M.R.O. 1—28,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1550 Press Mis.

Dated 4-11-1858

Not to be folded or roughly handled

No. 51. Read the following letter from JAMES OUCHTERLONY, Esq., late Principal Sudr Ameen of Ootacamund; to W. H. BAYLEY, Esq., Secretary to Government, dated October 2nd, 1858.

SIR,

I have the honor to forward herewith a Memorial, in triplicate, addressed to the Honorable the Council of India, with a request that the same may be forwarded; and I humbly trust that the Right Honorable the Governor in Council may see reason to accompany it with his favorable recommendation.

To the Right Honorable LORD STANLEY, Her Majesty's Secretary of State, and the Honorable the Members of the Council of India.

The humble Memorial of James Ouchterlony,
late Principal Sudr Ameen of Ootacamund.

SHEWETH,

That your memorialist, respectfully claims compensation at the hands of your Honorable Council, for the abrupt abolition of the Judicial office lately held by him, and the grave pecuniary injury thereby inflicted, and he craves to recite the following explanatory circumstances in support of his present application.

2. Owing to an increased resort of Europeans to the Neilgherry Hills, to a large augmentation of the general residents, to a belief on the part of the ruling authorities, that it was still a fast growing community, and especially likely to prove so in respect of Europeans, (the Honorable Court of Directors, in this view had ordered a Revenue Survey of the Hills so far back as 1844), and lastly, to the well-grounded complaints preferred as to the utter inadequacy, both in respect of Civil and Criminal matters of the local provisions for judicial administration, the Government of Madras communicated with the Court of Sudr Adawlut in July 1854, on the subject of a remedy, which should meet the pressing wants of the Hill population in this latter particular.

3. In the following month, August 1854, a Draft Act framed by the Sudr Adawlut Court, was sent to the Government. This Act was designed to correct the grave deficiencies which then existed. Justice had been solely administered by the temporary Military Commandant, who was made to act also as a Joint Magistrate and District Moonsiff. Thus, criminal cases beyond those of trivial character had to be sent to Coimbatore for trial, *i. e.*, to a distance of 50 miles, and to a Court situated in the low country, a contingency which made every prosecutor hold back, and thus practically gave an impunity to crime. And it was the same in respect of Civil suits, where the value at issue was over a certain limited amount, under which circumstance, a resort to Coimbatore became equally necessary. The proposed Act provided for a Judge, to be styled an Assistant Judge, who should have an enlarged Civil and Criminal jurisdiction; but it reserved an Appeal in the former branch to the Civil Judge of Coimbatore, so that suitors on the Hills should have the same range of Appeal as those at other stations, and, in respect of the latter, it required that all findings and punishments beyond the powers of an ordinary "Criminal Court," (Subordinate Judge or Principal Sudr Ameen's) to inflict, should be first confirmed by the Fouzdary Adawlut Court, before being carried into effect. Under this Act, justice would have been administered alike promptly, on the spot and under sufficient checks.

4. It was provided in the Act that the new Court should be presided over by an Uncovenanted officer, for the reason, it is to be presumed, that this opened a field for selection where there is a better acquaintance with English law and more familiarity of dealing with Europeans, than is usually possessed by the Covenanted Civil Servants; and also because it promoted economy, since the Act fixed the salary of the Judge at 800 Rupees per mensem, whereas a Covenanted Civil Servant, having an inferior jurisdiction, already drew 1,400 Rupees per mensem, as the lowest salary of his class in a Judicial office.

5. The Government of Madras forwarded this Draft Act in the same month to the Hon'ble D. Elliot, Esq., who acted for Madras in the Legislative Council of India. Mr. Elliot objected

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to it, and intimated this to the Government (in September 1854.) In the following month, October, the Government re-urged their desire to have the Bill passed in its integrity, as what the Madras Council unanimously approved of and considered both necessary and called for. Mr. Elliot then, as required by law, brought the Act before the Legislative Council, but at the same time signified his dissent and moved that it be referred to a Select Committee, which was done on the 11th November 1854. The Select Committee reported upon it on the 23rd December following.

6. As a result of this report, a Principal Sudr Ameen's Court was to be established at Ootacamund, and, to provide for cases beyond its criminal cognizance, Act XXV of 1855, was introduced, empowering the Session Judge of Coimbatore to come up to Ootacamund to try on the spot, cases that might be committed by the said Principal Sudr Ameen. By this arrangement, if your memorialist may be allowed the observation, the large and important station and district of Coimbatore is made to have a Court, both of Original and Appellate Civil and Criminal jurisdiction, entirely closed to the public, whenever the perpetration of a particular crime on the Neilgherry Hills requires its Judge's presence, there to try it, and the withdrawal of certain of his ministerial officers to attend him on the occasion.

7. Act XXV of 1855, was read a first time in the Legislative Council, on the 13th January, a second time on the 20th Idem, and a third time on the 21st July 1855, your memorialist respectfully asks attention to these dates, because, in the communications that must have occurred with the Home authorities, they shew so abundant a leisure for discussion of the measure, that he was justified in concluding, that the whole was an entirely settled question and arrangement, when, nearly two years after the first Act was drawn out by the Sudr Court, and nearly one and a half from the first reading of the Act, eventually passed, the judicial post on the Hills was conferred upon him.

8. On the Act XXV of 1855 coming into operation, the first selection to fill the post of Principal Sudr Ameen was Mr. Burgass, a Barrister of the Supreme Court of Judicature at Madras, and who had formerly for a short while held the important and responsible office of first Judge of the Court of Small Causes at Madras, with honor to himself and to the satisfaction of the public. This latter situation having again fallen vacant, Mr. Burgass, was permanently appointed to it after having presided over the Court at Ootacamund for about 6 months, and your memorialist was then, in May 1856, nominated his successor.

9. Your memorialist is compelled to be egotistical in speaking of the position he at that time held at Madras, and of all that he abandoned in order to take up this appointment, whose chief recommendation was the almost English climate of the place, so desirable to him after a residence of 27 years in India. Your memorialist had a house of Commercial business at Madras, he was engaged in divers commercial works; and he had a lucrative practice, enjoyed for some years, as a Pleader in the Sudr Adawlut Court, a large income from these sources had to be sacrificed; and it was done. He may add, when speaking of his employment, that he had been for above 20 years, in conjunction with Mr. Elliot, late Chief Magistrate of the Town, the almost exclusive Director of the Municipal affairs of Madras, all that time an honorary office, though, shortly after he left the place, a new arrangement deemed the discharge of the same duties by Commissioners only adequately remunerated with 800 Rupees a month. Your memorialist had acted for two years as a Magistrate of Police, and he is proud to say that, on the occasion of the retirement of Mr. Elliot from the office of Chief Magistrate and Superintendent of Police, (just before your memorialist was appointed Judge of Ootacamund,) a very large body of the most respectable Native inhabitants of Madras, petitioned Lord Harris to choose your memorialist as his successor, from the confidence they saw fit to repose in such a selection, securing the peace and good order of the town; and, although the Governor had made other arrangements, he replied to the petition in terms flattering to your memorialist. And to this your memorialist begs briefly to add mention of the fact, that when he came to leave Madras for the Hills, the community there did him the gratifying honor to invite him to a public dinner, at which were present the Members of the Council of Government, as well as the heads and officers of public departments, no less than the members of his own, the commercial body, and other independent classes.

10. In May 1856, your memorialist took up the appointment at Ootacamund. In January 1857, it was intimated to him that the Honorable Court of Directors had objected to the pay of

the office, being more than 500 Rupees a month, which was the salary of other Principal Sudr Ameens. Your memorialist need only say that if the least idea had been conveyed to him at the time, of the salary of the office being undetermined, he never would have accepted a situation which necessitated such grave sacrifices as he was obliged to make. But the Government of Madras remonstrated against this new order and it was referred back to the Honorable Court. It was represented that the duties falling upon the Principal Sudr Ameen at Ootacamund were very different from what the same officer had to perform elsewhere, nay, were more enlarged than those usually performed by a Subordinate Judge, who draws an allowance of 1,400 Rupees per month.

11. No further communication of any kind whatever reached your memorialist, and the whole question was supposed to be at an end, when in November last, an Extract Minutes of Consultation of the Madras Government, dated the 18th of that month, (Appendix A,) was sent to your memorialist, in which he was abruptly informed that he was to be summarily removed by the abolition of his Court, not because he had failed in the discharge of his duties, not because he had given any dissatisfaction, not because he was not competent to his office, but avowedly because he did not belong to a particular class (13th line of para. 4 of Despatch of Honorable Court of Directors); and that it was ordered that a Subordinate Judge's Court should be appointed in the room of his own.

12. This order was acted upon after the unavoidable delay in passing a new Act through the Legislative Council. It was announced in the Fort Saint George Gazette of the 4th May, that the Principal Sudr Ameen's Court at Ootacamund would be abolished from the 1st June, and that a Subordinate Court would be opened. In obedience to this brief and summary Notification, your memorialist closed his Court on that day, and handed all appertaining to it over to Mr. E. W. Bird, who had come up to Ootacamund to open the new Court.

13. Your memorialist prays your Honorable Council to consider the position in which he was thus placed. After more than a quarter of a century of actual residence and experience in India, having taken such a part in public life as to win the good will and the confidence of the people, amongst whom he had resided, no less than of the Government of the Presidency, as evidenced in the acts before recapitulated; having discharged for a period of *two years*, he may venture to say to the satisfaction of the public, as well as of the Government, the duties of his judicial office, such judicial office having been originated 4 *years back*, and proposed in its actual state for adoption 3½ years ago; and having made a sacrifice of the most important pecuniary interests to take up the said office, a sacrifice which cannot be recalled; your memorialist has found himself summarily ejected from office and from income, without ceremony or consideration, and, in the very nature of the act, not without some reflection being involved upon himself in the minds of those unacquainted with him and the circumstances! and it is to this nature of the act, that your memorialist would solicit your Honorable Council's especial attention. Your memorialist has presided over the Principal Sudr Ameen's Court at Ootacamund. This Court is abolished to make room for a Subordinate Court. *The powers of these two Courts are identical.* The Subordinate Court has no jurisdiction and no duties to perform that the other is not competent to do and exercise. Its Judge has no power beyond what your memorialist held, and does and can do nothing which he did not execute. The ignorant public will then only conclude that the incompetency of the former Court rested in the presiding officer; and, though the Government (Appendix B) has candidly relieved your memorialist from any reality of this, it adds to the injuries inflicted upon him that he should be exposed to the doubt, and doubt can hardly fail to exist, since in days of financial embarrassment, it must be difficult otherwise to understand how, when a duty is acknowledged to have been satisfactorily performed on 800 Rupees a month, it comes to be arbitrarily removed to other hands, where 1,400 Rupees has to be paid for the execution of *precisely the same.*

14. Under the circumstances thus set forth before your Honorable Council, your memorialist trusts that reason will be found for considering that there is but justice in his present respectful application to be compensated for the heavy pecuniary suffering which has been inflicted upon him, suffering which has its aggravation in the difficulty and cost with which he is now compelled to strive to re-enter in commercial undertakings, and, looking at what has been award-

ed in cases in England, which may be taken to bear some feature of analogy, he humbly prays that there may be granted to him at least two-thirds of the income of his late office.

And your memorialist, as in duty bound, will ever humbly pray.

Ootacamund, 2nd October 1858. (Signed) JAS. OUCHTERLONY.

No. 52. ORDER THEREON, No. 1550; dated 4th November 1858.

Ordered to be submitted for the favorable consideration of the Secretary of State for India.

(Signed) W. H. BAYLEY,
Acting Secretary to Govt.

Exd. F. Cartledge.

Appendix A

Judicial Department

№ 1500.

Extract from the Minutes of Consultation under date the 18th November 1857.

Extract from a Despatch from the Honorable the Court of Directors, dated 6th October, № 17 of 1857.

Paras: 4. We concur with you as to the expediency of appointing an European Officer to the Judicial office at Ootacamund, but we think it the better course to appoint a Subordinate Judge rather than a Principal Sudder Ameen upon an exceptional salary. Your objection to this arrangement is, that the Subordinate Judge will frequently be changed in consequence of the promotion of the incumbent. In the early promotion of Mr. Burgass, we see but little security for the permanent occupancy of the office even by a Principal Sudder Ameen. But however that may be, we consider that the office is one which would be better held by a Subordinate Judge than by a Judge of any other class, and it appears to us that this arrangement may be carried into effect at no greater expense than is required for the Court of a Principal Sudder Ameen by establishing a Subordinate Judge's Court at Ootacamund and a Principal Sudder Ameen's Court in lieu of one of the District Courts already presided over by a Subordinate Judge, thus keeping the number of Subordinate Judge's Courts as at present and increasing by one the number of Principal Sudder Ameen's Courts. Even this additional expense may to some extent be reduced in the manner adverted to in the concluding para. of our Despatch of the 12th November last.

5. As a reference to the Legislative Council will be necessary before you can give full effect to our instructions

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and consequently some time must elapse before new arrangements can be made, adverting also to the circumstances under which Mr Burgass's successor has been appointed, we authorize you to postpone the carrying into effect of the reduction of the salary of the Principal Sudder Ameen from 800 to 500 Rupees a month, until after the expiration of six months from the date of your receipt of this Despatch.

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1. Resolved that, as directed by the Honorable Court in para 2 of this Despatch, application be made to the Member for Madras, of the Legislative Council, for an Act to modify the provisions of Act XXV of 1855, in the manner pointed out by the Court, in para 6 of their previous Despatch of 12th November 1856, No 17.

2. Resolved also, that copy of this Despatch be furnished to the Court of Sudder and Foujdaree Adawlut, and that they be requested to suggest to Government, which of the Subordinate Courts in the Madras Presidency may most properly be changed to a Principal Sudder Ameen's Court, to admit of the creation of a Sub-Court at Ootacamund.

3. Resolved further, that paras. 4 and 5 of the Despatch be communicated to Mr James Ouchterlony, Principal Sudder Ameen of Ootacamund for his information.

(True Extracts)

Chief Secretary

To the Principal Sudder Ameen of Ootacamund.

True Copy
Ouchterlony

Appendix B

Judicial Department

No 838.

Extract from the Minutes of Consultation under date 25th June 1858.

Read the following letter from James Ouchterlony, Esqre late Principal Sudr Ameen of Ootacamund; to J. Pycroft Esqre, Chief Secretary to Government; dated 8th June 1858.

Sir

I had the honor, on the 1st Instant, to inform you that I had closed my Court agreeably to the Notification in the Gazette of its being abolished from that date; and to add that, in presuming such to be the desire and intention of the Government, I had handed over all records and funds, together with the charge of the Jail, to Mr E. W. Bird.

2. I hope I may now be permitted respectfully to enquire of the Government, what compensation is to be awarded to me for this deprivation of my appointment?

3. I trust also that I shall not be considered to ask too much, if, looking at the peculiar features of this case, I solicit the favor of Government expressing to me (always supposing it to entertain such an opinion) that it is not from my Judicial duties having been in any way inefficiently or laxly performed, that the Court over which I have presided has been abolished. I venture to solicit this, because, as it is now for a space of two years that I have presided over my Court, and as the new one substituted for it is one of precisely similar jurisdiction, my removal from the bench in the abolition of the first must

wear an equivocal appearance / calculated to affect me prejudicially / in the eyes of those who are ignorant of the attending circumstances.

The Right Honorable the Governor in Council regrets, that it is not in his power to make to Mr. J. Ouchterlony, late Principal Sudr Ameen of Ootacamund, any compensation for the loss of his appointment. He will however be prepared to recommend to the favorable consideration of the Honorable the Court of Directors, any representation which Mr. Ouchterlony may see fit to address to them on the subject.

2. The Government deem it but just to Mr. Ouchterlony, to express their satisfaction at the manner in which he has discharged the duties of his late office. The abolition of the Principal Sudr Ameen's Court at Ootacamund, has been carried out under orders of the Honorable the Court of Directors — altogether irrespective of Mr. Ouchterlony — and solely on the ground that in the judgment of the Honorable Court, a Subordinate Court is better adapted to the circumstances of the Neilgherry Hills.

/ True Extract and Copy /

/ Signed / J. Pycroft
Chief Secretary

To J. Ouchterlony, Esqre.

True Copy
J. Ouchterlony

Sudr Dr to Esqr 4 — Nov 1838
No 10 / 1538

From
James Ouchterlony Esq
late Principal Sudr Ameen
of Ootacamund

To W. H. Sayley Esq
Secretary to Government

Sir,

I have the honor to forward herewith a Memorial in triplicate, addressed to the Honorable the Council of India, with a request that the same may be forwarded; and I trust that the Right Honorable the Governor in Council may see reason to accompany it with his favourable recommendation.

I have the honor to be,
Sir,
Your most obedient
J. Ouchterlony

Ootacamund
Dec 2 1838

In the Hon'ble Court of Directors
dated 19th May 1858