

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	2866	Press Mis.
342-344		
Dated 28 th October 1918		

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
28th October 1869.*

Read the following papers:—

No. 342. From the Secretary to the Government of India, Home Department, (Revenue,) to the Secretary to the Government of Fort Saint George, dated Simla, 19th August 1869, No. 467.

I AM directed to forward a printed copy of the papers noted in the margin, and to request that, with the permission of His Excellency in Council, you will have the goodness to report the extent to which the custom known in Upper India as "Dhar Dhoora" or "Hadd Sikunderi" prevails and is acted on by the Courts in the Madras Presidency.

To the Chief Commissioner of Oudh, from the Secretary to the Government of India, in the Foreign Department, No. 346, dated 30th October 1868.
From the Junior Secretary to the Chief Commissioner of Oudh, No. 261, dated 28th January 1869.

2. I am also directed to request an expression of the opinion of His Excellency in Council as to whether legislation would be desirable for the abolition of a rule which, to the Government of India, seems hardly consistent with a state of society in which permanent proprietary rights in land are distinctly recognized.

FORWARDED to the Board of Revenue for report.

(Signed) R. A. DALYELL,

1st September 1869.

Acting Secretary to Government.

No. 343. From the Sub-Secretary to the Board of Revenue, to the Acting Secretary to Government, Revenue Department, dated Madras, 22nd September 1869, No. 7,041.

WITH reference to the letter from the Secretary to the Government of India, dated the 19th ultimo, and forwarded to the Board for report with your endorsement of the 1st instant, I am directed to state that the custom of "Dhar Dhoora" does not prevail in the Madras Presidency, and that in dealing with the class of cases referred to by the Government of India, the Courts are guided by the ordinary principles of law.

No. 344. ORDER THEREON, 28th October 1869, No. 2,866.

Miscellaneous.

ORDERED that the following letter be despatched to the Government of India:—

(Here enter 28th October 1869, No. 2,867.)

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

REVENUE DEPARTMENT,
FORT SAINT GEORGE,
28th October 1869.

No. 345.

No. 2,867.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

Miscellaneous.

HOME DEPARTMENT.

Sir,—With reference to your letter, dated 19th August 1869, No. 467, I am directed to state that the custom of "Dhar Dhora" does not prevail in the Madras Presidency, and that in dealing with the class of cases referred to by the Government of India, the Courts are guided by the ordinary principles of law.

I have the honour to be,
Sir,

Your most obedient servant.

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

Exd. F. R. Bantleman.

To His Excellency the Right Hon'ble Sir JOHN LAIRD MAIR LAWRENCE, Bt., G.C.B., G.C.S.I.,
Viceroy and Governor General of India.

The petition of Hoolas Sing and Tiluk Sing,
lumberdars and proprietors of Mouzah Nussowlee, Per-
gunnah Surounn Nuggur, Tehseel Shahabad, Zillah
Hurdul, in the Province of Oudh.

MOST HUMBLY SHEWETH,—That your petitioners have suffered substantial damage, and are with a large family literally driven to starvation and beggary by an *ex-parte* decision of the Financial Commissioner passed in review on the application and arguments of Mr. Barrister Arrathoon, who appeared from the part of the applicants who had lost their cause in all the lower Courts, and before the Financial Commissioner originally on the 14th July 1866.

That the Financial Commissioner has based his decision on review in petitioner's case, as he states in accordance with the deposition of Tiluk Sing, one of your petitioners, given in the case of the plaintiff in this case and the zemindar of Dharapoor, whose case was analogous to that of petitioner's cause, although he states that he however concedes that the expediency of the law may be doubtful. But the smallest attention and reflection will show that it is not only opposed to Tiluk Sing's deposition, as well as to the decision in that case, but is obnoxious to law, equity, custom, and all jurisprudence.

That the Financial Commissioner has been misled into this grave error by Mr. Barrister Arrathoon misinterpreting the deposition of Tiluk Sing, petitioner, which in that case was in vernacular, and misconstruing its intention, would have been made manifest had your petitioners not been denied a hearing and explanation repeatedly solicited.

That the Financial Commissioner's conclusions are erroneous, may be gathered from the fact that the plaintiff in this case claimed a large tract of land belonging to the zemindars of Dharapoor which became separated from their village without destroying the identity of the land by the river leaving its original channel and flowing into another, or by a fresh passage, in which case Tiluk, one of your petitioners, in giving evidence from the part of the zemindars of Dharapoor as to custom, stated that the usage of Dhar Dhowra was in vogue "whether the whole or a part of a village only was cut away," and the decision arrived at in that case was that the possession of the zemindars was maintained in accordance with Regulation XI. of 1825, and letter of the Secretary, Chief Commissioner, Oudh, No. 2228, dated 31st July 1863, to Commissioner, Khyrabad, and the custom of the country as ascertained by local enquiry.

That Tiluk Sing never meant to contradict the custom of the country as ascertained by local enquiry but to support it, and never meant to say that the main stream should be the boundary; that what he simply meant was that the custom of Dhar Dhowra did prevail in regard to portions of land as well as to whole villages *gradually cut away* by the river, and not that if a large tract of land became severed or intersected by the river breaking through without destroying and preventing the identity of the land, in which case it could not by any logic be considered an increment of the village to which it became attached.

That the circumstances of petitioners' case and that of Mouzah Dharapoor were identical, and the decisions in both should have been the same, inasmuch as the decision governs proprietary right to the land.

That independently of the conflicting decisions noticed in the two cases brought about by the misconstruction of evidence and misrepresentation, the proceedings are alike contrary to law, inasmuch as—1st, the Procedure Act allows but two appeals—one regular and one special—whereas in the present case a third appeal was preferred and dismissed after hearing by the Financial Commissioner; 2nd, that under Section 372, a special appeal can only be heard on points of law not on matters of fact, but the Financial Commissioner has reversed the judgments of the lower Court on matters of fact, not of law; 3rd, after admission of an application for review, a day should have been fixed for allowing the respondent to show cause why the judgment should not be set aside as laid down in Section 380; 4th, when petitioners came to the knowledge of the result of the decision in review, and made application for a review, it was, contrary to Section 379, rejected by the Officiating Financial Commissioner, who had no jurisdiction, without any day for hearing being fixed; 5th, when petitioners made a second application for review, it was similarly rejected contrary to Section 377.

The confidence of people in the administration of the Revenue Department is completely shaken by the numerous conflicting decisions in cases involving the same points of law or custom, the disregard of the law of procedure and want of some fixed rule in revenue, judicial awards and investigations as in the Regulation Provinces.

That under the present system the District Officers declare in open Court that they are *Sooltans*, and will act according to the dictates of their will, and do not require to be pointed out law or precedents, while the highest Appellate Court in some cases declares its unwillingness to interfere with the concurrent decisions of two lower Courts, however erroneous on points of law or opposed to the record on matters of fact, and in some instances that the law lays down

June 1869 Separated

From Court Book of

Ind. St. Court.

David Scott & Co.

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25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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Not to be used for the purpose of "Dhar Dhowra" but in doing with the case of "Dhar Dhowra" and by the Government of India, the Order is given by the Government of India as follows.

but two appeals from original decisions, and will not therefore listen to a third which the Court in other instances, as the present, admits when urged by an influential party or pleader; that in some instances a date is fixed for the hearing of an appeal or application of review in presence of the parties or pleaders; in others they are summarily rejected at home without opportunity of argument; that in some cases points of fact in special appeal are not allowed to be re-opened as laid down in Section 372; in others it is, as in the present case.

That your petitioners pray that the case in which deposition of Tiluk Sing, one of your petitioners referred to by the Financial Commissioner, and the case of your petitioners, be forwarded for the opinion of either of the High Courts, or to some officer of judicial experience, in order that justice may be done them, for which petitioners will ever pray.

No. 346, dated Simla, the 30th October 1868.

From—W. S. SETON-KARR, Esq., Secretary to the Govt. of India, Foreign Dept.,
To—The Chief Commissioner of Oudh.

I AM directed by His Excellency the Viceroy and Governor General in Council to forward, for your information, a petition from Hoolas Sing and Tiluk Sing, of Zillah Hurdai, and to remark that, if the statements of the petitioners are correct, the Financial Commissioner granted a review in a case which had been heard and decided a considerable time previously, and also passed the order on review now complained of *ex-parte*, or, as His Excellency in Council understands it, in the absence of the petitioners.

2. The petitioners also allege that the Financial Commissioner, sitting in special appeal, took up and decided the case on questions of fact, instead of confining himself to points of law.

3. His Excellency in Council does not attach any value to several of the other statements contained in the petition, especially to that which charges the Financial Commissioner with misinterpretation or misconstruction of evidence, nor is His Excellency in Council aware whether the points to which he has drawn attention are correctly stated, but he thinks it desirable that reference should be made to the Financial Commissioner to ascertain the correctness of the assertions, and he will await your reply with any remarks you may think fit to make on the reference.

No. 281, dated Lucknow, the 28th January 1869.

From—F. CURRIE, Esq., Junior Secretary to the Chief Commissioner of Oudh,
To—The Secretary to the Government of India, Foreign Department, Calcutta.

In reply to your letter No. 346, dated 30th October last, enclosing for report a petition from Hoolas Sing and Tiluk Sing, I am directed to forward, for the information of His Excellency the Governor General in Council, the accompanying copy of a minute by the Financial Commissioner, and to state that the Chief Commissioner does not find anything erroneous or irregular in the proceedings.

Minute on the case of HOOLAS SING and TILUK SING of Nussowlee, District Hurdai.

The Secretary Chief Commissioner's No. 4877, dated 12th November, forwards a petition preferred to the Governor General by the parties named above, together with copy of a letter No. 346, dated 30th October 1868, from the Secretary to the Government of India, in the Foreign Department, making certain observations on alleged errors of procedure on the part of this Court.

To satisfy the Government on the points regarding which information has been called for, it might perhaps be best to submit the entire file of judicial proceedings, but it will probably be considered sufficient, as it will be more convenient, if a short statement is furnished in the body of the letter.

The case is one of boundary dispute between the zemindars of Hurukhinda and Nussowlee. The land in dispute is situated within a loop of the Gurrak river which flowed round three sides of it, until the rainy season of 1863, when the water worked another passage for itself across the neck of the loop. By this change the land in dispute became separated from the rest of the land of Nussowlee. The proprietor of Hurukhinda claimed the land by right derived from the custom of the country that the mid stream of the Gurrak river is the boundary between the villages lying on its banks (Dhar Dhowra). The Court of first instance held that this custom existed, and decreed the land to the proprietor of Hurukhinda. The Superintendent of Survey in appeal reversed this order, holding that the custom only applied to lands of which the identity could not be established, as where land was gradually cut away from one bank and thrown up on the other, and not where the land, as in this case, had long been cultivated. He was of opinion that the Extra Assistant Commissioner's order was contrary both to law (Regulation XI. of 1825) and to custom. The Commissioner, before whom the case then went, remarked that the great argument of the proprietor of Hurukhinda was that another large tract of land belonging to him had been transferred to others by reason of the change in the course of this

river. The Commissioner, however, expressed his concurrence with Mr. Kavanagh. He recorded his opinion that, were such a change in the direction of the river to cause changes of proprietary right, many fraudulent attempts to change the river's course might be made. He concluded by directing that "the question of proprietary right will however be finally decided by the settlement department, but the village boundaries must remain as laid down by Mr. Kavanagh."

On the 14th July 1866, the Financial Commissioner (Mr. Davies) in special appeal saw no reason to interfere with the order of the Commissioner.

On the 16th idem (or two days after the passing of the order), the special appellant applied for review. On the 17th proceedings were called for, and on their receipt the Financial Commissioner directed that respondents be summoned.

On the 5th September 1866, the respondents filed their objections in writing. After this there was some delay pending the receipt of papers called for by the Financial Commissioner.

On the 16th March 1867, the respondents were summoned for the 5th April, and on the 5th April 1867 the Financial Commissioner (Mr. Davies) recorded the following order:—

"Special Appellants,"

Present by Mr. Arrathoon.

"Special Respondents,"

Absent.

"This case has been carefully reviewed."

"The Financial Commissioner now considers his order affirming those of the lower Courts incorrect."

"The lower Courts decreed against Bulbhuddur Sing, on the ground that the custom maintaining the main stream as the boundary between estates is a bad one. It is to be observed, however, that this custom is expressly maintained by Section 2 of Regulation XI. of 1835. The Financial Commissioner, however, concedes that the expediency of the law may be doubtful. But in the present case no reference to any general custom need arise, for it is clearly proved by the deposition of Tiluk Sing, &c., (parties to the present suit) that when it suited their purpose they gave the strongest evidence in affirmation of the main stream being the boundary. The Financial Commissioner therefore cannot admit them to plead that no such rule exists, or that it is a bad one. Their evidence was most distinct and is fatal to their claims on the land in dispute."

"The orders of the lower Appellate Courts are reversed, and the land shown in the sketch made by Mr. Kavanagh will be included in the village area of Mouzah Hurunkowda as the property of Bulbhuddur Sing, special appellant, and it will not re-open to the special respondents to claim the proprietary rights again. The expense of altering the maps, &c., will be defrayed by Bulbhuddur Sing."

On the 17th April, Mr. Davies rejected an application by Hoolas Sing and Tiluk Sing for review, and on the 10th September 1867 Colonel Barrow (Officiating Financial Commissioner) rejected a second application by the same parties.

With reference to the petition of Hoolas Sing and Tiluk Sing to His Excellency the Governor General, it appears unnecessary to notice more than the assertions to which attention has been drawn in the letter of the Foreign Secretary. As regards the first point, it is true that the Financial Commissioner passed this order in review in the absence of the petitioners, but not until they had been duly summoned and had failed to attend. With reference to the second point it may be observed that the effect of a previous statement by a party directly contrary to the allegations made in a subsequent suit, is a question of law rather than of fact, and even were it not so, the Financial Commissioner has, under Government Notification No. 4325, dated 6th August 1861 (which appears to have escaped notice), authority to review the orders of the Courts subordinate to him on questions of fact as well as of law.

L. BARROW,

Financial Commissioner, Oudh.

Dated the 11th March 1869.

Demi-official from—W. S. SETON-KARR, Esq., Secy. to the Govt. of India, Foreign Dept.,
To—The Chief Commissioner of Oudh.

Your letter of the 28th of January last, regarding the review of judgment in the case of Hoolas and Tiluk Sing, was fully considered in Council yesterday.

It was the opinion of His Excellency in Council that no error or absolute irregularity was to be discovered in the proceedings, and that, strictly speaking, there was no ground for any interference.

But it was also felt that it would have been much better had the original decision been adhered to, and that the custom which is found to exist regarding the stream, which remains as the

but two appeals from original decisions, and will not therefore listen to a third which the Court in other instances, as the present, admits when urged by an influential party or pleader; that in some instances a date is fixed for the hearing of an appeal or application of review in presence of the parties or pleaders; in others they are summarily rejected at home without opportunity of argument; that in some cases points of fact in special appeal are not allowed to be re-opened as laid down in Section 372; in others it is, as in the present case.

That your petitioners pray that the case in which deposition of Tiluk Sing, one of your petitioners referred to by the Financial Commissioner, and the case of your petitioners, be forwarded for the opinion of either of the High Courts, or to some officer of judicial experience, in order that justice may be done them, for which petitioners will ever pray.

No. 346, dated Simla, the 30th October 1868.

From—W. S. SETON-KARR, Esq., Secretary to the Govt. of India, Foreign Dept.,
To—The Chief Commissioner of Oudh.

I AM directed by His Excellency the Viceroy and Governor General in Council to forward, for your information, a petition from Hoolas Sing and Tiluk Sing, of Zillah Hurdai, and to remark that, if the statements of the petitioners are correct, the Financial Commissioner granted a review in a case which had been heard and decided a considerable time previously, and also passed the order on review now complained of *ex-parte*, or, as His Excellency in Council understands it, in the absence of the petitioners.

2. The petitioners also allege that the Financial Commissioner, sitting in special appeal, took up and decided the case on questions of fact, instead of confining himself to points of law.

3. His Excellency in Council does not attach any value to several of the other statements contained in the petition, especially to that which charges the Financial Commissioner with misinterpretation or misconstruction of evidence, nor is His Excellency in Council aware whether the points to which he has drawn attention are correctly stated, but he thinks it desirable that reference should be made to the Financial Commissioner to ascertain the correctness of the assertions, and he will await your reply with any remarks you may think fit to make on the reference.

No. 281, dated Lucknow, the 28th January 1869.

From—F. CURRIE, Esq., Junior Secretary to the Chief Commissioner of Oudh,
To—The Secretary to the Government of India, Foreign Department, Calcutta.

In reply to your letter No. 346, dated 30th October last, enclosing for report a petition from Hoolas Sing and Tiluk Sing, I am directed to forward, for the information of His Excellency the Governor General in Council, the accompanying copy of a minute by the Financial Commissioner, and to state that the Chief Commissioner does not find anything erroneous or irregular in the proceedings.

Minute on the case of HOOLAS SING and TILUK SING of Nussowlee, District Hurdai.

The Secretary Chief Commissioner's No. 4877, dated 12th November, forwards a petition preferred to the Governor General by the parties named above, together with copy of a letter No. 346, dated 30th October 1868, from the Secretary to the Government of India, in the Foreign Department, making certain observations on alleged errors of procedure on the part of this Court.

To satisfy the Government on the points regarding which information has been called for, it might perhaps be best to submit the entire file of judicial proceedings, but it will probably be considered sufficient, as it will be more convenient, if a short statement is furnished in the body of the letter.

The case is one of boundary dispute between the zemindars of Hurukhinda and Nussowlee. The land in dispute is situated within a loop of the Gurrak river which flowed round three sides of it, until the rainy season of 1863, when the water worked another passage for itself across the neck of the loop. By this change the land in dispute became separated from the rest of the land of Nussowlee. The proprietor of Hurukhinda claimed the land by right derived from the custom of the country that the mid stream of the Gurrak river is the boundary between the villages lying on its banks (Dhar Dhowra). The Court of first instance held that this custom existed, and decreed the land to the proprietor of Hurukhinda. The Superintendent of Survey in appeal reversed this order, holding that the custom only applied to lands of which the identity could not be established, as where land was gradually cut away from one bank and thrown up on the other, and not where the land, as in this case, had long been cultivated. He was of opinion that the Extra Assistant Commissioner's order was contrary both to law (Regulation XI. of 1825) and to custom. The Commissioner, before whom the case then went, remarked that the great argument of the proprietor of Hurukhinda was that another large tract of land belonging to him had been transferred to others by reason of the change in the course of this

river. The Commissioner, however, expressed his concurrence with Mr. Kavanagh. He recorded his opinion that, were such a change in the direction of the river to cause changes of proprietary right, many fraudulent attempts to change the river's course might be made. He concluded by directing that "the question of proprietary right will however be finally decided by the settlement department, but the village boundaries must remain as laid down by Mr. Kavanagh."

On the 14th July 1866, the Financial Commissioner (Mr. Davies) in special appeal saw no reason to interfere with the order of the Commissioner.

On the 16th idem (or two days after the passing of the order), the special appellant applied for review. On the 17th proceedings were called for, and on their receipt the Financial Commissioner directed that respondents be summoned.

On the 5th September 1866, the respondents filed their objections in writing. After this there was some delay pending the receipt of papers called for by the Financial Commissioner.

On the 16th March 1867, the respondents were summoned for the 5th April, and on the 5th April 1867 the Financial Commissioner (Mr. Davies) recorded the following order:—

"Special Appellants,"

Present by Mr. Arrathoon.

"Special Respondents,"

Absent.

"This case has been carefully reviewed."

"The Financial Commissioner now considers his order affirming those of the lower Courts incorrect."

"The lower Courts decreed against Bulbhuddur Sing, on the ground that the custom maintaining the main stream as the boundary between estates is a bad one. It is to be observed, however, that this custom is expressly maintained by Section 2 of Regulation XI. of 1835. The Financial Commissioner, however, concedes that the expediency of the law may be doubtful. But in the present case no reference to any general custom need arise, for it is clearly proved by the deposition of Tiluk Sing, &c., (parties to the present suit) that when it suited their purpose they gave the strongest evidence in affirmation of the main stream being the boundary. The Financial Commissioner therefore cannot admit them to plead that no such rule exists, or that it is a bad one. Their evidence was most distinct and is fatal to their claims on the land in dispute."

"The orders of the lower Appellate Courts are reversed, and the land shown in the sketch made by Mr. Kavanagh will be included in the village area of Mouzah Hurunkowda as the property of Bulbhuddur Sing, special appellant, and it will not re-open to the special respondents to claim the proprietary rights again. The expense of altering the maps, &c., will be defrayed by Bulbhuddur Sing."

On the 17th April, Mr. Davies rejected an application by Hoolas Sing and Tiluk Sing for review, and on the 10th September 1867 Colonel Barrow (Officiating Financial Commissioner) rejected a second application by the same parties.

With reference to the petition of Hoolas Sing and Tiluk Sing to His Excellency the Governor General, it appears unnecessary to notice more than the assertions to which attention has been drawn in the letter of the Foreign Secretary. As regards the first point, it is true that the Financial Commissioner passed this order in review in the absence of the petitioners, but not until they had been duly summoned and had failed to attend. With reference to the second point it may be observed that the effect of a previous statement by a party directly contrary to the allegations made in a subsequent suit, is a question of law rather than of fact, and even were it not so, the Financial Commissioner has, under Government Notification No. 4325, dated 6th August 1861 (which appears to have escaped notice), authority to review the orders of the Courts subordinate to him on questions of fact as well as of law.

L. BARROW,

Financial Commissioner, Oudh.

Dated the 11th March 1869.

Demi-official from—W. S. SETON-KARR, Esq., Secy. to the Govt. of India, Foreign Dept.,
To—The Chief Commissioner of Oudh.

Your letter of the 28th of January last, regarding the review of judgment in the case of Hoolas and Tiluk Sing, was fully considered in Council yesterday.

It was the opinion of His Excellency in Council that no error or absolute irregularity was to be discovered in the proceedings, and that, strictly speaking, there was no ground for any interference.

But it was also felt that it would have been much better had the original decision been adhered to, and that the custom which is found to exist regarding the stream, which remains as the

boundary even when sudden disruption takes place, and the land severed can be identified and followed, is an unreasonable custom which should be discouraged by every possible means.

Probably, a reference will be made to the Home Department to ascertain whether this custom exists, and is acted on in other Administrations. It is, I believe, wholly unknown in practice in Bengal, Behar or Oudh, where the Courts invariably follow the law, and not the usage, laid down in Regulation XI. of 1825, but it exists, we are told, in the Punjab as "Hudo Sikandar," and there is a notice of it in Elliot's glossary under the term by which it is known in your reference.

Meanwhile, His Excellency wishes to know whether nothing could be done to compensate the unlucky individuals who have lost their land by the river. I do not write officially, because I do not wish to put anything on record which might be highly inconvenient. For it would be clearly inconvenient if Government were to take on itself the duty of compensating any unlucky suitor whose case seemed hard, though decided legally. Can you suggest anything which would satisfy these men without making a bad precedent, or raising up a host of other applications to the same effect?

You can reply as confidentially as this is written.

Maine says that, in England, even if the custom were found to exist, the Courts would not uphold it, as contrary to public policy or justice. But, perhaps, we can hardly go as far here, and require legislation to put a bad custom aside.

Please think over the matter and say what occurs to you. His Excellency took personally a great interest in the case.

P. S.—I apprehend that the petitioners do not even dream of going to the Privy Council.

Dated Lucknow, the 25th June 1869.

From—R. H. DAVIES, Esq., Chief Commissioner of Oudh,

To—The Secretary to the Government of India, Foreign Dept.

I HAVE been longer than I could have wished in replying to your note of the 11th March last, having had to collect the papers of the case referred to again from several quarters.

On the general question of the inexpediency of upholding judicially the custom of "Hudo Sikandar" or "Dhar Dhowra," as it is here called, I am quite at one with the Council, and I send herewith papers which will show that as Financial Commissioner I took some pains to settle the matter in that sense. But the letters from Fyzabad will show that the custom has still in some parts a strong vitality, and could not be altogether ignored without legislation, to which however I myself see no objection, provided it have no retrospective force.

But the grounds for my decision in the particular case are not adverted to in your note, and are quite apart from the merits of the custom.

Considering that after prolonged enquiry I had ruled that the local custom as between villages should be recorded in each case at the time of settlement for the information and guidance of the Courts, and the easier settlement of future disputes, I do not see that I could very well have refused to tie down a party to the consequences of his deposition when pressed to do so by the pleader. It is an inconvenience no doubt to have a shifting river as the boundary of properties, but much more so I think to allow people to imagine that they can play fast and loose with their own recorded evidence. I send a copy of this evidence, as a perusal of it will show that there is no ambiguity about it.

I cannot suggest any way of compensating the zemindars of Nussowlee for the land they have lost, and I think that a most troublesome precedent would be established if the means could be found of compensating persons sustaining loss through their own double dealing.

APPEAL.

BOUNDARY DISPUTE.

No. 3 OF 1864.

Zillah Durriabad.

Rajah Soorajjeet Sing

...

...

... Appellant,

Shere Bahadoor Sing

versus

...

... Respondent.

Appeal against the order of Commissioner, Lucknow Division, dated 22nd June 1864, reversing the District Officer's order regarding an island in the river Gogra.

This is a special appeal from an order of the Commissioner of Lucknow, depriving appellant (defendant) of certain land which has been separated from his estate by the main stream of

the Gogra. The suit was originally decided by the Assistant and Deputy Commissioner and the Commissioner in accord, in favor of appellant (defendant), on the ground that the land had not lost its identity.

Subsequently, the Commissioner reviewing his order decided in favor of respondent (plaintiff), on the ground that the main stream is the absolute boundary between properties on opposite banks, instancing cases where the proprietary right in several whole villages together had been transferred under this rule.

Desirous of ascertaining, if possible, the fixed local custom, the Financial Commissioner directed an enquiry along the river, which has been carefully made under the instructions of the Commissioners of Lucknow, Khyrabad, and Fyzabad. The result is that no uniform custom is established, except as regards the Fyzabad District where (with few exceptions) the main stream is recognized as the boundary. From the districts of Baraitch and Durriabad, which are higher up the river, the rule is relaxed; and the more usual custom is that where the land is of some extent, and capable of identification, possession and ownership are not disturbed. The report from the Sectapore District shows that, whilst there is no fixed usage "the Dhar Dhowra" custom refers to land gradually cut away by the river, but when by a sudden change in the river course a considerable portion of an estate is cut away, though leaving the identity of the land clear, such portion would remain in possession of the person from whose estate the recession took place. In fact, the custom is identical with the law as laid down in clauses 1 and 2, section IV., Regulation XI. of 1825."

In forwarding the reports, the Commissioner of Lucknow observes that he considers that this first decision was correct. "In the Nowabee, few villagers would venture across the broad stream without a chance of being opposed by the zemindars on the opposite bank; but this state of things having changed, I do not see why land should change owners under any circumstances, so long as it is recognizable as a portion of land belonging to a certain village."

The Financial Commissioner observes that this opinion is borne out by the information which has been furnished as to the prevailing custom, and coincides with the existing law. It is also agreeable to reason. During the course of the regular settlement, the customs mutually agreed upon by opposite villages will be recorded, and will afford a rule for the decision of future disputes. In the present case, the Financial Commissioner considers that there can be no doubt but that according to custom and law the title of the appellant (defendant) to the land, which forms the subject of the present suit, should be maintained. Accordingly, the decision of the Commissioner of Lucknow, dated 22nd June 1864, is reversed, and that of the 19th April 1864 confirmed.

R. H. DAVIES,
Financial Commissioner, Oudh.

No. 1396, dated Lucknow, the 6th July 1865.

Copy forwarded to the Commissioner, Fyzabad Division, for information.

R. H. DAVIES,
Financial Commissioner, Oudh.

Translation of the deposition of TILUK SING and POLIP SING, lumberdars of Mouzah Nussowlee, referred to the case now pending in Financial Commissioner's Court against them from Chowdry BULBHUDDUR SING, 9th February 1860.

STATE that the Dhar Dhowra custom invariably prevails in this part of the country among the parties, and it makes no difference if a whole village be cut away, or only a portion of it. Long before this, but within their memory, the river had receded from Mouzah Dharapoor towards the west, and flowed close to Jumboora; and the land thus increased to the east joined to Mouzah Dharapoor and was taken possession of by the lumberdar of that village. Subsequently again on a sudden, nearly 12 years ago, the river changed its course, and began to flow close to Dharapoor, leaving only 100 beegabs to that village and cutting away the whole of the remaining area, which consequently fell into the possession of Bulbhuddur Sing, and is still in his possession, &c., &c.

Hecralal Putwarry corroborates the above.

BOUNDARY SETTLEMENT

APPEAL

No. 3 of 1864.

Zillah Durriabad.

Rajah Soorajet Sing Appellant,

Shere Bahadoor Sing Respondent.

Appeal against the order of Commissioner, Lucknow Division, dated 22nd June 1864, reversing the district order regarding an island in the river Gogra.

This is an important case, and the principle which shall govern its decision will regulate the limits of properties situated on either bank of the Gogra. It should therefore be most carefully treated.

The Commissioner has decided that the appellant shall lose a considerable extent of land which has been long his property, because the main stream of the Gogra has changed, and now divides this land from the other property of the appellant on the right bank.

It is not an uncommon custom on the rivers of India that this rule should be followed to a certain extent; but under our Government it has generally been limited by the reservation, that when the land is cut away in a form capable of identification by the owner, the right of property shall not be disturbed.

The Commissioner has quoted a single precedent as the ground of his decision. The appellant also quotes three precedents favorable to his own cause; but the Financial Commissioner considers that some of these is entitled to much weight in the absence of any verification of the local custom and of its deliberate recognition by the highest judicial authority.

The Gogra passes through the Khyrabad, Lucknow and Fyzabad Divisions. An enquiry should be instituted in each concerning the custom which is generally admitted to govern the proprietary right of land cut away or separated, or brought up by the changes or action of the river. A copy of this minute will be sent to the Commissioners concerned, in view to their causing the necessary investigation to be made. It will be advisable probably to depute a trustworthy native official to conduct it. In furnishing reports of the result of the enquiry, the Commissioners should state their own opinion concerning the rule to be adopted in deciding future disputes.

At the best the local custom is a rude mode of settlement. It has frequently occurred to the Financial Commissioner that, if the exact river boundary of each estate were so laid down by scientific survey as to be capable, with the aid of permanent bench marks and pillars in the high bank, of subsequent verification, then however great the shiftings and vagaries of the stream, the limits of mouzabs need never change, and disputes would at once be settled by reference to the map. A detailed survey of the river always takes place, and if at the time of its being made the mid-stream were by common consent the boundary of properties, it could be fixed once and for ever. Whether this plan, in the present state of our establishments, would answer in practice, is very uncertain, and it is referred to only by way of suggestion.

Until the reports of the Commissioners above called for are received, the decision of this appeal must lie over, but the possession of the appellant must be maintained.

R. H. DAVIES,

Financial Commissioner, Oudh.

No. 196, dated Fyzabad, the 10th June 1865.

From—P. CARNEGIE, Esq., Settlement Officer, Fyzabad,

To—The Commissioner of the Fyzabad Division.

WITH reference to the Financial Commissioner's call for information, No. 297, dated 2nd February, received under Commissioner's No. 297, dated 30th March 1865, regarding the custom prevailing along the line of the river Gogra in regard to alluvial and diluvion, I have now the honor to report that, in communication with your predecessor, and with the permission of the Officiating Deputy Commissioner, the necessary enquiry was entrusted to Extra Assistant Moon-shee Nund Ki-hore, the officer with the most experience of revenue matters at our disposal, and I have now the honor to report the result.

2. Proceeding to the westward, the Extra Assistant ascertained by assembling the inhabitants of the neighbourhood at Nowrahee, a considerable town, that the main channel of the river had been the constant boundary between that part of the District and Zillah Gonda, and in corroboration of this the following instances were named:—

1st.—*Mouzah Norrahee*.—A quantity of moujha land belonging to this village in 1269 F. with the standing crop upon it, and so fully capable of identification, was transferred by the river, and it became attached to a Gonda village, the proprietors

of which reaped the crop referred to, and having the well-established custom of the main channel being the boundary before them, the losers did not even seek to recover the land though they got a remission of revenue.

2nd.—*Mouzah Nenauwa*.—Ten or twelve years ago, about 2,200 beegabs of land was transferred by the river from this to the Gonda. Side so little land was left here that in 1264 F. the village was assessed at Rs. 11 only, and in 1266 F. that disappeared also. The proprietors knowing well the local custom made no claim for the land trans-Gogra.

3. The same rule existed all along the river till Pergunnah Umsin is reached, with this special feature, however, that the moujha on both banks of the river immediately below and opposite the town of Fyzabad was always held as nuzool land, and the collections were made here whether the land was on one side of the river or on the other.

4. In Pergunnah Umsin, the old custom was the same as that above described, viz., the main stream was the boundary; but it appears that when the Goruckpoor Settlement under Act IX. of 1833 was being made, a novelty in practice was introduced.

5. When Goruckpoor was ceded by Oudh to the British Government, it is said that Begumgunge and the neighbouring villages were five or six miles distant from the river, and all the intervening land of course belonged to the zemindars of this side. The river, whether gradually or not I cannot say, then changed its course, and all this intervening land got separated from this side by the main stream; but the zemindars of this side, notwithstanding every effort of the Raja of Amorah (Zillah Goruckpoor) to enforce the main stream custom, successfully opposed him, and maintained possession. When the settlement above referred to came to be made, both parties claimed the land, and after much correspondence between the British authorities and the Oudh Durbar it was finally arranged that a portion of the land should be settled, I presume as increment, with the Raja named, while a greater portion of the land was settled with the owners of four of our Fyzabad mehals, who thenceforth paid revenue to the British Government for such land in Zillah Goruckpoor.

6. Here we have the main stream boundary system completely set aside, although it is still affirmed to have been the custom of that day, and was pleaded by the Raja but in vain. Notwithstanding the above decision, the Extra Assistant reports that the subsequent custom was to make the main stream the boundary, but he has quoted no case in point. He also states the same custom to have prevailed throughout all the Pergunnahs of the Fyzabad and Akberpoor Tehseels.

7. But a case occurred in 1859, in which a decision was given contrary to this custom. It related to the moujha land of Mouzah Assoopoor, Pergunnah Tanda, which was claimed by Malik Hydaet Hosen, a talookdar of this District, as pertaining to his village just named, and as being on the right bank of the main stream. By enquiry it was ascertained that the moujha in question, 5,260 beegabs, had been settled at Rs. 300 under Act IX. of 1833 with the Raja of Nugger, whose estates had been confiscated and conferred on the Raja of Bansee for his services. The Collector of Goruckpoor quoted the case of Begumgunge as one in point, justifying the *status quo* being maintained, viz., that the Bansee Raja should retain possession, and pay the revenue of land in the Fyzabad District by well-established local custom into the Goruckpoor Tehseel. But the two cases are not in point. In the one case, the land is on the Goruckpoor side of the river, and by local custom Goruckpoor is entitled to the revenue; the Goruckpoor side of the river, and by local custom Goruckpoor is entitled to the revenue; therefore, in the other case, the land is on the Fyzabad side of the river, and Fyzabad is entitled to the revenue, be the settlement made with the Raja of Bansee or with Malik Hydaet Hosen.

8. In the Assoopoor case, Major Evans, Deputy Commissioner, recommended that the land should be considered as belonging to Mouzah Assoopoor, on the main stream principle; but the Commissioner on the 15th March 1860, No. 599, over-ruled this, and, in support of the view taken by the Collector, directed the land to remain attached to the Goruckpoor District. The result of this order is exhibited on the accompanying copy of the Revenue Surveyor's map, and it appears to me that the portion of land marked "Goruckpoor," and which adjoins this District, should be considered part and parcel of this District so long as it is on this side of the main stream, the settlement being of course made with the Raja in possession, on whom it has been conferred.

9. I beg to inform you that after I had drafted the above remarks I addressed the Collector of Goruckpoor and the Commissioner of Benares, begging to be favored with a perusal of any correspondence or proceedings that might throw light on the adjustments made when the Goruckpoor settlement was being carried on; but although nearly a month has expired, I have not received a reply from either officer, and as your docket No. 191 of the 9th instant, enclosing an urgent reminder from the Financial Commissioner, has this day reached me, I can detain the reference no longer.

10. With such information, therefore, as I now have before me, I summarize the result of the enquiry as follows:—

1st.—Where the land on both sides of the Gogra (as far as relates to Zillah Fyzabad) belonged to Oudh, the main stream has always been the boundary.

2nd.—When Goruckpoor belonged to Oudh, the same rule prevailed, for then also the land on both sides was of Oudh.

3rd.—When Goruckpoor was ceded, influence with the British authorities upset the old-established custom, and the main stream principle was set aside in at least the two important cases cited.

11. The enclosures of your docket No. 191, dated 9th instant, are herewith returned.

No. 552, dated 13th June 1865.

From—F. O. MAYNE, Esq., Commissioner of Fyzabad,

To—The Financial Commissioner of Oudh.

I HAVE the honor to reply to your letter No. 297, dated 2nd February last, and to furnish the result of the enquiry conducted in the Fyzabad District by Extra Assistant Commissioner Moonshee Nund Kishore through the Settlement Officer, Mr. Carnegie; in the Gondah District by the Deputy Commissioner, Major Ross, and in the Baraitech District by Deputy Commissioner, Mr. Anderson, on the custom which is generally admitted to govern the proprietary right of land cut away or separated, or thrown up by the fluvial action of the river Gogra.

2. The result of Moonshee Nund Kishore's enquiry proves in the most unmistakable manner, that from the western boundary of the Fyzabad District up to Pergunnah Umsin the main channel of the stream has been the constant boundary between Fyzabad and Gondah Districts, the land being taken possession of as a matter of course by the zemindars of the village in front of which it was thrown up, whether capable of identification or not, except as regard the moujha land with river banks to the north of the town of Fyzabad, which being nuzzool seems to have been reserved by Government for its own use on both banks without reference to the stream itself.

3. In Pergunnah Umsins the same custom prevailed, but at Regulation IX. of 1833 Settlement an exception was made; a large tract of land had been cut away from Oudh and went over to the Goruckpoor District, and the Oudh zemindars retained possession. This was of course disputed by the Goruckpoor zemindars, and after some correspondence with the Oudh Durbar the land was divided, the Raja of Amorah, of Goruckpoor, getting a portion, and the Oudh zemindars retaining the remainder but as malgozars of the British Government. This is a very curious case, the land retained owners but exchanged rulers. This as a measure still proving the stream to be the real boundary, and this custom seems still to prevail both in that locality and throughout all the pergunnahs of the Fyzabad and Khyrpoor Tehseels.

4. Mr. Carnegie quotes another case of land near Assoopoor which came up on this side of the river, and was settled with the Goruckpoor talookdar, the land remaining part of the Goruckpoor District. This is a mere case, however, of might forming right. But I consider both these cases to be the exception, and that they should not be allowed to affect the rule which is found so universally to prevail, and which the people themselves so well understand. The land in front of Assoopoor should at once be re-transferred to the Fyzabad District as recommended by Mr. Carnegie.

5. Major Ross reports different customs to prevail on either bank as to the division of lands thrown up; but I understand him to mean that the stream is the boundary between the villages on the two banks, except in cases when the villages on both banks belonged to the same family or clan.

6. Mr. Anderson from Baraitech reports differently. He says his enquiries prove that when lands cut away by a river in a form capable of identification, the title is not disturbed. Such instances must, however, naturally be very rare, and he acknowledges the rule has not always been followed, although opinion is in favor of it. He quotes instances in which 40 and 25 villages at a time changed banks.

7. My own experience tells me generally that on the Ganges, Jumna and other rivers, like the Gogra, the custom varies not only in different rivers but in different pergunnahs, and even, as in Gondah, in different villages and clusters of villages, and is by no means dependent on identification of the land until regular settlement. Land affected by increment and decrement must always remain under some uncertainty of rightful ownership, but at regular settlement in the Wajiboolurz of each village a clause is invariably inserted by consent of the zemindars describing what the custom is, whether *Dhur Dhonera* or *Was-par*, and lands affected by the fluvial action of the river are at once settled accordingly. There can then be no dispute between villages on opposite banks, for an appeal to the settlement papers at once determines the point of ownership as far as they are concerned, and I consider this is far better than to attempt laying down any one rule for a province or for a river, or even for a pergunnah. An island thrown up in the middle of a river with a stream on either side not fordable becomes the property of Government, and is settled as a new mehal.

8. The above record would so far decide the case when portions of villages only are affected, but when whole villages or clusters of villages bodily change banks, I believe it to

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9. There remains then to be disposed of only those cases in which by extraordinary action of the river portion of villages were cut away, which at time of settlement were nowhere near the river, and for which no condition or provision has been recorded in the Wajiboolurz. To guard against such an event the only possible precaution is to enter a clause in the Wajiboolurz of what the custom should be in cases of alluvial and diluvial in all villages for a breadth of five or six miles on each side of the river.

10. If I may be allowed to offer an opinion in the case under appeal, I should decidedly say that the land belongs, according to the prevailing and general custom, as far as it has hitherto been ascertained, to the village in front of which it now lies, viz., to the Thakoor Shere Bahadoor of Gondah.

11. The plan proposed by you of laying down the exact river boundary of each estate seems to me to be impracticable, and I think it would not meet the several difficulties which are liable to present themselves in such varied form.

2nd.—When Goruckpoor belonged to Oudh, the same rule prevailed, for then also the land on both sides was of Oudh.

3rd.—When Goruckpoor was ceded, influence with the British authorities upset the old-established custom, and the main stream principle was set aside in at least the two important cases cited.

11. The enclosures of your docket No. 191, dated 9th instant, are herewith returned.

No. 552, dated 13th June 1865.

From—F. O. MAYNE, Esq., Commissioner of Fyzabad,

To—The Financial Commissioner of Oudh.

I HAVE the honor to reply to your letter No. 297, dated 2nd February last, and to furnish the result of the enquiry conducted in the Fyzabad District by Extra Assistant Commissioner Moonshee Nund Kishore through the Settlement Officer, Mr. Carnegie; in the Gondah District by the Deputy Commissioner, Major Ross, and in the Baraiteh District by Deputy Commissioner, Mr. Anderson, on the custom which is generally admitted to govern the proprietary right of land cut away or separated, or thrown up by the fluvial action of the river Gogra.

2. The result of Moonshee Nund Kishore's enquiry proves in the most unmistakable manner, that from the western boundary of the Fyzabad District up to Pergunnah Umsin the main channel of the stream has been the constant boundary between Fyzabad and Gondah Districts, the land being taken possession of as a matter of course by the zemindars of the village in front of which it was thrown up, whether capable of identification or not, except as regard the moujha land with river banks to the north of the town of Fyzabad, which being nuzzool seems to have been reserved by Government for its own use on both banks without reference to the stream itself.

3. In Pergunnah Umsins the same custom prevailed, but at Regulation IX. of 1833 Settlement an exception was made; a large tract of land had been cut away from Oudh and went over to the Goruckpoor District, and the Oudh zemindars retained possession. This was of course disputed by the Goruckpoor zemindars, and after some correspondence with the Oudh Durbar the land was divided, the Raja of Amorah, of Goruckpoor, getting a portion, and the Oudh zemindars retaining the remainder but as malgozars of the British Government. This is a very curious case, the land retained owners but exchanged rulers. This as a measure still proving the stream to be the real boundary, and this custom seems still to prevail both in that locality and throughout all the pergunnahs of the Fyzabad and Khyrpoor Tehseels.

4. Mr. Carnegie quotes another case of land near Assoopoor which came up on this side of the river, and was settled with the Goruckpoor talookdar, the land remaining part of the Goruckpoor District. This is a mere case, however, of might forming right. But I consider both these cases to be the exception, and that they should not be allowed to affect the rule which is found so universally to prevail, and which the people themselves so well understand. The land in front of Assoopoor should at once be re-transferred to the Fyzabad District as recommended by Mr. Carnegie.

5. Major Ross reports different customs to prevail on either bank as to the division of lands thrown up; but I understand him to mean that the stream is the boundary between the villages on the two banks, except in cases when the villages on both banks belonged to the same family or clan.

6. Mr. Anderson from Baraiteh reports differently. He says his enquiries prove that when lands cut away by a river in a form capable of identification, the title is not disturbed. Such instances must, however, naturally be very rare, and he acknowledges the rule has not always been followed, although opinion is in favor of it. He quotes instances in which 40 and 25 villages at a time changed banks.

7. My own experience tells me generally that on the Ganges, Jumna and other rivers, like the Gogra, the custom varies not only in different rivers but in different pergunnahs, and even, as in Gondah, in different villages and clusters of villages, and is by no means dependent on identification of the land until regular settlement. Land affected by increment and decrement must always remain under some uncertainty of rightful ownership, but at regular settlement in the Wajiboolurz of each village a clause is invariably inserted by consent of the zemindars describing what the custom is, whether *Dhur Dhoera* or *Wai-par*, and lands affected by the fluvial action of the river are at once settled accordingly. There can then be no dispute between villages on opposite banks, for an appeal to the settlement papers at once determines the point of ownership as far as they are concerned, and I consider this is far better than to attempt laying down any one rule for a province or for a river, or even for a pergunnah. An island thrown up in the middle of a river with a stream on either side not fordable becomes the property of Government, and is settled as a new mehal.

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Proceedings of the Madras Government
Under date the 28 October 1869.

Read the following

Papers.

From the Govt. of India
Requesting to report the
extent to which the Custom
known in Upper India as "Dhar
Dhoona" prevails and is acted
on by the Courts of the Madras
Presidency. Board of Revenue.
Informing that custom
known in Upper India as "Dhar
Dhoona" or "Hadd Schunderi" does
not prevail in Madras Presi-
dency and that Courts are guided
by ordinary principles of law
in dealing with cases of boundary
disputes referred to by Govt.
of India. -

(H.E. 19? Augt 1869 No 1167)

- a - 22nd Sept 1869 - 7041)

Ordered that the
following letter be
despatched to the
Govt. of India
(See entry)

14 To the Board of Revenue 29 Oct 69

R 2920/69

Thomas Gifford & Co

28th Oct 1899

With reference to
your letter dated 19.th
Augt. 1869 No 467, I am
directed to state that the
custom of "Dhar Dhooa"
does not prevail in the
Madras Presidency, and
that in dealing with
the class of cases re-
ferred to by the Gov. of
India, the Courts are
guided by the ordinary
principles of law.

WPA



- Oct 17/79 125

1914

1914

1914

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