

## APPELLATE CIVIL.

Before Mukerji J.

GOBINDACHANDRA PODDAR

1931

Jan. 21, 26 ;  
Feb. 6.

v.

SUBDIVISIONAL OFFICER, CHANDPUR.\*

*Obstruction—Line of navigation, what is—Canals Act (Beng. V of 1864), ss. 13, 14, 15, 16—Notice under s. 80 of the Civil Procedure Code, if necessary in an action for injunction—Code of Civil Procedure (Act V of 1908), s. 80.*

In order to determine whether a particular point is within the line of navigation or not, all that has to be seen is whether it is a point at which the channel is in fact navigable, giving to the word "navigable" the ordinary meaning it bears.

In a case where the channel dries up in particular seasons of the year, it is quite possible that what is within the line of navigation in one particular season is not so in another season.

*Gokulchand Baral v. Emperor* (1) followed.

*Jugal Das Dalal v. Queen-Empress* (2), *Blundell v. Catterall* (3) and *Attorney-General v. Chambers* (4) referred to.

Nuisance or obstruction, which a supervisor is authorised to remove under section 13 of the Canals Act, must be *ejusdem generis* to the other kinds of nuisance and obstruction spoken of in the former part of that section.

*Mayor of Colchester v. Brooke* (5) referred to.

An action for injunction against a public officer for acts done in his official capacity cannot be maintained without the notice contemplated by section 80 of the Code of Civil Procedure.

SECOND APPEAL by the plaintiffs.

The material facts appear from the judgment.

*Dwarkanath Chakrabarti* and *Prakashchandra Majumdar* for the appellants.

*The Officiating Senior Government Pleader, Saratchandra Basak*, and *the Assistant Government Pleader, Nasim Ali*, for the respondents.

*Cur. adv. vult.*

\*Appeal from Appellate Decree, No. 118 of 1929, against the decree of Sashikumar Ghosh, First Subordinate Judge of Tippera, dated Sep. 3, 1928, affirming the decree of Upendrakumar Kar, First Munsif of Chandpur, dated Aug. 29, 1927.

- (1) (1928) Cr. Rev. No. 113 of 1928, (3) (1821) 5 B. & Ald. 268 ;  
decided by Mukerji J. on the 106 E. R. 1190.  
5th April. (4) (1854) 4 De G. M. & G. 206 ;  
(2) (1893) I. L. R. 20 Calc. 665. 43 E. R. 486.  
(5) (1845) 7 Q. B. 339 ; 115 E. R. 518.

MUKERJI J. This is an appeal by the plaintiffs, who have been unsuccessful in the courts below, in a suit for a perpetual injunction restraining the defendant from demolishing a *puccâ ghâtlâ* in execution of his order, dated the 16th August, 1926. The order was made by the defendant in his capacity as the Subdivisional Officer of Chandpur and supervisor of the Chandpur *Khâl*, purporting to act under sections 14 and 16 of the Canals Act (Bengal Act V of 1864). The order was made on the ground that the *ghâtlâ* in question was an obstruction to the "line of navigation" and a "nuisance."

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The contention urged in the appeal is that the place where the *ghâtlâ* is situate is not within the line of navigation. It has been pointed out that the *khâl* at the spot is about 750 feet wide, that there are other obstructions on both sides of the *ghâtlâ* projecting much further into the *khâl*, and that for several months in the year the place where the *ghâtlâ* is situate is dry land. It has been argued that the expression "line of navigation" means the stretch of the *khâl* which is *ordinarily* used for the purposes of passages of boats, *etc.*, and that the place in question does not satisfy that test. In support of this contention reference was made to *Jugal Das Dalal v. Queen-Empress* (1), which was a case under sections 283 and 290 of the Indian Penal Code and in which it was held that what was contemplated in those sections was the ordinary navigation of the river.

The question as to what is the meaning of the expression "line of navigation," as used in the Canals Act, came up before me for consideration in a criminal case in which an accused had been convicted under section 16 of the Act. It was the case of *Gokulchand Baral v. Emperor* (2). In that case, a very interesting contention was put forward on behalf of the defence, namely, that the limits of the line of navigation are co-extensive with the extent of

(1) (1893) I. L. R. 20 Calc. 665.

(2) (1928) Cr. Rev. No. 113 of 1928,  
 decided by Mukerji J. on  
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the rights of the Crown to the bed and shores landwards and they have to be fixed by the line of the medium high tide between the springs and neaps. This contention was sought to be supported by reference to *Blundell v. Cotterall* (1), *Attorney-General v. Chambers* (2) and other cases. This contention was overruled and the meaning of the expression "line of navigation" was expressed in these words:—

"Line of navigation has been defined in the Act "as meaning any navigable channel subject to the "provisions of the Act. The word 'channel' has been "defined in the Act as including any river, canal, "*khāl, nālā* or waterway, whether natural or artificial. "There is, as far as one can see, nothing else in the "Act which can serve to elucidate the meaning of the "expression 'line of navigation' any further, except "that in section 15 of the Act a somewhat curious "expression is used, namely, 'obstruction to the free' "and 'safe transit of such line of navigation.' \* \* \* "In the absence of any further elucidation of the "words 'line of navigation' than what is contained "in the definition of that expression in the Act and "in view of what a channel means under the Act, I "am inclined to take the view that, in order to "determine whether a particular point is within the "line of navigation or not, all that has to be seen is "whether it is a point at which the channel is in fact "navigable, giving to the word 'navigable' the "ordinary meaning that it bears; in other words, "whether at that point the channel allows the passage "of boats at all seasons of the year." I adhere to the remarks I then made, but with a slight modification. In that case, no question arose of the bed remaining dried up during any particular season of the year. The words "in other words, whether at that point "the channel allows the passage of boats at all seasons "of the year" were used in view of a contention as to whether a stretch of the slope which went under

(1) (1821) 5 B. & Ald. 268 (290); (2) (1854) 4 DeG. M. & G. 206; 43 106 E. R. 1190 (1198). E. R. 486.

water during abnormal tides only could be regarded as being within the line of navigation, and as an antithesis to emphasize the position that such a strip of land would not be regarded as within the line of navigation. It is quite possible that what is within the line of navigation in one particular season is not so in another season. But it cannot be disputed that, if during the months that the *char* remains under water, the channel is deep enough to allow boats to pass and boats do, in fact, pass over it, it is to be regarded as being for the time included in the line of navigation. These conditions, in my opinion, may be sufficiently inferred from the findings of the courts below. It should be noted that the plaintiffs were challenging the validity of the order of the defendant and it was for them to show that these conditions did not exist. The report on which they rely is not sufficient for this purpose.

In the view I take of this contention, it is unnecessary for me to consider whether, if the order was not justified on the ground of obstruction to line of navigation, it could be justified on the ground of nuisance, as has been urged on behalf of the respondent. There are, I may observe, difficulties in that respect, because, while section 13 of the Act would authorise a supervisor to remove a nuisance or obstruction to navigation, that nuisance or obstruction must be, as I read the section, *ejusdem generis* to the other kinds of nuisance or obstruction spoken of in the former part of the section; and sections 14 and 16 of the Act, under which the present order was made, do not speak of nuisance but only of obstruction to or in connection with the line of navigation and not navigation generally. The Act seems to me to be somewhat loosely drawn. But I am of opinion that the definition of the right of navigation, namely that "it is a right of way which may be enjoyed in the sea, "in tidal and non-tidal rivers, and as such it includes "all rights necessary for the full enjoyment and "exercise of the rights of convenient passage, such as "the right to pass and to ground and to anchor, to

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“remain for a reasonable time for the purpose of loading and unloading or completing repairs, or of waiting till the wind or weather or, probably also, the season permits the ship to leave,” the definition in Coulson & Forbes’ Law of Waters, 4th Edition, page 437, upon which the respondent relies, has not much relevancy in determining the meaning of “line of navigation.” In that view, the case of *Mayor of Colchester v. Brooke* (1) also, to which the respondent has referred, need not be discussed.

On behalf of the respondent, it has been urged that the suit itself was not maintainable for want of the notice required by section 80 of the Code of Civil Procedure. The court of first instance took that view but the lower appellate court has held otherwise. I am of opinion that, after the definite pronouncement of the Judicial Committee in the case of *Bhagchand Dagdusa Gujrathi v. Secretary of State for India in Council* (2), it is impossible to maintain this action, though one for injunction, without the notice contemplated by section 80.

The result is that the plaintiffs’ suit must, in any case, fail. The appeal must be dismissed with costs.

Leave has been asked for on behalf of the appellants to prefer an appeal from this decision. I am not prepared to grant the leave, as, in any case, the appellants’ suit cannot possibly succeed in view of the decision of the Judicial Committee to which I have referred.

*Appeal dismissed.*

A. C. R. C.

(1) (1845) 7 Q. B. 339; 115 E. R. (2) (1927) I. L. R. 51 Bom. 725; 518. L. R. 54 I. A. 338.