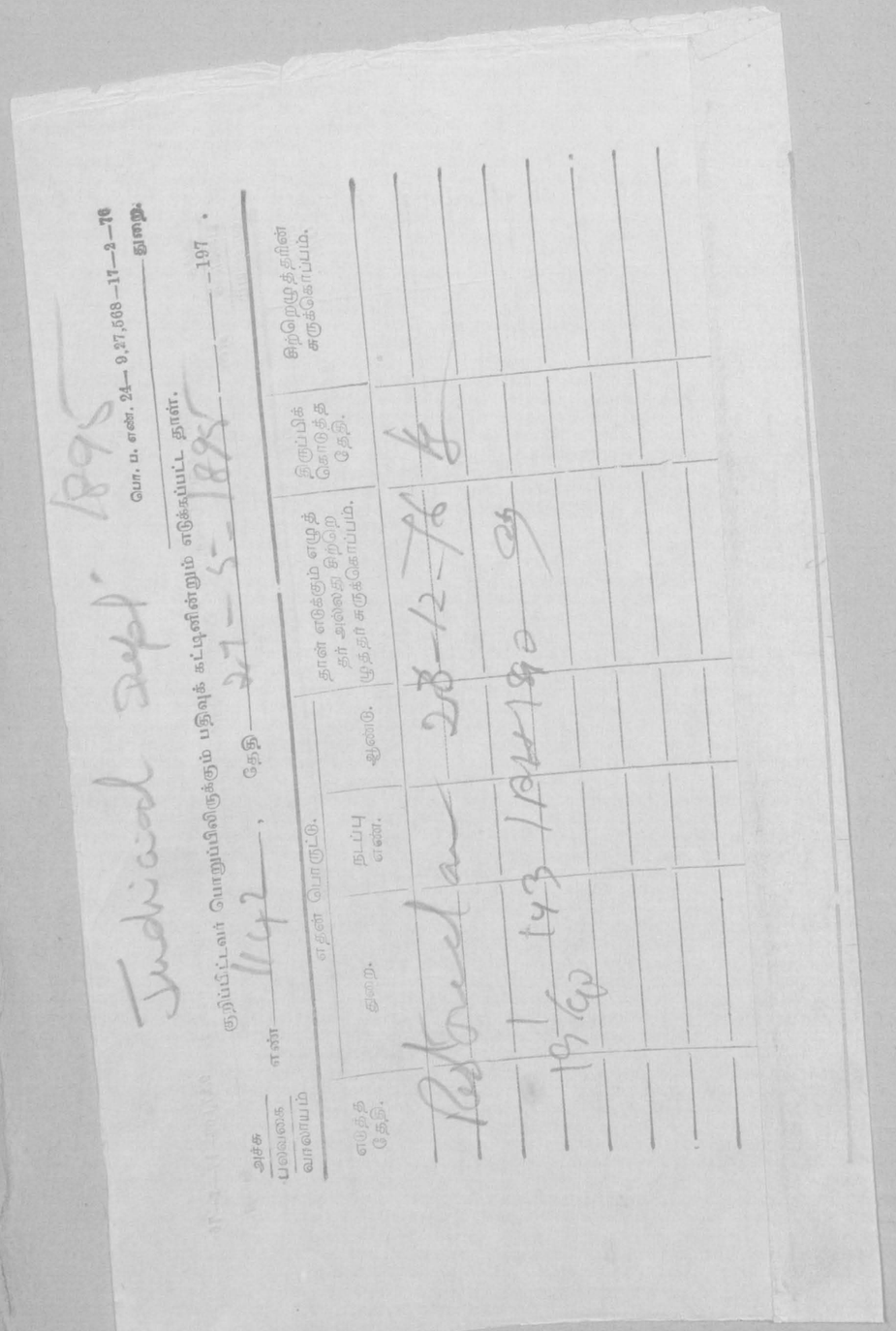
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ORDINARY (Press)

G.O., No. 1493

~~Confidential No.~~ 109

DATED 15th July 1895

[Despatch Abstract.]

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BACK PAPERS.

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

FURTHER PAPERS.

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

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

THE HON. MR. J. GROSE.

READ—again the following Proceedings of the Board of Revenue (Land Revenue), dated 13th May 1890, Mis. No. 3002:—

Read—the following Government Order, dated 28th April 1890, Mis. No. 2595, Revenue:—

Read—Proceedings of Government, Judicial Department, dated 15th November 1889, No. 1956.

ABSTRACT.—Reviewing the annual report on the administration of the Ganjam Agency Tracts for 1888–89.

Order—dated 28th April 1890, Mis. No. 2595, Revenue.

Communicated to the Board of Revenue.

2. With reference to paragraph 47 of the Agent's report and the remarks in paragraphs 72 and 73 of that of the Special Assistant Agent, the Government will be prepared to consider favorably any proposals that the District officers may have to make in view to a better preservation of forests in the Agency tracts.

3. In regard to the question of granting distilling licenses to Uriya Sundies referred to in paragraph 46 of the Special Assistant Agent's letter, the Government awaits the result of the Separate Revenue Commissioner's conference with the Collector (*vide* paragraph 4 of Board's Proceedings embodied in Government Order, dated 8th May 1889, No. 363).

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Commissioners of Land Revenue.
" Commissioners of Salt, Abkári and Separate Revenue.

Resolution—dated 13th May 1890, Mis. No. 3002.

The Collector is requested to submit his proposals as regards paragraph 2 of the Government Order through the Conservator of Forests, Northern Circle.

(A true Copy and Extract.)

(Signed) M. HAMMICK,
Secretary.

To the Collector of Ganjam.

Read—again the following Proceedings of the Board of Revenue (Land Revenue), dated 13th June 1890, Forest No. 634, Mis. :—

Mr. W. S. Whiteside.

Read—the following Government Order, dated 27th May 1890, Mis. No. 3217, Revenue :—

Read—Proceedings of the Board of Revenue (Land Revenue), dated 14th April 1890, Forest No. 197.

Abstract.—Submitting to Government, with remarks, Mr. J. S. Gamble's inspection note on the Ganjam forests; and requesting the Collector to give his early and earnest attention to all the matters in the note.

Order—dated 27th May 1890, Mis. No. 3217, Revenue.

Recorded.

2. The Government regards the question of conserving the forests in the Agency tracts, and particularly those which are situated at the head waters of the Rushikulya river, as one of great importance. The Collector should therefore be directed to make definite proposals for managing or reserving the Agency forests.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Commissioners of Land Revenue.
„ Judicial Department.

Resolution—dated 13th June 1890, Forest No. 634, Mis.

Communicated to the Conservator of Forests, Northern Circle, and the Collector of Ganjam. The latter officer is requested to submit, as early, as possible, the proposals called for by Government in the concluding sentence of paragraph 2 of the foregoing order.

(A true Copy and Extract.)

(Signed) A. G. CARDEW,
Acting Secretary.

To the Conservator of Forests, Northern Circle.
„ Collector of Ganjan.

Read—again the following Proceedings of the Board of Revenue (Land Revenue), dated 15th July 1890, Forest No. 760, Mis. :—

Mr. W. S. Whiteside.

Read—the following letter from J. S. GAMBLE, Esq., Conservator of Forests, Northern Circle, to the Secretary to the Commissioners of Land Revenue, dated Allapully, 5th August 1889, No. 1328 :—

With reference to the orders conveyed in paragraph 2 of Board's Proceedings, Forest No. 190, of 8th April 1889, I have the honour to submit a draft notification for the introduction of the Forest Act into the Chokkapad and Pondakhole muttas of Ganjam, which draft has received the approval of the Collector of the district in his letter No. 201-C of 19th July 1889.

2. Though he does not actually say so, but in his letter merely contents himself with approving the draft prepared in this office, I understand his agreement in the draft to mean that he *does* approve of its application to the Chokkapad mutta, although, as pointed out in Revenue Department Government Order, No. 2730, of 8th May 1889 (Board's Proceedings, Forest No. 385, of 18th May 1889), his previous opinions were not clear.

3. I propose to visit Ganjam before the end of the year and if the Government would agree to ask the Government of India to publish the notification at an early date, I would, in company with the District Forest-officer, visit the muttas in question for the selection of the reserved forests.

Enclosure No. 1.

Draft Notification.

In exercise of the power conferred by section 5 of Act XIV of 1874 (The Scheduled Districts Act), the Governor of Madras in Council is pleased, with the previous sanction of the Governor-General in Council, to extend Act V of 1882 (The Madras Forest Act) to the mutta of Chokkapad in Goomsur and the mutta of Pondakhole in Suradá, both in the Ganjam district of the Madras Presidency.

Reference on the above, dated 5th September 1889.

In the letter printed in Board's Proceedings, dated 30th July 1888, No. 416, the Collector stated that the Forest Act may be introduced into Pondakhole mutta, which is not Khond, but not into Chokkapad which is different and where the Khonds are likely to resist any interference with their free felling and cultivation. In a subsequent letter (*vide* that printed in Board's Proceedings, dated 8th April 1889, No. 190), the Collector, while repeating that the Act cannot be safely introduced into the Chokkapad mutta, seemed, however, inclined to advocate its introduction there. In the present letter the Conservator says that the Collector has not definitely stated whether he approves of the extension of the Act to the Chokkapad mutta. The Collector will therefore be requested to express his opinion clearly on the point and to correct the spelling int he draft notification if necessary.

(Signed) M. HAMMICK,
Secretary.

To the Collector of Ganjam, with draft notification in original, to be returned.

Copy to the Conservator of Forests, Northern Circle.

Read—the following letter from E. SCOTT, Esq., Acting Senior Assistant Collector in charge, Ganjam, to the Secretary to the Commissioners of Land Revenue (through the Conservator of Forests, Northern Circle), dated Chatrapur, 29th May 1890, No. 3911 :—

Adverting to the Board's reference on Register No. 1256 of 1889, I have the honour to state that I advocate the introduction of the Forest Act into the Chokkapad mutta.

2. The draft notification received with the above reference is herewith returned, the spelling having been corrected.

Endorsement by A. W. PEET, Esq., Acting Conservator of Forests, Northern Circle, dated Madras, 11th June 1890, No. 715.

Forwarded.

Resolution—dated 15th July 1890, Forest No. 760, Mis.

The Board regrets that it cannot submit to Government the question referred to in the foregoing correspondence without a more detailed expression of opinion from the Collector.

2. The Chokkapad mutta is included in the district manual in a list of muttas (page 16), of which the population is mainly Khond, and Mr. Horsfall in his letter, Forest No. 288, dated 29th June 1888 (recorded in Board's Proceedings, dated 30th July 1888, Forest No. 416) also implied that the population was chiefly of that class. The same officer has further recorded the opinion that the Khond would certainly resent being deprived of his right to squat anywhere and everywhere. The Board is strongly opposed to the introduction of the Forest Act and of the consequent operations of the Forest Department among a population which, like the Khonds and Sonras of the Ganjam Agency, is easily excited and which inhabits a country difficult to supervise; and before submitting any recommendation to Government, the Board must have full information as to the number and proportion of Khond villages in the mutta and as to the reasons which led the Collector to advocate the introduction of the Act.

(True Copies and Extract.)

(Signed) A. G. CARDEW,
Acting Secretary.

To the Collector of Ganjam.
Copy to the Conservator of Forests, Northern Circle.

READ—again the following Proceedings of the Board of Revenue (Land Revenue), dated 17th December 1890, Mis. No. 8067 :—

MR. W. S. WHITESIDE.

Read—the following Government Order, dated 2nd December 1890, Mis. No. 7414, Revenue :—

Read—Proceedings of Government, Judicial Department, dated 30th October 1890, No. 1684.

ABSTRACT.—Reviewing the administration report of the Ganjam Agency for 1889-90.

Order—dated 2nd December 1890, Mis. No. 7414, Revenue.

Communicated to the Commissioners of Land Revenue and the Commissioner of Salt, Abkári and Separate Revenue.

2. The attention of the Agent is drawn to his Principal Assistant's memorandum, dated 11th March 1890, and he is directed to submit a report on the points noticed therein.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Commissioners of Land Revenue.
" Commissioner of Salt, Abkári and Separate Revenue.
" Agent to the Governor, Ganjam,
through the Judicial Department.

Resolution—dated 17th December 1890, Mis. No. 8067.

Recorded.

(A true Copy and Extract.)

(Signed) H. A. SIM,
Acting Secretary.

READ—also the following letter from E. C. JOHNSON, Esq., Collector of Ganjam, to the Secretary to the Commissioners of Land Revenue (through the Conservator of Forests, Northern Circle), dated Chatrapur, 29th October 1890, Forest No. 1306 :—

Having consulted the local officers on the subject of (1) introducing the Forest Act and rules framed in accordance with it into the Agency tracts and (2) conserving the forests situated at the head waters of the Rushikulya river, I have the honour to report the conclusions arrived at by me on these subjects.

2. The papers connected with these questions extend as far back as May 1885 and originated in the Conservator of Forests making recommendations to protect myrabolan trees from being exterminated in the Northern Circars. The Conservator's recommendations were—

(1) to form reserved forests in the taluks of the plains of the Northern Circars under the Forest Act then in force;
(2) to introduce the Forest Act into Pondakhole and Chokkapad muttas of Goomsur;
(3) to introduce into the rest of the Agency tracts of Ganjam and Vizagapatam simple rules relating to forest produce and to reserve certain areas therein from felling, &c.

It is only recommendations (2) and (3) that I now refer to. The correspondence that ensued on the subject is to be found embodied in the following Board's Proceedings :—

No. $\frac{1345}{\text{Forest } 256}$, dated 6th May 1885.
" $\frac{2330}{\text{Forest } 437}$, " 13th Aug. "
" $\frac{143}{\text{Forest } 25}$, " 19th Jan. 1886.
" $\frac{353}{\text{Forest } 64}$, " 8th Feb. "
Forest No. 372, dated 11th July 1888.
" " 190, " 8th April 1889.
" " 385, " 18th May "
" " 1256, dated 5th Sept. "
" " 82, Routine, dated 9th Sept. 1889.
" " 634, Mis., dated 13th June 1890.

As the result of this correspondence—

Chokkapad. Pondakhole. Dokkarabadi.	Minajadi. Chondragiri. Chendiput.	(1) The felling of timber for export from the marginally-noted muttas of the Agency tracts has been prohibited;

(2) the late Collector Mr. Horsfall intimated his approval of the introduction of the Forest Act into Pondakhole and Chokkapad muttas, but did not explain his views to the satisfaction of the Commissioners.

(3) Government has desired that steps should be taken to conserve the forests at the head waters of the Rushikulya river.

3. I now recommend the introduction of the Forest Act into—

(*a*) Pondakhole mutta.
(*b*) Chokkapad mutta.
(*c*) Korada and Ronaba zemindaris.
(*d*) A small portion of the Chinna Kimedi maliahs on the edge of the low country.

I reserve the question of the introduction of the Act and of rules into the rest of the Agency tracts for future consideration after I have been able to visit them.

4. *Pondakhole mutta.*—Mr. Horsfall has already pointed out the reasons for the introduction of the Act into this mutta, and I recommend that as its circumstances are the same for the most part as those of many portions of the adjoining low country, Goomsur taluk, the Act may be fully applied and reserves formed at once,

5. *Chokkapad mutta.*—Mr. Horsfall states that he thinks the Act cannot be safely introduced into this mutta, but that it should be introduced. I think that the inhabitants being almost entirely Khonds will certainly at first raise objections; but being akin to the Khonds of Goomsur taluk and not like those of the wilder maliahs, no rising is to be apprehended, nor if the Act is worked judiciously is any real inconvenience likely to be caused to them. This, I believe, is what Mr. Horsfall meant. Enclosure No. 2 to this letter is a draft set of rules that I propose to introduce for Chokkapad mutta, and under them I should proceed cautiously to constitute reserved lands along the courses of the head waters of the Mahanadi and Gullery streams which are tributaries of the Rushikulya river.

6. *Ronaba and Korada zemindaris and portion of Chinna Kimedi Maliahs.*—In his letter, Forest No. 134, dated 16th March 1889 (embodied in Board's Proceedings, Forest No. 190, dated 8th April 1889), Mr. Horsfall states that the forest on the Luhagudi ghât has been strictly conserved by the Chinna Kimedi estate. That estate has now, however, been handed over to the Zemindar, and there is at present nothing to prevent his leasing out or destroying that forest at his will. This forest is not in the Agency tracts and no notification is necessary for it; but the forests on the eastern slope of the Eastern ghâts adjoining it on the south are included in the Chinna Kimedi maliahs and the extension of the Forest Act to this small and almost uninhabited area is advisable. In these forests rises the Godahodo stream, a large tributary of the Rushikulya. Moreover timber exported from the Chondragiri and Chendiput maliahs must pass through this forest, and whilst it remains the property of the Zemindar it is impossible satisfactorily to control the export of timber from the Agency tracts.

Ronaba and Korada zemindaris are in a similar situation. They contain the sources of the Korada, Barba, Kansuro streams, which flow directly into the Rushikulya, and of the Dobo stream which is the chief tributary of the Laharikhandi, which joins the Mahanádi at Goomsur and the Rushikulya at Aska. Reckless fellings and even denudation in parts of the forest have been made within recent years owing to the opening up of the sleeper trade, and the construction of the East Coast Railway, which will increase the demand for timber and facilitate export, is likely to increase such reckless fellings. Bordering as they do on the Agency and Government forests, these zemindaris by their position render the control of export from Agency tracts and of illicit fellings in Government forests difficult in the highest degree.

I therefore propose that Government should take from the Zemindars of Chinna Kimedi, Ronaba and Korada a perpetual lease of their forests. At present there is nothing to prevent the Zemindars from refusing to grant Government the lease of their forests, and the Korada and Ronaba chiefs in 1882 did so refuse and when Mr. Castlestuart Stuart tried negotiations with them. The Forest Act already applies as far as the forests in the Chinna Kimedi taluk is concerned, and if it were applied to Ronaba and Korada tracts also, Government could, under section 29 of that Act, regulate or prohibit the breaking up or clearing of land for cultivation the grazing of cattle and the firing or clearing of vegetation, such regulation or prohibition being, necessary for the maintenance of water-supply in springs and rivers, and if these regulations or prohibitions were enforced there is no doubt but that the Zemindars could be induced to grant a perpetual lease to Government, which would be a more satisfactory arrangement for them than the prohibiting of all fellings.

The terms of such lease should form the subject of a separate correspondence and should be considered in the light of the financial prospects of our forests. All that is required at present is to declare the zemindaris subject to the Forest Act.

7. Enclosure No. 1 is a fresh draft notification for the introduction of the Forest Act into the tracts above mentioned.

ENCLOSURE No. 1.—Draft notification extending the Forest Act to the Agency.

ENCLOSURE No. 2.—Draft rules under section 26.

Endorsement by A. W. PEET, Esq., Acting Conservator of Forests, Northern Circle, dated Mudanallai, 12th November 1890, No. 2089.

In forwarding I have the honour to remark that in sending up these proposals the Collector seems to have omitted to answer Board's Proceedings, dated 15th July 1890, Mis. No. 760, in which information was asked as to the number and proportion of Khond villages in the Chokkapad mutta. The present proposals go further than the former and propose the introduction of the Forest Act into Chokkapad and Pondakhole muttas and into the Korada and Ronaba zemindaris and into a portion of the Chinna Kimedi Maliahs.

2. About the facts of the denudation of the zemindaris, I think there is no doubt; but I am doubtful about the course recommended by the Collector of virtually taking up the forests against the will of the Zemindars.

READ—also the following Government Order, dated 13th November 1890, No. 911, Revenue:—

Read—Proceedings of the Board of Revenue, dated 19th January 1886, No. $\frac{143}{\text{Forest 25}}$.

ABSTRACT.—Submitting to Government, with remarks, letter from the Conservator of Forests, Northern Division, regarding Khond rights over land and forests in the Maliahs of Ganjam.

Order—dated 13th November 1890, No. 911, Revenue.

Forest, No. 275.

Before passing final orders upon the above paper, which was unfortunately mislaid in the Government office, the Government desires to be furnished with the views of the present Agent to the Governor in Ganjam, Mr. Johnson, upon the various points raised. The rapid denudation of the hill slopes was frequently noticed by the late Agent, Mr. Horsfall, in his annual tour reports, and was again brought prominently before Government by Mr. Gamble in his recent inspection note on the Ganjam district. In its order upon this last paper (G.O., No. 3217, dated 27th May 1890), the Government recognized the importance of this question and called upon the Agent to formulate definite proposals for conserving the Agency forests. To this reference no reply has been received, and proposals for the management of these forests naturally demand most careful consideration. His Excellency the Governor in Council is, however, unwilling to again postpone the disposal of the present paper for any length of time, and Mr. Johnson is accordingly requested to place the Government in possession of his views upon the several matters, dealt with in the above Board's Proceedings, at the earliest possible date.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Commissioners of Land Revenue.
" Judicial Department.

READ—also the following Government Order, dated 24th November 1890, Mis. No. 7203, Revenue:—

Read—Proceedings of the Board of Revenue (Land Revenue), dated 31st October 1890, Forest No. 1172, Mis.

ABSTRACT.—Awaiting a fuller and more detailed report on further reservation of forests in the Ganjam district.

Order—dated 24th November 1890, Mis. No. 7203, Revenue.

Recorded with reference to Government Order, No. 911, dated 13th November 1890.

(True Extract.)

(Signed) R. C. C. CARR,
Ag. Under Secy. to Government.

To the Commissioners of Land Revenue.

READ—also the following Government Order, dated 24th November 1890, Mis. No. 7201, Revenue:—

Read—Proceedings of Government, Judicial Department, dated 5th September 1890, No. 1472.

ABSTRACT.—Passing orders on letter from the Agent to the Governor in Ganjam regarding petition from Krishnachendra, Bissoye of the Gummakota mutta, relative to his grievances in connection with the villages on the Jeypore border.

Order—dated 24th November 1890, Mis. No. 7201, Revenue.

Communicated to the Commissioners of Land Revenue in continuation of Government Order, No. 911, dated 13th November 1890.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Commissioners of Land Revenue.

Reference on the above, dated 8th January 1891.

Mr. Johnson is requested to report fully upon the question of the ownership and conservancy of the forests of the Ganjam district.

(Signed) H. A. SIM,
Acting Secretary,

To the Collector of Ganjam.

Copy to the Conservator of Forests, Northern Circle.

READ—also the following letter from E. C. JOHNSON, Esq., Agent to the Governor in Ganjam, to the Secretary to the Commissioners of Land Revenue, dated Chatrapur, 17th February 1891, C. No. 114-Agency:—

I have the honour to furnish my reply to the marginally-noted references on the subject of—

(1) The advisability or otherwise of extending the operation of the Forest Act to the Agency tracts.

(2) The general question of the future treatment of forests in the said tracts.

(3) The rights claimed by Khonds and other hill tribes in such forests.

Board's Proceedings, Mis. No. 3002, dated 13th May 1890, embodying Government Order, No. 2595, dated 28th April 1890.

Government Order, No. 911, dated 13th November 1890, forwarded with endorsement by Commissioners of Land Revenue, dated 8th January 1891.

2. In my letter (Forest) No. 1306, dated 29th October 1890, I submitted proposals for extending the Forest Act to certain areas, and in my (Forest) No. 29-C, dated 6th September 1890, I demurred to formulating any further proposals until I had, by a tour in the maliahs, made myself personally acquainted with the country, the people and the forests.

3. I have now made a tour, in the course of which I have traversed all parts of the maliahs except the Kotiya Khond country and the northern part of the Parlákimedi maliahs, commencing with the Soura muttas of Gumma, Kollakotta and Serango in the south, passing through the Soura and Khond muttas of Pedda and Chinna Kimedi, Bodogoda and Suradá to Balliguda, and ending with the Goomsur Khond khandams of Udayagiri and Chokkapad. I was of course unable to make a long stay any where, but I have obtained a good general idea of the country, its forests and its inhabitants.

4. The whole country naturally divides into two categories, (1) tracts where denudation has already proceeded to a dangerous extent and where the population is crowded and bears heavily on the resources of the land (2) tracts which still contain large areas of good forest and where the population is comparatively scanty. Under the former are included the southern Soura muttas, the high plateau about Daringabadi, the villages around the head of the main Rushikulya river radiating upwards from Suradá and Gogellabadi and the Udayagiri portion of Goomsúr maliahs. The bulk of the remaining area may be placed in the second category. In the tracts included in the first category action is, where possible, urgently and immediately called for; in the rest of the country though action may without immediate mischief be deferred, yet the sooner it is taken the more easily and the more cheaply will a change for the better be effected.

5. To render any effective action possible, the introduction of the Forest Act is imperatively necessary. I see no reason why it should not be brought into force at once. Its extension to the maliahs will *per se* produce no effect whatever, but rules framed under it will enable the Agent to exercise such control as may be found desirable—a control which must of course be exercised with the gravest consideration—provided due discretion, tact and caution are exhibited in the framing of rules and in working them. I do not think that any danger is to be apprehended or any opposition on the part of the Khonds or Souras to be feared. The order of the sirkar is still tantamount to law with them and will meet with implicit obedience unless it is manifestly unjust or injurious.

6. Here it may be well to deal with the third subject specified in paragraph 1 and to give my opinion as to the "rights" of the Khonds. As observed by the Board of Revenue in paragraph 9 of the Proceedings embodied in Government Order, No. 911, Revenue, dated 13th November 1890, the only existing parallel to the relation of the Khonds to the British Government is to be found in that of the North American Indians to the Governments of the United States and the Dominion of Canada. There, as here, before the advent of the European, might was the only right; there, as here, might still remains to the aborigines the sole criterion of right; there, as here, the rights of the savage, to the devastation of the area over which he claims sway, can only, in the face of an advancing civilisation, be admitted so far as they are compatible with civilisation. These rights which, in the case of forest land, are tribal and not individual (*vide* Mr. Mounsey's report embodied in Government Order, Judicial, No. 756, dated 22nd March 1884, page 27) are emphatically not *legal* rights; and while they should undoubtedly be dealt with tenderly, I would never allow them to be pushed beyond what equity demands and policy admits. In the present case it cannot be urged that equity at all demands that the Khond should be permitted to extirpate the forests at his free will, seeing that such a course can only, even from his own view point, eventuate in his ruin. Policy meanwhile emphatically protests against his being permitted to involve our ryots of the plains in the catastrophe.

7. Under these circumstances, I do not consider that the Khonds have any rights which should be deemed a bar to the taking up and reservation by Government of such tracts of forest as it may seem advisable to protect for climatic reasons. I am of opinion that for some time to come reservation should be effected on climatic grounds only; at present forest operations could not be expected to be financially successful over the greater part of the area under consideration. By the time that the country is sufficiently opened up to make forest operations profitable, the Khonds and Souras will have become habituated to look upon the reserved forests as Government property, and there will then be no difficulty in formally reserving them and no reason why they should not be worked to the profit of the State.

8. I recommend the immediate extension of the Forest Act to the whole of the Agency tracts, the introduction of some simple rules (I enclose a draft of what I should advise), and the selection, demarcation and reservation of considerable areas. It will be observed that the rules which I propose will affect only areas actually reserved, or such particular trees as it may be found advisable to prohibit the felling of and so will necessitate a minimum of interference with the hill people. The selection should for the present, at all events, be left to the Agency officers, who will, when possible, avail themselves of the advice of the District Forest-officer; this officer, however, has too much work on his hands in the country below ghâts to admit of his devoting much time to the maliahs. In the direction of Udayagiri and Chokkapad he may be able to render effective assistance, as these tracts closely adjoin the principal forests of his low country charge.

9. Different tracts will require varying treatment and I will now proceed to deal with them *sciratim*. In the southern soura muttas I do not think Government interference likely to be of any use. The denudation has proceeded to such an extent that nothing short of expensive reforesting operations could ameliorate matters. The forests are not the property of Government; the population is refractory; the area but small and forming an insignificant portion of the water shed of the Vamsadhara river, the main head waters of which take their rise farther north and west. In this tract I recommend no interference.

10. Proceeding northwards, the next tract is well forested and has a comparatively scanty population. It includes the whole of the Pedda Kimedi and most of the Bodogoda maliahs, which are private property, and the Chondragiri, Chendiput and Gaddapur mutta of Chinna Kimedi (Government Maliahs). In this tract, the prohibition of export of timber (already in force under Government Order, No 56, dated 25th January 1886) will for many years to come suffice to prevent denudation to a mischievous extent; but the time must come when failing reservation by Government, the increase of population will bring about a state of things similar to that in the southern Soura tract; and with a view to preventing this, I would strongly recommend the reservation of some considerable areas which in the case of Pedda Kimedi and Bodogodo would have to be acquired by agreement or otherwise from the zemindars and patros. The sooner this is done the less it is likely to cost, but I think it would be well that the tract should be visited by the Conservator, Northern Circle, before any action is decided on. I may here observe that there is no reason why the whole of this tract should not within a few years be made accessible to carts from Berhampore if the road *viâ* Pudamari and the Taptapani ghât is completed. Timber should then be a valuable property.

11. North of the tract dealt with in the last paragraph lies the upland country about Daringabadi, and the valleys of the main Rushikulya, sloping down to Suradá. The whole of this area has been terribly denuded, and in the portion about Daringabadi the Khond population is unusually dense. Here reforesting is urgently necessary; and at the same time the restriction of "Konda podu" cannot fail to be considered a hardship by the Khonds, unless they are in some way compensated for it. In the Daringabadi and Grenobadi muttas there are only Khonds and Panos; no Uriyas whatever; and the Uriga patros of the neighbouring muttas are unwilling to allow them to cultivate within their limits, because they know that they could exercise no authority over them. They are thus practically tied down to their own limited territory.

12. In these muttas, there are no tanks; and what paddy is cultivated is so in the beds of small hill streams. There are large areas which might be made to grow paddy if only means of storing water were provided. The Khonds have neither the will, nor the capital necessary to execute works of irrigation; but if such works were provided and the land prepared for wet cultivation, I have no doubt that the Khonds and Panos would be only too ready to take it up, even if a water-rate were charged; and in this manner, at a comparatively small cost, it would be possible to double, or at least to very largely supplement their food-supply. I would suggest that while

restricting "podu" and taking up forest land for reservation on the one hand, Government should, on the other hand, devote a few thousand rupees yearly to such agricultural improvements as above indicated. The effect of restricting "Konda podu" will not be felt by the Khonds for a year or two; and by that time we should be able very largely to enhance their food-producing power. Something also might possibly be done in the way of teaching them to manure the dry lands at their doors, and to grow thereon the dholl and other necessaries now raised only by "Konda podu."

13. The question of the agricultural improvement of the whole of the Maliahs, or at least of such part of them as has vested in Government will have to be considered ere long. All the southern part of the Chinna Kimedi Maliahs is capable, if opened up and provided with tanks, of supporting a large population and producing ten times what is does to-day. Such improvements if not made by Government will not be made at all, or least not for many generations to come. The question is however too large a one to be discussed in this connection.

14. The country about Daringabadi and Grenobadi consist of rolling upland, averaging 3,000 feet above sea level, and backed by hills which rise only a few hundred feet higher. The greater part of the upland and most of the hills have been cleared; it will, in my opinion, be necessary to reserve a considerable proportion of these hills, and some of what little forest remains on the upland. In the valleys leading down to Suradá, large areas should be taken up; and I do not think there will be any difficulty in forming reserves there, inasmuch as the clearing there has been rather for exportation than for cultivation. This tract will all grow good Sâl forest if protected for a while.

15. The country north and west of Daringabadi, toward Balliguda, from there to the west, and again east as far as Sirangodo on the northern and Reikya on the southern road to Udayagiri, is still well-wooded. Some parts contain fine young Sâl forest, a good deal of which might be reserved without any inconvenience to the Khonds. There is a particularly fine piece with apparently no villages near, about the 7th mile south of Balliguda, on the "Grand Military road," and a good piece about half-way between Magam and Dharmapur on the Balligudu-Udayagiri (southern) road. I have been agreeably surprised to find this large area so little denuded, having been led to expect a very different state of things.

16. Immediately after passing Reikya a change comes over the scene; the country becomes more open, and broad valleys appear lying between ranges of hills of varying height, most of them cleared from base to summit; the type remains the same for some 30 miles eastward past Udayagiri and Tentuligodo to the edge of the ghâts leading down to the Goomsur plains in one direction and to the Chokkapad Khandam in another. This tract is thickly peopled by a mixed population of Uriyas and of Khonds whom contact with civilization seems to have debased rather than improved; as they are even more notorious for a propensity to drink than their wilder neighbours and have advanced but little beyond them as agriculturists. The hills which are mostly steep are terribly denuded, and in many places are in process of being washed quite bare of soil. To reserve them would not pay from a financial point of view; but to prevent further denudation is advisable from that of climate, though in consideration of the large tracts of well-clothed hills on the slopes down to Goomsur, in Chokkapad and in the tract to the west, I do not think that the denudation of this comparatively small area is of any great general importance.

17. In the neighbouring tract to the east, the Chokkapad khandam, a charge of four annas per acre is made for "Konda podu," and this charge, light as it is, has had the effect of almost stamping out the practice. I have carefully weighed the question of whether the introduction of a similar charge in the Udayagiri tract would have a like effect; but was led to the conclusion that the much greater density of the population in the latter would operate to prevent such a result; and that the extent of "Konda podu" is so great that any attempt to levy assessment on it would meet with great opposition, while its collection would necessitate a Revenue establishment which has no existence at present. I do not consider therefore that the levy of such a charge on forest ground is advisable, and this is not the place to discuss the general question of raising a revenue from land in the Maliahs.

18. I do not think that the people will make any objection to the reservation of selected areas in each mutta, and this may be gradually done. I would recommend that here as in the neighbourhood of Daringabadi something should be attempted in the way of storing water for cultivation and in agricultural improvements. The Khonds here cultivate little besides wet paddy, dry paddy, dholl and turmeric. The dry paddy is raised on sloping ground without any field embankments, and is a very precarious and ordinarily a very poor crop. Ragi and cholum are almost unknown though both of them would, in my opinion, afford a better return to labour, and furnish a better article of food than the "dry paddy" now grown. Some experiments with ragi by the Deputy Tahsildar Y. Sanjivi Naidu Garu have met with success; I should like to make more extensive experiments with ragi and cholum, and perhaps with wheat, and think that a small grant from the Agricultural Department for three or four years might be made for this purpose with advantage. It is only fair that when taking their land for reservation, we should offer the hill people some compensating advantages.

19. At Udayagiri, I was joined by the District Forest-officer Mr. Battie, with whom I consulted on the several matters mooted in this report. From Udayagiri we marched through the Chokkapad khandam *viâ* Netiguda to Gulleri in the plains of Goomsur. The whole of Chokkapad khandam lies comparatively low, the level parts of its being only a few hundred feet above sea level, with numerous hills rising to 2,000 and 2,500 feet. All these hills are thickly clothed with small jungle, mostly Bamboo and Sâl, which is clearly the growth of the last ten years only. Of recent "Konda podu" there is but little sign; an assessment of 4 annas per acre is by way of being made on such cultivation; and this seems to have had the effect of almost entirely putting a stop to it. I find that assessment was paid for fasli 1300 on only 86 acres 48 cents of Konda podu in Chokkapad khandam. Some no doubt escapes detection; but a glance at the hill sides when compared with those we had just left in the Udayagiri neighbourhood showed that the area cleared was quite insignificant.

20. There is little good forest worth reserving for financial reasons in this tract, and the 4 annas per acre assessment appears for the present at least to operate as a sufficient check on denudation. Nothing, therefore, is necessary here, and all I would recommend is that some areas adjoining our Goomsur taluk reserves on the border be taken up and added to them.

21. To sum up, my recommendations are (1) to introduce the Forest Act and frame a set of simple rules under it which will enable the Agent to reserve areas and classes of trees; (2) in the well-wooded and scantily-peopled tracts to gradually make reserves, where it can be done without present inconvenience to the hill people, thereby in time extinguishing any possible rights therein and creating in the future a valuable property for the State; (3) to abstain from interference, as being useless, in the denuded parts of the Parlákimedi Maliahs; and (4) in the bare but crowded tracts around Daringabadi, the head waters of the Rushikulya and Udayagiri (Goomsur), a policy of cautious reservation hand in hand with agricultural improvement.

22. To make reservation of areas anything more than a name, expenditure will be necessary both for demarcation and protection. The wild hill people cannot be expected to respect a reserve unless its boundaries are clearly marked out. Existing roads and large streams should be utilized as far as possible; elsewhere a broad line should be cleared (and kept clear), running always as straight as possible; and where the boundary has to be carried over open ground stout Sâl posts should be erected. Such demarcation should not cost more than Rs. 10 per mile, and provision will probably be necessary for some time to come for the annual clearing of some 50 miles of demarcation line in addition to the cost of maintaining what has been cleared, which may be estimated at Rs. 2 per mile per annum.

23. As to protection the best plan, if it can be arranged, will be by a lump yearly payment to the headman of the village or mutta in which the forest is situated, calculated with respect to the extent reserved within his limits; the same to be paid only if the forest is found on inspection to have been really preserved from felling

and burning. It is impossible to estimate what might be required under this head. If Government accept the principle, separate proposals will have to be made for each reserve.

24. If my proposal to experiment in tank construction about Udayagiri and Daringabadi be approved, I shall call upon the Engineer, who is shortly to be attached to the Maliah charge, to investigate likely localities and to submit estimates for some half dozen tanks of moderate dimensions.

25. The subject under report is so large and so important that some points which I should have dealt with may have escaped my notice; but I have tried to make it as full as is consistent with reasonable conciseness, and I trust that what I have written will be found sufficient to enable the Board and Government to satisfactorily dispose of the subject.

26. There are 3 areas which I have not inspected– (1) the northern part of the Parlákimedi zemindari; (2) the Kotiah Khond country; (3) he tKorada and Ronaba zemindaris. As to the first, I think the zemindar is alive to his own interests, and to the protection of the Mahendratanaya river whose sources are in that tract, and may be left to deal with the matter himself; as to the second, the country is reported to be still well-wooded and not over-crowded, and so no immediate action is called for; the third area is insignificant, at present the little forest left in it simply serves as a cloak for frauds on the Government Forest Department, and the sooner the whole of it is cleared the better.

27. I forward a map in which the different areas dealt with are approximately shown under different colour washes; the reserved forests in the adjoining low country tracts are also marked, as their position has an important bearing on the subject in hand.

ENCLOSURE No. 1.—Draft rules.

ENCLOSURE No. 2.—Map.

READ—also the following Government Order, dated 10th March 1891, Mis. No. 1644, Revenue:—

Read—the following letter from the Agent to the Governor in Ganjam, dated 18th February 1891, No. 17-Ag.:—

Adverting to Government Order, No. 7414, Revenue, dated 2nd December 1890, asking for a report on the points noticed in Mr. Wedderburn's memorandum, dated 11th March 1890, I have the honour to refer you to paragraphs 10 and 12 of my letter published with Government Order, Judicial, No. 1472, dated 5th September 1890, in which Mr. Horsfall's opinion on the subject and mine are given.

2. Though I have given attention to this subject in my late hill tour, I have not been able to arrive at any more definite conclusion as to the respective rights of zemindar, patro and villagers, nor do I think it possible to do so without a judicial inquiry for which I have at present no point of departure, but which can be initiated by any of the parties concerned, and no doubt will be so as soon as the question becomes one of practical importance.

Order—dated 10th March 1891, Mis. No. 1644, Revenue.

Recorded.

2. The reply to Government Order, dated 13th November 1890, No. 911, should be expedited.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Agent to the Governor, Ganjam, through Judicial Department.
Copy to the Commissioners of Land Revenue.

Read—also the following Government Order, dated 18th April 1891, Routine No. 117, Revenue :—

Read—the following letter from the Agent to the Governor, Ganjam, dated 4th April 1891, No. 114-Ag. :—

Referring to paragraph 2 of Government Order, dated 10th March 1891, No. 1644, received through the Judicial Department, I have the honour to inform you that Government Order, dated 13th November 1890, No 911, Revenue, was replied to in my letter, current No. 114-Agency of 1890, dated 17th February last, to the Secretary to the Commissioners of Land Revenue.

Order—dated 18th April 1891, Routine No. 117, Revenue.

Recorded.

2. It is observed that the Board has not yet submitted the Agent's letter to Government. It is requested to expedite disposal of the matter.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Commissioners of Land Revenue.

Resolution—dated 10th August 1891, No. 354.

For several years past complaint has been made by Government officers of the destruction of forest going on in the Ganjam Maliahs and the Agent's Hill tour reports have each year regularly called attention to the matter.

2. With the exception of prohibiting the felling of timber for sale in certain Maliahs (Government Order, dated 25th January 1886, No. 56) nothing has, however, been done, because of the difficulty, firstly, in deciding whom the forests belong to; and secondly, in devising efficient means to protect them without at the same time raising the Khonds and others in revolt.

3. In 1885, Mr. Gamble made certain proposals in this direction, but the Collector, Mr. Horsfall, objected, saying that any such attempt "would excite suspicion and terror and meet with sullen and determined opposition," and his objection was supported by the Board and accepted by Government—Government Order, dated 29th September 1885, No. 1106. In 1887 again the Collector, in reporting that his efforts to persuade the Khonds to be more provident had had no effect, stated that "the Khond would not hesitate to cut down the man who attempted to interfere with his free right of cultivation. He pays his dues to the Bissoyi readily enough when let alone, but will not brook any interference, not even from his Bissoyi"—Board's Proceedings, dated 17th August 1887, Forest No. 469.

4. In Mr. Horsfall's opinion apparently this resistance to interference on the part of the Khonds was more or less justified, for in his letter in the Government Order of 1885 already quoted, Mr. Horsfall said—"The Khonds claim the unrestricted ownership of the land and forests, and their right and title thereto has never been questioned, subject, of course, to prescriptive dues to their Bissoyis, or Patros. Mr. Gamble appears to labour under the impression that the forests in the Agency tracts are, as is the case in the low country, the property of Government, but this is not so." Mr. Horsfall's opinion in regard to such a matter, in a district which he knew so well as Ganjam, would be entitled to great weight, at any rate as showing what the locally-received opinion was; but Mr. Gamble questioned its correctness at once, in a letter which is embodied in Government Order, dated 13th November 1890, No. 911: the Board expressed its opinion on the matter, but Government wished for an expression of opinion from the present Collector, Mr. Johnson, which Mr. Johnson has now submitted.

5. In its order, dated 28th April 1890, No. 2595, passed on the Agent's Hill tour report for 1888-89, in which the Agent had made his usual complaint of the destruction of the Agency forests, Government remarked that it "would be prepared to consider favorably any proposals that the District officers might have to make in view to a better preservation of forests in the Agency tracts." To this also Mr. Johnson has replied.

6. The questions to be decided, therefore, are—

(*a*) To whom does the forest belong;
(*b*) What degree of protection is required;
(*c*) In what way can this protection be most easily afforded.

7. The first question is one of some difficulty. The fact appears to be that the right to forest in the Ganjam Maliahs is much the same as it is elsewhere, *i.e.*, that it belongs to the State, and the State at present is the British Government. There seems no need to go as far as the Red Indians for an analogy. Much the same state of things appears to prevail on every large hill range in the Presidency in which hill tribes reside and cultivate on a more or less shifting system. The Chentsus of the Nallamalai appear to stand on much the same footing as the Khonds and Souras, though on a smaller scale, for they have lived and felled and cultivated in their forests for centuries, but no one would dream of allowing their claims to the forest, as private owners, though a certain modified right of use has been admitted in their favour at the settlement. If the Khonds have advanced a stage further, and have pushed their cultivation so that the forests are mere adjuncts to the cultivated area, they do not stand in any better position than ordinary ryots do, whose claims to forests lying near them, or in their midst, are always disallowed. So far as actual user goes, it is clear that the Khonds use the forests as they please, but so, till not so very long ago, did the ordinary ryot of the plains, and so, till the Forest Department stops him, does the ordinary hillman of other districts. The only difference is that the Khonds being an excitable race and having a strong natural position, they have not been interfered with so much as other folk, for fear of stirring them up to revolt. The forests do not seem, therefore, to belong to the villagers.

Do they belong to the Patros? From the description given of these men at the end of paragraph 7 of the Board's Proceedings dealt with in Government Order, dated 13th November 1890, No. 911, clearly not, it would seem. This is the question raised in paragraph 6 of the Government Order, dated 5th September 1890, No. 1472, Judicial, in Government Order, dated 24th November 1890, No. 7201, Revenue, and there the suggestion is made that the Patros or Bissoyis may be entitled to seigniorage. This does not appear to be the case. In particular cases, a stronger Bissoyi than usual may have levied fees, and in certain cases the Khonds may have allowed them, as a matter of grace, to their feudal chief, but in neither of these cases is Government bound. It will be recollected that Government has held that the mittadars have no right to the forests in Rumpa and that these must be considered State property—*vide* Government Order, dated 3rd February 1890, No. 103.

The right to the forests appears, therefore, to be vested in Government, or where Government has transferred its rights to a Zemindar, in that Zemindar. The question has, however, been very inadequately dealt with by Mr. Johnson, and is treated more at length in Board's Proceedings, dated 19th January 1886, No. 143, though the conclusion there come to is more in favour of the Khonds.

8. As regards the second and third questions, there seems a general consensus of opinion that what is mainly needed now is protection to such portions as are required for climatic purposes, such as the area round the head waters of the Rushikulya, &c.; that the reservation of areas for the mere growth of timber is not needed and would not be financially profitable as yet; and that the best way of effecting this will be to bring the Forest Act into force throughout the Agency, and to lay down a simple set of rules under it, fully protecting the areas reserved, and merely prohibiting export for sale from the rest. Mr. Johnson has gone carefully into the question, and after a complete tour through the Maliahs, submits detailed proposals in regard to the areas to be taken up, or, if zemindari, to be leased. On this matter,

however, the Board thinks it would be well to have the opinion of the Acting Conservator Mr. Hooper, who should arrange to visit Ganjam in the ensuing touring season, either as independent Conservator or when on special duty—(*vide* Government Order, dated 24th July 1891, No. 4186), and whose experience of the Agency tracts of Godávari will teach him that especial tact and care are needed in dealing with such an excitable and jealous people as the Khonds and Souras for the first time.

9. For, on this point, all parties are agreed that the hill tribes are extremely jealous of their alleged rights and that any want of caution and discretion in taking up forest land for the first time will most probably lead to an explosion. It has been already stated that the forests seem to belong to Government, and there seems no reason to go back from this view; but even so, there is no need to ride rough-shod over Khond feelings, and it will be far cheaper to expend a fair sum in buying them over to the side of Government, than to have to spend a large sum in putting down a possible *fituri*. It seems clear from Mr. Johnson's report that the judicious expenditure of an inconsiderable sum will go far towards rendering any such explosion unlikely. The Collector in some instances recommends that this should take the shape of a grant for the construction of irrigation works and the extension of agricultural improvements, and the idea is a good one; but the Collector is requested to report more in detail after actually settling what area is to be taken up.

10. Another point to which the attention of the local officers should be directed is the differences in temperament and civilisation between the various sections of the hill tribes; what could perhaps be done easily in the Udayagiri taluk, could not be done without risk in the Chinna Kimedi country, or without the certainty of an explosion among the Kutya Khonds. It is not absolutely necessary that the whole district should be taken in hand at once; on the contrary, it would be far better to avoid the more risky parts for a time, until efficient control has been obtained of the easier portions, which could be taken up first. Apart from the risk of causing an explosion, by appearing to be too grasping at first and by encroaching on the wilder and more lawless tribes, there is the probability of the department not being able to supply a sufficient staff to deal with more than a small area.

11. The Board would therefore strongly recommend that Government should declare that the forests in the Ganjam Agency tracts are State property, except where Government has transferred its rights to a zemindar; and that steps be taken to introduce the Forest Act into these tracts. The Collector and Conservator should in the meantime consult each other and submit a detailed report as to the extent of the areas to be taken up, the rules to be framed under the Act, and the concessions or compensations to be made to the local tribes. In this connection attention is drawn to the suggestion in paragraph 11, Board's Proceedings, dated 19th January 1886, No. 143 (Forest), that the Khonds should be induced, in consideration of an annual payment, themselves to guard those tracts which it may be deemed expedient to reserve.

(True Copies and Extract).

(Signed) H. A. SIM,
Acting Secretary.

To the Secretary to Government, Revenue Department,
with four enclosures (to be returned).
" Conservator of Forests, Northern Circle.
" Collector of Ganjam.
Copy to the Conservator of Forests, Southern Circle.
" " Examiner of Forest Accounts.

Exd. W. J. Lewis.

REVENUE DEPARTMENT.

1891.

Board of Revenue

(Land Revenue),

MADRAS.

Printed September 9th.

Proceedings, dated 10*th August* 1891,
Forest No. 354.

Recommending to Government that the forests in the Ganjam Agency tracts should be declared to be State property, and that steps should be taken to introduce the Forest Act into them, and requesting the Collector and Conservator to submit a detailed report as to the extent of the areas to be taken up, &c.

REVENUE BOARD OFFICE MADRAS

Proceedings of the Board of Revenue

(Land Revenue).

Dated 16 October 1893

Forest No. 1315, Miscellaneous.

READ the following :—

REVENUE DEPARTMENT.

~~Original letter~~ *Proceedings of the Madras Government.*

READ Proceedings of the ~~Board of Revenue (Land Revenue)~~, dated Government, Judicial Department, dated 16 August 1893, no 1645

~~Order thereon~~ Communicated to the Board of Revenue.

2. The attention of the Commissioners of Land Revenue will be drawn to the remark contained in the second sentence of para 4 of the Proceedings read above, and the necessary instruction should be issued to the Collector.

3. With reference to para 32 of the Agent's report, it is observed that a notification extending the Abkari Act to

to the villages referred to, has been ordered to be published in G.O. dated 17th July 1893, No. 641 Revenue.

4 The attention of the Commissioner of Salt, Abkari and Separate Revenue will be invited to the Agent's remarks in paras 33, 34, and 36 of his report.

(True Extract)

(Signed) H. Bennett
Under Secretary to G. W. D.
for Ag: Secretary to Govt.

To The Board of Revenue, (S.R).
do (L.R)
Judicial Department.

Resolution:
Communicated to the Agent, Ganjam whose attention is drawn to para 2 of the Government order. He is requested to take action accordingly.

(Signed) W. S. Meyer.
Ag: Secretary.

To the Agent to the Governor, Ganjam.

(True Copy)

Ag: Secretary.

CONFIDENTIAL.

PROCEEDINGS OF THE BOARD OF REVENUE.
(LAND REVENUE.)

READ—the following letter from C. J. WEIR, Esq., Acting Agent to the Governor in Ganjám, to the Secretary to the Commissioners of Land Revenue, dated Camp Possara, 20th January 1895, Reference on C.T. No. 6/Ag. of 1895 :—

As directed in paragraph 1 of Government Order No. 1630, Judicial, dated 30th June 1894, I have the honour to report that the Zamindar of Parlákimedi has filed a suit in my court against the Secretary of State for India in Council to establish his rights to the tract known as the Parlákimedi Maliahs and the forests therein; a copy of the plaint is herewith enclosed.

2. The plaint was filed before me on November 19th. As it was somewhat vague in its language as to the rights claimed by the zamindar over the lands other than forests, I asked the vakils for the plaintiff to state their client's claims more definitely. This they professed themselves to be unable to do without consulting their client, and fifteen days' time was allowed them for the purpose. On December 4th they filed before me an explanatory statement, the language of which was even more ambiguous. This I returned with an endorsement. (Copy of explanatory statement and endorsement herewith sent.)

Subsequently the plaintiff has sent by registered post a second explanatory statement which reached me on the 11th instant, a copy of which I enclose. The rights claimed by the zamindar are not yet stated exhaustively or precisely, but I think I need not now call for further explanations at this stage. At the settlement of issues the plaintiff may be called upon, if necessary, to further supplement these explanatory statements.

3. I now wish for instructions as to the lines on which Government wish to defend the suit.

Government Order No. 1490, Judicial, dated 21st August 1894, does not state those arguments on which the decision arrived at therein was based, nor can I find them in the correspondence in my office.

The right of the zamindar to appoint Bissoyis has been discussed in Government Order No. 2265, Judicial, dated 3rd November 1891. I think, however, it is not desirable that I should attempt to frame a written statement of reply without first taking the orders of Government, and I would suggest, for the consideration of Government, whether it would not be better that one of their law officers at the presidency should draft the written statement.

4. As regards paragraph 2 of Government Order No. 1630 of 30th June 1894, I think it is obviously undesirable that I should myself judicially dispose of the suit. As representative of Government, I must take a considerable part in working up the case for the defence, and this duty I cannot conveniently depute to any other officer. I think, therefore, it would be best that I should refer the suit to the Principal Assistant Agent under clause 2 of Agency Rule X.

I do not anticipate that the hearing of the suit will actually occupy much time as there will be little, if any, oral evidence. I consider, therefore, the Principal Assistant Agent will be able to dispose of the suit in addition to his ordinary duties; but if this should prove otherwise, a Deputy Collector might be posted temporarily to assist him in the latter.

5. Copies of the exhibits filed with the plaint are herewith sent. The plaintiff has valued the plaint properties at Rs. 25,000; this valuation it is impossible to check, and I have accepted it for the present at all events.

Read—the following letter from C. J. WEIR, Esq., Acting Agent to the Governor in Ganjám, to the Secretary to the Commissioners of Land Revenue, dated Camp Udayagiri, 24th January 1895, Ref. on Tour Current No. 6/Ag. of 1895 :—

In continuation of my letter, Reference on C.T. No. 6/Ag. of 1895, dated 20th January 1895, I have the honour to suggest that, after receiving the orders of Government as to the general lines on which they wish the defence of the suit to be conducted, I should make an abstract of the documents to be filed at first hearing shown in the list filed by plaintiff so far as available in my office. All the more important ones should be forthcoming.

2. We would then know what documentary evidence plaintiff relied upon. A thorough search among the records for papers other than those mentioned by the plaintiff, material to the case, would also have to be made.

3. I might then submit to Government a report on these investigations on which a proper statement of defence might be based.

Resolution—dated 18th May 1895, No. 152/Confdl. No. 45.

The Board begs to submit the papers read above for the orders of Government.

2. The delay that has occurred in the Board's office is regretted. It was partly caused by the preparation of a written statement in answer to the plaint, but chiefly by the fact that, in so doing, the facts of this complicated case were fully gone into and a note was drawn up dealing with the various aspects of the claim made by the zamindar. The Board resolves to submit a copy of this note for the information of Government, as it may prove useful in disposing of the case.

3. The first point on which orders are required is in what court the suit is to be tried. The Government has already said * that the Agent, Mr. Weir, must deal with the case himself unless he refers it to the Principal Assistant Agent under clause 2 of Agency Rule X. Mr. Weir thinks it is "obviously undesirable" that he himself should dispose of the case, as he wishes to work up the defence. In the Board's opinion the objection is not of very much weight. As Agent Mr. Weir must, of necessity, occupy the dual capacity of judge and party in any suit filed in the Agency tracts against or on behalf of Government. The rules contemplate this and they even oust the jurisdiction of the High Court as a final court of appeal in all suits, such as that now in question, in which the "landed possession of a zamindar, Bissoyi, &c., forms the subject of litigation." Under Rule XXII of the special rules, the Government itself is constituted the final court of appeal in such cases, and the Government is thus empowered to decide, without let or hindrance from the ordinary courts, matters in which its own interests are involved. Moreover, if Mr. Weir shifts the responsibility for the original suit on to his Principal Assistant Agent, he will still have to decide the same issues on appeal should the original decision be contested; and the Agent's decision would in this event be practically final. The Board accordingly considers that the trial should be entrusted to the Agent himself.

* Government Order, dated 30th June 1894, No. 1630, Judicial.

4. The defence of the suit should be worked up by the Principal Assistant Agent. Parlákimedi is in his division, and the Maliahs are primarily in his charge; it is right, therefore, that he should represent Government in the case; but, of course, the Agent's records must be made available for him, and the Agent's establishment can, if necessary, work under his orders in the matter.

5. The next point for consideration is the written statement. The draft prepared in the Board's office will be submitted to Government and may serve as a basis for the answer; but in the Board's opinion it is desirable to entrust the preparation to the legal advisers of Government. In this connection the Board would point out that the Honourable Mr. Bhashyam Aiyangar represented the Court of Wards in the friendly suit No. 10 of 1888 in the Berhampur District Court, filed to establish the present zamindar's right to take over the estate and is therefore well acquainted with the peculiar history of the zamindari.

6. As regards the merits of the suit itself, the Board would respectfully invite the attention of Government to the office-note now forwarded. Presuming that the facts therein stated cannot be controverted, the Board is of opinion that the suit now filed by the zamindar, in so far as it relates to his ownership of the forests, cannot be successfully contested. It is beyond dispute that for many years the Court of Wards, acting on behalf of the present zamindar's predecessors in interest, treated these forests as estate property. From 1862 to 1879 a special forest establishment was maintained by the Court of Wards on account of the Parlákimedi estate. The records prior to 1862 have not been traced, but it is exceedingly unlikely that the Court of Wards worked the forests before 1862. In a report of a tour in Ganjám forming appendix G to the forest report for 1859, Dr. Cleghorn submitted proposals for working the Ganjám forests, mentioning that the first effort to work the sâl forests of the Northern Circars had been made by a Mr. Williams in 1851. Supposing that the Court of Wards entered on the forests for the first time in 1862, and that the full period of limitation (sixty years) cannot therefore be proved by the zamindar against Government, still the long-continued action of a *quasi*-Government body like the Court of Wards during the years 1862–1893, will be a strong point in the zamindar's favour. It seems to the Board that the Court of Wards merely followed the generally accepted idea subsequent to the arrangement of 1835. What that idea was is clear from paragraph 20 of Government Order, No. 1067, dated 1st September 1835 (read with paragraph 135 of Mr. Russell's report) which to all appearances placed the lands of the Bissoyis again within the zamindari by declaring that those hill chiefs should be regarded "as tributaries and dependents of the zamindar rather than as independent chiefs paying tribute to Government" (paragraph 58 of President's minute). Moreover, the annual sum of Rs. 1,397, the revenue of certain Doratanam Mokhassas was specifically left to the zamindar as compensation for the abatement of one-third of the tribute which would have been made if the arrangement had been in force when the permanent settlement was made (paragraph 135 of Mr. Russell's report).

7. The Board accordingly considers that if it is necessary in the public interests that the ownership of these forests should be secured by the State, it would be well to compromise the present suit for such sum as the Government may be prepared to expend for the purpose.

8. The following telegram will be sent to the Agent to the Governor in Ganjam :—

"Please send copy of Parlákimedi sanad."

(True Copies and Extract.)

Ag. Secretary.

To the Secretary to Government, Revenue Department,
with 15 enclosures, in original, to be returned.

Copy to the Collector with draft written statement.

Exd. S. J. Pereira.

Extracts - Page 6

Extracts Page 15.

APPENDIX.

Note.

The Parlákimedi Maliahs or hill tracts which are claimed by the Zamindar of Parlákimedi in the present suit extend along the north of the Parlákimedi estate and to the south of the Pedda Kimedi Maliahs. The best map is that published with Mr. Maltby's Ganjám Manual, dated 1877, and the map shows them as *proprietary Maliahs* as distinguished from *Government Maliahs—vide* key to the map. There is an equally good map with Mr. Russell's printed report on the Kimedi disturbances dated 1856; only the boundary between the estate proper and the Maliahs is not clearly defined on this map. The large scale map of Parlákimedi (1 inch to a mile) reduced from Captain Wynch's survey of 1864 (undertaken at the instance of the Court of Wards) does *not* show the Maliahs, not because these tracts were not considered part of the estate, but because it was not thought worth while surveying them. For the same reason the Parlákimedi Maliahs are not shown in the atlas sheets reduced from the Topographical Survey of India.

Note.—For Mr. Maltby's account of the Maliahs, please see pp. 14 and 32 of the Ganjam District Manual. The statements on pp. 14 and 15 regarding the Maliahs are not quite accurate. It was not on the recommendation of the Circuit Committee (which had no existence after 1788) but of the Special Commission that the Bissoyi's lands were severed from the zamindari; even this is not correct because the severance had been resolved on in 1799.

2. The Parlákimedi Maliahs are composed of forest, jungle and cultivated land. Mr. MacCartie's account of the Kimedi forests in 1881 was as follows:—

Pages 55, 56 of Government Order, dated 24th November 1882, No. 1954, Judicial.

"With the exception of isolated patches in *Gyba* to the west and of the two easterly muttas named *Jerangi* and *Koypuram*, the once famous forests of the Kimedi Zamindari have disappeared under the combined influence of Kumeri cultivation and indiscriminate felling for sale. Blackwood, ebony, sâl, pia sâl and other species, of which I do not know the English names, are indigenous, but save in the excepted tracts they are rarely to be met with and their place has been taken by a dense jungle of brush-wood . . . The future prospects of these jungles are discouraged by the prevalence of *Kumeri* cultivation among the Savara tribes, with whose prescriptive right to which it has hitherto been deemed inadvisable to interfere. No orders have therefore been issued in restriction of this practice nor of the privilege of all comers to cut timber for domestic or agricultural purposes . . . "

The cultivated land is occupied by the Savaras and the Bissoyis. The latter enjoy the lands as service inams for protecting the low country from Savara raids. Before the proclamation of 1800 referred to below, the Bissoyis (ten in number) paid a kattubadi of

Para. 8, p. 43 of Mr. MacCartie's report.

Rs. 3,656 per annum to the Zamindar of Parlákimedi. At present the kattubadi (reduced to Rs. 2,530 per annum) is payable to Government through the zamindar and it is excluded from the assets of the zamindari. Mr. MacCartie appears to have misapprehended the altered relation of the Bissoyis to the zamindar which is correctly described in Government Order, dated 3rd November 1891, No. 2265, Judicial. Mr. MacCartie, in the report already referred to, recorded his findings as to the fees claimable by each Bissoyi from the Savaras; these fees also constitute part of the service payment made by the State to the Bissoyis. The Government does not appear to derive any independent revenue from the Savaras.

3. *The history of the administration of the Parlákimedi estate* so far as it bears on the present claim is as follows:—

In February 1798, Gajapati Deo, the Zamindar of Parlákimedi, broke into rebellion against the Honourable East India Company and was joined by several of the Bissoyis from the Maliah tracts attached to the estate. The insurrection was put down in 1799 and the question of the future administration of the zamindari came under consideration.

In order to establish the authority of Government in the zamindari on a permanent basis, Government determined that Gajapati Deo should be declared to have forfeited his zamindari and that the estate should be placed under the management of his cousin Durga Razu. It was also thought necessary, in the interests of the public peace, that the Bissoyis should be withdrawn from the control of the zamindar and placed immediately under the surveillance of Government officers.

4. Accordingly a proclamation was published throughout the disaffected tracts early in 1800, wherein it was declared that Gajapati Deo had forfeited his estate for repeated breaches of engagements, for disobedience of Collector's orders and for withholding revenue collected by him; the Collector was directed by the same proclamation to make the necessary arrangements for the future peace of the country and for the collection of the revenue until the arrears should be paid as well as to make agreements with *and grant the cowle of Government to the Bissoyis who were from thenceforward to pay their revenue direct to*

Government, and to be for ever kept under the Company's immediate authority. At the same time the proclamation announced that the Government would be willing, as soon as the country should be reduced to order, to restore Purushottam Narrain Deo, son of Gajapati Deo, to the lands of his ancestors, with the exception of *those then held by the Bissoyis which were declared separated from the zamindari for ever.*

1800.

5. In 1800 kabuliyats were executed in favour of Government by the Bissoyis of the estate and the revenue payable by them was also subsequently reduced from Rs. 3,656, the amount which they had paid to the zamindar, to Rs. 2,530, the amount accepted in the kabuliyats. This latter amount was fixed as the permanent revenue payable by the Bissoyis.

1802.

6. The estate was under the Collector's management up to 4th February 1802, when Gajapati Deo having died, his son, Purushottam Narrain Deo, was declared zamindar. The new zamindar was presented in May 1803 with a deed of permanent settlement which fixed the assessment at 20,000 star pagodas for the ten fasli years 1213 to 1222 and thereafter at 22,857 (Rs. 80,000) star pagodas. This assessment was settled in accordance with the recommendation of the *Special Commissioners* and a reference to their report dated 29th April 1803 shows that all payments on account of the Maliah tracts held by the Bissoyis were excluded from the assets adopted in fixing the permanent assessment, the details of calculation of the assessment being as hereunder:—

1803.

Extracts - Pages 8 & 17

Extracts - Page 12.

		Rs.	Rs.
"Average revenue			1,26,202
Deduct—			
Salt sayer and abkári		17,930	
Peishcush paid by the Bissoyis to be in future paid to the Collector		2,530	
			20,460
Balance (average net revenue)			1,05,742
Two-thirds of which amount to			70,494

70,000 to be paid for fasli 1212 and nine ensuing years and 80,000 for subsequent years."

The Special Commissioners also appended the following comparative statement showing the revenue derived by the Company from the Parlákimedi estate before and after the permanent settlement:—

Extracts - Page 15

	Rs.	Rs.
Jumma paid by Gajapati Deo before permanent settlement	..	86,000
Do. to be paid by the zamindar in perpetuity	80,000	
Salt and sayer (excluding items improperly included in the original figure)	11,027	
Revenue to be received direct by the Collector from the Bissoyis	2,530	
		93,557
Increased revenue due to the Company under the permanent settlement		7,557

Extracts - Page 17

Paragraph 56 of the Special Commissioners' report referred to the separation of the Bissoyis' possessions from the estate and to the steps to be taken for the future government of the same with due regard to their prejudices.

Extracts - Page 18.

The Government accepted the permanent assessment so fixed and observed that the exclusion of the Bissoyis' possessions from the estate was in accordance with its orders.

1805.

7. Purushottam Narrain Deo died in 1805 and was succeeded by his son, a minor. The estate was then taken under the Court of Wards and placed under the management of Durga Razu who, however, resigned his post in 1813. His son, Padmanabha Deo, was appointed in his stead. The Bissoyis were, however, not peaceful, but desired the removal of the new manager. He was removed and one Narasinga Rao appointed in his stead. Fresh disturbances having arisen in 1822, it was thought proper to place the zamindar, though under age, in charge of the estate, and this was accordingly done in 1822. Before handing over the estate, however, "it was determined that the instructions given *during the management of Mr. Scott* * and acted upon in forming the permanent settlement, by which the kattubadi of the Bissoyis was made payable direct to Government, but which had, in fact, remained inoperative [all that had been realized (from the Bissoyis) having been collected by Durga Razu, a manager of the estate, and Pattamaha Devi (Gajapati Deo's widow)] should be cancelled, and that they should pay their tribute, as *formerly, to the zamindar.*

Under Court of Wards, 1805–1822.

Mr. Russell's report in vol. I of the reports on the disturbances in Parlákimedi, Vizagapatam and Goomsur.

Russell, p. 30, para. 49.

* *I.e.*, in the first decade of the century, according to Special Commissioners' recommendation.

Russell, p. 30, para. 48.

Under Court of Wards 1830–1890.

8. In 1830, the estate was again taken under the management of the Court of Wards owing to the imbecility of the zamindar; but constant disturbances followed the transfer of custody to the Court, and in 1832 Mr. Russell was appointed as Commissioner of Ganjám and

Vizagapatam to restore order. This duty was accomplished before 1834 and, in his exhaustive report to Government, Mr. Russell suggested that the tribute payable by the Bissoyis to Government having been added to the peishcush without any consideration or compensation to the zamindar for the responsibility imposed on him, the increased revenue realizable from certain forfeited dorathanam mokhasa villages should be made over to the zamindari on the condition of its being charged for the future with the tribute of the Bissoyis in addition to the peishcush. In Mr. Russell's opinion it was "extremely desirable that the Bissoyis should still be considered tributaries of the zamindar, rather than independent chiefs paying tribute directly to the Government." In expressing his views on Mr. Russell's report the President in Council (The Right Honourable Sir Fred. Adam) said:—"I observe that Sir T. Munro was also of opinion that the Bissoyis should be subject to the zamindar and should pay their tribute to him. As the proposed arrangement, therefore, is advantageous to the zamindar and the most convenient and expedient generally, I recommend that it be sanctioned." The Government, in its order on Mr. Russell's proposals dated 1st September 1835, No. 1067, directed that the zamindari should, in future, be charged (as proposed) with the tribute of the Bissoyis in addition to peishcush. But in Government Order No. 2265, Judicial, dated 3rd November 1891, the Government expressed the view that the arrangement arrived at in 1835 was a purely fiscal one, "whereby the zamindar was made the representative of Government for purposes of collection only and it did not otherwise alter, as between the zamindar and the Bissoyis or the tracts under their authority, the relations previously settled and in force for 36 years."

Russell, p. 87, para. 135.

Russell, p. 86.

Para. 58 of the minute.

Para. 20 of the Government Order.

9. The arrangements thus arrived at in 1835 have been in force ever since. From 1862 to 1879 a special *forest* establishment was maintained by the Court of Wards on account of the Parlákimedi estate. A sum of Rs. 55,842 was spent on forests during the seventeen years following December 1862 and the receipts during the same period amounted to Rs. 81,002, leaving a net profit to the estate of Rs. 25,160. The expenditure was incurred with a view of obtaining revenue from the forests rather than of

Note.—Report in Court of Ward's Proceedings, Mis. No. 2144, dated 4th July 1893, referred to and commented on in Government Order, dated 21st July 1893, No. 1480, Judicial.

conserving them, and, in fact, no measures of conservancy were undertaken in respect of the Maliah forests. In 1880, the establishment was dispensed with and after that date there does not seem to have been any outlay under that head excepting Rs. 16 per mensem for extra allowances for estate peons for special duty in guarding the ghâts and in levying seigniorage on timber.

It is also stated that expenditure was incurred out of the estate funds on account of roads and schools in the Maliahs, but the exact amount thereof is not ascertainable in this office.

The correspondence and the accounts regarding the Maliah forests produced by the plaintiff also relate mainly to the years 1867–1880; the papers relating to previous years are only nine in number, of which two are of 1838 and the rest do not date further back than 1858. Subsequently to 1879–1880, as observed already, the Court of Wards regularly collected a seigniorage on all timber passing down into the plains. This right was not disputed either by Government or by the Bissoyis till 1889 or 1890, *i.e.*, for sixty years after the Court of Wards assumed charge of the estate.

1890.

10. In the year 1890, the estate was given over by the Court of Wards to the imbecile zamindar's son under a decree of the Civil Courts. The Collector's letter of 1862 * to the Court of Wards shows clearly that no doubt was entertained as to the forests being the exclusive property of the zamindar. This belief was confirmed by the policy of the Court of Wards in sanctioning various establishments for felling wood in the Maliah forests. A single paragraph (paragraph 3) in Board's Proceedings, No. 143, Forest No. 25, dated 19th January 1886 (drafted by the late Mr. S. Laffan) avers that the Maliahs of Parlákimedi were excluded from the assets of the estate and that the Government may be regarded as exercising full sovereign rights over those tracts, but a singular fate attended this Board's Proceedings. It was mislaid in Government office for four years as will appear from page 7 of Board's Proceedings dated 10th August 1891, Forest No. 354, and even when final orders were passed† on it, the fact that the attitude of the Court of Wards towards the forests in the Parlákimedi Maliahs required to be set right was lost sight of. In Board's

* In Court's Proceedings, dated 29th August 1862, No. 5736.

† In 1893—*vide* Government Order in Board's Proceedings, Forest No. 213, dated 22nd March 1893.

Proceedings, dated 10th August 1891 a general recommendation was made that Government should declare that the forests in the Ganjám Agency tracts were State property, except where Government has transferred its rights to a zamindar. It was not stated whether the Parlákimedi Maliahs contained State forests although this had been pointed out in 1886. This fact was noticed for the first time in paragraph 4 of Government Order, dated 3rd November 1891, No. 2265, Judicial, and the discovery was due to the following circumstances.

11. In 1891, the zamindar having claimed the right to appoint a successor to a deceased Bissoyi, the Government was referred to for orders. The whole question of the Bissoyi tenure was then gone into, and the Government, in passing orders, * observed :—

"It is not the case that the right of investiture of a Bissoyi has always appertained to the zamindar, for this right was abolished by the proclamation of 1799, nor is it *the case that the hill villages form any part of the estate*, or that the kattubadi paid by the Bissoyis constitutes tribute paid to the zamindar; it is tribute paid to Government through the zamindar. Finally, it is impossible to question the right of Government to declare the estates of the Bissoyis forfeit." Immediate action was, however, not taken on the decision that the forests did not belong to the estate.

* Government Order, dated 3rd November 1891, No. 2265, Judicial.

12. In 1893, the zamindar of Parlákimedi sought to be recognised as the owner of the forests on which he alleged that heavy expenditure had been incurred by the Court of Wards out of the funds of his estate, and prayed for the grant of a Maliah sanad. The Government declined to grant the zamindar a sanad for the Maliah tracts bordering on his estate or to recognise any claim on his part to the forests in those tracts. It also disallowed his claim to compensation for the alleged outlay by the Court of Wards as that outlay had been more than counterbalanced by the income derived from the forests and credited to the estate.

Government Order, dated 21st July 1893, No. 1480, Judicial.

13. Two other claims to *Maliah* forests have formed the subject of discussion and of Government orders. The first claim related to the Government Maliahs and was that of the Khonds and Savaras, the aboriginal hill tribes, which was dealt

with in Government Order, dated 21st January 1893, No. 57. Government then decided that although the Khonds and Savaras might have exercised certain *privileges* in the forests, they had no legal right of ownership or possession in them and that the Government would be justified in curtailing their privileges if it became necessary in the interests of the general public to do so.

* P. 3 of the letter to Government of India, dated 29th January 1895, No. 191.

† In Government Order, dated 24th November 1882, No. 1954, Judicial.

‡ As settled by Mr. MacCartie.

14. The other claim is that lately put forward by the Bissoyi of Gumma (one of the hill forts in the Parlákimedi Maliahs) to the forests in his mutta. The question is fully dealt with in Government Order No. 190, Judicial, dated 29th January 1895, and the letter to the Government of India of the same date. The Government said: * "A reference to Mr. MacCartie has elicited the fact that on the occasion of his settlement † in 1881 no claim to the ownership of the forests in their muttas was put forward by the Bissoyis and no sanads or other documents have been produced in support of the claim to the possession of proprietary rights which has now been made by the petitioner (the Bissoyi of Gumma). This claim is indeed of quite recent origin." The Government Order concluded by saying that the Bissoyis *had a right only to the lands actually in their* occupation and to the customary fee ‡ payable by the Savaras to which they had been declared entitled, but that it would be inexpedient as well as unfair to recognise in them any general proprietary rights in the muttas.

NOTE.—It would be important to know when this claim was first recognised by the Court of Wards. A search has been made in the records for papers before 1862, but thus far without avail. The zamindar, however, seems to have found papers of 1830–40.

15. The fact that these claims have been put forward may possibly be useful in meeting the pretensions of the Parlákimedi Zamindari to *exclusive* possession in the past of the Parlákimedi Maliahs; but still the fact remains that *for several years* the zemindar's ownership of the forests was asserted and acted upon by the Court of Wards. The Proclamation of 1800 excludes "the Bissoyis' possessions," but not the Maliah forests from the zamindari. The sanad granted to the zamindar in 1803 which might throw light on the Government's intention in regard to the Maliahs is not here, but it will be called for. Supposing the sanad does not exclude the forest by name, the question arises whether the zamindar's right to the forests (as distinct from the Bissoyi's possessions) was taken away by the proclamation of 1800. The case will then be parallel to that in XV.

Madras I.L.R., quoted below. The Bissoyis' possessions lie scattered among the forests, and it is probable that the Government of 1800 meant, in excluding the "Bissoyis' possessions" to exclude the forests also from the zamindari, supposing they had previously been included in it. Besides, the description "Bissoyis' possessions" meant much more in 1800 than it does now, but the Government of 1895 has just laid down (in the letter to the Government of India, No. 191, Judicial, dated 29th January 1895), that the Bissoyis' possessions do not include forests. The exact terms of the sanad of 1803 require to be studied in order to determine whether the forests were included in the grant. No copy of the sanad is available either here or in Government office and a copy will be called for from the Agent. One thing is certain, that the revenue of the hill tracts or Maliahs did not form part of the assets on which the peishcush was fixed; but this would be no answer to the zamindar's claim, so far as the *forests* are concerned, if the sanad were so worded as not to exclude them. The following remarks of the Privy Council in disposing of the Singampatti forests claim (I.L.R., XV. Mad., p. 109) are pertinent to the present subject:—

"Having regard to the character of the subjects in controversy, the *exclusive* possession which the zamindars are, by concurrent judgments found to have enjoyed, appears to (their Lordships) to have in no particular fallen short of proprietary possession. There is no ground for presuming that a proprietor whose title was clear and who was desirous of turning his estate to the best account would have occupied or used the subjects in any other way than they did. When that circumstance is taken in connection with the fact that the zamindars had a title which will aptly include these subjects and that their acts of possession have invariably been ascribed to that title, the inference drawn by the High Court, viz., that the zamindars are proprietors of the forests in dispute, * appears to be inevitable."

In the present case the zamindar's possession of the Maliah forests has not been exclusive. As described by Mr. MacCartie,† it was for long the privilege of all comers to cut timber in the Maliahs for domestic or agricultural purposes; especially as it been the privilege of the Savaras, whose right to continue to exercise that privilege forms the subject of several recent Government Orders. Here again judicial opinion may differ as to whether such acts of user on the part of the Savaras, the Bissoyis and low country ryots may be held to clash with

† Quotation at p. 1 of this note.

XV, Mad. I.L.R., p. 101.

the zamindar's exclusive possession as owner of the forests. The following remarks occur in the Singampatti case already referred to:—

"Beyond what may be implied in the acts themselves, there is nothing to show that aught done by these stranger raiyats was in the assertion of right; and assuming the statements of the appellant's witnesses to be absolutely true, the acts of user to which they speak are neither in amount nor quality sufficient to displace the proprietary title of the zamindar. Whether the evidence would *per se* be sufficient to raise rights of easement, and, if so, in whose favour, are issues which do not arise in the present case."

16. If adverse possession on the part of the zamindar is established, the period during which it continued is an important consideration; secondly, even if it has extended over the full prescriptive period of sixty years, it will have to be proved that the possession was not *vi*, *clam*, *vel precario*, but that of a full owner. It is on these points that further evidence will have to be collected by the Agent in Ganjám.

17. In paragraph 11 of the plaint the plaintiff prays that if he should not be held entitled to the lands themselves in the Maliahs, he may be declared to have rights in them by way of easements *profits à prendre* for cutting, felling, &c. In the Singampatti case the High Court held that the zamindar's user proved him entitled to proprietorship, not merely to easements, and the possibility of such an opinion being formed in the present case has to be considered.

To establish an easement or easements by prescription the following conditions should be fulfilled—*vide* section 15 of the Easements Acts, 1882.

(1) the easement should have been (*a*) peaceably and (*b*) openly enjoyed by the person claiming title hereto; (*c*) it should have been enjoyed as an easement and (*d*) as of right; (*e*) without interruption; (*f*) and for sixty years.*

(2) the suit for declaration of the easement should be brought within two years next after the close of the prescriptive period of sixty years.

* As against Government; in other cases twenty years.

Condition (2) is fulfilled in this case because, although Government in Judicial G.O., dated 3rd November 1891, No. 2265 (paragraph 4) decided that the hill

villages did not form part of the zamindari, action was taken to dispossess him of the forest only on receipt of Judicial G.O., dated 21st July 1893, No. 1480.

Of the six conditions under (1), (*a*) and (*b*) are fulfilled in this case; (*c*) is not fulfilled because the zamindar did not cut and fell timber in the forest as one enjoying an easement in a servient (*i.e.*, another's) heritage but as a proprietor using his own property. During the years 1862–1890 the forests were used by the Court of Wards as part of the property belonging to the estate, not as a subject of easement rights. They may or may not have been used as the estate property before 1862: "but an interruption of this kind, however short, will prevent the acquisition of an easement by prescription both at common Law and under the Act" (*Goddard on Easements*, p. 244). An admission that the zamindar or his representatives in interest looked upon the forests as his property during a certain period will not, of course, amount to an admission that they were *entitled* to regard it as such. Besides, in the letter to the Government of India, dated 29th January 1895, No. 191, Judicial, the Government admitted that until 1890 the Court of Wards acted under the mistaken belief that the Maliahs formed part of the Parlákimedi estate.

Mitra's Limitation Act, p. 46.
s. v. enjoyment as an easement.

If condition (*c*) fails, condition (*d*) also fails. Condition (*e*) is probably fulfilled, but Government will have to satisfy itself that there has been no interruption. Condition (*f*) is important, not because it would go to prove an easement right if the zamindar had used the forests for sixty years, but because his having used them as his own would be strong evidence of *ownership* in his favour.

Sixty years *ante litem motam* would commence somewhere about 1833, *i.e*, three years after the Court of Wards took charge of the estate for the second time. The nature of the uses to which the forests were put by the Court of Wards from 1833 to 1862 (in which latter year a regular establishment for deriving revenue from the forests was entertained) requires to be carefully investigated and scrutinized.

18. In the supplemental statement of January 1895, the plaintiff claims certain personal rights over the Bissoyis. Government Order, dated 3rd November 1891, No. 2265, Judicial, affords a complete answer to this claim. The principal contents of that Government Order have been already quoted (paragraph 11 *supra*).

Revenue Department.

1895.

Board of Revenue

(Land Revenue),

MADRAS.

Current No 4081

CONFIDENTIAL No 33.

CHIEF SECRETARY
7 JUN 1895
GOVERNMENT OF MADRAS

Printed,

Received 8/6

Proceedings, 18*th May* 1895, *No.* 152
Confdl. No. 45.

Submitting, for the orders of Government, letters from the Agent of the Governor in Ganjám regarding suit filed in his court by the Zamindar of Parlákimedi against the Secretary of State in Council, &c., to establish his rights to the tract known as the Parlákimedi Maliahs and the forests therein.

P. T. O

1630. 30.6.94
2265: 23.11.91.
1490: 26.8.94
1067: 1.4.35
1486: 21.7.93
1954: 24.11.82

87: 21.1.93
196: 21.1.95
I.L.R. xv Madras
Examiner
Imperial Act

CURRENT No. 2780

Selections from Records Vol I.
Board's Proc. Vol. Aug. 62
Pte Commr's Proc. Dte 64: 13.481

Endorsement No 2278 Mis

Transferred to the Judicial Department.

W H Lewis
Offg Under Secy to Govt.

Ootacamund
7th June 1895.

Note

All the proceedings connected with this subject that has taken place in the Land Dept and orders have been passed already in that dept.

Bdm 7/6/95

To The Judicial Deptt
Dft 17 encl & 4 spare copies of the BB.

CURRENT No. 2894

REVENUE BOARD OFFICE
MADRAS

Proceedings of the Board of Revenue

(Land Revenue).

Dated 7 June 1895.

No. 2877 Mis

Read the following letter from R. H. Shipley Esqr, Ag. Agent to the Governor in Ganjam to the Secretary to Commissioners of Land Revenue, Madras, dated 30 May 1895

R. C. No. 465 ag.

Sir,

With reference to your Telegram dated 17th instant, I have the honor to submit herewith a copy of the Kabuliat of the Zemindar, his Sanad not being available.

So far back as August 1890, when the Estate was made over to the present Zemindar, he asked for his Sanadi-Dilkhast for Isthimirar, but it was not forthcoming in the records of this Office, though

though a thorough search for it was made; and he was informed accordingly.

Resolution

Submitted to Government in continuation of P.P. 18-5-95 / 152. No 2278 / 7-6-95

The Kabuliat throws no light on the question now at issue.

/ True copy & Extract /

Rees
Offg: Secretary.

To The Secretary to Government /
Rene: Deputn with Kabuliat.

OS/

CURRENT NO. 2894

Judicial ~~Revenue~~ 1895. Dept.

Board of Revenue

(Land Revenue),

MADRAS.

~~Govt. Order No. 233~~

To The Secretary to Government Revenue Department

Read in Judl— 15 JUN. 1895
Rep'd " " 17-6-95

Read 12 June

Proceedings, dated 7—6— 1895,
No. 2877 Mis. ~~Routine~~. Enclosures. /

Subject.

Submitting to Govt. a copy of the Kabuliat of the Parlakimedi Zemindar.

P. T. O

X-a
13/6

Ap 13/6

Endorsement No 9667

Transferred to the Judicial Department in continuation of Endorsement (confdl) No 2278 misc, dated 7th June 1895.

W Blackmore
a/c under Secy to Govt.

Ootacamund
13. June 1895.

Dist
BMM.
13.6.95

[G. 25.]
600—8-3-95.

DEPARTMENT.

C. No. of 2780 / 2894 } from the Rev. Dept.

Note.

The delay in submitting this current is due to the fact that it could not be completely referenced until the 6th inst.

D
8.7

FOR ORDERS.

These papers relate to a suit filed against the Secretary of State by the Zamindar of Parlakimedi with a view to establish his rights to the Parlakimedi Malianks.

2. The suit gives originates from GO. of 26 June 1891 No. 1277 Jud. which deals directly only with the right of the Zamindar to appoint the Bissoyies who are in direct occupation of the Malianks tracts. The Govt then held that the right of appointment vested in itself but that the Zamindar may be permitted to make nominations inasmuch as he was responsible for the collection of the Kattubadi Tax from the Bissoyies to Govt. The note for orders on the GO. quoted deals fully with the history of this arrangement. This order was contested by Mr Taylor the Zamindar's

CUR

Feud

agent who contended that the Kattu-
badi paid by the Bissoyies was a
tribute to the Zamindar, not to Govt
through the Zamindar, & that the lands
of the Bissoyies form an integral part
To of the Zamindaries inasmuch as the
Kattubadi, which the Bissoyies had
previously paid to Govt, was in 1835
added to the Zamindar's peshcush.
The contention was replied to in G.O.
3rd Nov. 1891 No. 2265 which reiterated at
length the substance of the note for orders
in the previous G.O. (1277 / 26-6-91). The view
Re Rq taken by Govt was that the arrangement
arrived at in 1835 was a "purely
fiscal one", the duty of collecting the
Kattubadi being assigned to the Zamindar
(for account purposes only).
in whose peshcush it was added for convenience
for the additional payment being given in
the shape of the grant of a number of
Inaindaram villages of an annual value
considerably in excess of the Kattubadi
payable by the Bissoyis. - The Govt held
that this in no other way "altered", as between
"the Zamindar and the Bissoyies or
"the tract under their authority the
"relations previously settled and in
"force for 36 years". In support of this
view an order of the Special Commissioner
Mr Carmichael, of 1881 was quoted.

FOR ORDERS.

P. 134
not bound file; marked with red tape.

[G. / 25.]
600—8-3-95.

DEPARTMENT.

C. No.

FOR ORDERS.

in which that officer wrote
"These Bissoyi tenures are service
"inams; the land revenue forms no
"part of the assets of the Parlakimedi
"Zamindar"
3. The question was further discussed in
Govt Rs. 26 when the Agent, Mr
5.2.92
Johnson, pointed out that the Court of
Wards had been expending Estate moneys
upon the Kattubadi tracts, a circumstance
from which he deduced the conclusion
that the Court of Wards virtually con-
sidered the Kattubadis to form part of the
Zamindary, & that the Court would therefore
be liable to refund to the Estate all
moneys so spent, if the view taken by
Govt was correct
Govt however adhered to its previous
views
4. The next move on the part of the Zamindar

FOR ORDERS.

was a letter from Mr Taylor asking G.O. 1157 / 7.6.93
Govt to grant to Zamindar a
pawad for the Maliahs. He referred to
the expenditure of estate money by the
Court of Wards in conserving the
Maliah forests, & mentioned that in the
"Friendly suit", by which the present
Zamindar obtained possession from the
Court, the maliahs were admitted by the
Court & the part of the Estate
The Court of Wards however reported
that the expenditure of estate money upon
the Maliah forests was far exceeded by the
revenue derived, & that it was sanctioned
with a view to the object of obtaining revenue &
not for the purpose of conserving the
forests

The Govt accordingly declined to G.O. 1480 / 21. 7. 93
grant the Zamindar a pawad for the
Maliahs, & incidentally remarked that
the Rajas had no right to the forests
& directed that measures should be taken
to prevent their interfering with them
In reviewing the Sanjam Agency
report of the following month, G.O. 1645 / 16.8.93
Govt ordered that the Zamindar should
be restrained from issuing permits
for felling timber in the Maliahs.
This order was apparently given effect
to in Sept. 1893, & the cause of action

FOR ORDERS.

in the present suit appears to date
from that month.

6. The notice of the suit was received
in G.O. 1630 / 30.6.94 & the Board of Revenue
now sends up proposals for the
hearing and defence of the suit.

7. First as regards the hearing, the
Agent, Mr. Weir, wishes to refer the
suit to the Principal Asst. Agent under
Agency Rule X (2), on the ground that
he himself must work up the defence.
The Board, however, points out that
as Agent, Mr. Weir must hear the
appeal which is made to that the Principal
Asst. can work up the defence. For
the speedy decision of the matter it
appears desirable that the Agent should
hear the suit rather than his Asst.
Orders are required on the point,
however.

Note.
In G.O. 1630 / 30.6.94 it was held that there was no
provision of law under which this suit could
be transferred from the Agent's file, but it
appears that certain cases transfers can be made under
Sec 15 of 24 & 25 Vict. cap 104 which empowers
the High Court to make transfers from any
"Court subject to its appellate jurisdiction"
Under Agency rule no. XXII no appeal in this
suit lies to "the Governor in Council alone" and
it is therefore probable that the High Court could
not transfer inasmuch as the Agent's Court
when trying this case, is not "subject to the
appellate jurisdiction" of the High Court.
D
9.7.94

X This will be the only way of getting it before the High Court. I do not think that Rule XX would give the High Court authority to act as a Court of revision in the case contemplated by the Privy Council. It is actually barred by the wording of Rule XXI they would be by the spirit of

FOR ORDERS.

E. For the defence, the Board ~~regard~~ requires to retain Mr. Bhashyam Iyengar on the ground that he is already acquainted with the history of the Zamindari having represented the Court of Wards in the 'friendly suit' by which the present zamindar obtained possession. - Perhaps this recommendation may be accepted.

2. As regards the merits of the suit the Board recommends that it be compromised, the ownership of the forests being secured to the state by payment of compensation. - This recommendation is based on the very contentions raised by Mr. Taylor, which Govt after the most careful consideration rejected. viz. (i) that for many years the Court of Wards, acting as representative in interest of the Zamindar, treated the Malai forests as estate property (ii) that the arrangement of 1835 was intended to place the Bissoyis in the position of tributaries of the Zamindar vis à vis Govt, in support of which view it is urged that 'an annual sum of Rs 1397, the revenue of certain Dreatanam mokhtesas was specifically left to the Zamindar as compensation for the abatement of

FOR ORDERS.

J. Brandreth 30/8

× This gives no legal right as against the State which the Court had enjoyed for 60 years.

×. See please my note on Note for orders in G.O. No. 1277 dated 26-6-91 & this & notes thereon.

(187 of the bound volume "Records of 1856)

[G / 25.]
600—8-3-95.

DEPARTMENT.

C. No.

FOR ORDERS.

"one third of the tribute which would
"have been made if the arrangement
"had been in force when the permanent
"settlement was made"

10. Argument no (i) is of little weight. In the first place Govt is in no way bound by the acts of the Court of Wards, except to collect profit from its interference with the forests.

11. The answer to argument no (ii) is that the arrangement of 1835 was purely fiscal & cannot be taken to cancel the ~~former~~ act of state by which the Malais were formally resumed by proclamation in 1799. The revenues of the Zamindaree were increased by Rs 4977* in all by the arrangement of 1835, & the peshkush by Rs 2530†; there was thus a net

*. p. 87 (para 134) of volume Records of 1856 & Statt. 9. shown at p. 25 of this appendix of

†. Statt. in margin of para 121 (p. 80)

[G. 25.]
600—8-3-95.

DEPARTMENT.

C. No.

FOR ORDERS.

proper to the Zamindar of Rs (4977 - 2530 =) Rs 2447 less the cost of collecting Rs Kattatadi of Rs 2530 from the Bissoyis. To grant the zamindar villages with a revenue of Rs 1397 only as compensation for having to pay Rs 2530 extra peish-cush appears an absurdity.

12. The office note which accompanies the Board's proceedings however deals with the suit more fully & raises additional difficulties.

13. The most important difficulty is that Govt now holds that the Bissoyis have a right only to lands actually in their occupation & not to the adjacent forests as well (vide G.O. 190 29.1.95). Now the proclamation of 1800 1799 refers to "the lands held by the Bissoyies" not to "malcah tracts". If the Sanad issued in 1803 does not expressly exclude the "malcah tracts" from the zamindari, but merely the Bissoyi's possessions, it would seem that the zamindar has still a title to the forests, though at the same time it is probable that in 1799 1800 the Govt meant a great deal more by the expression "Bissoyi's possessions" than the Govt of today, including perhaps among their possessions 'the forests'. Unfortunately the Sanad of the

+ This is the wrong one called the Proclamation of 1800. The really operative one is that of the 24th Oct 1799

FOR ORDERS.

Zamindar cannot be found either in the records either of the Board or Govt, but cannot therefore be ascertained whether the Malcah forests were expressly excluded from the zamindari limits or not; if they were then Govt has a clear case; if they were not then it would seem that Govt must either concede proprietary rights (a) to the Bissoyis †, or to the Zamindar (vide I.L.R. Madras XV p. 104 etc) as in the Singampatti case. - As the Sanad cannot be found, the Board's draft written statement (para. 8 of the plaint, throws the onus of proof on the plaintiff by the plea that all forests not expressly granted by the State in favour of private individuals rest in the State.

14. The plaintiff further makes an alternative claim to rights of easement

† by including the forests among "their possessions"

Suit regarding Parlakimedi Maliahs

FOR ORDERS.

proper power the forests. The Board's answer
R.24 is that under sec. 15 of the Indian Easements
the Kala Act 1882 it is necessary that the
Sovereign plaintiff should have enforced his ease-
ment as an easement and as rights
for hitherto this clear that the Court of
each mods interfered with the forests in the
the of mistaken belief that the Zamindar owned
Board then & not merely possess rights of
the Easement.
Diffic 15. If Govt adheres to the views expressed
13. the in 1891 & 1893 it seems necessary &
Govt desirable to fight the suit. This being
a so, it appears expedient that a
concise statement of defence prepared by the
as Govt Sol^r, in consultation with the
pr Hon. Bhashyam Aiyangar of the proposal
"to retain his services is approved. It
to seems probable that lawyers might be
m able to make more out of the wording of
mo the plaint eg the inconsistency of the two
me alternative claims made by the plaintiff.
wo the reference to "Kattubadi paid in respect
a of the maliahs" (not in respect of the cultivated
as portions of the maliahs only)

pare 4 of plaint

D
8.7.95

The case is certainly one to fight. I do submit that the papers may be sent to the Govt. Solicitor as suggested above. It would however be desirable - and better - to obtain the Hon'ble Mr. Bashyam's views before sending the Advocate Genl. to Ganjam

RD
11/7/95

RD
12/7/95

[G. 24.]
500—21-5-95.

Jud^l DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated		189 , No.	
Again G.O., dated		189 , No.	
Current No.	of 189 , dated		from
" "	" 189 , "	,	,
" " 2780	" 1895 ; " 7 June ;		the Rev Dept.

ORDER. dy 15 July 1895, No. 1493

The Board's suggestion that the suit filed by the Zamindar of Parlakimedi should be compromised does not meet with the approval of Government which sees no reason to depart from the position taken up in G.O. dy 8 Nov^r 1891 No. 2265 Jud^l.

D
2. As recommended by the Board, the trial of the suit should be entrusted to the Govt himself, the defence being worked up by the Principal Assistant Agent.

3. The Board should now arrange for the preparation of the necessary statement of defence by the Govt Sol^r in consultation with the Hon Bhashyam Aiyangar whose

4

in accordance with C.S.'s instruction
D
12-7

Parlakimedi Maliahs

as proposed
Proceedings returned & retained ~~as proposed~~
for the defence of the suit
(from orders)
D
12.7.95 DD
13/7/95

H.M. Board of Revenue with enclosures } Despd 16/7
returned 45 copies despatched
Printed

The Agent (Rod) } Despd 7/8
The Govt Solr

E

G.

from orders.

15TH JULY 1895, No. 1493, JUDICIAL.

CONFIDENTIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers:—

Proceedings of the Board of Revenue (Land Revenue), dated 18th May 1895, No. 152/Confdl. No. 45.

Read—the following letter from C. J. WEIR, Esq., Acting Agent to the Governor in Ganjám, to the Secretary to the Commissioners of Land Revenue, dated Camp Possara, 20th January 1895, Reference on C.T. No. 6/Ag. of 1895:—

As directed in paragraph 1 of Government Order No. 1630, Judicial, dated 30th June 1894, I have the honour to report that the Zamindar of Parlákimedi has filed a suit in my court against the Secretary of State for India in Council to establish his rights to the tract known as the Parlákimedi Maliahs and the forests therein; a copy of the plaint is herewith enclosed.

2. The plaint was filed before me on November 19th. As it was somewhat vague in its language as to the rights claimed by the zamindar over the lands other than forests, I asked the vakils for the plaintiff to state their client's claims more definitely. This they professed themselves to be unable to do without consulting their client, and fifteen days' time was allowed them for the purpose. On December 4th they filed before me an explanatory statement, the language of which was even more ambiguous. This I returned with an endorsement. (Copy of explanatory statement and endorsement herewith sent.)

Subsequently the plaintiff has sent by registered post a second explanatory statement which reached me on the 11th instant, a copy of which I enclose. The rights claimed by the zamindar are not yet stated exhaustively or precisely, but I think I need not now call for further explanations at this stage. At the settlement of issues the plaintiff may be called upon, if necessary, to further supplement these explanatory statements.

3. I now wish for instructions as to the lines on which Government wish to defend the suit.

Government Order No. 1490, Judicial, dated 21st August 1894, does not state those arguments on which the decision arrived at therein was based, nor can I find them in the correspondence in my office.

The right of the zamindar to appoint Bissoyis has been discussed in Government Order No. 2265, Judicial, dated 3rd November 1891. I think, however, it is not desirable that I should attempt to frame a written statement of reply without first taking the orders of Government, and I would suggest, for the consideration of Government, whether it would not be better that one of their law officers at the presidency should draft the written statement.

4. As regards paragraph 2 of Government Order No. 1630 of 30th June 1894, I think it is obviously undesirable that I should myself judicially dispose of the suit. As representative of Government, I must take a considerable part in working up the case for the defence, and this duty I cannot conveniently depute to any other officer. I think, therefore, it would be best that I should refer the suit to the Principal Assistant Agent under clause 2 of Agency Rule X.

I do not anticipate that the hearing of the suit will actually occupy much time as there will be little, if any, oral evidence. I consider, therefore, the Principal Assistant Agent will be able to dispose of the suit in addition to his ordinary duties; but if this should prove otherwise, a Deputy Collector might be posted temporarily to assist him in the latter.

5. Copies of the exhibits filed with the plaint are herewith sent. The plaintiff has valued the plaint properties at Rs. 25,000; this valuation it is impossible to check, and I have accepted it for the present at all events.

Read—the following letter from C. J. WEIR, Esq, Acting Agent to the Governor in Ganjám, to the Secretary to the Commissioners of Land Revenue, dated Camp Udayagiri, 24th January 1895, Ref. on Tour Current No. 6 Ag. of 1895:—

In continuation of my letter, Reference on C.T. No. 6/Ag. of 1895, dated 20th January 1895, I have the honour to suggest that, after receiving the orders of Government as to the general lines on which they wish the defence of the suit to be conducted, I should make an abstract of the documents to be filed at first hearing shown in the list filed by plaintiff so far as available in my office. All the more important ones should be forthcoming.

2. We would then know what documentary evidence plaintiff relied upon. A thorough search among the records for papers other than those mentioned by the plaintiff, material to the case, would also have to be made.

3. I might then submit to Government a report on these investigations on which a proper statement of defence might be based.

Resolution—dated 18th May 1895, No. 152/Confdl. No. 45.

The Board begs to submit the papers read above for the orders of Government.

2. The delay that has occurred in the Board's office is regretted. It was partly caused by the preparation of a written statement in answer to the plaint, but chiefly by the fact that, in so doing, the facts of this complicated case were fully gone into and a note was drawn up dealing with the various aspects of the claim made by the zamindar. The Board resolves to submit a copy of this note for the information of Government, as it may prove useful in disposing of the case.

3. The first point on which orders are required is in what court the suit is to be tried. The Government has already said * that the Agent, Mr. Weir, must deal with the case himself unless he refers it to the Principal Assistant Agent under clause 2 of Agency Rule X. Mr. Weir thinks it is "obviously undesirable" that he himself should dispose of the case, as he wishes to work up the defence. In the Board's opinion the objection is not of very much weight. As Agent Mr. Weir must, of necessity, occupy the dual capacity of judge and party in any suit filed in the Agency tracts against or on behalf of Government. The rules contemplate this and they even oust the jurisdiction of the High Court as a final court of appeal in all suits, such as that now in question, in which the "landed possession of a zamindar, Bissoyi, &c., forms the subject of litigation." Under Rule XXII of the special rules, the Government itself is constituted the final court of appeal in such cases, and the Government is thus empowered to decide, without let or hindrance from the ordinary courts, matters in which its own interests are involved. Moreover, if Mr. Weir shifts the responsibility for the original suit on to his Principal Assistant Agent, he will still have to decide the same issues on appeal should the original decision be contested; and the Agent's decision would in this event be practically final. The Board accordingly considers that the trial should be entrusted to the Agent himself.

* Government Order, dated 30th June 1894, No. 1630, Judicial.

4. The defence of the suit should be worked up by the Principal Assistant Agent. Parlákimedi is in his division, and the Maliahs are primarily in his charge; it is right, therefore, that he should represent Government in the case; but, of course, the Agent's records must be made available for him, and the Agent's establishment can, if necessary, work under his orders in the matter.

5. The next point for consideration is the written statement. The draft prepared in the Board's office will be submitted to Government and may serve as a basis for the answer; but in the Board's opinion it is desirable to entrust the preparation to the legal advisers of Government. In this connection the Board would point out that the Honourable Mr. Bhashyam Aiyangar represented the Court of Wards in the friendly suit No. 10 of 1888 in the Berhampur District Court, filed to establish the present zamindar's right to take over the estate and is therefore well acquainted with the peculiar history of the zamindari.

6. As regards the merits of the suit itself, the Board would respectfully invite the attention of Government to the office-note now forwarded. Presuming that the facts therein stated cannot be controverted, the Board is of opinion that the suit now filed by the zamindar, in so far as it relates to his ownership of the forests, cannot be successfully contested. It is beyond dispute that for many years the Court of Wards, acting on behalf of the present zamindar's predecessors in interest, treated these forests as estate property. From 1862 to 1879 a special forest establishment was maintained by the Court of Wards on account of the Parlákimedi estate. The records prior to 1862 have not been traced, but it is exceedingly unlikely that the Court of Wards worked the forests before 1862. In a report of a tour in Ganjám forming appendix G to the forest report for 1859, Dr. Cleghorn submitted proposals for working the Ganjám forests, mentioning that the first effort to work the sâl forests of the Northern Circars had been made by a Mr. Williams in 1851. Supposing that the Court of Wards entered on the forests for the first time in 1862, and that the full period of limitation (sixty years) cannot therefore be proved by the zamindar against Government, still the long-continued action of a *quasi*-Government body like the Court of Wards during the years 1862–1893 will be a strong point in the zamindar's favour. It seems to the Board that the Court of Wards merely followed the generally accepted idea subsequent to the arrangement of 1835. What that idea was is clear from paragraph 20 of Government Order, No. 1067, dated 1st September 1835 (read with paragraph 135 of Mr. Russell's report) which to all appearances placed the lands of the Bissoyis again within the zamindari by declaring that those hill chiefs should be regarded "as tributaries and dependents of the zamindar rather than as independent chiefs paying tribute only to Government" (paragraph 58 of President's minute). Moreover, the annual sum of Rs. 1,397, the revenue of certain Doratanam Mokhassas was specifically left to the zamindar as compensation for the abatement of one-third of the tribute which would have been made if the arrangement had been in force when the permanent settlement was made (paragraph 135 of Mr. Russell's report).

7. The Board accordingly considers that if it is necessary in the public interests that the ownership of these forests should be secured by the State, it would be well to compromise the present suit for such sum as the Government may be prepared to expend for the purpose.

8. The following telegram will be sent to the Agent to the Governor in Ganjam:—

"Please send copy of Parlákimedi sanad."

(True Copies and Extract.)

(Signed) R. C. C. CARR,
Ag. Secretary.

To the Secretary to Government, Revenue Department,
with 15 enclosures, in original, to be returned.

Copy to the Collector, with draft written statement.

APPENDIX.

Note.

The Parlákimedi Maliahs or hill tracts which are claimed by the Zamindar of Parlákimedi in the present suit extend along the north of the Parlákimedi estate and to the south of the Pedda Kimedi Maliahs. The best map is that published with Mr. Maltby's Ganjám Manual, dated 1877, and the map shows them as *proprietary Maliahs* as distinguished from *Government Maliahs—vide* key to the map. There is an equally good map with Mr. Russell's printed report on the Kimedi disturbances dated 1856; only the boundary between the estate proper and the Maliahs is not clearly defined on this map. The large scale map of Parlákimedi (1 inch to a mile) reduced from Captain Wynch's survey of 1864 (undertaken at the instance of the Court of Wards) does *not* show the Maliahs, not because these tracts were not considered part of the estate, but because it was not thought worth while surveying them. For the same reason the Parlákimedi Maliahs are not shown in the atlas sheets reduced from the Topographical Survey of India.

Note.—For Mr. Maltby's account of the Maliahs, please see pp. 14 and 32 of the Ganjám District Manual. The statements on pp. 14 and 15 regarding the Maliahs are not quite accurate. It was not on the recommendation of the Circuit Committee (which had no existence after 1788) but of the Special Commission that the Bissoyi's lands were severed from the zamindari; even this is not correct because the severance had been resolved on in 1799.

2. The Parlákimedi Maliahs are composed of forest, jungle and cultivated land. Mr. MacCartie's account of the Kimedi forests in 1881 was as follows:—

"With the exception of isolated patches in *Gyba* to the west and of the two easterly muttas named *Jerangi* and *Koypuram*, the once famous forests of the Kimedi Zamindari have disappeared under the combined influence of Kumeri cultivation and indiscriminate felling for sale. Blackwood, ebony, sâl, pia sâl and other species, of which I do not know the English names, are indigenous, but save in the excepted tracts they are rarely to be met with and their place has been taken by a dense jungle of brushwood . . . The future prospects of these jungles are discouraged by the prevalence of *Kumeri* cultivation among the Savara tribes, with whose prescriptive right to which it has hitherto been deemed inadvisable to interfere. No orders have therefore been issued in restriction of this practice nor of the privilege of all comers to cut timber for domestic or agricultural purposes . . . "

Pages 55, 56 of Government Order, dated 24th November 1882, No. 1954, Judicial.

The cultivated land is occupied by the Savaras and the Bissoyis. The latter enjoy the lands as service inams for protecting the low country from Savara raids. Before the proclamation of 1800 referred to below, the Bissoyis (ten in number) paid a kattubadi of

Para. 8, p. 43 of Mr. MacCartie's report.

Extracts, page 6.
" " 15.

Rs. 3,656 per annum to the Zamindar of Parlákimedi. At present the kattubadi (reduced to Rs. 2,530 per annum) is payable to Government through the zamindar and it is excluded from the assets of the zamindari. Mr. MacCartie appears to have misapprehended the altered relation of the Bissoyis to the zamindar which is correctly described in Government Order, dated 3rd November 1891, No. 2265, Judicial. Mr. MacCartie, in the report already referred to, recorded his findings as to the fees claimable by each Bissoyi from the Savaras; these fees also constitute part of the service payment made by the State to the Bissoyis. The Government does not appear to derive any independent revenue from the Savaras.

3. *The history of the administration of the Parlákimedi estate* so far as it bears on the present claim is as follows:—

In February 1798, Gajapati Deo, the Zamindar of Parlákimedi, broke into rebellion against the Honourable East India Company and was joined by several of the Bissoyis from the Maliah tracts attached to the estate. The insurrection was put down in 1799 and the question of the future administration of the zamindari came under consideration.

In order to establish the authority of Government in the zamindari on a permanent basis, Government determined that Gajapati Deo should be declared to have forfeited his zamindari and that the estate should be placed under the management of his cousin Durga Razu. It was also thought necessary, in the interests of the public peace, that the Bissoyis should be withdrawn from the control of the zamindar and placed immediately under the surveillance of Government officers.

4. Accordingly a proclamation was published throughout the disaffected tracts early in 1800, wherein it was declared that Gajapati Deo had forfeited his estate for repeated breaches of engagements, for disobedience of Collector's orders and for withholding revenue collected by him; the Collector was directed by the same proclamation to make the necessary arrangements for the future peace of the country and for the collection of the revenue until the arrears should be paid as well as to make agreements with *and grant the cowle of Government to the Bissoyis who were from*

thenceforward to pay their revenue direct to Government, and to be for ever kept under the Company's immediate authority. At the same time the proclamation announced that the Government would be willing, as soon as the country should be reduced to order, to restore Purushottam Narrain Deo, son of Gajapati Deo, to the lands of his ancestors, with the exception of *those then held by the Bissoyis which were declared separated from the zamindari for ever*.

1800. 5. In 1800 kabuliyats were executed in favour of Government by the Bissoyis of the estate and the revenue payable by them was also subsequently reduced from Rs. 3,656, the amount which they had paid to the zamindar, to Rs. 2,530, the amount accepted in the kabuliyats. This latter amount was fixed as the permanent revenue payable by the Bissoyis.

1802. 6. The estate was under the Collector's management up to 4th February 1802, when Gajapati Deo having died, his son, Purushottam Narrain Deo, was declared zamindar. The new zamindar was presented in May 1803 with a deed of permanent settlement which fixed the assessment at 20,000 star pagodas for the ten fasli years 1213 to 1222 and thereafter at 22,857 (Rs. 80,000) star pagodas. This assessment was settled in accordance with the recommendation of the *Special Commissioners* and a reference to their report dated 29th April 1803 shows that all payments on account of the Maliah tracts held by the Bissoyis were excluded from the assets adopted in fixing the permanent assessment, the details of calculation of the assessment being as hereunder:—

1803. Extracts, pages 8 to 17.

Extracts, page 12.

	Rs.	Rs.
"Average revenue		1,26,202
Deduct—		
Salt sayer and abkári	17,930	
Peishcush paid by the Bissoyis to be in future paid to the Collector	2,530	
		20,460
Balance (average net revenue) ..		1,05,742
Two-thirds of which amount to ..		70,494

70,000 to be paid for fasli 1212 and nine ensuing years and 80,000 for subsequent years."

The Special Commissioners also appended the following comparative statement showing the revenue derived by the Company from the Parlákimedi estate before and after the permanent settlement:—

Extracts, page 15.

	Rs.	Rs.
Jumma paid by Gajapati Deo before permanent settlement ..		86,000
Do. to be paid by the zamindar in perpetuity ..	80,000	
Salt and sayer (excluding items improperly included in the original figure)	11,027	
Revenue to be received direct by the Collector from the Bissoyis	2,530	
		93,557
Increased revenue due to the Company under the permanent settlement		7,557

Extracts, page 17. Paragraph 56 of the Special Commissioners' report referred to the separation of the Bissoyis' possessions from the estate and to the steps to be taken for the future government of the same with due regard to their prejudices.

Extracts, page 18. The Government accepted the permanent assessment so fixed and observed that the exclusion of the Bissoyis' possessions from the estate was in accordance with its orders.

1805. 7. Purushottam Narrain Deo died in 1805 and was succeeded by his son, a minor. The estate was then taken under the Court of Wards and placed under the management of Durga Razu who, however, resigned his post in 1813. His son, Padmanabha Deo, was appointed in his stead. The Bissoyis were, however, not peaceful, but desired the removal of the new manager. He was removed and one Narasinga Rao appointed in his stead. Fresh disturbances having arisen in 1822, it was thought proper to place the zamindar, though under age, in charge of the estate, and this was accordingly done in 1822. Before handing over the estate, however, "it was determined that the instructions given *during the management of Mr. Scott* * and acted upon in forming the permanent settlement, by which the kattubadi of the Bissoyis was made payable direct to Government, but which had, in fact, remained inoperative [all that had been realized (from the Bissoyis) having been collected by Durga Razu, a manager of the estate, and Pattamaha Devi (Gajapati Deo's widow)] should be cancelled, and that they should pay their tribute, as *formerly, to the zamindar*.

Under Court of Wards, 1805–1822.

Mr. Russell's report in vol. I. of the reports on the disturbances in Parlákimedi, Vizagapatam and Goomsur.

Russell, p. 30, para. 49.

* *I.e.*, in the first decade of the century, according to Special Commissioners' recommendation.

Russell, p. 30, para. 48.

Under Court of Wards, 1830–1890. 8. In 1830, the estate was again taken under the management of the Court of Wards owing to the imbecility of the zamindar; but constant disturbances followed the transfer of custody to the Court, and in 1832 Mr. Russell was appointed as Commissioner of Ganjám and

Vizagapatam to restore order. This duty was accomplished before 1834 and, in his exhaustive report to Government, Mr. Russell suggested that the tribute payable by the Bissoyis to Government having been added to the peishcush without any consideration or compensation to the zamindar for the responsibility imposed on him, the increased revenue realizable from certain forfeited dorathanam mokhasa villages should be made over to the zamindari on the condition of its being charged for the future with the tribute of the Bissoyis in addition to the peishcush. In Mr. Russell's opinion it was "extremely desirable that the Bissoyis should still be considered tributaries of the zamindar, rather than independent chiefs paying tribute directly to the Government." In expressing his views on Mr. Russell's report the President in Council (The Right Honourable Sir Fred. Adam) said :—"I observe that Sir T. Munro was also of opinion that the Bissoyis should be subject to the zamindar and should pay their tribute only to him. As the proposed arrangement, therefore, is advantageous to the zamindar and the most convenient and expedient generally, I recommend that it be sanctioned." The Government, in its order on Mr. Russell's proposals dated 1st September 1835, No. 1067, directed that the zamindari should, in future, be charged as proposed with the tribute of the Bissoyis in addition to peishcush. But in Government Order No. 2265, Judicial, dated 3rd November 1891, the Government expressed the view that the arrangement arrived at in 1835 was a purely fiscal one, "whereby the zamindar was made the representative of Government for purposes of collection only and it did not otherwise alter, as between the zamindar and the Bissoyis or the tracts under their authority, the relations previously settled and in force for 36 years."

Russell, p. 87, para. 135.

Russell, p. 86.

Para. 58 of the minute.

Para. 20 of the Government Order.

9. The arrangements thus arrived at in 1835 have been in force ever since. From 1862 to 1879 a special *forest* establishment was maintained by the Court of Wards on account of the Parlákimedi estate. A sum of Rs. 55,842 was spent on forests during the seventeen years following December 1862 and the receipts during the same period amounted to Rs. 81,002, leaving a net profit to the estate of Rs. 25,160. The expenditure was incurred with a view of obtaining revenue from the forests rather than of

Note.—Report in Court of Ward's Proceedings, Mis. No. 2144, dated 4th July 1893, referred to and commented on in Government Order, dated 21st July 1893, No. 1480, Judicial.

conserving them, and, in fact, no measures of conservancy were undertaken in respect of the Maliah forests. In 1880, the establishment was dispensed with and after that date there does not seem to have been any outlay under that head excepting Rs. 16 per mensem for extra allowances for estate peons for special duty in guarding the ghâts and in levying seigniorage on timber.

It is also stated that expenditure was incurred out of the estate funds on account of roads and schools in the Maliahs, but the exact amount thereof is not ascertainable in this office.

The correspondence and the accounts regarding the Maliah forests produced by the plaintiff also relate mainly to the years 1867–1880; the papers relating to previous years are only nine in number, of which two are of 1838 and the rest do not date further back than 1858. Subsequently to 1879–1880, as observed already, the Court of Wards regularly collected a seigniorage on all timber passing down into the plains. This right was not disputed either by Government or by the Bissoyis till 1889 or 1890, *i.e.*, for sixty years after the Court of Wards assumed charge of the estate.

1890.

10. In the year 1890, the estate was given over by the Court of Wards to the imbecile zamindar's son under a decree of the Civil Courts. The Collector's letter of 1862 * to the Court of Wards shows clearly that no doubt was entertained as to the forests being the exclusive property of the zamindar. This belief was confirmed by the policy of the Court of Wards in sanctioning various establishments for felling wood in the Maliah forests. A single paragraph (paragraph 3) in Board's Proceedings, No. 143, Forest No. 25, dated 19th January 1886 (drafted by the late Mr. E. S. Laffan) avers that the Maliahs of Parlákimedi were excluded from the assets of the estate and that the Government may be regarded as exercising full sovereign rights over those tracts, but a singular fate attended this Board's Proceedings. It was mislaid in Government office for four years as will appear from page 7 of Board's Proceedings dated 10th August 1891, Forest No. 354, and even when final orders were passed† on it, the fact that the attitude of the Court of Wards towards the forests in the Parlákimedi Maliahs required to be

* In Court's Proceedings, dated 29th August 1862, No. 5736.

† In 1893—*vide* Government Order in Board's Proceedings, Forest No. 213, dated 22nd March 1893.

set right was lost sight of. In Board's Proceedings, dated 10th August 1891, a general recommendation was made that Government should declare that the forests in the Ganjám Agency tracts were State property, except where Government has transferred its rights to a zamindar. It was not stated whether the Parlákimedi Maliahs contained State forests although this had been pointed out in 1886. This fact was noticed for the first time in paragraph 4 of Government Order, dated 3rd November 1891, No. 2265, Judicial, and the discovery was due to the following circumstances.

11. In 1891, the zamindar having claimed the right to appoint a successor to a deceased Bissoyi, the Government was referred to for orders. The whole question of the Bissoyi tenure was then gone into, and the Government, in passing orders, * observed :—

"It is not the case that the right of investiture of a Bissoyi has always appertained to the zamindar, for this right was abolished by the proclamation of 1799, nor is it *the case that the hill villages form any part of the estate*, or that the kattubadi paid by the Bissoyis constitutes tribute paid to the zamindar; it is tribute paid to Government through the zamindar. Finally, it is impossible to question the right of Government to declare the estates of the Bissoyis forfeit." Immediate action was, however, not taken on the decision that the forests did not belong to the estate.

* Government Order, dated 3rd November 1891, No. 2265, Judicial.

12. In 1893, the zamindar of Parlákimedi sought to be recognised as the owner of the forests on which he alleged that heavy expenditure had been incurred by the Court of Wards out of the funds of his estate, and prayed for the grant of a Maliah sanad. The Government declined to grant the zamindar a sanad for the Maliah tracts bordering on his estate or to recognise any claim on his part to the forests in those tracts. It also disallowed his claim to compensation for the alleged outlay by the Court of Wards as that outlay had been more than counterbalanced by the income derived from the forests and credited to the estate.

Government Order, dated 21st July 1893, No. 1480, Judicial.

13. Two other claims to *Maliah* forests have formed the subject of discussion and of Government orders. The first claim related to the Government Maliahs

and was that of the Khonds and Savaras, the aboriginal hill tribes, which was dealt with in Government Order, dated 21st January 1893, No. 57. Government then decided that although the Khonds and Savaras might have exercised certain *privileges* in the forests, they had no legal right of ownership or possession in them and that the Government would be justified in curtailing their privileges if it became necessary in the interests of the general public to do so.

14. The other claim is that lately put forward by the Bissoyi of Gumma (one of the hill forts in the Parlákimedi Maliahs) to the forests in his mutta. The question is fully dealt with in Government Order No. 190, Judicial, dated 29th January 1895, and the letter to the Government of India of the same date. The Government said: * "A reference to Mr. MacCartie has elicited the fact that on the occasion of his settlement † in 1881 no claim to the ownership of the forests in their muttas was put forward by the Bissoyis and no sanads or other documents have been produced in support of the claim to the possession of proprietary rights which has now been made by the petitioner (the Bissoyi of Gumma). This claim is indeed of quite recent origin." The Government Order concluded by saying that the Bissoyis *had a right only to the lands actually in their* occupation and to the customary fee ‡ payable by the Savaras to which they had been declared entitled, but that it would be inexpedient as well as unfair to recognise in them any general proprietary rights in the muttas.

* P. 3 of the letter to Government of India, dated 29th January 1895, No. 191.

† In Government Order, dated 24th November 1882, No. 1954, Judicial.

‡ As settled by Mr. MacCartie.

15. The fact that these claims have been put forward may possibly be useful in meeting the pretensions of the Parlákimedi Zamindari to *exclusive* possession in the past of the Parlákimedi Maliahs; but still the fact remains that *for several years* the zamindar's ownership of the forests was asserted and acted upon by the Court of Wards. The Proclamation of 1800 excludes "the Bissoyis' possessions," but not the Maliah forests from the zamindari. The sanad granted to the zamindar in 1803 which might throw light on the Government's intention in regard to the Maliahs is not here, but it will be called for. Supposing the sanad does not exclude the forest by name, the question arises whether the zamindar's right to the forests (as distinct from

Note.—It would be important to know when this claim was first recognised by the Court of Wards. A search has been made in the records for papers before 1862, but thus far without avail. The zamindar, however, seems to have found papers of 1830–40.

the Bissoyi's possessions) was taken away by the proclamation of 1800. The case will then be parallel to that in XV. Madras I.L.R., quoted below. The Bissoyis' possessions lie scattered among the forests, and it is probable that the Government of 1800 meant, in excluding the "Bissoyis' possessions" to exclude the forests also from the zamindari, supposing they had previously been included in it. Besides, the description "Bissoyis' possessions" meant much more in 1800 than it does now, but the Government of 1895 has just laid down (in the letter to the Government of India, No. 191, Judicial, dated 29th January 1895), that the Bissoyis' possessions do not include forests. The exact terms of the sanad of 1803 require to be studied in order to determine whether the forests were included in the grant. No copy of the sanad is available either here or in Government office and a copy will be called for from the Agent. One thing is certain, that the revenue of the hill tracts or Maliahs did not form part of the assets on which the peishcush was fixed; but this would be no answer to the zamindar's claim, so far as the *forests* are concerned, if the sanad were so worded as not to exclude them. The following remarks of the Privy Council in disposing of the Singampatti forests claim (I.L.R., XV. Mad., p. 109) are pertinent to the present subject:—

"Having regard to the character of the subjects in controversy, the *exclusive* possession which the zamindars are, by concurrent judgments found to have enjoyed, appears to (their Lordships) to have in no particular fallen short of proprietary possession. There is no ground for presuming that a proprietor whose title was clear and who was desirous of turning his estate to the best account would have occupied or used the subjects in any other way than they did. When that circumstance is taken in connection with the fact that the zamindars had a title which will aptly include these subjects and that their acts of possession have invariably been ascribed to that title, the inference drawn by the High Court, viz., that the zamindars are proprietors of the forests in dispute, appears to be inevitable."

In the present case the zamindar's possession of the Maliah forests has not been exclusive. As described by Mr. MacCartie,* it was for long the privilege of all comers to cut timber in the Maliahs for domestic or agricultural purposes; especially has it been the privilege of the Savaras, whose right to continue to

* Quotation at p. 1 of this note.

exercise that privilege forms the subject of several recent Government Orders. Here again judicial opinion may differ as to whether such acts of user on the part of the Savaras, the Bissoyis and low country ryots may be held to clash with the zamindar's exclusive possession as owner of the forests. The following remarks occur in the Singampatti case already referred to:—

XV, Mad. I.L.R., p. 101.

"Beyond what may be implied in the acts themselves, there is nothing to show that aught done by these stranger raiyats was in the assertion of right; and assuming the statements of the appellant's witnesses to be absolutely true, the acts of user to which they speak are neither in amount nor quality sufficient to displace the proprietary title of the zamindar. Whether the evidence would *per se* be sufficient to raise rights of easement, and, if so, in whose favour, are issues which do not arise in the present case."

16. If adverse possession on the part of the zamindar is established, the period during which it continued is an important consideration; secondly, even if it has extended over the full prescriptive period of sixty years, it will have to be proved that the possession was not *vi, clam, vel precario*, but that of a full owner. It is on these points that further evidence will have to be collected by the Agent in Ganjám.

17. In paragraph 11 of the plaint the plaintiff prays that if he should not be held entitled to the lands themselves in the Maliahs, he may be declared to have rights in them by way of easements or *profits à prendre* for cutting, felling, &c. In the Singampatti case the High Court held that the zamindar's user proved him entitled to proprietorship, not merely to easements, and the possibility of such an opinion being formed in the present case has to be considered.

To establish an easement or easements by prescription the following conditions should be fulfilled—*vide* section 15 of the Easements Acts, 1882.

(1) the easement should have been (*a*) peaceably and (*b*) openly enjoyed by the person claiming title hereto; (*c*) it should have been enjoyed as an easement and (*d*) as of right; (*e*) without interruption; (*f*) and for sixty years.*

* As against Government; in other cases twenty years.

(2) the suit for declaration of the easement should be brought within two years next after the close of the prescriptive period of sixty years.

Condition (2) is fulfilled in this case because, although Government in Judicial G.O., dated 3rd November 1891, No. 2265 (paragraph 4) decided that the hill villages did not form part of the zamindari, action was taken to dispossess him of the forest only on receipt of Judicial G.O., dated 21st July 1893, No. 1480. Of the six conditions under (1), (*a*) and (*b*) are fulfilled in this case; (*c*) is not fulfilled because the zamindar did not cut and fell timber in the forest as one enjoying an easement in a servient (*i.e.*, another's) heritage but as a proprietor using his own property. During the years 1862–1890 the forests were used by the Court of Wards as part of the property belonging to the estate, not as a subject of easement rights. They may or may not have been used as the estate property before 1862: "but an interruption of this kind, however short, will prevent the acquisition of an easement by prescription both at common Law and under the Act" (*Goddard on Easements*, p. 244). An admission that the zamindar or his representatives in interest looked upon the forests as his property during a certain period will not, of course, amount to an admission that they were *entitled* to regard it as such. Besides, in the letter to the Government of India, dated 29th January 1895, No. 191, Judicial, the Government admitted that until 1890 the Court of Wards acted under the mistaken belief that the Maliahs formed part of the Parlákimedi estate.

Mitra's Limitation Act, p. 46, *s. v. enjoyment as an easement.*

If condition (*c*) fails, condition (*d*) also fails. Condition (*e*) is probably fulfilled, but Government will have to satisfy itself that there has been no interruption. Condition (*f*) is important, not because it would go to prove an easement right if the zamindar had used the forests for sixty years, but because his having used them as his own would be strong evidence of *ownership* in his favour.

Sixty years *ante litem motam* would commence somewhere about 1833, *i.e.*, three years after the Court of Wards took charge of the estate for the second time. The nature of the uses to which the forests were put by the Court of Wards from 1833 to 1862 (in which latter year

a regular establishment for deriving revenue from the forests was entertained) requires to be carefully investigated and scrutinized.

18. In the supplemental statement of January 1895, the plaintiff claims certain personal rights over the Bissoyis. Government Order, dated 3rd November 1891, No. 2265, Judicial, affords a complete answer to this claim. The principal contents of that Government Order have been already quoted (paragraph 11 *supra*).

Mis. No. 2278, Revenue.

Transferred to the Judicial Department.

(Signed) W. B. AYLING,
Ag. Under Secy. to Govt.

OOTACAMUND,
7th June 1895.

To the Judicial Department, with 17 enclosures.

Proceedings of the Board of Revenue (Land Revenue), dated 7th June 1895, Mis. No. 2877.

Read—the following letter from R. H. SHIPLEY, Esq., Acting Agent to the Governor in Ganjám, to the Secretary to the Commissioners of Land Revenue, dated 30th May 1895, R.C. No. 465/Ag.:—

With reference to your telegram, dated 17th instant, I have the honour to submit herewith a copy of the kabuliyat of the zamindar, his sanad not being available.

So far back as August 1890, when the estate was made over to the present zamindar, he asked for his sanad-i-milkiyat istimrar, but it was not forthcoming in the records of this office though a thorough search for it was made, and he was informed accordingly.

Resolution—dated 7th June 1895, Mis. No. 2877.

Submitted to Government in continuation of Board's Proceedings, dated 18th May 1895, No. 152. The *kabuliyat* throws no light on the question now at issue.

(True Copy and Extract.)

(Signed) R. C. C. CARR,
Acting Secretary.

To the Secretary to Government, Revenue Department, with kabuliyat.

R. No. 966, Revenue.

Transferred to the Judicial Department in continuation of endorsement (Confidential), No. 2278, Mis., dated 7th June 1895.

OOTACAMUND,
13th June 1895.

(Signed) W. B. AYLING,
Ag. Under Secy. to Govt.

ORDER—dated 15th July 1895, No. 1493, Judicial.

The Board's suggestion that the suit filed by the zamindar of Parlákimedi should be compromised does not meet with the approval of Government, which sees no reason to depart from the position taken up in G.O., dated 3rd November 1891, No. 2265, Judicial.

2. As recommended by the Board, the trial of the suit should be entrusted to the Agent himself, the defence being worked up by the Principal Assistant Agent.

3. The Board should now arrange for the preparation of the necessary statement of defence by the Government Solicitor in consultation with the Honourable Bhashyam Aiyangar, whose services should, as proposed, be retained for the defence of the suit.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the Board of Revenue, with 18 enclosures returned.
" Agent to the Governor in Ganjám.
" Government Solicitor.

Exd. S. J. Pereira.

Govt. of {1895} Madras.

JUDICIAL.

CONFIDENTIAL.

Issued.

Recd. *Encl.*

G.O., 15th July 1895, No. 1493.

JULY.

Parlakimedi Maliahs.

Passing orders as to the trial and the conduct of the defence of the suit filed in the court of the Agent to the Governor, Ganjám, &c.

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