Judicial (18) Department.

ORDINARY.

G.O. No. 338

DATED 15-5-97

[Despatch Abstract.]

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Government {1897} of Madras.

REVENUE.

Recd. } 1897. *Enclosures*

Regd. *Spare copies*

G.O., No. 338, 15th May 1897.

MAY.

Boundary between His Highness the Nizam's Dominions and the Godavari district.

Communicating to the Board of Revenue and to Messrs. Binny & Co. letters from the Government of India and the Resident at Hyderabad fixing the left margin of the deep stream of the Gódávari river as the political — and the left edge of the water as shown in the "last survey map" as the boundary with regard to rights to minerals, and addressing the Government of India as to the meaning of the expression "the last survey map" and as to the demarcation of the political boundary.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—again G.O., No. 565, Revenue, dated 26th October 1896.

Abstract.—Sanctioning, with remarks, the grant for a period of one year from the 31st March 1896 of a fresh prospecting license to the Gódávari Coal Company in respect of the area of 10¼ square miles, covered by former licenses and addressing the Government of India regarding the demarcation of the boundary of Bhadráchalam taluk.

Read—letter to the Secretary to the Government of India, Foreign Department, No. 566, Revenue, dated 26th October 1896.

Abstract.—Requesting that steps may be taken for the speedy settlement of the political boundary between the Hyderabad territory and the Bhadráchalam taluk of the Gódávari district.

Read—the following Endorsement of the Government of India, Foreign Department, No. 1119-I. B., dated Fort William, 22nd March 1897:—

From TREVOR CHICHELE-PLOWDEN, Esq., C.S.I., Resident at Hyderabad, to the Secretary to the Government of India, Foreign Department, dated Hyderabad Residency, the 24th August 1896, No. 233.

I informed His Highness' Government of the purport of your No. 461-I of the 1st February 1896 on the subject of the disputed boundary on the river Gódávari, and I now submit copy of the letter from His Highness' Minister cited in the margin,* with its enclosures, which comprise a memorandum by Mr. Hormusji, Vakil, and opinions of Messrs. Pugh, Woodruffe and Sir Griffith Evans, the counsel whom His Highness' Government have consulted. You will observe that what the Minister asks is that having regard to the purport of these opinions and to the statement of the Hyderabad case as given in the memorandum, "the Government of India may be respectfully requested to be good enough to reconsider the whole question of the disputed boundary."

* From His Highness' Minister, No. 770, dated 21st July 1896.

2. Sufficient opportunity has been given me in the earlier stages of this correspondence of placing my views before the Government of India, and I do not wish to repeat arguments which have already been considered. It is enough to say here that I respectfully adhere to the views expressed in my letters Nos. 153 of 30th May and 255 of 4th September 1894 that the territory acquired by the British Government under the treaty of the 26th December 1860 extends up to the left margin of the deep stream of the rivers Gódávari and Wainganga, and no further; that it does not include the deep stream itself or any part of the bed over which it flows.

3. At the same time I beg permission to point out that the argument in my letter of the 4th September 1894, whatever it may be worth, has not been correctly reproduced in paragraph 3 of your No. 468-I of the 7th February 1895. I have not maintained that "the treaty of 1860 gave the British Government land on the left bank, but does not make the river itself the boundary." My argument was that although by article 9 of that treaty the Gódávari and its tributaries may have become the boundary, it does not follow from that circumstance that the Nizam has also ceded his rights in those waters. I wrote †:—

† Paragraph 2 of No. 255, dated 4th September 1894.

"I quite agree that it may be inferred from article 9 that in consequence of the treaty the Gódávari and its tributaries have become the boundary between British and Hyderabad territory for a portion of their course. But a mere agreement that certain rivers shall form a boundary between two states does not, I conceive, involve that the state to which the rivers admittedly belong has thereby parted with its property in them. The rivers may form the boundary without prejudice to the question of ownership."

And the intention of paragraph 3 of the same letter was to draw attention to the fact that the correspondence and the accompanying maps which preceded the treaty of 1860 confirm the view that there was no cession of any part of the river, for they show not only that the territory to be ceded was confined to the land on the left bank, but that the left bank of these rivers, and not the rivers themselves, was to be the frontier. Later on in paragraph 6 I discussed the meaning of which the expression "possessions *on* the left bank" might be considered susceptible, and I said that I held to the opinion in my letter of the 30th May that the left bank extends up to the edge of the deep stream when the river is at its lowest, but does not include the deep stream itself or any part of the bed over which it flows. Messrs. Woodruffe and Evans have expressed a similar opinion, for they hold that the words "on the left bank" of the river mean on the left side as opposed to the right side, and do not mean the high bank on the left side. Your letter also holds that the "practice of the locality putting aside some special settlements (all of which, it may be observed, are inconsistent with the present decision) has generally been to treat the lands *up to the left edge* of the deep stream as British territory." That is, local practice shows that British territory extends up to, but not beyond, the left margin of the deep stream.

4. The Minister attaches, of course, great importance to the opinions of the eminent counsel whose advice His Highness' Government have sought. It will be noticed, however, that these opinions do not refer to the correspondence of 1881 (paragraph 23 of Mr. Hormusji's memorandum and exhibit L), to which the Government of India invited the particular attention of His Highness' Government. I have dealt with this matter in my No. 236 of 17th August 1892 and in paragraph 6 of my letter of 30th May 1894, and I do not propose to discuss it further. Nor will it perhaps be expected that I should offer any observations upon the legal opinions enclosed, which accord generally with the views which I have ventured to urge upon the Government of India, but which, I regret to say, have not found acceptance. No doubt the Government of India will give those opinions the further consideration which His Highness' Government has asked that they should receive.

Enclosure.

From the Nawab Sir VIKAR-UL-UMRA BAHADUR, K.C.I.E., His Highness the Nizam's Minister, to the Resident at Hyderabad, dated Hyderabad, 21st July 1896, No. 770.

Kindly refer to my letter No. 58, dated the 16th January 1896, regarding the Gódávari boundary dispute, in paragraph 2 whereof I had intimated to you that the papers on this subject were under circulation amongst the members of the Cabinet Council, and as the case affected an important treaty question, I was unable to dispose of it under my own authority or to give you any definite reply until the matter was disposed of by the Council. Since then the matter was considered by my Honourable Colleagues and myself in Council, and they came unanimously to a decision that the Legal Adviser to His Highness' Government should be directed to prepare a complete case touching all the points and questions involved, and that at the same time he should not only record his own opinion, but should also obtain the opinions of some counsel of eminence thereon. This the Legal Adviser did, and the Honourable Members of the Cabinet Council at its meeting held on the 20th day of July instant having fully considered the case and opinions have unanimously come to the conclusion that to them the opinions expressed by Messrs. Woodruffe, Evans, and Pugh appear to be quite clear and sound, and on perusing which it will be seen that these eminent counsel, who were furnished with the report of Moulvi Abdul Kadir also and a map of the locality, have all given their opinions in accordance with the contention urged on behalf of His Highness' Government.

Messrs. Woodruffe and Evans, two of the said counsel, in their joint opinion distinctly say (1) that the limit of the cession is the left edge of the flowing stream as it may exist from time to time; (2) that there is nothing in article 9 of the treaty inconsistent with this view, as a physical object which is mentioned as a boundary may belong to either of the parties or may be held in common; (3) that they are not satisfied that any practice of the locality generally treating the lands up to the left edge of the deep stream as British territory with the knowledge or acquiescence of His Highness' Government is proved except in the sense that land is taken possession of and cultivated by the raiats to whom access is easiest; and (4) that such practice, if proved, would not affect the sovereign rights of His Highness. In discussing these questions, they have clearly expressed it as their opinion that "the Government of His Highness the Nizam retained the bed of the rivers mentioned in the treaty granting the taluks, and that the limit of the territories ceded to the Government of India is the left water edge on the left side of the flowing stream." Mr. Pugh has recorded a separate opinion, but virtually

to the same effect. All these views are apparently inconsistent with the grounds of the decision of the Government of India referred to in Mr. Tucker's letter No. 284, dated the 18th February 1895.

Under these circumstances I hope you will agree with His Highness' Government in thinking that the Government of India may be respectfully requested to be good enough to reconsider the whole question about the disputed boundary.

Ten printed copies of the case and opinions above referred to are herewith sent.

From O. V. BOSANQUET, Esq., Officiating Under Secretary to the Government of India, Foreign Department, to the Resident at Hyderabad, dated Fort William, the 22nd March 1897, No. 1118-I.B.

I am directed to reply to your letter, No. 233, dated the 24th August 1896, regarding the boundary between British India and His Highness the Nizam's Territories on the Gódávari river.

2. With a view to a final settlement of the matter, the Government of India will not insist on retaining the midline of the stream and agree that the left margin of the deep stream shall be fixed as the political boundary while the left edge of the water, as shown in the last survey map, shall as suggested by the counsel, whom His Highness' Government consulted, be fixed as the boundary with regard to rights to minerals.

3. I am to request you to arrange in direct communication with the Government of Madras for the necessary demarcation during the approaching hot season.

Endorsement No. 1119-I.B.

A copy of the foregoing, together with a copy of the letter to which it is a reply, is forwarded to the Government of Fort St. George for information and guidance, with reference to their letter, No. 566, Revenue, dated the 26th October 1896.

(By order.)

Fort William,
22nd March 1897.

(Signed) O. V. BOSANQUET,
Offg. Under Secy. to the Govt. of India.

Read—the following letter from TREVOR CHICHELE-PLOWDEN, Esq., C.S.I., Resident at Hyderabad, to the Secretary to the Government of Madras, Revenue Department, dated Hyderabad Residency, the 30th March 1897, No. 1877:—

I have received a letter from the Government of India conveying their decision as to the boundary to be adopted between British India and the territories of His Highness the Nizam on the Gódávari, and I have been instructed to arrange for the necessary demarcation during the approaching hot season in direct communication with the Government of Madras.

2. In writing to His Highness' Government, I have pointed out that two boundaries have to be demarcated—the political boundary and the boundary for minerals—; and have requested the Minister to select the officer whom he proposes to employ on behalf of His Highness' Government for this purpose. I shall be much obliged if you will inform me what the wishes of the Madras Government are in the matter.

Read—again the following G.O., No. 778, Revenue, dated 14th April 1897:—

Order—No. 778, Revenue, dated 14th April 1897.

The following telegram will be despatched to the Government of India, Foreign Department:—

"Your endorsement No. 1119, dated 22nd ultimo. Copies of all enclosures to Resident's letter No. 233, dated 24th August 1896, not yet received. Please send them as early as possible."

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

Read—the following letter from the Officiating Under Secretary to the Government of India, Foreign Departmen,, to the Acting Under Secretary to the Government of Madras, Revenue Department, dated Simla, the 17th April 1897:—

With reference to the Honourable Mr. Stokes' telegram of the 14th instant, I enclose a copy each of Mr. Hormusji Vakil's memorandum and the opinions of Counsel, which formed enclosures to the Resident of Hyderabad's letter, No. 233, dated the 24th August 1896, regarding the Gódávari river boundary dispute.

Enclosure.

OPINION OF COUNSEL

IN THE MATTER OF

The Godavari boundary dispute.

There is no question but that up to the time of the cession the territory ceded the territory on the opposite side of the river and also the whole of the river were included in His Highness the Nizam's Dominions.

The agreement for the cession is formulated by Mr. Young, Secretary to the Government of India in his letter of the 5th September 1860 as follows:—(so far as is material). "The unqualified control of all the possessions of His Highness on the left banks of the Gódávari and Wainganga shall be delivered to the British Government by His Highness" and "no obstruction will be caused in crossing the Gódávari and no sair-tax shall be collected in cases where the said river is crossed." It is I think clear that the territory then contemplated as the subject of the cession was territory on the left bank of the river only and that provision was intended to be made against the obstructing or taxing of the river primarily against His Highness the Nizam and in favour of the British Government in the view that the river was to continue part of His Highness the Nizam's Dominions. Of course that agreement might have been altered but there seems nothing to show or to suggest it, and coming to the Treaty itself which is dated the 31st December 1860 we find the subject of the cession described in the self same words as "all the possessions of His Highness on the left bank of the river Gódávari and" of the river "Wainganga." Then after some words describing their position in relation to the confluence of the rivers which, whether correct or not, are immaterial there follows a "videlicet" which prefaces an enumeration of taluks. Had these taluks up to this time included some lands on the right bank it would in my opinion have been impossible to maintain that those lands on the right bank had passed to the British Government and in my opinion, it would have been the same with any islands in the middle of the river. I do not think that the enumeration of the taluks could operate to pass anything beyond what was on the left bank. If this is the true construction of article 8 standing alone, does article 9 provide for anything inconsistent with that construction? I can see nothing of the kind. The navigation of the Gódávari and its tributaries it is provided shall be free so far as they form the boundary between the two States that is as I think it means so far as one bank belongs to one State and the other bank to the other State. The word boundary is shown in the First Assistant's letter of the 18th February 1895, Exhibit P. to be used in a variety of senses; and it is sometimes used to denote the exact line of division, which does not generally appear upon the ground at all, and sometimes to denote a physical boundary natural or artificial appearing upon the ground, it may be a river or a ditch a fence or a wall or a row of boundary pillars. In the case of a physical boundary the exact line of division may fall just on one side or just on the other or along the middle of the physical boundary. In any case the physical boundary is correctly described as the boundary. And which party it belongs to or whether it belongs half to one and half to the other is purely a question of title. The rule that the exact line of division is to be taken along the middle of the physical boundary has in my opinion no application, where one side shows title to the physical boundary.

Here the title of His Highness the Nizam to the part of the river Gódávari in question was clear up to the cession the agreement formulated in September 1860 shows no intention to cede any portion of it, and in my opinion the treaty itself had no such effect. By article 9 the B itish Government as well as His Highness the Nizam are prohibited from levying customs or other cesses on goods and this would seem to have been intended to meet the case of the British Government claiming to levy such duties or cesses on the left bank.

I am of opinion however that Mr. Clegg's contention in his letter of 6th August 1890, Exhibit V, is substantially correct and that any accretion to or extension of the left bank is British territory.

This brings me to the question of local practice and I have carefully read and considered all the papers bearing upon this point as well as the other point and in particular I have read

all the evidence taken by Mr. Skinner. The evidence has very little bearing upon the question of the sovereign rights of the two Governments, if any at all, and in so far as it may touch that question I do not see how it could affect the rights of either Government. It does not appear that His Highness' Government had any knowledge of still less that it acquiesced in any dealing into the bed of the river inconsistent with its sovereign rights. In fact the evidence shows what one might expect that it was the practice for the ryots most handy to the place to lay hold on and cultivate any addition to the land that might appear and that unless they were disturbed, as they seldom were, they continued to cultivate it and in due time it was settled as part of the village. This evidence may I think be used as to some slight extent supporting Mr. Clegg's view in so far that the occupation of such lands was consistent with it but in my opinion it in no way proves that the British Government had any title or that the taluks enumerated at any time extended to the edge of the deep channel still less to the middle of it.

I therefore answer the questions put to me as follows :—

Questions.	Answers.
1. What is the fair construction, meaning and interpretation of article 8 of the Supplemental Treaty of the 26th December 1860 above referred to? Does Counsel agree with His Highness' Government that this article only ceded the processions of that Government on the left bank of the river and nothing in the river or the bed of the river?	1. I am of opinion that according to the true construction of article 8 of the treaty, the possessions on the left bank only of the river were ceded, and nothing in the river or bed of the river, but that the land on the left bank might be increased or diminished by the action of the river.
2. Does article 9 of the said treaty in any way affect, modify or alter the meaning of article 8, and if so, in what respect? If it does not, does Counsel concur in the view taken by His Highness' Government that this article of the treaty referred to the Gódávari and its tributaries as the boundary between the territories of the two Governments only incidentally, and by way of description, and not so as to alter or affect the territorial rights of either Government?	2. I am of opinion that article 9 in no way affects modifies or alters the meaning of article 8. I am clearly of opinion as above explained that the reference to the Gódávari and its tributaries in no way altered, or affected or was intended to alter or affect the territorial rights of either Government.
3. Has any practice of the locality generally treating the lands up to the left edge of the deep stream as British territory with the knowledge and acquiescence of His Highness' Government been proved? In answering this query, Counsel will bear in mind that the practice in the taluks now included in the Madras Presidency has been, as reported by the officers of the said Government and as recognized by that Government, the very reverse.	3. I am of opinion that no practice of the locality generally treating the lands up the left edge of the deep stream as British territory with the knowledge and acquiescence of His Highness the Nizam's Government has in any way been proved and it does not seem to me that there is any reliable evidence to that effect.
4. Supposing the existence of such practice has been proved, could it affect or supersede the sovereign rights of His Highness under and prior to the treaty?	4. I do not think any practice of the kind set up in the evidence could affect or supersede His Highness the Nizam's sovereign rights under and prior to the treaty.
5. And on all other points generally which may occur to Counsel on the facts and circumstances of the case as above set out and disclosed in the annexures to the case?	5. No other point occurs to me on the facts and circumstances of the case as disclosed in the annexures.

April 7th 1896.

(Signed) L. P. PUGH.

Opinion of Counsel in the matter of the Góddvari boundary dispute.

By article 8 of the supplemental treaty, dated the 26th December 1860, His Highness the then Nizam of Hyderabad ceded to the British Government "in full sovereignty all possessions of His Highness on the left bank of the river Gódávari and of the river Wainganga above the confluence of the two rivers, viz., the taluks Rakapilly, Bhadráchallam, Cherla, Albaka, Noogoor and Seroncha," and by article 9 provided that "the navigation of the river Gódávari and its tributaries so far as they formed boundary between the two states shall be free and no custom duties or other cesses shall be levied by either of the two contracting parties, or by the subject of either on goods passing up or down the aforesaid rivers."

The main question in dispute between the Government of India and His Highness the Nizam's Government is the construction of article 8 and the limit of the cession made by this treaty read in the light if any thrown on the construction of article 8 by article 9.

Arguments as to the possible meaning of words standing by themselves lead to little result in the construction of documents, all documents whether they be treaties between States or instruments executed by private parties are subject to the same general rule, that the question of intention is to be collected from the language in the document with reference to surrounding circumstances owing, however, to the peculiar character of the contracting parties and the subject-matter of treaties relating to cession of territory as compared with grants by a State to a subject of that State or instruments between subjects the presumptions applicable to such grants and instruments are not always applicable to treaties between States (see *Vattoll's Law of Nations, Book I, Chapter XXII*).

The general rule as to river boundaries between States is thus laid down by Wheaton "when a river is the boundary between States the middle of the channel is generally treated as the line of separation between the two States, but this presumption is capable of being rebutted," (see *Wheaton's International Law, 3rd Edition, page* 241).

This presumption is for instance rebutted by the fact of one State having established itself on one bank whilst the other bank was not the subject of settled sovereignty (see *Vattoll's Law of Nations, supra*), when one State is at one time in possession of sovereign rights on both banks and grants territory on one bank the general rule above stated does not prevail (see *Angell on Tide water, page* 7), quoted in argument by Mr. Roundell Palmer, Q. C. (afterwards Lord Selborne) in *Lord vs. The Commissioners of Sidney*, 12 Moores P. C. Cases, page 487, where the special rule in such a case is thus laid down "The well settled rule of the law of nations is that when an arm of the sea or a river is the boundary between two nations or States if the original jurisdiction is in either in the absence of a convention respecting it, each holds to the middle of the stream. But when one State is the original proprietor and grants the territory on one side only, it retains the river within its own domain and the newly established State extends to the river only and the low water-mark is the boundary."

The limitation of the general rule thus laid down was stated in the case above referred to by Mr. Palmer to have been recognised and acted upon by the Supreme Court of the United States in reference to the Ohio river, of which the State of Verginia was the original proprietor and had ceded the land on one side only to the State of Kentucky.

The principle so laid down appears to us equally applicable whether the river be tidal or not.

These are the only direct authorities one can find on the subject and applying the principle therein enunciated to the facts of the present case, we are of opinion that the Government of His Highness the Nizam retained the bed of the rivers mentioned in the treaty fronting the taluks Rakapilly, &c., and that the limit of the territories ceded to the Government of India is the left water edge on the left side of the flowing stream. The words on the left bank of the river mean in our opinion on the left side of the river as opposed to the right side, and do not mean the high bank on that left side.

A river though to some extent a fluctuating boundary, is not an inappropriate one for political purposes and for civil and criminal jurisdictions and is in many respects preferable to an imaginary line boundary, as it is always visible, nor does any difficulty arise as to surface rights or the collection of revenue by the State although it may happen that an individual may, by an alteration of the course, find his lands under a different jurisdiction.

These rivers apparently fluctuate within narrow limits as compared with deltaic rivers.

If any difficulty were found in the enjoyment of mineral rights by the two contracting States owing to fluctuation of the stream, it would be easy for them to agree to give such rights for ever (if so desired) by agreeing to take the line of the left edge of the water in the last survey map for this purpose only, leaving the water edge on the left side of the flowing stream as it may exist from time to time to be the boundary for other purposes.

In this view the British Government would have no claim to islands unless and until by the alteration of the stream they cease to be islands and become annexed to the left bank.

The riparian proprietors would be entitled to any innocent use of the water which did not injure the Hyderabad State.

The navigation of the stream free of tools is provided for by article 9.

We would answer the question as follows :—

Questions.	Answers.
1. What is the fair construction, meaning and interpretation of article 8 of the supplemental treaty of the 26th December 1860, above referred to? Does Counsel agree with His Highness' Government that this article only ceded the possessions of that Government on the left bank of the river and nothing in the river or the bed of the river.	1. We are of opinion that the limit of the cession is the left edge of the flowing stream as it may exist from time to time.

Questions.	Answers.
2. Does article 9 of the said Treaty in any way affect, modify or alter the meaning of article 8 and if so in what respect? If it does not, does Counsel concur in the view taken by His Highness' Government that this article of the treaty referred to the Gódávari and its tributaries as the boundary between the territories of the two Governments only incidentally and by way of description, and not so as to alter or effect the territorial rights of either Government.	2. There is nothing in article 9 inconsistent with this view as a physical object which is mentioned as a boundary may belong to either of the parties or may be held in common.
3. Has any practice of the locality generally treating the lands up to the left edge of the deep stream as British territory with the knowledge and acquiescence of His Highness' Government been proved? In answering this query, Counsel will bear in mind that the practice in the taluks now included in the Madras Presidency has been, as reported by the officers of the said Government and as recognised by that Government, the very reverse.	3. We are not satisfied that any such practice of the locality is proved except in the sense that land is taken possession of and cultivated by the ryots to whom access is easiest.
4. Supposing the existence of such practice has been proved, could it affect or supersede the sovereign rights of His Highness under and prior to the treaty?	4. Such practice would not affect the sovereign rights of His Highness.
And on all other points generally which may occur to Counsel on the facts, and circumstances of the case as above set out and disclosed in the annexures to the case.	
29th April 1896.	(Signed) J. P. WOODROFFE. (Signed) G. H. P. EVANS.

Order—No. 338, Revenue, dated 15th May 1897.

Miscellaneous.

The letters from the Government of India and the Resident at Hyderabad read above will be communicated to the Board of Revenue and to Messrs. Binny & Co.

2. It has now been finally settled by the Government of India that the left margin of the deep stream of the Gódávari river shall be the political boundary between His Highness the Nizam's dominions and the Gódávari district and that the left edge of the water "as shown in the last survey map" shall be the boundary with regard to rights to minerals. Before, however, taking steps to give effect to this decision His Excellency the Governor in Council desires to ascertain from the Government of India what is meant by "the last survey map" referred to in their letter and also whether it is their intention that the political boundary too should be demarcated once for all as pointed out by the Resident at Hyderabad to His Highness the Nizam's Government.

3. The following letter will accordingly be despatched to the Government of India.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Political Department.
„ the Board of Revenue (Land Revenue).
„ Messrs. Binny & Co.

Exd. Shaik Karim,

50 Copies.

REVENUE DEPARTMENT.

From

The Honourable Mr. G. STOKES, I.C.S.,
Acting Secretary to the Government of Madras,
Revenue Department.

To

The SECRETARY to the GOVERNMENT of INDIA,
Foreign Department;

Dated Ootacamund, 15th May 1897.

Sir,

Miscellaneous.

Adverting to Mr. Bosanquet's endorsement No. 1119-I. B., dated the 22nd March 1897, regarding the boundary between Hyderabad and British Territory on the Gódávari river, I am directed to enquire if the "last survey map" referred to in paragraph 2 of the letter to the Resident at Hyderabad No. 1118-I.B., dated the 22nd March 1897, is the one which is stated to have been prepared by the Survey of India party about 1880–81, and to which reference is made by Mr. Cardozo, Superintendent, Madras Survey, in paragraph 1 of his letter No. 76-B., dated the 18th August 1891, printed in page 11 of the file forwarded with Mr. Muir Mackenzie's letter No. 2902-8, dated the 29th December 1892.

2. I am further to invite attention to the letter from the Resident at Hyderabad, No. 1877, dated the 30th March 1897 (copy enclosed) from which it would appear that the Resident is of opinion that the political boundary too should be demarcated once for all. His Excellency the Governor in Council, however, doubts if this is the intention of the Government of India and desires to be informed whether it is not meant that the left margin of the deep stream *as it may exist from time to time* should be regarded as the political boundary, *i.e.*, for purposes of civil and criminal jurisdiction, &c.

I have the honour to be,
Sir,
Your most obedient servant,

(Signed) G. STOKES,
Ag. Secretary to Government.

Exd. Shaik Karim.

30 Copies.

1897.

FOREIGN DEPARTMENT.

From

The Government of Fort St. George.

Recd. } 1897. *Enclosures*

Regd. *Spare copies*

Letter, No. 339, 15th May 1897.

MAY.

ENQUIRING if the "last survey map" referred to in the letter of the Government of India to the Resident at Hyderabad regarding the boundary between His Highness the Nizam's Dominions on the Gódávari river and the British Territory is the one which is stated to have been prepared by the Survey of India party in 1880–81, and requesting to be informed whether the political boundary too should be demarcated once for all.

1897.

RESIDENT AT HYDERABAD.

From *The Government of Fort St. George.*

Recd.	1897.	*Enclosures*
Regd.		*Spare copies*

Letter, No. 340, 15th May 1897.

MAY.

INFORMING the Resident at Hyderabad that the wishes of the Madras Government in the matter of the arrangements to be made for the demarcation of the boundary between Hyderabad Territory and the Gódávari district will be communicated to him on receipt of the reply from the Government of India to a reference made to it on the subject.

REVENUE DEPARTMENT.

From

The Honourable Mr. G. STOKES, I.C.S.,
Acting Secretary to the Government of Madras,
Revenue Department,

The Resident at Hyderabad,

Dated Ootacamund, 15th May 1897.

Sir,

In reply to your letter No. 1877, dated the 30th March 1897, regarding the demarcation of the boundary between Hyderabad Territory and the Gódávari district of this Presidency, I am directed to inform you that the Government of India has been asked to state what is meant by the "last survey map" referred to in their letter and also if it is their intention that the political boundary too should be demarcated now. The wishes of His Excellency the Governor in Council in the matter of the arrangements to be made for the demarcation of the boundary line will, I am to add, be communicated to you on receipt of the reply from the Government of India.

Miscellaneous.

I have the honour to be,
Sir,
Your most obedient servant,

(Signed) G. STOKES,
Ag. Secretary to Government.

Exd. Shaik Karim.

20 Copies.

D/4 1,000—20-2-96. 15-5-97

Read again G.O. 565-6 of 26.10.97

REVENUE DEPARTMENT.

Re. Hydrabad-Godavari boundary C. Nos 2795, 2847, & d.o. 1066 of 1897,

From the Govt of India & the Resident at Hydrabad

Dated 22.nd March 1897.
& 30 & 17 th April 1897.

FOR ORDERS.

The Hon^ble Mr Grose C.I.E.

H^is Excellency the Governor.

The Secretary is of opinion that this Gov^t should gratefully refuse to accept two orders of the G^t of I.; but I do not agree with him. The ultimate decision rests with them. We can only reiterate arguments which have already been placed before them, with the fresh addition that we do not like the decision & wish we had been consulted before it was promulgated. But it is out of the question that this G^t of I addition will induce them to alter their decision, & as I have said, the decision lies with them not with us.

I think therefore we must accept the decision, but before we can arrange for demarcation, we must 3/5/97 ask the

With the first of the Currents read above, the Govt of India communicates its final decision on the question of the boundary between the British and Hydrabad territory along the whole line of the six Taluks, Bhadrachalam & Rekapalli (now in the Godavari District), Cherla, Albaka, Nagaram and Sironcha. (in the Central Provinces). These Taluks were Ceded to the British Govt by the Nizam of Hydrabad by treaty dated the 26th December 1860 which runs as follows:

. . .

Article 8.

"His Highness the Nizam cedes to the British Govt in full Sovereignty all the possessions of His Highness on the

left bank of the river Godavery and of the river Wyne Gungah above the Confluence of the two rivers viz. the Taluks of Rekapilly, Buddrachellum, Cherla, Albaka, Noogoor and Seroncha.

Article 9.

The Navigation of the river Godavari and its tributaries, so far as they form the boundary between the two states, shall be free, and no Customs duties or other Cesses shall be levied by either of the two Contracting parties, or by the subjects of either, on goods passing up or down the aforesaid rivers.

The necessity for settling the boundary between the Bhadrachalam Taluk and the Nizam's dominions was first brought to the notice of this Govt in 1892 by Messrs Binny & Co. to whom it was proposed to grant a Coal Mining lease in respect of certain lands in the Bhadrachalam Taluk.

FOR ORDERS

Questions suggested on two last 3 pages of two books, & get a copy of two last survey maps

If this decision is accepted, it may be communicated to Messrs Binny & Co.

JG
5/5/97

I await the opinion of the Hon. Sir Govt.

J.S.H 7.5.97

Printed correspondence attached in H Go No 75 & 30.1.93 flagged C.

E. in G.o 1116-7
2.11.92

As these lands extended in Certain parts up to the river Godavari, the Coal Company desired to know how far on the bed of the river they could carry on mining operations, and the question arose as to what was the precise boundary line between the Nizam's territory and the Godavari Dst. About the same time, a similar question was raised by the Administration of the Central Provinces, with regard to the boundary Seroncha Taluk Taluk of the Chanda District. The Nizam's Govt Contended that according to the terms of the treaty of 1860 the entire bed of the Godavari river belonged to Hydrabad and that the left bank of the river was the boundary between the two Governments. At the instance of the Govt of India, a local enquiry was then held by the Dy. Comr of the Chanda District at which a representative of the Nizam's Govt and

ed Mr Gillman, the Special asstt agent Godavari, who was deputed by this Govt were present.

From the evidence recorded at the enquiry, the Chief Court of the Central Provinces was of opinion that it was clear that the claim of the Nizam's Govt to the exclusive possession of the river-bed was not established by local practice, and he accordingly suggested to the Govt of India that the line drawn, ~~midway~~ between bank and bank of the river might be adopted as the boundary in all cases of dispute.

As regards the Bhadrachalam and Rekapalli Taluks of this Presidency, Mr. Gillman who had attended the Chanda enquiry reported that a ~~local~~ similar local enquiry would not be of much use, that at most it might help to settle the minor question how far the actual enjoyment of the river-bed lands by the villagers on the

Mr Laurie's letter No 416 Dt 25-5-93 in page 1 of the printed Correspondence Stitched with G.O No 729 12.1.94

Mr Gillman's report in Para 314 G.O. No 791 Dt 8.9.93 & also letter to India No 792 of the same date (flagged B).

Letter to India No 792 in 8.9.93 G.O of Flagged B.

Resident's letter No 153 Dt 30.5.94 flagged A in G.O No 728 12.10.94

the British side has ~~intended~~ intended, but that the question of the territorial jurisdictions of the Governments on either side must be determined by general rules applicable to river-boundaries and by the terms of the treaty of 1860.

This Govt Concurred in Mr Gillman's views and decided not to take any further action towards arranging for a local enquiry similar to that instituted in the Chanda District unless asked by the Govt of India to do so.

The ~~Govt of India~~ Resident at Hydrabad, Mr. Plowden, to whom the Govt of India forwarded all the correspondence and the records connected with the Chanda enquiry, took a totally different view from that of the Chief Court of the Central Provinces. He argued that ~~the~~ before the treaty of 1860, the Nizam's Govt possessed three things in full sovereignty, namely, the lands on the right-bank

ed Mr Gillman, the special asstt
agent Godavari, who

bank of the river, those on the
left bank. and the rivers
themselves. deep stream, river-
bed, and all; ~~and~~ that
they ceded by article 8 of
the treaty only one of these
three things, namely, the lands on
the left bank; that the
riverbed therefore still
belonged to them. and
further that there was no
evidence to show that the
British Cultivation had
ever extended further than
up to the left margin of the
deep stream.
The Govt of India, however,
observed that the effect
of article 9 of the treaty
which made the Godavari
river the boundary between
the two territories, was overlooked
in Mr Plowden's argument
and accordingly applying
the rule usually observed
when a river forms the
boundary between British
and Foreign territory,
they ~~Supt~~ decided that the
precise boundary was the

letter to India 729
12.10.94.

X [illegible] D in £0806
21.2.95

middle of the deep stream.
To this decision the Madras Govt
declared that it had no objection
but the Nizam's Govt whose
views were shared in by the
Resident, Mr. Plowden, would
not accept it. It appears
that the Resident (either of
his own accord, or at the instance
of the Hyderabad Durbar, it is
not clear) addressed a letter
to the Govt of India on the
4th September 1894. asking for
a reconsideration of the case.
The Govt of India, however,
after traversing the Residents'
arguments again declared in
their letter No 408 P. D. 21.2.95 that
the Godavari and any of its
tributaries which may be neces-
sary to name, form the bound-
ary between the Hyderabad
territory and the Ceded Taluks
and that the present line
of the middle of the deep
stream of these rivers
shall be finally regarded
as the political boundary
irrespective of any fluctu-
ations to which the streams
may hereafter be subject.

flagged D

~~from~~ Letter from the Govt of India
dd 19.7.94 flagged H in
Govt No 728 dd 12.10.94

Further, the Govt of India in the same letter asked the Resident to urge His Highness's Govt to take steps to depute an officer to Cooperate with the British official to be appointed by the Madras Govt for the purpose of laying down the boundary. Again the Nizam's Govt did not choose to give effect to the wishes of the Govt of India. After the lapse of ~~year~~ nearly one year, a further Communication was addressed by the Resident on the 20. January 1886 to the Govt of India who gave the following reply:— 31.2.96 flagged F in F.O. 629 13.2.96.

'The Govt of India will not refuse to receive any further representations which His Highness the Nizam's Govt may wish to make regarding the Constitution of the Godavari boundary, but it was only after full and careful consideration of all the aspects of the Case that the mid-line of the deep stream was selected as the boundary and the

the Govt of India are not likely to depart from the view. His Highness's Govt have already had a year in which to make such representations: and the further progress of the Case, which consists in ascertaining and fixing the boundary as above defined Cannot be longer delayed on this account.

"A general local enquiry such as the Minister appears to suggest can serve no useful purpose and you should therefore request His Highness's Government to instruct their delegate to confine his attention to ascertaining and fixing the mid-line of the deep stream of the rivers."

These instructions of the Govt of India were however disregarded by the Nizam's Govt. They did not see fit to invest their representative with authority to arbitrate or decide

finally the mid-line of the deep stream and the result was that the Special Assistant Agent, Godavari, Mr Spencer, who was deputed by the Govt to Co-operate with the Hyderabad delegate found it impossible to accomplish the settlement of the disputed boundary, and had to rest content with ~~ordering~~ the survey of the six miles of the river-bed adjoining the ~~Coal~~ Badrachalam Coal-fields.

The action of the Nizam's Govt who had frustrated the intentions of the Govt of India and brushed aside their decisions was reported to them in letter No 566 dated 26.10.96. and His Excellency the Governor General in Council was requested to take such further action as might be required to ensure a prompt and final settlement of the ~~vexed~~ vexed question of the political boundary between the Hyderabad territory and

G.O. 565-6 / 26.10.96 / flagged G

flagged G

?
Mlly 1.5.97

Not all present. They wanted the whole of the river bed, above the deep stream only
Hy

11

and the Badrachalam Taluk. It was hoped that the Govt of India would bring pressure to bear on the Nizam's Govt to make them yield to the decision at which they arrived in July 1894 and to which they adhered more than once.

It is now a matter for surprise to see that the Govt of India have after all yielded to the views of the Hyderabad Durbar.

The letter of the Resident in the first of the Currents read above says:—

"With a view to a final settlement of the matter, the Govt of India will not insist on retaining the Mid-line of the deep stream and agree that the left margin of the deep stream shall be fixed as the political boundary while the left edge of the water as shown in the last survey map shall as suggested by the Counsel whom His Highness's Govt consulted, be fixed as the boundary

with regard to rights to Minerals.'
This decision will have a serious effect on the Mining Operations of the Godavari Coal Company, and inasmuch as the most valuable seam of Coal is believed to lie under the bed of the river. The question now for Consideration is whether this Govt should make any representation to the Govt of India in view to the question being reconsidered.

In the first place, the claims of the Nizam's Govt are strongly supported by the opinions of the eminent Counsel, Sir Greffith Evans & Mr Hood Roffey and by the Resident Mr Plowden.

2ndly, all that could be urged by this Govt in support of the Mid stream boundary has already been put forward before and by the Govt of India.

The significance of the terms of article 9 of the

The Govt of India has not allowed its view that the proper boundary is the mid stream but merely stated that to hasten a final settlement of the matter it will not object to the Hyderabad Durbar's proposals. This Govt is, I submit, the party most interested in this early settlement of the dispute and it has not been consulted at all by India in arriving at the present decision.
Addl 1.5.97

I submit this Govt. should fully support the Resident's Officers.
7/5/97.

Mr Plowden's arguments were all before the Govt of India when that Govt decided that the mid stream was the proper boundary. So were also all the arguments which the Eminent counsel particularly however. The Eminent counsel merely say the Govt of India was wrong. On this point which is as much (if not more) one of policy as of law, the counsels' opinions are worth little. Addl 7/5/97.

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the treaty which made the Godavari river the boundary was fully urged by the Govt of India on His Highness's Govt.

As regards the order of this Govt No 671 Dated 30.12.78, in which it was inadvertently decided that the Nizam's Govt ceded only certain Talaks lying on the left bank of the river, that the Cession cannot be held to include any island in the mid stream, it has been explained in para 3 of letter No 792 dated 8.9.93. that the decision was based mainly on the interpretation of Article 8 of the treaty and did not consider the provisions of article 9 thereof.

Again with regard to the order of this Govt dated 29.6.85 No 122, in which this Govt. while issuing certain instructions relating to the resettlement of the Badrachalam and Rekapalli Taluks observed, having in view the decision in G.O. No 671

× in G.O. flagged B.

671 d) 30.12.78, that the assessments levied by the proprietors on river bed Cultivation should be excluded from the assets on which their peshcush was to be Calculated, it has been ~~observed~~ pointed out that the order in question was subsequently Cancelled by G.O. No ~~690~~ 460 dated 17th June 1890.

The Nizam's Govt has also been confronted by the Govt of India with the Residents' letter dated the 7th January 1881, in which it was stated that the Nizam's Govt had no Claim or right of any sort ~~to~~ beyond the Mid stream of the river, and with the reply thereto from the Nizam's Minister in which the Correctness of the Residents statement was not challenged but tacitly accepted.

There seems to be therefore nothing new which can be urged for the Consideration either of the Govt of India or of the Nizam's Govt.

in para 4 of letter No 792 S 8.9.93.

vide G.Os 528-9 & 137
22.12.80 15.3.81

also the Resident's letter of 1881 printed in page marked with red tape in G.O flagged H;
have 3 of also letter to the Resident dt 22.7.93
stitched with the same G.O.

As the Govt of India do not alter their decision but merely propose with respect what decision in order to get the matter finally settled, this Govt is not called upon to submit to argue the matter further

called upon to reiterate the correctness of that decision

Ulla
1.5.97

The Govt of India's present position is this. They maintain or rather do not deny the correctness of their former ruling that the mid stream is the proper boundary. This ruling was arrived at after a careful consideration of all the arguments that could be advanced one way or the other & India has distinctly stated that they are not likely to alter it. (Please see Flag F.) But they now say that with a view to a final settlement of the matter they will not insist on that ruling being carried out but will (practically) accept the Hyderabad Durbar's proposals.

The decision is therefore based on considerations of expediency, of the force of which I submit, this Govt is the best judge. As points out above, this Govt was not consulted at all before the present decision. The question seems to be will the advantages of a prompt settlement outweigh the disadvantages of yielding up to Hyderabad the rights of this Govt as decided by the Govt of India?

Apart from the loss to the Godavari Coal Company the latter course will entail the loss to Govt of the royalties on the richest part of the strata which is said to underlie the river bed.

There is nothing standing in the way of a speedy settlement except the covert refusal of the Durbar to accept the ruling of the Govt of India, a refusal which, I submit, was probably not have been persisted in had it not apparently been supposed that the Resident who seems to have put his own opinion before the orders of India

Thirdly, the present decision of the Govt of India affects not only the interests of this Govt but also of the Central Provinces administration which will also lose its rights over the valuable seam of coal which is reported to underlie the river bed. Supposing this Govt was precise in the present views of the Govt of India, certain difficulties still arise. The only course, under the circumstances, seems to be to accept the decision of the Govt of India and to give effect take steps to give effect to it. But here again Ulla 1.5.97 there are difficulties. The Govt of India have fixed the left margin of the deep stream as the political boundary, and the left edge of the water, as shown in the last Survey map, shall as the boundary with reference to the rights to minerals, and have asked the Resident at Hyderabad to arrange with this Govt direct for the necessary demarcation during the

Ulla
1.5.97

the reason. ~~The Resident~~
The Resident also has accordingly addressed a letter to this Govt saying that he has pointed out to the Nizam's Govt that their boundaries have to be demarcated — the political boundary and the boundary for Minerals — that he has requested the Nizam's Minister to select the officers whom he proposes to employ on behalf of His Highness's Govt. for this purpose, and that he would be much obliged if he would be informed what the ~~view~~ wishes of this Govt are in the matter.

In the first place, it seems very doubtful whether it is the intention of the Govt of India that the political boundary should be now demarcated as supposed by the Resident. The Opinion of the Counsel, Messrs Woodroffe & Evans, ~~Counsel~~

to which the Govt of India make a reference in their letter in the first of the above Current is that the left edge of the flowing stream as it may exist from time to time may be regarded as the political boundary. It is for their Highness Civil and Criminal Jurisdiction &c. If this is also what the Govt of India means, ~~there is evidently no need for demarcation~~, the political boundary cannot evidently be demarcated once for all.

As regards the demarcation of the boundary for Minerals, which has been declared by the Govt of India to be the left edge of the waters as shown in the last survey map; it is not clear what the Govt of India means by the last Survey map.

It appears from Mr Cardozo's letter dated the 18th August 1891 No 76-B. printed in page 11 of the printed Correspondence

897

Stitched with Go No 75 of 30.1.93.

that Badrachallam and Rekapalli were surveyed by the Survey of India party in 1880-81. that a Maps of these Taluks was Compiled from the Survey of India maps by Mr Gamble, Conservator of Forests and was printed in 1887. in the Office of the Superintendent Madras Survey, and that it shows the whole of the Godavari river. ~~of these or the Maps prepared from the Survey of India, it will be~~ the representatives to be appointed by the two Govts will have to do & will be to ~~have~~ ascertain the distance between the left edge of the water as shown in the plan, and fixed landmarks on the banks. The Govt of India may perhaps be asked to state if this is the Map referred to.

+ If the Govt decide to acquiesce in the present view of the Govt of India

1.5.97

1.5.97

Re. Hyderabad-Godavari boundary

His Excellency the Governor for approval of the draft letter to India.

5.5.97

14.5.97

Read again Go. 565-6
26.10.96
C. Nos 2795 & 2847 of 1897
G.O. No 778 & 14.4.97
D.O.C. No 66 of 1897

Order No 338 & 15th May 1897.

The letters from the Govt of India and the Resident at Hyderabad read above will be communicated to the Board of Revenue and to messrs Binny & Co.

2. It has now been finally settled by the Govt of India that the left margin of the deep & broad of the Godavari river shall be the political boundary between His Highness the Nizam's dominions and the Godavari District and that the left edge of the water as shown in the last Survey Map shall be the boundary with regard to rights to Minerals. Before however, taking steps to give effect to this decision, His Excellency the Governor in Council desires to ascertain from the Govt of India

R.C. 13/5/97

India what is meant by 'the last Survey Map' referred to in their letter, and also whether it is their intention that the political boundary too should be demarcated once for all, as pointed out by the Resident at Hyderabad to His Highness the Nizam's Government.

3. [illegible] (from orders) [illegible]

[illegible] 11.5.97

1. The following letter will accordingly be despatched to the Govt of India

To the Political Dept.
" " Board of Rev (C.R.)
" Messrs Binny & Co.

50/5

Sd. 21-5-97
P.C. dtd. 19.5.97

Genl. Dept. 20/5/97

No. 339

To the Secretary to the Govt of India
Foreign Dept.

Sir,

Adverting to Mr Bosanquet's endorsement No 1119 I/3 dated the 22nd March 1897, regarding the boundary between Hyderabad and British territory on the Godavari river, I am directed to enquire if the 'last survey map' referred to in para 2 of the letter from the Resident at Hyderabad No 1118 I/3 dated the 22nd March 1897 is the one which is stated to have been prepared by the Survey of India Party about 1880-81. and to which reference is made by Mr Cardoze, Superintendent, Madras Survey in para 1 of his letter No 76-B dated the 18th August 1891 printed in page 11 of the file forwarded with Mr Muir. Mackenzie's letter No 2902/8 dated the 29th December 1892.

2. I am further to invite attention to the letter from the Resident at Hyderabad No 1877 dated the 30th March 1897 (Copy enclosed) from which it would appear that the Resident is of opinion that the political boundary too should be demarcated once for all. His Excellency the Governor in Council, however, much doubts if this is the intention of the Govt of India and desires to be informed whether it

it is not meant that the left margin of the deep stream as it may exist from time to time should be regarded as the political boundary ie for purposes Of Civil and Criminal Jurisdiction &c.

11.5.97

30/V

No 340

Dis. 21-5-97

To the Resident at Hyderabad

Sir,

In reply to your letter No 1877 dated the 30th March 1897 regarding the demarcation of the boundary between Hyderabad territory and the Godavari Distruct of this Presidency, I am directed to inform you that the Govt of India has been Asked to State what is meant by the 'last survey map' referred to in their letter and also if it is their intention that the political

9.5.97
14.5.97

23

political boundary too Sh be demarcated now as you seem to think. The wishes of His Excellency the Governor in Council in the matter of the arrangements to be made for the demarcation of the boundary line will, I am to add, be Communicated to you on receipt of the reply from the Govt of India.

11.5.97

20/V

MR
11/5