleads that, as the island claimed was formed so far back as 1850, the plaintiff's claim is barred by lapse of time. He denies that the land was an accretion to the plaintiff's island, from which it was divided at the time of its formation by a channel which has since been filled up, the eastern portion of the island called Betarulunka, nearest the site of the abovementioned channel, having been formed from the bed of the Godavery some time in or about the year 1860. He further maintains that the land claimed was formed in the bed of the Godavery, which is in that part a tidal and navigable river, within the boundary of Kota, the mainland on the north and the mainland on the south of the disputed island belonging to that village, and that, out of the 390 acres, which was the extent of the island at the time of its formation in 1850, only about 276 acres remain, changes having taken place by the action of the river.

4. At the first hearing, a preliminary investigation was made regarding the defendant's plea that the suit was barred by lapse of time, and I was of opinion that it was not, as it appeared from exhibit B, which is a letter dated October 16th, 1860, addressed by Mr. Purvis, a former Collector of this district, to the plaintiff; he was asked if he would consent to submit the dispute regarding the island to arbitration under Act No. XXVIII. of 1860. This letter was written "by desire of the Board of Revenue." I was of opinion, therefore, that, as the Collector, on behalf of the Board of

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1st October 1868.

Revenue, proposed an amicable settlement of the dispute by arbitration in 1860, the cause of action had not then arisen; and twelve years being the limit for suits for the recovery of land, the present suit was not barred by the Statute of Limitation.

5. At the preliminary hearing, the plaintiff's Pleaders acquiesced in the defendant's statement regarding the extent of the island; and, as there was no dispute regarding the amount of the mesne profits claimed, the whole matter was reduced to a single issue, namely,

"Whether the disputed island, being an accretion to the island called Betarulunka attached to the plaintiff's village Kotipalli, belongs to that village, or, as the defendant denies that it was an accretion to Kotipalli, to the Government village Kota."

6. The following documents have been filed:—

Exhibits for the plaintiff.

A. Plaintiff's Plan.
B. Letter addressed in English by Mr. A. Purvis, Collector of the Godavery district to the plaintiff, on the 16th October 1860.
C. Letter addressed by Mr. A. Purvis, Collector of the Godavery district, to the plaintiff, on the 8th September 1862.
D. Copy of a decision passed on the 10th September 1838, by W. H. G. Mason, Esq., Head Assistant Collector of the Zillah of Vizagapatam.
E. Copy of a plan caused to be drawn on the 30th January 1860, by Mr. R. E. Master, Deputy Director of Revenue Settlement.
F. Copy of the Revenue Board's Proceedings, dated 29th May 1860.
G. Do. of do. dated 10th June 1862.
H. Copy of an order issued by H. Morris, Esq., Collector of the Godavery district, to the Deputy Collector, on the 2nd June 1863.
I. Copy of the day book for the month of July 1863, kept in the Office of the Treasury Deputy Collector of the Godavery district.
J. Copy of the Account book kept on the 24th July 1863, in the Office of the Treasury Deputy Collector.
K. Copy of an order issued by the Collector of the Godavery district, to the Tahsildar of Ramachendrapuram talook, on the 29th June 1867.

Exhibits for the defendant.

1. Plan.
2. Survey Plan.
3. Copy of the Board's Proceedings, dated 29th May 1860.
4. Do. of do. dated 21st July 1860.
5. Do. of do. dated 26th July 1860.
6. Copy of the Proceedings of Government, dated 18th March 1862.
7. Copy of the Board's Proceedings, dated 9th May 1862.
8. Do. of do. dated 10th June 1862.

7. The following is a succinct account of the dispute, as gathered from the various papers which have been filed. There had for many years been a boundary dispute between the villagers of Kotipalli and those of Kota, which, at the time the dispute attracted attention, belonged to a Zemindary estate. It has since become the property of Government. In 1838, Mr. Mason, the Head Assistant Collector of Vizagapatam, and Mr. W. Knox, Assistant Collector of Rajahmundry, visited the spot, and drew up a decision fixing the boundary between the two villages. At that time the disputed land did not exist; but, as it appeared probable that an island would eventually be formed, those gentlemen determined that, in the event of one forming, the mainland boundary line between the two villages should be extended across the island, and that the land to the east of it should belong to Kota, and that to the west to Kotipalli. The present island was formed in 1850, and when the ryots of Kotipalli claimed the portion to which they considered themselves entitled under the above mentioned decision, the ryots of Kota demanded that a new boundary should be fixed, a line being drawn due south from the boundary on the mainland, and that all to the east of that line should be

given to them on the report of the Tahsildar; the Collector let out the newly formed island, and kept the amount of rent which was received in deposit pending the settlement of the dispute. During the next ten years nothing was done.

Mr. Master, the Deputy Director of Revenue Settlement, took the matter up in 1860, and, in a letter addressed to the Collector,* recommended that the decision of Mr. Mason and Mr. Knox should be adhered to, and that the island, according to the plan forwarded with his letter, should be very nearly bisected. The Board of Revenue would not consent to this arrangement, and were of opinion that the boundary line suggested by the ryots of Kota was the fairest and most natural boundary. The Collector was instructed to ask the plaintiff if he would submit the dispute to arbitration without any reference to the decision of 1838. The Collector made this proposition to the plaintiff, who consented to it, and the case was referred for the orders of Government, who ultimately came to the conclusion that the plaintiff's claim was inadmissible, and directed the Board to "refuse to acknowledge the claim of the Rajah to the island in dispute." The plaintiff then filed the present suit.

* Exhibit.

8. If an island be newly formed in the bed of a river, without being an accretion to the mainland or to any existing island, the right of the Government to it would, under recent decisions, be unquestionable; but, if a newly formed island is an accretion to the mainland or to another island, even though the river in which it is formed should be a tidal and navigable river, the land thus formed by accretion would belong to the owner of the soil to which it may have accrued. *In the case of John Doe on the demise of Rajah Seebkris to* versus *The East India Company*, reported in the 6th volume of Moore's Indian Appeals, page 267, the Lords of the Privy Council decided that the Indian Government have a freehold in the bed of navigable rivers in India, but that land formed by gradual accretion belongs to the owner of the adjacent soil. Other cases are mentioned in Morley's Analytical Digest, Volume I., page 560, and in Volume I., New Series, page 356. The principle that alluvial lands gradually gained from a river belong, by way of accretion, to the adjoining proprietor, seems thus to be fully established. The single point for determination, therefore, is, whether the island was an accretion to Betarulunka, which was already in the plaintiff's possession, or whether, as the defendant asserts, it was not an accretion to that island, because it was separated from it, at the time of formation, by a channel which has since been filled up.

See also Regular Appeal No. 38 of 1861, Page 255, Volume I, Reports High Court, Madras.

9. The plea that the island was formed within the boundary line of the Government village of Kota cannot be sustained for a moment. The papers filed show clearly that the boundary between the two villages across the river has never been settled. Land belonging to both villages is situated on the south as well as on the north of the river, and boundary marks have, it appears, been now placed connecting the points where the lands of the two villages join on either side of the river.† By this line the island is certainly included within the limits of Kota, but this boundary was not fixed until more than ten years after the formation of the island, and the Deputy Director of Revenue Settlement himself was in favour of making an entirely different boundary. The defendant has, moreover, since awarded to the plaintiff certain other land to the east of this imaginary line, which he ascertained by inquiry made at the time of its formation, was evidently an accretion to the plaintiff's lands. The boundary on the mainland has for years been the subject of bitter dispute between the Ryots of the two villages, and the boundary across the river has never been definitely settled.

† See the Survey Plan exhibit.

10. Regarding the one point of fact to be determined, the witnesses on either side give directly contrary evidence. Ten witnesses on the plaintiff's behalf depose that in 1850, when the island was formed, there was no channel between it and Betarulunka. Five witnesses on the defendant's side swear that there was a broad stream between the two. After repeated perusal of the documentary evidence, I am inclined to believe the oral evidence for the plaintiff, and I am of opinion that the disputed island was an accretion to the plaintiff's estate. It and Betarulunka are now united by

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land; and, as the defendant asserts that the channel which once divided them is now filled up, the burden of proof lies on him. He has by no means proved his statement. On going back to the origin of the dispute, no mention of any channel was made at the time the island appeared when the ryots o Kotipalli claimed a portion of the island; according to the decision of 1838, the ryots of Kota appear to have demanded that the boundary line which they considered right should be drawn, but no hint was given of a clear, well-defined, natural boundary such as a channel would have been.

"The Kota people claim now," Mr. Master remarks, in 1860, "as they did in 1850, that the "boundary line be run due south from the main land boundary *punta*, and that all the *lunka* east of "it be given to them. The grounds on which the demand of the Kota people is based, are, that formerly "the lands of their village stood where the disputed *lunka* now stands, and have since been washed "away, and that as they have land on the south side of the river opposite to the disputed *lunka*, all of "it falling between the main land of Kota to the north and the main land of Kota to the south of right "belongs to them." They then attempted to prove to the Deputy Director that the site of the village of Kota had altered: but no mention of a channel was made to him, and I think it most probable that, if a channel had cut off the newly formed island from Betarulunka, some allusion to it would have been made at once, and the fact of its existence would not have escaped the memory of the ryots of Kota at the time of Mr. Master's personal inspection and inquiry. The only circumstance which militates against this opinion is, that the disputed lunka appears in the rough sketch accompanying Mr. Master's Report as an island entirely surrounded by water; but, if this sketch accurately represents the position of the land in 1860, it also negatives the defendant's statement that the disputed land was, at the date of its formation and down to the year 1860 or thereabouts, bounded on the east by an island theretofore existing in the Godavery and forming part of the Government village of Kota.

11. The disputed land is now joined to the plaintiff's island called Betarulunka. The defendant has not proved that it was divided from Betarulunka at the time of formation by a channel connecting the two branches of the Godavery which bounded it on the north and south; he has not proved that the whole of the land marked C. in the plaintiff's Plan,* and so much of the land marked A, as now lies to the west of the site of the abovementioned channel, was land covered with the water of the southern branch of Godavery, the whole of the land marked C, and nearly the whole of that marked A, having been formed from the bed of the Godavery about 1860; and consequently, I believe the statement of the plaintiff's witnesses that there was, in 1850, no such channel as the defendant describes, and that the disputed land is an accretion to the plaintiff's island and belongs to him. No inquiry has been made regarding the mesne profits, as the amount was not contested. The land should be made over to the plaintiff according to its present extent.

* Exhibit A.

12. Judgment is given in favour of the plaintiff with costs.

(Signed) H. MORRIS,
Civil Judge.

(True Copy.)

(Signed) N. LAKSHMINARAYANA,
Serishtadar.

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1. In the first of the foregoing letters, the Collector reports the decision of Suit No. 3 of 1867, by the Civil Judge of Rajahmundry, in favor of the Zemindar of Vizianagram; and with the second letter, copies of the Decree and Judgment are forwarded.

2. The Board resolve to submit the correspondence for the information of Government, in continuation of Board's Proceedings, dated and numbered respectively 9th and 27th of January 1868, Nos. 144 and 642.

3. The circumstances of the case are concisely stated in paragraph 7 of the "Judgment."

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4. The Board have received and recorded a copy of this same Decree and Judgment, transferred to them with endorsement from the Secretary to Government, dated 4th August 1868.

No. 22. ORDER THEREON, 1st October 1868, No. 2,526.

Miscellaneous.

The Government do not deem it desirable to appeal from the Decree of the Civil Judge. The Board of Revenue should, however, have submitted their opinion on this point.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

Govt. of [1868] Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated October, 1st.

Recd.

Encl.

G. O., 1st October 1868, No. 2,526.

OCTOBER.

Nos. 21-22.

Suit against Collector of Godavery.—Board of Revenue informed that an appeal from the Decree of the Civil Judge of Rajahmundry is not desirable.

No 3029. Dt. 2526.

1st. Octr /68

Lett from Collr.

The Govt do not deem it desirable to appeal from the decree of the Civil Judge. The Bd of Revd however, have submitted their opinion on this point

DAD.

14 Copies To the Bd of Rev Despts & Secy

Memo re No 3027

The Board have not expressed any opinion as they should have done as to appellant's from the decree - It seems hardly desirable to do so though, as the case of the first named upon the existence of a channel separating the land in dispute from the Island and Lusaka, and the Civil Judge has declared that there is no evidence to prove that any such channel ever

The judgment of the Civil Court appears to me to be a very proper one. And on the papers in the packet I cannot say that we ought not to concur with the decision -

In submitting it, the Board ought certainly to state whether they saw any grounds for an appeal

WDR

I agree in the Chief Judge's view of the judgment.

A.J.A.

Revenue 1868 Despte
Proc of Govt on Actn

25-3-82

No 2526.

Proc of the Madras Govt
dt 1 October 1868

Forwd for Rum 4th May 69
O.C. 1452.

No. 21-22

Extract