

*Proceedings of the Madras Government, Revenue Department,
18th February 1871.*

No. 197. Read the following letter from the Collector of the Godavery District, to the Secretary to Government, Revenue Department, Fort Saint George, dated Kakaraparru, 21st January 1871, No. 3:—

REFERRING to Proceedings of Madras Government, Revenue Department, of 21st December 1869, No. 3,217, in regard to removing Darbha grass from the bed of the Godavery river, I beg to be informed what is the legal meaning of the term "navigable" river referred to in Section 431 of the Indian Penal Code. Does it mean that the river must be at all times navigable, or will it suffice if it be so for a portion of each year only?

2. I ask this question because, with reference to the Proceedings of the Board of Revenue, No. 3,767, of 27th May 1869, in which are quoted copies of letters from myself and Mr. Happell, regarding the ownership of a lanka, it will be observed that Mr. Happell, in paragraph 6 of his letter, states that "the Vasishta Godavery at Kanur is not a tidal or navigable river."

3. That it is not tidal there I know, but it depends on the legal meaning of the term "navigable," whether it can be so called or not. It is navigable to that point and even higher from July to end of November, but not during the rest of the year.

4. The Zemindaries of Nidadavole have been causing grass to be planted in the bed of the river at Kanur, and they maintain their right to do this. The Executive Engineer in charge of the Range has officially reported to me that this planting of grass is injurious to the banks of the river in the vicinity; therefore, on the legal meaning of the term "navigable" depends whether or not the offenders can be dealt with under Section 431 of the Indian Penal Code.

No. 198. ORDER THEREON, 18th February 1871, No. 302.

Miscellaneous.

THIS letter should have been submitted through the Board of Revenue.

2. The Board are now requested to report whether they wish for a legal opinion upon the point raised in paragraph 1 of the Collector's letter.

3. It is observed that the Section of the Penal Code referred to expressly specifies artificial navigable channels as well as navigable rivers, and it is obvious to remark that the majority of navigable channels in the deltas are not "tidal," and are frequently closed for removing silt when they temporarily cease to be "navigable;" but there can be no question that it is penal wilfully to obstruct the passage in such channels when they would otherwise be navigable.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Collector of the Godavery District.
,, the Board of Revenue.

Exd. F. R. Bantleman.

No. 3,767.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 27th May 1869.

Read the following letter from J. FRASER, Esq., Collector of the Godavery District, to the Acting Secretary to the Board of Revenue, dated Cocanada, 27th April 1869, No. 85:—

With reference to the Proceedings of the Board of Revenue, dated 29th January 1869,

No. 627, I have the honor to submit, herewith, copy of a report* received from the Acting Head

* Dated 19th April 1869, No. 21.

Assistant Collector Mr. Happell, together with two English depositions taken by him from the present Moonsiff and a former Curnum of the Zemindary village of Kanur regarding the Lunka newly formed in the bed of the river Godavery, and claimed by the Zemindarnies of the Nidadavole estate. From these it will be observed that the Lunka in question was formed on the site where there was formerly a Lunka belonging to the Zemindarnies.

2. The petition, and other papers which accompanied the Proceedings under reply, are herewith returned.

ENCLOSURE No. 1.

From W. A. HAPPELL, Esq., Acting Head Assistant Collector, to the Collector of the Godavery District, dated Ellore, 19th April 1869, No. 21.

I HAVE the honor to reply to your letter, * No. 14, dated 11th February 1869, requesting me to take evidence respecting the Lunka claimed by the Zemindarnies of Nidadavole.

* Enclosures herewith returned.

2. I went to the Lunka on the 18th March, and, after inspecting it, took the two enclosed statements; the first from the Moonsiff of Usulamarru, the village to which you made over the Lunka, and the other from the former Curnum of Kanur.

3. Both of these witnesses state that there was formerly a Lunka belonging to the Zemindar on the site of the present disputed Lunka. Curnum Venkataramana produced old accounts, which show that in Fusly 1222 there was a Lunka of twenty-five putties of land belonging to Kanur, and that it has been gradually decreasing ever since. He says he remembers it well, and that it not only occupied the site of the present Lunka, but extended half way across the river. I myself examined the accounts produced, and have no doubt they are really the old accounts of the village.

4. A part of the old Lunka is still in the possession of the Zemindarnies. It is a long strip of land under the bank, extending from the boundary of Pendyala, a Zemindary village, to that of Usulamarru. Outside the bank, for nearly the whole length of this Lunka, are the lands of Kanur Agraharum, and beyond them the Zemindary village of Kanur. The disputed Lunka is about half a mile below the boundary of Pendyala village, and not less than a mile above the boundary of Usulamarru. It is divided from the Zemindarnies' Lunka by a water-course about fifty or sixty feet wide, which was dry when I saw it. If its bed was alluvium instead of sand it would probably be cultivated as a part of the Kanur Lunka.

5. The Zemindarnies had a great many other witnesses ready, but I did not examine them, as the existence of the former Lunka seemed sufficiently proved. It also seemed to me that all parties had overlooked the principal point in favor of the Zemindarnies' claim.

6. The Vasishta Godavery at Kanur is not a tidal or navigable river. The tide never comes higher up that branch of the Godavery than Malleshwaram, ten or twelve miles below Kanur.

7. Both by English and Roman law islands formed in the beds of rivers that are not tidal and navigable become the property of the proprietor of the nearest bank.

8. The bank belonging to the Zemindarnies of Nidadavole is within a stone's throw of the island in dispute. The nearest Government land on the side of the river is one mile, and, on the

His Honour

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1 To the Collector Godavery District
 14 — By Order

By Order

Legal meaning
of the term "Navi-
gable" river.

No 18-3287103. No 197

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