2. Date

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M.R.O. 1—32 400—23-11-30

MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 2057 Press Mis.

2281

Dated 3—12 1857.

Not to be folded or roughly handled

No. 27. Read the following letter from J. H. BLAIR, Esq., Subordinate Judge of Rajahmundry; to H. FORBES, Esq., Acting Secretary to Government, dated Rajahmundry, 12th October 1857.

SIR,

1. Having at length obtained copies of letters and documents connected with the road through the burying ground at Bezoarah, which have not been laid before Government, I have the honor to forward them, and at the same time to make a statement of what occurred.

2. Soon after my arrival at Bezoarah about 15th June 1856, a sum of money was granted for repairing roads; and among other improvements, I wished to repair the road through the burying ground, which led, not only to Mr. Way's house, as stated by Mr. Fraser, but to 3 other houses, as shown in the sketch Plan, and was used in the dry season as a cart road to villages several miles distant.

3. Knowing that the Mussulmen would object to the ground being disturbed, I sent for them, and asked their leave to *gravel* the old road: they consented, provided no tombs were disturbed, and no trenches dug. The line across the fields was then newly marked out straight instead of the old zigzag path, as I intended to make a proper carriage road, and to continue it all round, as shown in the Plan.

4. So far all was well, when to my astonishment Dr. Miller wrote, remonstrating against my making a new road, and that the ground was already his &c. I answered telling him he had nothing to do with the road, or any right to prevent my repairing it that I had never thought of asking his leave to repair an old road, through ground of which, I clearly pointed out, other parties were the owners, and that they had not transferred the ownership to him; whereas I had obtained their consent to do what I wished. The next day he put up his fence which I called on him to remove, and wrote* to the Acting Magistrate requesting his advice. I had also written to him privately before, and in his private† letters which I have unfortunately destroyed he acknowledged Dr. Miller had no right to fence off the road which indeed he subsequently admitted officially‡ He§ answered "I should proceed under Act XXI of 1841."

See private correspondence already before Government.

* No. 56 9th July Acting Joint Magistrate to Acting Magistrate.
† Referred in No. 183 of 10th July Acting Magistrate to Acting Joint Magistrate.
‡ See para. 5 No. 220 9th August Acting Magistrate to Acting Joint Magistrate.
§ No. 183 10th July Acting Magistrate to Acting Joint Magistrate.

5. A day or two afterwards the Mussulmen came to me and complained against Dr. Miller for fencing off part of their burying ground without their consent as shown in letters already before Government. The final was that on the morning of the 19th Dr. Miller's fence was removed by my orders, as he could show no right or title whatever to erect it has detailed in my letters noted marginally* to which with No. 70 and 79 I would beg particular attention.

See letters between Dr. Miller and Mr. Blair from 15th to 18th July.
* Nos. 67 and 68 July 19th Acting Joint Magistrate to Acting Magistrate.

6. Mr. Miller appealed to Mr. Fraser, who* then accused me of Acting illegally and contrary to the regulations. This I answered† showing that I corresponded with Dr. Miller to save him annoyance, as up to the day the fence was removed (the 19th July) we had been on friendly terms.

* No. 193 22nd July Acting Magistrate to Acting Joint Magistrate.
† No. 70 July 21st.
‡ No. 79 Acting Joint Magistrate to Acting Magistrate.

7. Mr. Fraser then wrote to me to obtain certain information, requisite to decide the dispute between Dr. Miller and myself, this was sent to him as shown by my letter* I lay *much stress on the documents and information then forwarded,* as upon them Mr. Fraser grounded his final decision, as detailed in his letter of 9th August No. 220, particularly in para 5, I was perfectly satisfied with the decision and having the permission of the Mussulmen to repair the road, (while their complaint against Dr. Miller for enclosing a part of their ground had not been withdrawn) I determined upon going on with it. Being however unable from illness to attend to it myself, I asked Captain Orr to

No. 203 of 29th July Acting Magistrate to Acting Joint Magistrate.
* No. 85. of 5th August Acting Joint Magistrate to Magistrate and Nos. 1-2-3 translations of Arzee and Kyfiets.

set my people to work, which he agreed to do, on the understanding that we should give way to Dr. Miller, if he showed that he had the consent of all, or any great proportion of the Mussulmen. As Captain Orr had anticipated, it appeared that Dr. Miller had made use of the time to gain the written consent of a few, and on his assurance that it was "*of all*" Captain Orr yielded the point, and, as we had arranged, contented himself with directing the gravelling of the portion of the track left outside the fence. Here the matter might and would have ended, but for Dr. Miller sending for the Mussulmen, and inciting them to drive off my people. This coupled with his defient taunts, induced Captain Orr and me to exert ourselves; and in a few days we had obtained the written consent of between 80 and 90 Mussulmen, being the heads of about all the families here having been shown Dr. Miller's agreement† I perceived, that instead of its being between him and "*all*," the Mussulmen, as he had stated in his usual reckless style of assertion, it contained the names of only *four*, and therefore I called upon him to remove his fence, as it was then clear, that under the Acting Magistrate's decision, he had no right to the ground, and had put up the fence illegally. The same evening Captain Orr, I, and the Mussulmen went to the place to mark out the line of road, and in doing so one or two fastenings of the bamboos of the fence were accidentally removed. Dr. Miller immediately complained to Mr. Fraser that I had sent him a notice at 5 o'clock, and pulled down his fence at 6 also apparently stating that‡ he had a written document from 15 out of 17 of the owners of the burial ground, in which his fence was that there were 3 burying grounds, not one, and making several other unfounded and reckless assertions Mr. Fraser then wrote another‖ letter to me, which when compared with his former letter of 9th August, speaks for itself. He had after a full examination of all the papers, the Kyfiets¶ given by the Mussulmen themselves, and the village Officers, the Plan sent, and the correspondence between Dr. Miller and myself given his *final* decision. On the 18th finding it did not suit Dr. Miller, he *upset* it, and gave another *perfectly different* on *exparte* statements made by Dr. Miller, which the evidence already before him and the statements of the real, and undisputed owners of the ground *directly contradicted* I answered giving my reasons for sending the notice to Dr. Miller, and stating that Captain Orr and the Mussulmen had removed a part of the fence, meaning thereby, that I had nothing to do with it in my official capacity. Mr. Fraser answered "that the Mussulmen had no right to interfere, they had consented to the fence being put up, and must go to a Civil Court:" though one week before he had declared them to be, undoubtedly owners of the burying ground, and that no one could fence off a part, or repair the road, without the written consent of all.

† Translation already sent by Dr. Miller.

‡ See para. 2 No. 233 August 18th Acting Magistrate to Acting Joint Magistrate.

‖ No. 233 of 18th August.

¶ Copies sent of Kyfiets and Plan.

No. 21 August 10th. Acting Joint Magistrate to Acting Magistrate.

22nd August No. 246, Acting Magistrate to Acting Joint Magistrate.

8. On hearing this, they again came to me with a complaint, and to strengthen it, as Mr. Fraser appeared determined to believe any thing Dr. Miller chose to say, rather than the very men whose right to the ground had never before been disputed, and had once been confirmed by himself after full investigation, I took depositions on oath from seven of the most respectable of them, among them the four men who gave the agreement to Dr. Miller which I sent with the complaint. I also sent the agreement* given by Dr. Miller to 4 of them, who swore that a corresponding one had been given by them, which even those 4 then wished cancelled, according to its terms, as they had no Idea when they gave it, that Dr. Miller was going to take advantage of it to stop the road, which was a public benefit, they also declared no other agreement had ever been given. I† pointed out the utter illegality of the document, but Mr. Fraser only wrote‡ back again referring the Mussulmen to a *Civil suit for damages.*

* Translation sent.

† No. 97 August 30th Acting Joint Magistrate to Acting Magistrate.

‡ No. 277 9th September Acting Magistrate to Acting Joint Magistrate.

9. This letter clearly shows is determination, and bias in the matter, not one of the statements in it are correct, and the *inferences* and *comparisons*, are not either warranted by the facts, or applicable to the case in any way.

10. Thus the matter stood when I left Bezoarah, the road had been finished up to A in the plan; but Dr. Miller had stopped the further repair of it, and erected his fence in spite of the

opposition of the Mussulmen, being backed by Mr. Fraser, who though I had repeatedly urged him to come out, and settle the matter on the spot, would never do so. I believe, knowing full well, that if he did, he must remove Dr. Miller's fence, and order him to make no further opposition to the repair of the road. The Mussulmen were extremely angry, and if it had not been for the great influence of Captain Orr with them, and my advice, they would have removed Dr. Miller's fence by *force*, and created a disturbance, they have been deprived against their will of a considerable portion of their burying ground, and can obtain no redress, as they do not know how to set about it. The Plan will shew that just at the part of the burying ground where the road was narrowest, Dr. Miller projected the *angle* of his fence about 3 feet into it; the road could not be made further *west*, on account of some tombs, but part of it remained, and was used *daily* by the residents of Bezoarah, and Dr. Miller himself, who in making his fence actually left a gate into the burying ground opening on to the road, which he used without the slightest compunction, though he objected to my gravelling it for the convenience of the public, he never attempted to shut up the whole of the road, and when he first put up his fence, he moved the standards about 2 feet back at the request of Mr. Way, who asked him, whatever he did, not to shut up the path altogether, and so prevent *horses* or *tonjons* passing along.

11. I never knew any one at Bezoarah before my arrival, and I cannot therefore be accused, I hope, of any interested motives; but from what I know and have heard since, I firmly believe that the reasons of Dr. Miller's opposition were, "that. He had shortly before quarrelled with Captain Orr (by whom and by whose friends the road was a good deal used) and he was angry with me for not consulting him before I commenced repairing the road, though I cannot conceive why he should have" expected me to do so.

12. Captain Orr has sent me a copy of his letter to the Chief Engineer of 31st March 1857, and I beg to corroborate every thing said by him therein regarding the road, his statement of what occurred on the 12th August, is with regard to what passed between himself and me, about metalling the road outside the fence, perfectly correct, as to what passed between him and Dr. Miller, I can only say that on that evening Captain Orr told me what had happened, exactly as stated in his letter.

13. I would finally submit that I am utterly at a loss to understand what acts of mine and Captain Orr's regarding the road towards Dr. Miller can be characterized as "oppressive and unjustifiable." If there was any oppression, it was practised by Dr. Miller towards the Mussulmen, and the public of Bezoarah, by enclosing part of the burying ground of the former against their will, and by preventing an old road being repaired for the benefit of the latter.

14. I also consider I was most unfairly treated throughout by Mr. Fraser; he first declared that *Dr. Miller was wrong*, then modified that opinion by deciding that *both he and I were wrong, and finally settled that I was wrong that the Mussulmen had no right to prevent the appropriation of their own burying ground by Dr. Miller,* and *that he was perfectly right in taking the ground,* and *no one was to interfere with him.*

15. The simple facts were, I wished to repair an old road for the benefit of the public, with the full consent of the owners of the ground through which it passed. Dr. Miller fenced off part of the road and ground, a *complaint* was made to me by the *undoubted owners*, and I acting *thereon* pulled down the fence; he then got a document granting a conditional permission to put his fence up again from 4 owners out of 100, erected it again, and was aided in appropriating the burying ground and keeping up his fence by the Magistrate, who first gave a decision adverse to him, and then another in his favour, without any grounds whatever for changing his opinion. With regard to the road, I acted for the benefit of the public, and was making it with public money; and with regard to the complaint of the owner's of the ground, I most certainly consider Dr. Miller's proceedings came under the head of "*wilful trespass*" and that I was *perfectly justified* in removing his fence, nor can I see what other course was open to me.

16. I would further submit that as I warned Dr. Miller against putting up his fence at all, either in the burying ground, or across the road, before he did so; his conduct was most reprehensible and illegal, and that I should have been perfectly justified in removing it the very next hour if I had thought proper to do so and though Mr. Fraser chose to consider that Dr.

Miller did not commit "*wilful trespass*" though *forewarned*, and *complained against, directly he did it by the owners.* I do not think any one else can possibly have any doubt whatever on the point.

17. I would only further beg to remark that a fair estimate of Dr. Miller's command of temper, and character, may be formed from the facts, that within 3 or 4 months he contrived to quarrel on distinct and separate grounds with 3 out of the 4 other residents at Bezoarah, and that when called on by the 4 men who had given him a conditional permission to erect his fence, to remove it according to his *written promise* entered in the agreement, he *distinctly refused* to do so.

18. I have since writing the above heard from Bezoarah, that since Dr. Miller left the station, the road through the burying ground has been repaired by the present Acting Sub Collector, and I hope that after the explanation now given, and the consideration of the letters and translations of Telugu papers herewith sent, the Government will withdraw the imputation cast upon Captain Orr and myself, in Extract Minutes Consultation under date 21st March 1857, reverse Mr. Fraser's unjust and partial decision, order their burying ground to be restored to the Mussulmen of Bezoarah, and reprimand those who have been to blame throughout, viz. Dr. Miller and Mr. Fraser.

Letter from J. BLAIR, Esq., Acting Joint Magistrate of Masulipatam; to J. FRASER, Esq., Acting Magistrate Masulipatam, dated Bezoarah, 9th July 1856, No. 56.

SIR,

I have the honor to enclose copy of a letter addressed by me to Assistant Surgeon J. Miller, and to request that you will inform me whether [in the event of that Officer refusing to remove the obstruction therein referred to] I should proceed under the provisions of Section II Act XXI of 1841, as a Magistrate or of Section II Regulation II of 1820 as a Justice of the Peace.

Letter from J. BLAIR, Esq., Acting Joint Magistrate of Masulipatam; to J. FRASER, Esq., Acting Magistrate of Masulipatam, dated Bezoarah, 19th July 1856, No. 67.

SIR,

I have the honor to report the following circumstances for your information.

2. On the 11th instant, a complaint was brought to me by some of the Mussulmen of Bezoarah, that J. Miller Esquire Assistant Surgeon was without their permission enclosing with a fence part of their burying ground. Monday the 14th was a Native holiday, and the next day I wrote to Doctor Miller, requesting him to remove the fence which he had commenced, as he had no right to the ground.

Vide No. 60 of July 15th.

3, On the 16th I received an answer requesting me to send him a copy of their complaint and of the Regulations, this I did on the 16th, and on the 17th received a letter of which copy is sent. Several of the expressions and allusions therein contained I consider most uncalled for, if not insulting to me personally; however of these I took no notice, and sent a reply again requesting him to remove the fence, and referring him to a Civil Court if he considered he had any right to the ground. On the 18th, Doctor Miller wrote me another letter, a copy of which is forwarded.

No. 64 of July 17th.

3. This morning the fence not having been taken down, the sticks were removed by my orders in my presence. Doctor Miller told me when I was pointing out the part of the fence to be removed "that he would not permit it to be touched" and ordered the persons removing it, to desist. I therefore thought it better to remain, and see it done myself in case of his attempting to resist the execution of my orders.

4. Thus the matter stands at present. I have clearly pointed out to Doctor Miller both privately and officially that he has no right or claim whatever to the ground, and if he again attempts to enclose it, I shall proceed as a Justice of the Peace under Section II Reg., II of 1820.

Letter from J. BLAIR, Esq., Acting Joint Magistrate of Masulipatam; to J. FRASER, Esq., Acting Magistrate Masulipatam, dated Bezoarah, 19th July 1856, No. 68.

SIR,

You are already aware from my letter No. 56 of the 9th Instant, and the copies of the private correspondence between J. Miller Esquire., Assistant Surgeon, and myself, that he objected to my repairing an old road passing through the Mussulman burying ground near his house.

2. On the 15th Instant (the same day that I wrote to him regarding a complaint brought against him by some of the Mussulmen of Bezoarah, referred to in my letter No. 67 of this date) I sent him a notice under Section II Act XXI of 1841, to remove the same fence within 24 hours, as it obstructed a Public road.

3. You will see by his letter of the 17th Instant that he tries to mix up the two cases, though they are perfectly independent of each other one being a charge against him of trespass, and attempt to enclose land to which he has no title whatever; the other whether I have the right to repair an old road, to which he objects, though the ground through which it passes does not belong to him.

Copy forwarded with my letter of this date No. 67,

4. Dr. Miller in his letter of the 17th Instant, objects to my ordering the fence to be removed within 24 hours, under Act XXI of 1841. On consideration of the Act it appears to me to be so loosely worded, that, by the strict letter thereof, any person may shut up a public road for 10 days or more, without the Magistrate having the power to remove the obstruction. It surely cannot be intended that the limit of 10 days allowed for appeal, and the further time requisite for the examination by the Jury provided for in Section III (during which the Magistrate is to suspend the Execution of the injunction) is to apply to obstructions *newly* raised, suppose for instance that from malicious or other motives, a wall was built across the bridge at the head of Boodemair channel on the Hyderabad road, has not a Magistrate the power of immediately removing the same. I have put a case to show what might happen, and my opinion is that there can be no doubt as to the spirit of the Act, that the limit of 10 or more days allowed thereby is only claimable in case of old obstructions.

5. Before Proceeding further in this case, I beg to be informed of your opinion regarding the point viz. whether in the case of newly raised obstruction in a public road, a Magistrate has the power of ordering them to be removed immediately, or not, under Act XXI of 1841.

Letter from J. BLAIR, Esq., Acting Joint Magistrate of Masulipatam; to J. FRASER, Esq., Acting Magistrate Masulipatam, dated Bezoarah, 21st July 1856, No. 70.

SIR,

With reference to your letter of the 20th Instant, I have the honor to inform you that in obedience to your orders, I shall delay to repair the road through the Mussulman burying ground, pending your further instructions.

2. My letters to you of the 19th Instant No. 67 and No. 68, have shown that I did not remove the fence put up by Assistant Surgeon J. Miller, "on the score of a public thoroughfare being obstructed." As to the written permission "which Assistant Surgeon J. Miller has informed you that "he had obtained from the Mussulmen," he distinctly informed me in an Official letter, of which a copy was sent to you with No. 67, that he had no written permission, and the complaint brought against him, on which I acted, has not been withdrawn.

Letter from J. BLAIR, Esq., Acting Joint Magistrate of Masulipatam; to J. FRASER, Esq., Acting Magistrate Masulipatam, No. 79.

SIR,

I have the honor to acknowledge the receipt of your letter No. 193 of the 22nd instant, and beg to make the following remarks.

2. On consideration of Regulation II of 1820, Act IV of 1843, and the interpretation of the former that "any Officer exercising the full powers of Joint Magistrate is competent to take cognizance of charges against European British subjects." I considered that I might act Magisterially, and wrote to Doctor Miller requesting him to remove the fence, instead of *summoning* him as a Justice of the Peace, because I did not wish to inconvenience him personally, and hoped that when he received my letter he would have removed the cause of complaint. No depositions were taken as it was a matter of no doubt that the complainants were part owners of the burying ground, and that no one could fence it off without their permission. In acting thus I see I have committed two errors, the second being consequent on the first, the causes I have already stated, and I can only regret that to save Dr. Miller annoyance, I did not proceed strictly according to Regulations for Justice of the Peace.

3. As to the case being one of the *simple trespass*, I admit that Dr. Miller had *endeavoured* to make arrangements with the Mussulmen to put up a fence, but he was perfectly well aware that he had not their assent to enclose any part of the burying ground, as my private letters to him No. 2 of the 7th, and No. 3 of the 8th, (regarding the road) distinctly informed him that he had *no right or title* of *any kind whatever* to enclose any part of the burying ground. One of these letters was written the day before, and the other on the day Dr. Miller began making the fence. I submit therefore that the case was most clearly one of *wilful trespass*, and even his own official letter to me shows that he knew he had no legal right to enclose the ground.

Copies of private correspondence are herewith forwarded.

July 17th 1856.

4. With reference to para. 6 regarding the "right of road", I beg to remark that *Dr. Miller has no right or title* of any kind whatever to oppose the repair of the road except on the ground of its being a *Nuisance*, which he has taken 3 years to find out; and I consider the public benifit and comfort *are* in question in this case as the road *has been* and *is* used daily by persons going from the Hyderabad road to Lieutenant Way's, Captain Orr's and my own house, and as I told Dr. Miller, he rendered himself liable to a Civil action if he attempts to prevent any one going along it. As to the *Musssulmen's right* to enclose their burying ground, or shut up the road, that is I submit *totally irrelevant* to the *present* question between Dr. Miller and myself.

5. In conclusion as the matter has been referred to you officially by both parties, I having acted officially and for the benefit of the public all along, which I told Dr. Miller as he seemed to consider it was a private matter between himself and me, and has now cut me for what I have done officially, I request that you will, after making such enquiry as you think proper; decide whether Dr. Miller has a *right* to the ground he claims, and whether *he* can prevent the road being repaired or not. I can *prove* by witnesses that there has been a road past Dr. Miller's house, through the burial ground for 2½ or 3 years, and *he* has I submit *no right* of any kind to shut it up, nor has he ever had any right to enclose any part of the burying ground.

Letter from J. BLAIR, Esq., Acting Joint Magistrate of Masulipatam; to J. FRASER, Esq., Acting Magistrate Masulipatam, dated Bezoarah, 5th August 1856, No. 85.

SIR,

In accordance with the instructions in your letter No. 203 of the 29th Ultimo, I have the honor to inform you that I pointed out to Mr. Conran the line of the new part of the road therein referred to, and the old track through the burying ground, which I wish to repair. The new line is to be 8 yards wide, including the trenches, the old track is only to be gravelled to a width of 10 or 12 feet, and no trenches to be dug, as the Mussulmen object to the ground being disturbed, or dug up.

2. The limits of the burying ground were pointed out to Mr. Conran by the Mussulmen in the presence of the Moosundar, who reports that those shown are the correct ones according to the accounts.

Report sent.

3. The village officials and the Mussulmen have given Kyfiets declaring that all Mussulmen travelling through, or residing in Bezoarah, have a right to bury their dead indiscriminately in any part of the burial ground, and that no particular portions thereof have ever been assigned to particular families or individuals.

Kyfiets sent.

Letter from J. BLAIR, Esq., Acting Joint Magistrate of Masulipatam; to J. FRASER, Esq., Acting Magistrate Masulipatam, dated Bezoarah, 20th August 1856, No. 91.

SIR,

I have the honor to acknowledge the receipt of your letter.

No. 233 of the 18th Instant.

2. I beg to state in reply that acting on the *final* orders conveyed in your former letter* "to enable either project to proceed you must obtain the *written* consent of every Mussulman of Mature age, or at least of the head of every family at Bezoarah, for the repair of the road in the mode proposed, or that Dr. Miller procure a similar sanction for the erection of his fence," I considered it my duty to send the letter to Dr. Miller knowing that he was again putting up his fence although he had not obtained the written permission of *all* the Mussulmen.

* No, 220 of the 9th Instant.

3. Dr. Miller is mistaken in stating that "I caused the removal of the fence within one hour after the receipt of the letter." Whatever fence was removed, was so conjointly by Captain Orr, and the Mussulmen owners of the burying ground, the former I believe not recognizing Dr. Miller's right under any circumstances to put up a fence across a road in use by the public and the latter exercising their undoubted rights.

Letter from J. BLAIR, Esq., Acting Joint Magistrate of Masulipatam; to J. FRASER, Esq., Acting Magistrate of Masulipatam, dated Bezoarah, 30th August 1856, No. 97.

SIR,

I have the honor to forward herewith a complaint from the Mussulmen of Bezoarah, against Dr. Miller, for refusing to remove the fence erected by him in their burying ground.

2. I also send an agreement given by Dr. Miller, to 4 of the Mussulmen on the 19th of July, by which you will perceive that he agrees to remove the fence when required by them, which he now refuses to do. The document is in itself an invalid one, as part of a community cannot grant a permission involving their rights of all.

Herewith sent.

3. I have taken depositions regarding the ownership of the burying ground from seven of the most respectable Mussulmen of the place, and beg to send the complaint, agreement and depositions for your orders. I took the latter as it appears from the contents of your letters noted Marginally, that you have been misinformed as to the real facts of the case.

No. 233, August 18th 1856.
No. 246, August 22nd 1856.

4. It appears from para. 3, of your letter No. 233 of August 18th that I can act in this matter as a Justice of the Peace, and I should do so; but, for the remarks contained in your letters regarding the rights of the Mussulmen, as I myself have no doubt that Dr. Miller, has acted illegally.

5. I therefore consider that the best course for me to pursue is to forward the case to you for your decision at once.

Letter from J. BLAIR, Esq., Acting Joint Magistrate of Masulipatam; to J. FRASER, Esq., Acting Collector, dated Bezoarah, 11th September 1856, No. 107.

SIR,

I have the honor to forward another Petition presented by some of the Mussulmen of Bezoarah, on the same subject as that sent with my letter No. 97, of the 30th Ultimo, praying that it may be decided at once.

From BOHOOPATE VENCATAREDDY, Majoondaroo; to J. H. BLAIR, Esquire, Acting Joint Magistrate in the Zillah of Masulipatam, dated Bezoarah, 1st August 1856.

The Urzee of Bohoopate Vencatareddy Majoondaroo of Bezoarah Talook.

With reference to your order dated 31st Ultimo instructing me to report about the boundaries of the burial ground of the Mussulmen situated on the east side of Bezoarah, and near the house of Dr. Miller, and how it is entered in the Village accounts, I beg to forward the reports received from the Village authorities and from the principal Mussulmen of Bezoarah, who declare that a mosque has been erected in that ground during the time of ancient kings; and that the Mussulmen are in the habit of erecting in it tombs for deceased Mussulmen without any distinction of places, or rights of families. It appears from the account that the said ground was included in 10 Coonchems of which is the precinct of the Village; but it appears from the Checoobundy Mashat or measurement accounts that the ground had been separately measured ascertaining it is Varambakum Gobla Dibba.

I have also compared the reports with the Mashat accounts, but no difference was found regarding the boundaries the difference in area according to measurements taken at present, and some time back.

I have also shown the boundaries to the Surveyors, which I had fenced with the bamboos.

A form corresponding the Checoobundy account for the Fusly 1259 defining the boundaries of the burial ground situated east of Bezoarah.

The piece of ground No. 92 is bounded as follows—

1. * On the east by the piece of land No. 107 of Moohadeen Pacha.

* This was taken up for the Boodamair channel as shown in Plan.

On the south by the Bushy way from Parooinbaka Village to the road leading to Ellore.

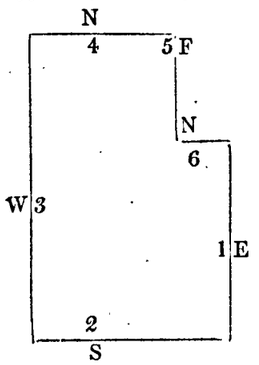
1. On the west by Saree land of Syed Selar.

1. On the north by the land No. 105 (which was entered in the name of Meeroohoossain in the Chekoobundy accounts but at present under Selar Sahib) and partly by Sary land No. 106 (which was entered in the name of Meerbagoo in the Checoobundy accounts and at present under the cultivation of Nagaty Narrainsawmy.)

The area of the burial ground lying within the abovementioned 4 boundaries according to the measurements taken by a measuring rope of 44 cubits in reference to the Checoobundy accounts is as follows—

3 on the east. } 3 on the west.
$2\frac{15}{16}$ on the south. } $2\frac{15}{16}$ on the north.

Thus the length of the burial ground is 3, and the breadth is $2\frac{15}{16}$ and the square Coontas $8\frac{15}{16}$ or 1 yadoom $6\frac{1}{2}$ manicas at the rate of 32 Coontas per candy.



Although the ground is situated within the above said boundaries, yet according to the actual measurements taken by the measuring rope of 44 cubits and after personal examination of the same it is as follows—

$1\frac{1}{2}$ on the east.
$2\frac{15}{16}$ on the south.
$1\frac{1}{2}$ on the west.
$3\frac{37}{44}$ on the north.
$\frac{27}{44}$ on the east.
$\frac{1}{2}$ on the north.

} These are the measurements taken on the 6 sides of the ground.

On the average, the length is $3\frac{37}{44}$
And the breadth..... $1\frac{50}{64}$

and the Square Coontas are $6\frac{6}{64}$ from which deducting $\frac{18}{16}$ which is the area of the nook, the net area is $5\frac{15}{16}$ or 2 Manicas 14 Piraloo and 5 Soorucmooloo at the rate of 32 Coontahs per Candy.

As the Chekoobundy measurement of this village is not yet completed, the area of the burial ground No. 92 as entered in the Chekoobundy rough accounts does not correspond with that taken by the actual measurement of the land by the measuring rope of 44 cubits, though the boundaries for the same entered in both accounts correspond with each other. But the present measurement is correct.

In the Chekoobundy accounts this burial ground is entered under the Village of Parumbaka, and in the Village Dowl accounts it is entered under the Coorooroola land, attached to Village of Parumbaka.

All the Mahomedan inhabitants of this village have a right for this land and the dead bodies of the people of their faith are entered indiscriminately in any part of it and tombs erected over them. There is no particular portion allotted to each family.

1st August 1856.

(Signed) AVOOLA KRISTNAMAH,
Village Moonsiff.

„ K. VEERARAJOO,
„ C. BAPIAH, } *Curnums.*

Forwarded to the Hoozoor on 1st August 1856.

(Signed) BOOPATY VENKATAREDDY,
Mazoomdar.

(A true translation.)

(Signed) J. BLAIR,
Subordinate Judge.

To the Honorable Company.

The Kyfyet given on the 1st August 1856 by the undersigned inhabitants of Bezoarah in the Talook of Bezoarah Fusly 1266.

The Talook Mazoomdar Boopaty Venkatareddy Naidoo having desired as to state the correct boundaries of the burial ground situated adjacent to Dr. Miller's house at this place, and to inform whether all persons are allowed to bury dead bodies in whatever place they choose within that ground, or whether particular portions are allotted to particular families, we beg to state the following true facts.

Several years ago, during the time of ancient Pachas, a mosque was erected in this burial ground, and ever since that time Mussulmen are in the habit of interring dead bodies around that mosque. All the dead bodies of the people of our faith, whether inhabitants of this Town or of Travellers that die at this place during their journey, have been interred without any distinction of place. All people of our faith have equal right for this place, aud not one or particular person. There is not particular portion allotted to particular family.

This ground is bounded on the west by the sary field of Selar, on the north partly by the Sary field of Sakoo Selar, and partly by that of Condaboyanah Kistnamah and Bagunty Narrainsawmy. On the east by the western bank of Government Canal from Boodamaroo, and on the south by the bushy place which is to be appropriated for the proposed road to connect the town

with the old high road leading to Ellore. This piece of ground bounded in the aforesaid manner is used for the burial place, and all people of our faith have equal rights to it.

Signed by 20 Mussulmen.

Forwarded to Hoozoor 1st August 1856.

(Signed) BOOPATY VENKATAREDDY,
Mazoomdar.

(A true translation.)

(Signed) J. BLAIR,
Subordinate Judge.

Document given by Doctor JAMES MILLER, dated 19th July 1856; to Ameerbeg, Mohomedally, Hoossain Sahib, Nejam Sahib and others inhabitant of Bezoarah.

To prevent cattle &c. from coming near the Bungalow built and the garden raised by me on the bank of of the channel "Jalemale Caloova", I am disposed to raise a fence by fixing posts in the burial ground (situated on the west side of the Bungalow, &c.) apart from the tombs and without interfering with them. But thinking that the ground would be appropriated under a garden or road, you stopped posts from being fixed. I therefore assure you that I have never intended to raise a garden or make a road through it or to appropriate it for other purposes, and hereby promise to restore you the ground whenever you require it again. There will be no hinderance to your building tombs therein. I therefore request you will give me a document with your unanimous consent and under your signatures empowering me to raise a fence as above stated. You must consider that no injury whatever can be done by raising the fence.

Letter from J. FRASER, Esq., Acting Magistrate of Masulipatam; to J. H. BLAIR, Esq., Acting Joint Magistrate of Masulipatam, dated 10th July 1856, No. 183.

SIR,

1. I have the honor to acknowledge the receipt of your letter No. 56 of yesterday's date and its enclosure.

2. If on consideration of my private communication to you of this day's date you find that it will be requisite to take steps for removing any obstruction on what you state to be a public road, I consider that you should do so in your Magisterial capacity under Act XXI. of 1841, and not as Justice of the Peace. Your proceedings if recourse must be had to such, should be strictly according to the letter of the Act above quoted.

Letter from J. FRASER, Esq., Acting Magistrate of Masulipatam; to J. H. BLAIR, Esq., Acting Joint Magistrate of Masulipatam, dated Bezoarah, 20th July 1856.

SIR,

1. I have the honor to inform you that I have this morning received an official complaint from Assistant Surgeon J. Miller, against you, for having on the score of a public thoroughfare being thereby obstructed, caused the removal of a fence which on the written permission of the resident Mussulmen, he had put up in their burial ground near the Boodoomair bridge.

2. Being well acquainted with the locality, and having been informed of the facts of the case by a perusal of the private correspondence that has passed between Dr. Miller, and yourself regarding it, I have the honor to request that pending further instructions, you will immediately on receipt of this letter suspend the making of the road you propose through the corner of the Mussulmen burying ground, and past Dr. Miller's house.

Letter from J. FRASER, Esq., Acting Magistrate of Masulipatam; to J. H. BLAIR, Esq., Acting Joint Magistrate, Masulipatam, dated 22nd July 1856, No. 193.

SIR,

I have the honor to acknowledge the receipt of your letters Nos. 67 & 68 of the 19th Instant, regarding the repairs of a road through the Mussulmen burying ground, near the Boodamair bridge at Bezwadah, and an encroachment made on it by Dr. Miller.

2. First, as regards the encroachment on the burial ground, in your letter to Dr. Miller, No. 60 of the 15th Instant, you sign yourself as Acting Joint Magistrate. If you had any jurisdiction in the matter at all, *it was as Justice of the Peace*, and under Regulation II. of 1820; your proper course was in that capacity, to have called on Dr. Miller by summons to appear before you, to answer the complaint of forcible entry, and not to have requested or desire, him by letter to remove the fence. But it seems to me that the case was not one of *forcible entry*. It is plain from Dr. Miller's official correspondence with you, that he had sometime ago made, or endeavoured to make, some arrangements with the Mussulmen to put up a fence in their burial ground for the protection of his garden; and I think it is equally plain, that prior to erecting his fence, he believed he had their full assent to his doing so, and that he had good grounds for this belief. He did not, therefore, in the face of any opposition from them put up the fence, (for they complained to you after it was there) but under the impression that he was only doing what the owners of the ground had before verbally assented, or given him to understand that they assented to.

3. Under this view of the case, which I consider the correct one, you had no jurisdiction whatever in the matter; because it was one of *simple trespass*, and for such Dr. Miller was amenable only to a Civil Action in the ordinary Courts.

4. I am not certain from the correspondence, whether you founded your proceedings on the written complaint of the Mussulmen, or on their depositions before yourself; but if you acted on their written complaint only, it was an important mistake: because a Justice of the Peace is bound, before issuing any process in such matters, to take down in writing the complainants statements on oath, or solemn affirmation. It is almost impossible to act in this capacity in too strict and literal adherence to the Acts and Regulations.

5. In regard to the matter of the road, whatever be the wording of Act XXI. of 1841, it is a criminal one, and the rule is that all such are to be construed strictly. If a certain penalty be laid down in any Penal Act or Regulation as "imprisonment," for instance, we cannot infer that it should or may be with labour, however desirable such a course might seem, unless the word, labor is actually mentioned. In such an extreme case as you suppose, a Magistrate would of course cause the immediate removal of a wall built across a public road, because in the first place there would be no doubt about such being strictly a public thoroughfare, and in the 2nd he could, as custodean of such, proceed against any one for trespass, if a native, or forcible entry if a European; the fact of the place being a public thoroughfare being indisputable and patent to all. I consider that he need not in this case avail himself of Act XXI. of 1841.

6. The case of the road through the Mussulmen burial ground, I consider to be quite different. It is one in which the "*right*" of passage is at least open to question, and in my opinion the road through it has not existed for such a length of time as to prevent the Mussulmen, if they wished it from enclosing to-morrow their burial ground with a wall so as to bar access to all and every one. The act under which you have proceeded states that "it shall be lawful for any Magistrate, when the public benefit and comfort are in question &c.," I do not consider that in this instance they were in question to such extent as to render the delay of 10 days provided for in Section III. otherwise than imperative on you. The only person who could have been put to the slightest inconvenience was Lieutenant Way, (who made no complaint) and this would have consisted in his making a circuit of a few yards in going to the main road leading to the Annicut, or over the bridge.

7. In para. 3 of your letter No. 68, you state that Dr. Miller tries to mix up two cases perfectly independant of each other. The two seem so intimately connected with one another, that it must be a difficult matter for an unprofessional person, to keep them distinct, and I

think you have not yourself been quite successful in making the line of separation between them as marked as it might have been, I suppose that Dr. Miller's fence was partly on or across the road, partly beyond it and in the burial ground. Under this supposition you could not, under Act XXI. of 1841, direct the removal of more than was on or across the road, whereas you appear to have removed the whole. If the fence was entirely on the road, you took two modes of procedure, when one only was correct and necessary.

8. In reply to para. 5 of your letter No. 68, I beg to give as my opinion.

1st. That if a Magistrate finds any one *making preparations* to raise any obstruction in a spot, which is undoubtedly and undisputedly a public thoroughfare or place, he may at once put a stop to them, forcibly if necessary, and punish for trespass any one resisting.

2ndly. That if any one entirely block up or obstruct so as to render useless, such a road as above stated, a Magistrate may proceed under the general regulations to remove such obstruction, and punish for trespass in his Character of Custodian of the public rights.

3rdly. That where there is any possibility of question as to the road or place being public, or that the party can prove a right to the ground, on which his obstruction, whether new or old, is raised, the Magistrate must proceed under Act XXI, of 1841, allow the lapse of 10 days, and then proceed according to circumstances.

Letter from JAMES FRASER, Esq., Acting Magistrate of Masulipatam; to J. H. BLAIR, Esq., Acting Joint Magistrate of Masulipatam, dated 29th July 1856, No. 203.

SIR,

A plan of the ground between the foot of the Hill in which Captain Orr's house is built and the road leading from the Boodamair bridge into the town, is about to be made under Captain Orr's directions; so as to show the spot in dispute between you and Dr. Miller, and the line of your proposed new road.

I have therefore the honor to request, that you will point this out and the width to be taken, to the person making the survey also that you will desire the Mussulmen to point out the exact limits of their burial ground ascertain whether those they show are the correct ones and whether each family has a general right to enter indiscriminately in any part of the burial ground, or whether particular families.

Letter from J. FRASER, Esquire, Acting Magistrate of Masulipatam; to J. H. BLAIR, Esq., Acting Joint Magistrate of Masulipatam, dated Bezoarah, 9th August 1856, No. 220.

SIR,

Para 1. I have the honor to acknowledge the receipt of your letter No. 85, of the 5th Instant and its enclosures, I have also received a plan of the burial ground and the vicinity, in illustration of the points in dispute between you and Doctor Miller.

2. I am now therefore in a position to decide the question of the right of way through the burial ground, and of Dr. Millers to enclose a part of the same, the first thing to be decided, is whether the road which you desire to repair is a public or a private one. That it cannot be called a thorough fare at all in the legal sense after it passes Lieutenant Ways house, is patent from the fact of its having been obliterated beyond that point every year since it has been used by cultivation, and without any objection on the part of the public. It has been used as a road over the fields when there has been no crop on them, and as no harm has been done by this usage, it has been worth no ones while to challenge this right for a few months in the year. It follows therefore, that as the road, properly so called, leads only to Lieutenant Way's house and no further, it is in the strictest sense and according to the legal definition of the term, a private way.

3. According to English Law," a private way may be claimed by Grant, prescription, reservation, or as of necessity." There being no Grant in the case of this road, it remains to be seen what length of uninterrupted use will stand in lieu of it, or give a prescriptive right of passage I cannot find that in any Regulation or Act of the Government of India, there is any particular time specified, but by English Law, 20 years is what is required, and as, in this case, the house to which the road leads, and even the road itself have only been in existence about 3 years use during that time will not establish any right to its continuance when the right is challenged by any competent person.

4. A right of way by reservation, cannot of course be contended for as that pre-supposses a written agreement, nor as of necessity, for Lieutenant Way's house, could be approached by a road inside the channel bank, between it and the edge of the channel, or by one leading round the Northern boundary of the burial ground. I have gone into this detail to show that parole evidence as to use in this case, is superfluous, the road being only a private one, and the length of time which it has been used being insufficient to establish a prescriptive right to its continuance, as such if that use be legally objected to. It follows as a necessary corallary that Act XXI of 1841 having reference only to public thoroughfares, you cannot, under it, take any Proceedings in regard to this road to Lieutenant Way's house.

5. I consider the Mussulmen population of Bezoarah *as a body* to be those who alone can grant a continuous further right of way through, or to an enclosure of part of their burial ground. Part of them, it seems, have given their consent, either actual or implied to the present road through the burial ground being repaired by you: part of them also have given Dr. Miller their written consent to his simply enclosing a portion, I do not look on the consent in either case as sufficient for the purpose required. All the Mussulmen have a general right to the whole ground, and therefore the consent of the whole body is requisite to give validity to the alienation of any part of it. In the present state of things, any one individual among them, could legally object either to your road, or Dr. Miller's enclosure; and I therfore consider that to enable either project to proceed you must obtain the written consent of every Mussulman of Mature age, or at least of the head of every family at Bezoarah, for the repair of the road in the mode proposed; or that Dr. Miller procure a similar sanction for the erection of his fence, whoever first obtains this consent, will be the person who has the right to the part of the burial ground required by him, and until this be set at rest, I must request that you will not in any way repair or interfere with the part of the proposed road which passes through it. I also consider that the Mussulmen have, if they please to exert it, the right to interdict right of passage through their burial ground to *any* one.

6. The road in question being a private one only, the whole matter must be *entirely* a matter of private arrangement between yourself or Dr. Miller, and the parties chiefly concerned viz. the owners of the burial ground, whose interests have not hitherto been sufficiently kept in view. The question of approach to the houses at Bezoarah, should have been provided for, when the sites were selected. It will not do to insist on a right of way in a particular direction simply because the houses happen to be where they now stand.

7. In conclusion I must express my regret that the question should have proceeded so far as to render my official interference necessary when it might have been advantageously settled by carrying the line of road round the western angle of the burial ground and to that point by a slight curve from the corner of Guffoor Beg's garden. I have sent a copy of this letter to Dr. Miller for his information.

Letter from J. FRASER, Esq., Acting Magistrate of Masulipatam; to J. H. BLAIR, Esq., Acting Joint Magistrate of Masulipatam, dated Bezoarah, 18th August 1856, No. 233.

SIR,

I have the honor to inform you, that I have this morning received a letter from Doctor Miller forwarding copy of one from you No. 87 of the 15th Instant. Doctor Miller complains that you have again removed part of his fence, on the plea that he has not obtained the written consent of the Head of every Mussulmen family resident in Bezoarah.

2. It does not appear from your letter that you had any complaint of Encroachment from any of the Mussulmen, and in the absence of this, your proceedings were clearly illegal. In stating in para. 5 of my letter* that the written consent, of all the heads of resident Mussulmen families, was a necessary preliminary either to Doctor Millers erecting his fence, or your making the road, I was under the impression that every Mussulmen family there, had a right to, and did make use of the burial ground, near Doctor Miller's house. But from his letter to me it seems that there are 3 burial grounds used by the Mussulmen of Bezoarah, and that he had got the written consent of all, but two of those using or having any right to use that in which his fence was erected and that those two though not signing the paper made no objection.

* No. 220 of the 9th Instant.

3. As in my letter already referred to, I have in several places alluded to the *owners* of the burial ground as the *only* parties who can alienate or allow encroachments on any part of it, it is fairly to be inferred that I meant the consent of all the owners *only*, and not of all the Mussulmen if they did not fall under that denomination. If, as I conclude from your letter to Doctor Miller, no complaint of encroachment was made to you by any owner, you could not interfere, the matter of the road being, as I have already decided, entirely private. It is true that if Dr. Miller had erected his fence without the necessary precaution of getting permission from all who had a right to grant it, he did so at his own risk, but it would not give you any right to interfere unless the parties actually complained to you. The written charge preferred some time ago gives no authority in the case, both because it was irregular, and because the state of things has entirely altered since then, and the fence demolished in the interim a fresh encroachment or trespass required a fresh complaint.

4. Courtesy no less than justice demanded that you should have given Dr. Miller an opportunity of explaining on what grounds he re-erected his fence in opposition, as you considered, to my orders, but which you do not appear to have done; for Dr. Miller states that you caused the removal of the fence within one hour after the receipt by him of your letter. You also seem to have acted on insufficient information, because even if the Mussulmen had complained that their consent had not been obtained, you were bound before taking any active measures, to put this simple question to Dr. Miller, whether he had procured it or not, seeing that I had informed him of the necessity for it.

5. Dr. Miller seems to me in this case to have acted quite in accordance with the spirit of my decision. He had obtained the assent of 15 out of 17 owners, and the two who were silent had made no objection; therefore, in the absence of any positive objection, their assent also was to be assumed. I have therefore to request that you will desist from offering any further hinderance to Dr. Miller erecting his fence; and as your removal of it under present circumstances, was an illegal act, I would suggest the propriety of your re-placing it in the state in which you found it.

Letter from J. FRASER, Esq., Acting Magistrate of Masulipatam; to J. H. BLAIR, Esq., Acting Joint Magistrate of Masulipatam, dated Bezoarah, 22nd August 1856, No. 216.

SIR,

Para. 1. I have the honor to acknowledge receipt of your letter No. 91 of the 20th Instant.

2. Captain Orr's interference in the removal of part of the fence, on whatever pretext, was illegal. I have therefore written to him to say so, and to point out the only course open to him, if, as a member of the community at Bezoarah, he feels aggrieved by my decision that the road through the Burial ground is a private and not a public one. I hope that on receiving my letter, he will interfere no further, but if he or any other person should again do so, in any way, I have to request that you will take steps officially to prevent it.

3. The Mussulmen owners of the Burial ground having once given their assent to Dr. Miller's erection of his fence, cannot summarily withdraw, or rather cannot remove or insist on the removal summarily of the fence. The matter must then be matter of Civil action between them and Dr. Miller.

Letter from J. FRASER, Esq., Acting Magistrate of Masulipatam; to J. H. BLAIR, Esq., Acting Joint Magistrate of Masulipatam, dated Masulipatam, 9th September 1856, No. 277.

SIR,

1. I have the honor to acknowledge the receipt of your letter, No. 97 of the 30th Ultimo, and the depositions, &c., which accompanied it, these I now return.

2. Of those who have deposed before you, 4 signed the agreement, in the strength of which Dr. Miller, erected his fence in the first instance. When his intentions in putting it up were fully understood by the Mussulmen, none seemed to have objected and now this sudden call for removal has come from them, rather capriciously as it appears, for I do not think Dr. Miller would have gone to the expense of a fence, had he known he was to have been called on to fulfil his promise of removing it in a week or ten days.

3. Notwithstanding this agreement, however, this is not a case for the interference of a Magistrate or Justice of the Peace. It is analogous to that of a tenant entering a house by the landlords consent, under a similar agreement. If the tenant does not turn out when called on to do so, the landlord must bring a suit of ejectment in a Civil Court, and of course can also sue for damages, if he please, for non-fulfilment of his tenants promise. This is the course which the Mussulmen must pursue, and I request that you will inform them of it. Had the entry in the first instance been forcible, the Magistrate or Justice of the Peace might I think, have interfered, but it was not.

No. 28. ORDER THEREON, No. 2251; dated 3rd December 1857.

In an Extract from the Minutes of Consultation, dated the 21st of March 1857, No. 523 the Government passed orders on a dispute which had arisen between Dr. Miller on the one side, and Mr. J. H. Blair and Captain Orr on the other. Both of the last named Gentlemen, feeling dissatisfied with the decision of Government, applied for a reconsideration of the case, on the plea that they could adduce evidence which had not been before Government when their decision was passed, and in an order dated the 15th of May No. 935, a list of all the papers which had been laid before Government was forwarded to each Gentleman, with an expression of the willingness of Government to consider any further evidence that they could adduce.

2. Captain Orr has hitherto made no reply, but Mr. J. H. Blair now addresses Government and submits copies of a long correspondence between the Magistrate Mr. Fraser, and himself, and on a consideration of it, claims that the original decision of Government shall be reversed, and that Mr. Fraser and Dr. Miller shall be reprimanded.

3. The Right Honorable the Governor in Council has carefully considered all the papers connected with this case. He does not see that any new light is thrown upon the question at issue. Mr. Blair lays great stress on the Magistrate having as he supposes, given two decisions diametrically opposed to each other, having at one time decided that as a section of the Mussulmen population only had permitted Dr. Miller to erect his fence, he could not be allowed to put it up, but must obtain the consent of all the heads of families, and having subsequently decided that the permission which Dr. Miller had obtained was sufficient, and that he could be ousted from the position which that permission had given him only by a Civil action of ejectment.

4. There is no doubt that Mr. Blair was to some extent, misled by Mr. Fraser's opinion as to the consent of all Musselmen resident at Bezoarah being required to the erection of the fence in question, which he, Mr. Fraser, subsequently changed on further information. Mr. Blair was however wrong in allowing Captain Orr to interfere in any way with his business, when he must have been fully aware of the terms on which that Officer and Dr. Miller were, and this of course led to a further personal difference between Mr. Blair and Dr. Miller. On the whole the Right Honorable the Governor in Council can see no reason to change the orders which have already been passed on the subject.

(Signed) H. FORBES,
Acting Secretary to Government.

From Captain Norman Joint Magistrate

To J. H. Blain Esquire

Acting Joint Magistrate
in the Talluk of
Masulipatam

dated August 31st 1838 Inspection Report

The Surgeon of Bhoopaly
Venkatreddy Majoondar
of Buzarah Saheb.

With reference to your order dated
31st Ultimo instructing me to report
about the boundaries of the burial ground
of the Mooselmans situated on the east
side of Buzarah, and near the house of
Dr. Miller, & how it is entered in the
Village accounts, I beg to forward
the reports received from the Village
Authorities, and from the principal
Mooselmans of Buzarah, who declare
that a mosque has been erected in
that ground during the time of ancient
Kings, and that the Mooselmans used
in the habit of erecting in it tombs
for deceased Mooselmans without any
distinction of places, or rights of
families. It appears from the account
that the said ground was included
in 10 Couchums of which is the precinct

of

of the Village, but it appears from the Chrecoolundy Moohal or measurement accounts that the ground had been separately measured ascertaining it is Varcumbaram Gollas Dibbies -

I have also compared the reports with the Moohal accounts, but no difference was found regarding the boundaries & the differences in area according to measurements taken at present, & some time back

I have also shown the boundaries to the Surveyors, which I had fenced with the boundrow -

Bazoorah 7th August 1856 } Signed Bhoopathy Eneatroyer
Majoondaroo -

(A true translation)

Blair
Sub Ju Judge

2

A form corresponding the Chrecoolundy account for the fasly 1259 defining the boundaries of the burial ground situated east of Bazoorah -

The piece of ground No 92 is bounded as follows -

1 × On the East by the piece of land No 107 of Moohadeen Pachee -
1 On the South by the Bushy way from Paroinchatta Village to the road leading to Ellore -
1 On the west by Saree land of Syed Sahar -
1 On the north by the land No 105 (which was entered in the name of Meeroohoojain in the Chrecoolundy accounts but at present under Pelar Pathila) and partly by Sary land No 106 (which was entered in the name of Meer Haqoo in the Chrecoolundy accounts and at present under the cultivation of Nagaty Narainsamy) -

× This was taken up for the Boundary Main Channel as shown in plan

The area of the burial ground comprising within the above mentioned

4

of the people of their faith are
entered indiscriminately in any
part of it and tombs erected over
them - There is no particular portion
allotted to each family -

1st August 1856 -

/sig/ Avoola Krishnamah
Village Kroomieff -
" K. Veerarajoo } Curnums
" C. Kapiah - }

Forwarded to the Mozoor on 1st August
1856 -

/sd/ Bospaty Venkatareddy.
Mazoomdar.

/A true translation -/

Blair
Subte Judge

To The Honorable Company

The Fyfzjet given
on the 1st August 1856
by the undersigned
inhabitants of
Bezorah in the Taluk
of Bazorah Fusly 1266 -

The Taluk Mazoomdar Bospaty
Venkatareddy Naidoo having desired
us to state the correct boundaries of
the burial ground situated adjacent to
Dr. Millie's house at this place, and
to inform whether all persons are allowed
to bury dead bodies in whatever place
they choose within that ground, or whether
particular portions are allotted to
particular families, we beg to state
the following true facts -

Several years ago, during the
time of ancient Pachas, a Mosque was
erected in this burial ground, and
ever since that time Mussulmen are
in the habit of interring dead bodies
around that mosque - all the dead
bodies of the people of our faith, whether

Inhabitants

inhabitants of this town or of travellers that die at this place during their journey, have been or interred without any distinction of place. All people of our faith have Equal right for this place - and not one or particular person. There is not particular portion allotted to particular family -

This ground is bounded on the west by the Sary field of Selar - on the north partly by the Sary field of Sahib Selar, and partly by that of Condaboyanah Kistnanah and Bagunty Narainswamy - on the east by the western bank of Government Canal from Bordamaroo and on the south by the bushy place which is to be appropriated for the proposed road to Connect the town with the old highroad leading to Ellore. This piece of ground bounded in the aforesaid manner is used for the burial place, and all people of our faith have Equal rights to it -

Signed by 20 Mussulmen

Forwarded to Bezwada
1st August 1856

/Signed/ Boopaty Venkatarazu
Mazoondar

(A true translation -)

J Blair
Subte Judge

Document given by Doctor James Miller, to Ameerbeg, Mohomed ally, Boojsain Sahib Nejam Saheb and others inhabitant of Bezora -

To prevent cattle &c. from coming near the Bungalow built and the garden raised by me on the bank of the channel "Jalemala Calowa", I am disposed to raise a fence by fixing posts in the burial ground (situated on the west side of the Bungalow &c.) apart from the tombs and without interfering with them - But thinking that the ground would be appropriated under a garden or road, you stopped posts from being fixed - I therefore assure you that I have never intended to raise a garden or make a road through it or to appropriate it for other purposes - and hereby promise to restore you the ground whenever you require it again - There will be no hinderance to

to your building tombs therein - I therefore request you will give me a document with your unanimous consent and under your signatures empowering me to raise a fence as above stated - You must Consider that no injury whatever can be done by raising the fence -

19th July 1856 -

/Signed/ I Miller

True Copy

(Signed) J Blair

Ag Joint Magistrate.

/True Translation/

J Blair

Sub Judge

P M 209/57

No 107

To J. Fraser Esquire

Acting Collector.

Sir

I have the honor to forward another petition presented by some of the Mussulmen of Begoarah on the same subject as that sent with my letter No 97 of the 30th ultimo praying that it may be decided at once.

Begoarah 11th September 1856

I have the honor &c
/Signed/ J. Blair
Ag Joint Magte

/A true Copy/

J Blair

Sub to Judge

№ 183

Masulipatam
Magistrates Court
10th July 1856

From

I. Fraser Esquire

Acting Magistrate of Masulipatam.

To

J. H. Blair Esquire

Actg. Joint Magistrate of Masulipatam.

Sir,

1 I have the honor to acknowledge the receipt of your letter №56 of yesterdays date and its enclosure.

2 If on consideration of my private communication to you of this days date you find that it will be requisite to take steps for removing any obstruction on what you state to be a public road, I consider that you should do so in your Magisterial capacity under act XXI of 1841. and not as a Justice of the Peace.

Your proceedings if recourse must be had to such, should be strictly according to the letter of the Act above quoted.

I have &c

(Signed) I Fraser

Actg Magistrate

A true Copy

J Blair

Subdr Judge

To

J. H. Blair Esquire

Actg Joint Magistrate of Masulipatam

Bezwarah

Sir,

1 I have the honor to inform you that I have this morning received an official complaint from Assistt Surgeon I Miller against you, for having on the score of a public thoroughfare being thereby obstructed, caused the removal of a fence which on the written permission of the resident Musulmen, he had put up in their burial ground near the Bordesmain bridge.

2 Being well acquainted with the locality, and having been informed of the facts of the case by a perusal of the private correspondence that has passed between Dr. Miller and yourself regarding it, I have the honor to request that pending further instructions, you will immediately on receipt of this letter suspend the making of the road you propose through the corner of the Musculman burying ground, and past Dr. Millers house.

I have the honor &c.
(Signed) I Fraser
Actg Magistrate

Masulipatam
20th July 1856

(A true copy)

W Elliot
Subdt Judge

No 193 Masulipatam Magistrates Court
22d July 1856

From

I Fraser Esquire

Actg Magistrate of Masulipatam

To

I H Blair Esquire

Actg Joint Magistrate

Masulipatam

Sir,

I have the honor to acknowledge the receipt of your letters Nos 67/68 of the 19th Inst. regarding the repair of a road through the Mussulman burying ground, near the Boodamaur bridge at Bezwadah, and an encroachment made on it by Dr Millen.

2. First, as regards the encroachment on the burial ground. In your letter to Dr Miller, No 68 of the 15th instant, you sign yourself as Acting Joint Magistrate. If you had any jurisdiction in the matter at all, it was as Justice of the Peace, and under Regulation II. of 1820; your proper course was in that Capacity, to have called on Dr Miller by summons to appear before you, to answer the complaint of forcible entry, and not to have requested or desired him by letter to remove the fence. But it seems to me that the case was not one of forcible entry. It is plain from Dr Millers official Correspondence with you, that he had some time ago made, or endeavoured to make, some arrangements with the Mussulmen to put up a fence on their burial ground for the protection of his garden; and I think it is equally plain, that prior to erecting his fence, he believed he had their full assent to his doing so, and that he had good grounds for this belief. He did not, therefore, in the face of any opposition from them put

1/5

up the fence, (for they complained to you after it was there) but under the impression that he was only doing what the owners of the ground had before verbally assented, or given him to understand that they assented to.

3 Under this view of the case, which I consider the correct one, you had no jurisdiction whatever in the matter; because it was one of simple trespass, and for such Dr Miller was amenable only to a Civil action in the Ordinary Courts.

4 I am not certain from the correspondence, whether you founded your proceedings on the written Complaint of the Mussulmen, or on their depositions before yourself: but if you acted on their written complaint only, it was an important mistake: because a justice of the Peace is bound, before issuing any process in such matters, to take down in writing the Complainant's Statements on oath, or solemn affirmation. It is almost impossible to act in this capacity in too strict and literal adherence to the Acts and Regulations.

5 In regard to the matter of the road, whatever be the wording of Act XXI of 1841, it is a Criminal one, and the rule is that all such are to be construed strictly. If a certain penalty be laid down in any penal act or Regulation as imprisonment for instance, we cannot infer that it should or may be with labour, however desirable such a course might seem, unless the word, labor, is actually mentioned. In such an extreme case as you suppose, a Magistrate would of course cause the immediate removal of a wall built across a public road, because in the first place there could be no doubt about such being strictly a public throughfare, and in the 2d., he could, as Custodean of such, proceed against any one for trespass, if a native, or forcible entry if a European; the fact of the place being a public throughfare being indisputable and patent to all. I consider that he need not in this case avail himself of Act XXI of 1841.

6 The case of the road through the Mussulman burial ground, I conceive to be quite different. It is one in which the "right" of passage is at least open to question, and in my opinion the road through it has not existed for such a length of time as to prevent the Mussulmen, if they wished it from enclosing tomorrow their burial ground with a wall &c as to bar access to all and every one. The act under which you have proceeded states that "It shall be lawful for any Magistrate when the public benefit and comfort are in question &c." I do not consider that in this instance they were in question to such extent as to render the delay of 10 days provided for in Section III, otherwise than imperative on you. The only person who could have been put to the slightest inconvenience was Lieut Way (who made no complaint) and this would have consisted in his making a circuit of a few yards in going to the main road leading to the Amient, or over the bridge.

7 In para 3 of your letter No 68, you state that Dr Miller tries to mix up two cases perfectly independant of each other. The two seem so intimately connected with one another, that it must be a difficult matter for an unprofessional person, to keep them distinct, and I think you have not yourself been quite successful in making the line of seperation between them as marked as it might have been, I suppose that Dr Miller's fence was partly on or across the road, partly beyond it and in the burial ground. Under this supposition you could not, under Act XXI of 1841, direct the removal of more than was on or across the road, whereas you appear to have removed the whole. If the fence was entirely on the road, you took two modes of procedure when one only was correct and necessary.

8 In reply to para 6 of your letter No 68, I beg to give as my opinion.

1st That if a Magistrate finds any one making preparations to raise any obstruction in a spot, which is undoubtedly and undisputedly a public throughfare

or place. he may at once put a stop to them, forcibly if necessary, and punish for trespass any one resisting

2ndly That if any one entirely block up or obstruct so as to render useless, such a road as above stated, a Magistrate may proceed under the general regulations to remove such obstruction, and punish for trespass in his character of Custodian of the public rights.

3dly That where there is any possibility of question as to the road or place being public, or that the party can prove a right to the ground, on which his obstruction, whether new or old, is raised — the Magistrate must proceed under Act XXI of 1841, allow the lapse of 10 days, and then proceed according to circumstances.

I have the honor &c
(Signed) J Fraser
Actg Magistrate

(A true Copy)

Blair
Subltn Judge

Masulipatam
Magistrate's Court
29th July 1856

No 203

From James Fraser Esquire
Acting Magistrate of Masulipatam

To, J. W. Blair Esquire
Adg Joint Magistrate of Masulipatam

Sir,

A plan of the ground between the foot of the hill in which Captain Orr's house is built and the road leading from the Boordamaire bridge into the town, is about to be made under Captain Orr's directions; so as to show the spot in dispute between you and Dr Miller, and the line of your proposed new road.

I have therefore the honor to request that you will point this out & the width to be taken, to the person making the survey. also that you will desire the Inspectress to point out the exact limits of their burial ground. ascertain whether those they show are the correct ones. and whether each family has a general right

6

to enter indiscriminately in any part of the burial ground, or whether certain particular parts are assigned to particular families —

I have the honor &c

/Signed/ I. Fraser
Acting Magistrate

/A true Copy./
Blair
Sub Ter Judge

No 220

Masulipatam
Magistrates Court
9th August 1856.

From,
I. Fraser Esquire
Ag. Magistrate Masulipatam

To J.H. Blair Esquire
Ag. Joint Magistrate
Bezwadah

Sir,

Para 1 I have the honor to acknowledge the receipt of your letter No 85 of the 5th Instant and its enclosures. I have also received a Plan of the burial ground and the vicinity, in illustration of the points in dispute between you & Doctor Miller.

2 I am now therefore in a position to decide the question of the right of way through the burial ground, and of Dr Millers to enclose a part of the same; the first thing to be decided, is whether the road which you desire to repair is a Public or a Private one. That it cannot be called a thoroughfare at all in the legal sense after it passes Lieutenant Wages house, is patent from the fact

of

of its having been obliterated beyond that point every year since it has been used by cultivation, and without any objection on the part of the public. It has been used as a road over the fields when there has been no Crop on them, and as no harm has been done by this usage, it has been .... worth no ones while to challenge this right for a few months in the year. It follows therefore, that as the road, properly so called, leads only to Lieutenant Way's house and no further, it is in the strictest sense and according to the legal definition of the term, a "private way."

3 According to English Law, "a "private way may be claimed by Grant, "prescription, reservation, or as of necessity." There being no Grant in the case of this road, it remains to be seen what length of uninterrupted use will stand in lieu of it, or give a prescriptive right of passage. I cannot find that in any Regulation or Act of the Government of India, there is any particular time specified, but by English Law - 20 years is what is required, and as, in this case, the house to which the road leads, and even the road itself have only been in Existence about 3 years use during that time will not establish any right to its continuance when the right is challenged by any competent person.

4 A right of way by reservation, cannot of course be contended for as that pre supposes a written agreement, nor as of necessity, for Lieutenant Way's house could be approached by a road inside the channel bank, between it and the edge of the channel, or by one leading round the northern boundary of the burial ground. I have gone into this detail to show that parole Evidence as to use in this case, is superfluous; the road being only a private one, & the length of time which it has been used being insufficient to Establish a prescriptive right to its continuance, as such if that use be legally objected to. It follows as a necessary Corollary that

that Act XXI of 1841 having reference only to public thoroughfares, you cannot, under it, take any proceedings in regard to this road to sanction Hays's having

5th Considering the application of Bezoarak as a body to be those whose sanction can grant a further right of way through an inclosure of part of their burial ground - Part of them, it seems, have given their consent, either actual or implied, to the present road through the burial ground being repaired by you - part of them also have given Dr Miller their written consent to his wholly Enclosing a portion - I do not look on the Consents in either case as any sufficient for the purpose required - All the Objectors can have a general right to the whole ground, and therefore the Consent of the whole body is requisite to give validity to the alienation of any part of it - In the present unsettled state of things, any one individual among them, could legally object either to your road or Dr Miller's Inclosure; and I therefore consider that it would be either subject to

proceed

proceed you must obtain the written Consent of every adult person of Mature age, or at least of the head of every family at Bezoarak, for the repair of the road in the mode proposed; or that Dr Miller procure a similar sanction for the erection of his fence - whichever first obtains this consent, will be the person who has the right to the part of the burial ground required by him, and until this be set at rest, I must request that you will not in any way repair or interfere with the part of the proposed road which passes through the Jakes

Consider that the adjudication leaves, if they please to exert it, the right to interdict right of passage through their burial ground to anyone -

6 The road in question being a private one only, the whole matter must be entirely a matter of private arrangement between yourself or Dr Miller, and the parties chiefly concerned viz the owners of the burial ground, whose interests have not hitherto been sufficiently kept in view - The question of approach to the houses at Bezoarak, should have been provided for, when the sites were selected

It will not do to insist on a right of way

in

in a particular direction simply because the honour he pursue to be what they now stand -

7 In conclusion I must express my regret that the question should have proceeded so far as to render my official interference necessary, which might have been advantageously settled by carrying the line of road round the western angle of the burial ground, and to that point by a slight curve from the corner of Gulfoor Begú garden - I have sent a copy of this letter to Dr. Miller for his information -

I have the honor to be &c.

(Signed) S. Fraser
Acting Magistrate

(A true Copy)

Blair
Subdr. Judge

No 233.

Masulipatam
Magistrate Court
18th August 1856

From J. Fraser Esquire
Acting Magistrate Masulipatam

To J. H. Blair Esquire
Ag Joint Magistrate
Bezwarah 18th

Sir, I have the honor to inform you, that I have this morning received a letter from Dr. Miller forwarding copy of one from you No 87 of the 13th Instant - Dr. Miller complains that you have again removed part of his fence, on the plea that he has not obtained the written consent of the Head of every Mussulman family resident in Bezwarah -

2 It does not appear from your letter that you had any complaint of Encroachment from any of the Mussulmans, and in the absence of this, your proceedings were clearly illegal In stating in Para 3 of my letter that the written consents of all the heads of resident Mussulman families, was a necessary preliminary to Dr. Millers erecting his fence, or your making the road, I was under the impression that every Mussulman family

* In 220 of the 9th Inst.

family there, had a right to, and did make use of the burial ground near Dr. Miller's house - But from his letter to me it seems that there are 3 burial grounds used by the Congregation of Bezaneth, and that he had got the written Consent of all, but two of those using or having any right to use that in which his fence was erected and that those two though not signing the paper made no objection -

3 As in my letter already referred to, I have in several places alluded to the owners of the burial ground as the only parties who can tolerate or allow encroachments on any part of it, it is fairly to be inferred that I meant the consent of all the owners only, and not of all the Congregation if they did not fall under that denomination - If, as I conclude from your letter to Dr. Miller no Complaint of encroachment was made to you by any owner, you could not interfere, the matter of the road being, as I have already decided, entirely private - It is true that if Dr. Miller had erected his fence without the necessary precaution of getting permission from all who had a right to grant it, he did so at his own risk, but it would not give you any right to interfere unless the parties ordinarily complained to you - The written charge preferred some time ago gives no authority in the case, both because it was irregular, and because the state of things has entirely altered since then, and the fence demolished in the interim a fresh encroachment or trespass required a fresh Complaint -

4 Courtesy no less than justice demanded that you should have given Dr. Miller an opportunity of explaining on what grounds he re-erected his fence in opposition, as you considered, to my orders, but which you do not appear to have done; for Dr. Miller states that you caused the removal of the fence within

within one hour after the receipt by him of your letter - You also seem to have acted on insufficient information, because even if the Europeans had complained that their consent had not been obtained, you were bound before taking any action whatever, to put this simple question to Dr Miller, whether he had procured it or not, seeing that I had informed him of the necessity for it -

5 Dr Miller seems to me in this case to have acted quite in accordance with the spirit of my decision - He had obtained the assent of 15 out of 17 owners, and the two who were silent had made no objection; therefore, in the absence of any positive objection, their assent also was to be assumed - I have therefore to request that you will desist from offering any further hinderance to Dr Miller erecting his fence; and as your removal of it under present circumstances, was an illegal act, I would suggest the propriety of your replacing it in the state in which you found it -

I have the honor &c

(A true Copy)

Blair

(Signed) J. Fraser

Off Magistrate

No 261

Masulipatam Magistrate's Office

22d August 1851

From J. Fraser Esquire

Off Magistrate of Masulipatam

To, J. H. Blair Esquire

Off Joint Magistrate

Bezawarah

Sir,

Para 1 - I have the honor to acknowledge the receipt of your letter No 91 of the 20th Instant

2. Captain Orr's interference in the removal of part of the fence, on whatever pretext, was illegal - I have therefore written to say so, and to point out the only course open to him, if as a Member of the Community at Bezawarah, he feels aggrieved by my decision that the road thro the Burial ground is a private and not a public one - I hope that on receiving my letter, he will interfere no further, but if he or any other person should again do so, in any way, I have to request that you will take steps officially to enforce it -

3 The Mahomedan owners of the burial ground having once given their assent

appeal to Dr Miller's erection of his fence, cannot summarily with the views or matter cannot remove or insist on the removal summarily of the fence the matter must then be matter of civil action between them and Dr Miller.

I have the honor &c

(Signed) J. Fraser
AS Magistrate

(A true Copy)

J Blair
Sub Ju Judge

No 177

Masulipatam
Magistrate's Court
9th September 1836

From J Fraser Esquire
Ag Magistrate of Masulipatam

To J. H. Blair Esquire
Ag Joint Magistrate of Masulipatam

Sir,

1 I have the honor to acknowledge the receipt of your letter No 97 of the 30th ultimo, and the depositions &c which accompanied it, these I now return.

2 Of those who have deposed before you, to signed the agreement, in the strength of which Dr Miller erected his fence in the first instance. When his intentions in putting it up were fully understood by the Moosulmen, none seemed to have objected. and now this sudden call for removal has come from them, rather capriciously as it appears, for I do not think Dr Miller would have gone to the expense of a fence, had he known he was to have been called on to fulfil his promise of removing it in a week or 10 days.

3 Notwithstanding this agreement, however, this is not a case for the interference of a Magistrate or Justice of the Peace- It is analogous to that of a tenant entering a house by the Landlords consent, under a similar agreement- If the tenant does not turn out when called on to do so, the Landlord must bring a suit of Ejectment in a Civil Court, and of course can also sue for damages, if he please, for non-fulfilment of his tenants promise- This is the course which the Prosecutor must pursue, and I request that you will inform them of it- Had the entry in the first instance been forcible, the Magistrate or Justice of the Peace might I think, have interfered, but it was not-

I have the honor &c

(Signed) J. Grant

Actg Magistrate

(A true Copy)

J Blair

Subte Judge

Rc 56.

To The Acting Magistrate

Masulipatam

Sir

I have the honor to inclose copy of a letter addressed by me to Assistant Surgeon J. Miller, and to request that you will inform me whether I in the event of that Officer refusing to remove the obstruction therein referred to, I should proceed under the provisions of Sect. Act XXI of 1841 as a Magistrate or of Sect. Reg II of 1820 as a Justice of the Peace

Bapatla
9th July 1856

I have the honor &c

(Signed) J. Blair

Joint Magte

(A true Copy)

J Blair

Subte Judge

No 67

To The Acting Magistrate
Masulipatam

Sir

I have the honour to report
the following circumstances for your
information

2 On the 11th instant, a complaint
was brought to me by some of the
Inmindmen of Begoarah, that one
J Miller Esquire Assistant Surgeon
was in attending their permission
enclosing with a fence part of their
burying ground - Monday the 14th
was a Native holiday, and the next
day I wrote to Doctor Miller
Vide No 60 of July 15 requesting him to remove the fence
which he had commenced, as he
had no right to the ground -

3 On the 16th I received an
answer requesting me to send him
a copy of their complaint and of
the Regulations, this I did on the 16,
and on the 17th received a letter of

which

which copy is sent. General of the expressions and allusions therein contained I consider most uncalled for, if not insulting to me personally. Numerous of these Stock Ro. Notices, and sent a reply again requesting him to remove the fence, and referring him to a Civil Court if he considered he had any right to the ground. On the 18th Doctor Miller wrote me another letter, a copy of which is forwarded.

3 This morning the fence not having been taken down, the sticks were removed by my orders in my presence - Dr Miller told me when I was pointing out the part of the fence to be removed "that he would not permit it to be touched" and ordered the persons removing it, to desist. I therefore thought it better to remain, and see it done myself in case of his attempting to resist the execution of my orders.

I have the honor to be

Sir

Your most obedient

Servant

J Blair

Asst Magte

Ro 64 of Sub Co 19

at present - I have clearly pointed out to Doctor Miller both privately and officially that he has no right or claim whatever to the ground, and if he again attempts to enclose it, I shall proceed as a Justice of the Peace under Sect 11 Regn of 1820.

Begd Ranah
19th June 1856

I have &c &c
Signed J Blair
Asst Magte

A true Copy
J Blair
Subdte Judge

No 68

To

The Acting Magistrate

Masulipatam

Sir

You are already aware from my letter No 56 of the 9 instant, and the copies of the subsequent correspondence between Mr Miller Engineer Assistant Surgeon & myself that he objected to my repairing an old road passing through the Mussulman burying ground near his house.

2 On the 15 instant I wrote to him regarding a complaint brought against him by some of the Inhabitants of Beyapore, referred to in my letter No 63 of that date) I sent him a Notice under Act XXI of 1841 to remove the Compound within 24 hours, as it obstructed a public road.

3 You will see by his letter of

Copy forwarded with my letter of this date No 69

of the 17th instant that he has to Mise
up the two cases, though they are
respectively independent of each other.
one being a charge against him of
trespass, and attempt to enclose
land to which he has no title whatever
the other whether I have the right
to repair an old road to which he
objects, though the ground through
which it passes does not belong
to him.

4 Do Miller in his letter of
the 17th instant objects to Mr Browne
the power to be removed within 24
hours, under Act XXI of 1841.
On consideration of the Act it appears
to me to be so loosely worded, that by
the strict letter thereof any person
may shut up a public road for 10
days or more, without the Magistrate
having the power to remove the obstruction
If such cannot be written that the
limit of 10 days allowed for appeal,
and the further time requisite for
the examination by the Surveyor
for in Sec III / leaving which the
Magistrate

Magistrate is to suspend the execution
of the injunction) is to apply to
obstructions Remain raised - Suppose
for instance that from malicious
or other motives, a wall was built
across the bridge at the head of
Brodeimair channel on the Wyebrook
road, how not a Magistrate the powers
of immediately removing the same -
I have put a case to show what
might happen, and my opinion is
that there can be no doubt as to the
spirit of the Act, that the limit of
10 or more days allowed thereby
is only claimable in cases of real
obstructions

5 Before proceeding further
in this case, I beg to be informed of
your opinion regarding the foregoing
letters in the cases of Rowley
Caused obstructions in a public road,
a Magistrate have the power of ordering
them to be removed immediately, or not,
under Act XXI of 1841.

Dergonville
19th June 1856

I have the honor &c
/signed/ J McClair
Jr Joint Magte

/A true Copy/
Blair
Asst Surv

No 70

To The Acting Magistrate

Masulipatam

Sir

With reference to your letter of the 20th instant, I have the honor to inform you that in obedience to your Orders, I shall delay to repair the road through the Mussulman burying ground, pending your further instructions

2 My letters to you of the 19th instant No 67 and No 68 have shown that I did not remove the fence put up by Assistant Surgeon J Miller, "on the score of a public thoroughfare being obstructed" As to the written permission "which Assistant Surgeon J Miller has informed you that "he had obtained from the Mussulmen" he distinctly informed me in an Official letter, of which a copy was sent to you with No 67,

that

that he had no written commission and the complaint brought against him, on which I acted, has not been withdrawn.

Bezoarah 21st July 1836

I have the honor &c
(Signed) J. H. Blair
Esq. Joint Magte.

(A true Copy)

Blair
Sub Ass. Judge

No 79

To The Acting Magistrate
Masulipatam
&c &c

I have the honor to
acknowledge the receipt of your
letter No 193 of the 22 instant, and
beg to make the following remarks.
2 Sec. consideration of Regn
of 1820, Act IV. of 1843, and the
interpretation of the former that
"any Officer exercising the full powers
of Joint Magistrate is competent to
take cognizance of charges against
European British subjects" &
conceived that I might act in the
Magisterial, and wrote to Doctor
Miller requesting him to remove the
fence, instead of summoning him
as a Justice of the Peace, because
I did not wish to be unnecessarily
him personally, and hoped that
when he received my letter he
would

would have removed the cause of complaint - No observations were taken as it was a matter of no doubt that the complainants were part owners of the burying ground, and that no one could fence it off without their permission. In acting thus Dr Miller committed two errors, the second being consequent on the first, the cause should have been tried, and Dr Miller argues, could not proceed directly according to Regulations for Justices of the Peace.

3 As to the case enforcing one of the Insolvent trespass, I admit that Dr Miller had endeavoured to make arrangements with the Executors to put up a fence, but he was perfectly well aware that he had not their assent to enclose any part of the burying ground, as they refused to allow him to do so, and No 3 of the [illegible] (regarding the road) absolutely prevents him that he had the right or title of any kind whatsoever to enclose any part

part of the burying ground - One of these letters was written the day before, and the other on the day Dr Miller began making the fence. I submit therefore that the case was most clearly one of wilful trespass, and even his own Official letter to me shows that he knew he had no legal right to enclose the ground.

July 17th 1816

1 With reference to Para 6 regarding the "right of road", I beg to remark that Dr Miller has no right or title of any kind whatsoever to oppose the repair of the road except on the ground of it's being a Nuisance, which I have taken 3 years to find out, and I consider the public benefit and comfort are in question in this case. As the road has been and is used daily by persons going from the Hyderabad road to Lieut Way's, Captain Orr's and my own houses, and as I told Dr Miller, he rendered himself liable to a Civil Action if he attempted to prevent any one going along it. As to the Insolvent

Right

copies of papers connected with the foregoing

Right to make over the burying ground,
or part of the road, that is Intended
totally irrelevant to the present
question between Dr Miller & Negro S.
5 In conclusion as the Deed
has been referred to you officially by
both parties, I having acted officially
and for the benefit of the public all
along, which is the Reason Dr Miller has
referred to convince him as a
private matter between himself and
me, and has Requested me to let
I have done officially, Request
that you will, after Investigating the
Subject as you think proper decide
whether Dr Miller has a right
to the ground he claims, and whether
he can prevent the road being opened
or not - I can prove by Witnesses
that there has been a road used
Dr Miller's House through the Disputed
ground for upwards 30 Years, and has
Individual right of any kind to
shut it up, & has he even the

any

any right to make over any part of
the burying ground -

I have the honor &c &c

(Signed) D Blair
Ch Joint Magte

(A true Copy)
Blair
Sub Ch Judge

No 85

To the Magistrate
Masulipatam

Sir

In accordance with the instructions in your letter No 203 of the 29th ultimo, I have the honor to inform you that I pointed out to Jno Cowan the line of the new road & of the road therein referred to, and the old track through the hungry ground which I wish to repair. The new line is to be 8 yards wide, including the trenches, the old track is only to be levelled to a width of 10 or 12 feet; and no trenches to be dug, as the Inhabitants object to the ground being disturbed, & is dug up.

2 The limits of the hungry ground were pointed out to Jno Cowan by the Inhabitants in the presence of the Peishcar, who represents that the Report sent the Inhabitants, who represents that there shown are the correct and

according

according to the Records -

3 The Village Officials and the Inhabitants in general respectfully represent & declare that all Inhabitants travelling through, or residing in Begonvale, have a right to carry their Weapons indiscriminately in any part of the Colonial ground, & that no particular restriction thereof have ever been assigned to particular families or individuals -

Begonvale 5 August 1836 } Thomas the Marks of Regina + of Blair & of Sam Dingle

[A true Copy]

Blair

Sub Ch Judge

No 91

To

The Acting Magistrate

Inverlesprattum

Sir

I have the honor to

Act 33 of the 18 instant. acknowledge the receipt of your letter

2 I beg to state in reply that

Act 22 of the 9th instant. acting on the former Order communicated in your former letter* I have enabled letters signed by the Inhabitants obtain the written consent of every Inhabitant of Begonvale upon, or at least of the head of every family at Begonvale, from the respective heads in the Parish Register, that Dr Miller possesses a similar sanction for the erection of his fence", I communicated it by circular to send the letter to Dr Miller stating that he was again infringing upon his fences although he had not obtained the written permission of all the Inhabitants -

3 Dr Miller is included in

Most Respectable Municipality of the

Rajahmundry
12 October 1857

21

SURVEY of a portion of the Town and environs of Bejwarah.

100 50 0 100 200 300 400 feet

Note: — Represents proposed new Road
::::::: " old bandy track
——— " Bungalow Compound wall finished
since built + ... " " " marked out, but not begun
..... " Burial ground boundary

Mr Fraser's compound.

road to Sultanagram

Native Huts

N

Native Quarters

Native Quarters

Native Huts

Native Huts

S

A

Mosque

Dr. Millard

Dr. Millard

New Travellers Bungalow Compound

Hyderabad Road

Public Ball Room

Channel

Buoy

Boodeman Channel

Elliots Road

—— Dr millers new fence.

+ ——— correct line of old road through the burying ground the dotted line is too much to the Eastward. showing the angle of the fence projected into the road.

+ This is not in the original plan

A true Copy-

Public Judge-

Most respectable Mussulmen of the place, and beg to send the Complaint, Agreement and depositions for your orders - I look the latter as it appears from the contents of your letter noted marginally, that you have been misinformed as to the real facts of the case -

No 233 - August 18th 1856 -
No 246 August 22nd 1856 -

4 It appears from Para 3 of your letter No 233 of August 18th that I can act in this matter as a Justice of the Peace, and I should do so, but for the remarks contained in your letters regarding the rights of the Mussulmen as I myself have no doubt that Mr Millers has acted illegally -

5 I therefore considered that the best course for me to pursue is to forward the cases to you for your decision at once -

I have &c &c

To August 30 1856

(Signed) J B Blair
Ag Joint Magte

A true Copy

Blair
Sub Ter Judge

D M 2091/57

Most Respectable Mussulmen of the

Rajahmundry
12 October 1857

From
J. H. Blair Esquire
Subordinate Judge
Rajahmundry

To
H Forbes Esquire
Acting Secretary to Government
Fort St. George

Sir,

1 Having at length obtained copies of Letters and documents connected with the road through the burying ground at Bezoara, which have not been laid before Government, I have the honor to forward them, and at the same time to make a statement of what occurred.

2 Soon after my arrival at Bezora about 15th June 1856, a sum of money was granted for repairing roads; and among other improvements, I wished to repair the road through the burying ground, which led, not only to Mr. Wayt's house, as stated by Mr. Fraser, but to 3 other houses, as shown in the estimate plan, and was used in the dry season as a cart road to villages several miles distant.

3 Knowing that the Mussulmen would object to the ground being disturbed, I sent for them, and asked their leave to gravel the old road: they answered, provided no tombs were disturbed, and no trenches dug. The line across the fields was then newly marked out

PW 2091/57

Subdte Judge

out straight instead of the old Zigzag path, as I intended to make a proper carriage road, and to continue it all round, as shown on the plan. —

4 So far all was well, when to my astonishment Dr. Miller wrote, remonstrating against my making a new road, and that the ground was already his. Ex. I answered telling him he had nothing to do with the road, or any right to prevent my repairing it. that I had never thought of asking his leave to repair an old road, through ground of which, I clearly pointed out, other parties were the owners, and that they had not transferred the ownership to him; whereas I had obtained their consent to do what I wished. The next day he put up his fence which I called on him to remove, and wrote to the Acting Magistrate requesting his advice. I had also written to him privately before, and in his private letters which I have unfortunately destroyed he acknowledged Dr Miller had no right to fence off the road which indeed he subsequently admitted officially. He answered "I should proceed under Act XXI of 1841."

see private correspondence already before Government

5 A day or two afterwards the Mussulmen came to me and complained against Dr. Miller for fencing off part of their burying ground without their consent as shown in letters already before Government. The finale was that on the morning of the 19th Dr. Millers fence was removed by my orders, as he could show no right or title whatever to erect it as detailed in my letters noted marginally, to which with No 70 & 79 I would beg particular attention.

6 Dr Miller appealed to Mr Fraser, who then accused me of acting illegally, and contrary to the Regulations.

This

× No 70 July 21st
× No 79 Ag. Joint Magistrate to Actg. Magistrate

No 203 of 29th July Ag. Magistrate to Actg Joint Magistrate

× No 85 of 5th August Ag. Joint Magistrate to Mgt. and Nos 1. 2. 3. translations of Arzee & Kyfiets.

See letters between Drs Miller and Mr Blair from 15th to 18th July

× No 67 & 68 July 19th Actg. Joint Magte to Ag. Magiste.

× No 193-222 July Ag. Magte. to Acg Joint Magistrate

This I answered showing that I corresponded with Dr. Miller to save him annoyance, as up to the day the fence was removed (the 19th July) we had been on friendly terms.

7 Mr Fraser then wrote to me to obtain certain information, requisite to decide the dispute between Dr. Miller and myself, this was sent to him as shown by my letter. I lay much stress on the documents and information then forwarded, as upon them Mr Fraser grounded his final decision, as detailed in his letter of 9th August No 220. particularly in Para 5. I was perfectly satisfied with the decision, and having the permission of the Mussulmen to repair the road, (while their complaint against Dr Miller for enclosing a part of their ground had not been with drawn) I determined upon going on with it. Being however unable from illness to attend to it myself, I posted Captain Orr to set my people to work, which he agreed to do, on the understanding that we should give way to Dr. Miller, if he showed that he had the consent of all, or any great proportion of the Mussulmen. As Captain Orr had anticipated, it appeared that Dr Miller had made use of the time to gain the written consent of a few, and on his assurance that it was "of all" Captain Orr yielded the point, and, as we had arranged, contented himself with directing the gravelling of the portion of the track left outside the fence. Here the matter might and would have ended, but for Dr Miller sending for the Mussulmen, and inciting them to drive off my people. This coupled with his defiant taunts, induced Captain Orr and me to exert ourselves; and in a few

days

× See Para 5 No 220 9th Augt. Actg. Magte to Ag Joint Magiste
× No 183. 10th Augt. Ag Magistrate to actg Joint Magistrate

days. on had obtained the written consent of between 80 and 90 Mussulmen, being the heads of about all the ..... families here - having been shown Dr. Miller's agreement, I perceived, that instead of it being between him and "all", the Mussulmen, as he had stated in his usual reckless style of assertion, it contained the names of only four, and therefore I called upon him to remove his fence, as it was then clear, that under the Acting Magistrate's decision, he had no right to the ground, and had put up the fence illegally. The same evening Captain Orr, I. and the Mussulmen went to the place to mark out the line of road, and in doing so one or two fastenings of the bamboos of the fence were accidentally removed. Dr. Miller immediately complained to Mr. Fraser that I had sent him a notice @ 5 Oclock, and pulled down his fence at 6 - also apparently stating that he had a written document from 15 out of 17 of the owners of the burial ground, in which his fence was. that there were 2 burying grounds, not one, and making several other unfounded and reckless assertions. Mr. Fraser then wrote another letter to me, which when compared with his former letter of 9th August, speaks for itself. He had after a full examination of all the papers, the hyfriks given by the Mussulmen themselves, and the village officers, the plan sent, and the correspondence between Dr. Miller and myself, given his final decision. On the 18th finding it did not suit Dr. Miller, he upset it, and gave another perfectly different on ex parte ... statements made by Dr. Miller, which the evidence .... already before him and the statements of the real, and undisputed owners of the ground directly contradicted. I

† translation already sent by Dr. Miller

† See Para 2 No. 238 Aug.t 18th Ag. Magistrate to Ag. Joint Magistrate

† No. 233 of 18th August

† Copies sent of hyfriks & Plan.

No. 21 August 10th
Acting Joint Magistrate
to Acting Magistrate

22nd August
No. 246
Actg. Magistrate
to Actg. Joint Magte

I answered giving my reasons for sending the notice to Dr. Miller, and stating that Captain Orr and the Mussulmen had removed a part of the fence, meaning thereby, that I had nothing to do with it in my official capacity. Mr. Fraser answered "that the Mussulmen had no right to interfere. they had consented to the fence being put up, and must go to a Civil Court ... though one week before he had declared them to be, undoubtedly, owners of the burying ground, and that no one could fence off a park, or repair the road, without the written consent of all.

8 On hearing this, they again came to me with a complaint, and to strengthen it, as Mr. Fraser appeared determined to believe any thing Dr. Miller chose to say, rather than the very men whose right to the ground had never before been disputed, and had once been confirmed by himself after full investigation, I took depositions on oath from seven of the most respectable of them - among them the four men who gave the agreement to Dr. Miller which I sent with the Complaint - I also sent the † agreement given by Dr. Miller to 4 of them, who swore that a corresponding one had been given by them, which even those of them who cancelled, according to its terms, as they had no idea when they gave it, that Dr. Miller was going to take advantage of it to stop the road, which was a public benefit - they also declared no other agreement had ever been given. I pointed out the utter illegality of the document, but Mr. Fraser only † wrote back again referring the Mussulmen to a Civil Suit for damages.

† translation sent.

† No. 97 August 30th Ag. Jt. Mag.te to Ag. Mag.te

† No. 277 9th Sept. Ag. Mag.te to Ag. Joint Magistrate.

This

9 This letter clearly shows his determination, and bias in the matter, not one of the statements in it are correct, and the inferences and Comparisons, are not either warranted by the fact, or applicable to the case in any way.

10 Thus the matter stood when I left Bezoara, the road had been finished up to A in the plan; but Dr Miller had stopped the further repair of it, and erected his fence in spite of the opposition of the Musulmen being backed by Mr Fraser, who though I had repeatedly urged him to come out, and settle the matter on the spot, would never do so - I believe, knowing full well, that if he did, he must remove Dr Millers fence, and order him to make no further opposition to the repair of the road. The Musulmen were extremely angry, and if it had not been for the great influence of Captain Orr with them and my advice, they would have removed Dr Miller's fence by force, and created a disturbance - they have been deprived against their will of a considerable portion of their burying ground, and can obtain no redress, as they do not know how to set about it. The plan will shew that just at the part of the burying ground where the road was narrowest, Dr Miller projected the angle of his fence about 8 feet into it; the road could not be made further west, on acct of some tombs, but part of it remained, and was used daily by the residents of Bezaarah and Dr Miller himself, who in making his fence actually left a gate into the burying ground opening on to the road, which he used without the slightest compunction, though he objected to my gravelling it for the convenience of the public - he never attempted to shut up the whole of the road, and when he first put up his fence, he moved

moved the standards about 2 feet back at the queen of Mr Way, who asked him, whether he did not to shut up the path altogether, and so prevent horses or tonjons passing along.

11 I never knew any one at Bezaarah before my arrival, and I cannot therefore be accused, I hope, of any interested motives; but from what I know and have heard since, I firmly believe that the reasons of Dr Millers opposition were, that he had shortly before quarrelled with Captain Orr (by whom and by whose friends the road was a good deal used) and he was angry with me for not consulting him before I commenced repairing the road, though I cannot conceive why he should have expected me to do so.

12 Captain Orr has sent me a copy of his letter to the Chief Engineer of 31st March 1857, and I beg to corroborate every thing said by him therein regarding the road - his statement of what occurred on the 12th August is with regard to what passed between himself and me, about metalling the road outside the fence, perfectly correct - as to what passed between him and Dr Miller, I can only say that on that evening Captain Orr told me what had happened, exactly as stated in his letter.

13 I would finally submit that I am utterly at a loss to understand what acts of mine and Captain Orrs regarding the road towards Dr Miller can be characterized as "oppressive and unjustifiable." — If there was any oppression, it was practised by Dr Miller towards the Musulmen, and the public of Bezaarah, by enclosing part of the burying ground of the former against their will, and by preventing an old road being repaired for the benefit of the latter.

14 I also consider I was most unfairly treated throughout

throughout by Mr. Fraser; he first declared that Dr. Miller was wrong, then modified that opinion by deciding that both he and I were wrong, and finally settled that I was wrong, that the Mussulmen had no right to prevent the appropriation of their own burying grounds by Dr. Miller, and that he was perfectly right in taking the ground, and no one was to interfere with him.

15 The simple facts were, I wished to repair an old road for the benefit of the public, with the full consent of the owners of the ground through which it passed. Dr. Miller fenced off part of the road and ground; a complaint was made to me by the undoubted owners, and I acting thereon pulled down the fence; he then got a document granting a conditional permission to put his fence up again from 4 owners out of 100, erected it again, and was aided in appropriating the burying ground and keeping up his fence by the Magistrate, who first gave a decision adverse to him, and then another in his favour, without any grounds whatever for changing his opinion. With regard to the road, I acted for the benefit of the public, and was making it with public money; and with regard to the complaint of the owners of the ground, I most certainly consider Dr. Miller's proceedings came under the head of "wilful trespass" and that I was perfectly justified in removing his fence, nor can I see what other course was open to me.

16 I would further submit, that as I warned Dr. Miller against putting up his fence at all, either in the burying ground, or across the road, before he did so; his conduct was most reprehensible and illegal, and that I should have been perfectly justified in removing it the very next hour if I had thought proper

proper to do so. and though Mr. Fraser chose to consider that Dr. Miller did not commit "wilful trespass", though forewarned, and complained against, directly he did it, by the owner. I do not think any one else can possibly have any doubt whatever on the point.

17 I would only further beg to remark that a fair estimate of Dr. Miller's command of temper, and character, may be formed from the facts, that within 3 or 4 months he contrived to quarrel on distinct and seperate grounds with 3 out of the 4 other residents at Bezoarah, and that when called on by the 4 men who had given him a conditional permission to erect his fence, to remove it according to his written promise entered in the agreement, he distinctly refused to do so.

18 I have since writing the above heard from Bezoarah that since Dr. Miller left the station, the road through the burying ground has been repaired by the present acting Sub Collector, and I hope that after the explanation now given, and the consideration of the letters and Telugu papers herewith sent, the Govt. will withdraw the imputation cast upon Captain Orr and myself, in Extract Minutes of Consultation under date 21st March 1857, reverse Mr. Fraser's unjust & partial decision, order their burying ground to be restored to the Mussulmen of Bezoarah and reprimand those who have been to blame throughout, viz. Dr. Miller & Mr. Fraser.

I have the honor to be,

Sir,

Your most Obedt. Servant

Blair

Subordinate Judge

Rajahmundry Subordinate Court
12 October 1857.

Dft Comm. 24 March/57 No. 59-60
" " 19 May " " 30 & 32

Public No. 1857 Oct. 8 Dec. 2091
Colonial
from J. H. Blair Esq.
Sub Judge Rajahmundry
To A. Forbes Esq.
Agency Govt.

Dated 12 Octr 1857
Rec 22 " " —
No.
Enclosures 4 2 Encl.
Sketch 1
Ry. 16 No. 2351. 3 & 2 Docts.

Statement concerning the road thro' the Mussulman burial ground at Berooara & forwards copies of correspondence & papers not previously laid before Government.

No. 27.

WR

c26 1 October c24 Nov.

decision was pulled, and on the
[illegible] dated the 15th May 1935,
allotting unto the said Beck Lee
[illegible] Premises
[illegible] subject to each such charge,
with all exception & reservation to the
[illegible] subject to such charge
[illegible] aforesaid.

2. Upon the Settlement of the
[illegible] with Mr. [illegible] Blair
[illegible] Executors and
[illegible] called a long account
[illegible] between the said
Mr. Reid & Estate, and on a

[illegible] Mr. Blair
[illegible]

[illegible] Mr. Blair
[illegible]

by Mr Blair: I have not enjoined
Delonge by name upon.

Mr B. was no doubt blame.
Salute insist by Mr Hall in Glasgow
respecting the contents of the hospital.
Mr Lang required which he Mr F.
has subsequently changed in substance by
making Delonge Dr Mr. Hall & statements
Three ci a disappearance of his number
of Employees - who are chiefly Irish
Since this consult Dr for his Lordship
his fence - which affects the question
as to the grounds on which Mr Fraser
ultimate decision was given - which

Shaw looked carefully over the
previous proceedings appears in this
case - as well as those now forwarded

I enquire cannot how be settled.

Sir Henry Evidence that Mrs Blair was visited by Faulds on both days. & Sold himself absent simultaneous endeavours to impede each other

[illegible] Mrs Blair's own statement is a clear & [illegible] guide to the course he adopted

Miss Blair's representation Dr Smith & Mr Fraser were alone in fault. & Little Chisholm & the Sergeants captains cannot take Mrs Blair's evidence for true representation

This is my view of the case after I think Mrs Blair's statements & the proceedings of his counsel & agent, Mr Fraser, may, unfortunately

L.G.

The discrepancies as to matters of fact are so great that I am unable to say who was right & who wrong in the first instance

Mrs Blair declares (para) that the Pakhalis questions regarding the Mahomedans interested in the Ground & are unfounded. There is no evidence, and the Prisoner to establish this point — The whole question turns upon the credit of Dr Miller on the one hand & four or five witnesses on the other. Dr Miller's profession & the position he took professes contrary to the sworn statements of the witnesses & the weight of evidence

Captain

Mr Justice Young.

Upon which the Merchants
he had obtained the concurrence
of the underwriters having an Equi-
table interest in the Land, the Registr
had no power to interfere, or whether
~~Registrar~~ any other Instrument
the Lands by him might be
then traced after Deeds by him.

The Registr of the Land Act
for Public purposes, Deeds traced
under Act XX of 1852

Mr Pleer was wrong in allow
ing Capt Orr to interfere in any
way

way with the Instrument.

He must have been aware
of the Trust on which Capt Orr held
Miller were. This led to a personal
difference between Mr Pleer & Capt Miller
& embittered the whole of the ~~proceedings~~ proceedings
correspondence between them.

Pleer no necessity
to make Will
6

Captain

Public Works Dept

No. 2257.

Extract from the Minutes of Consultation

Under date the 3d ~~November~~ Nov.r 1857.

Read the following

letter from the Subordinate

Judge of Rajahmundry.

Fort Venkatagiri 12: October 1857

In an Extract

from the Minutes of

Consultation dated the

21st of March 1857 No. 525,

the Government passed

orders on a dispute

which had arisen

between Dr. Miller

on the one side, and

Mr. J. H. Blair and

Captain

Captain Orr on the other.

— Both of the last named Gentlemen, feeling dissatisfied with the decision of Govern-ment, applied for a reconsideration of the case, on the plea that they could adduce evidence which had not been before Govern-ment when their decision was passed, and in an order dated the 15th of May No. 905, a list of all the papers which had been laid before Go-vernment was for-warded to each Gen-tleman, with an expression of the wish-es of Government to consider any further evidence that they could adduce.

2 Captain Orr has hitherto made no reply, but Mr. H. Blair now ad-dresses Government, and submits Copies of a long correspondence between the Magis-trate Mr. Trower, and himself, and on a consideration of it, claims that the original decision of Government shall be reversed, and that Mr. Trower

and

and Dr. Miller shall be reprimanded.

3. The Right Honorable the Governor in Council has carefully considered all the papers connected with this case. He does not see that any new light is thrown upon the question at issue. Mr. Blair lays great stress on the Magistrate having, as he supposes, given two decisions diametrically opposed to each other, having at one time decided that, as a section of the Mussulmen population only had permitted Dr. Miller to erect his fence, he could not be allowed to put it up, but must obtain the consent of all the heads of families, and having subsequently decided that the permission which Dr. Miller had obtained was sufficient, and that he could be ousted from the position which that permission had given him only by a civil action of ejectment.

4. There is no doubt

doubt that Mr. Blair was to some extent misled by Mr. Travers opinion as to the consent of all Mussel-mans resident at Bajamundry being required to the erection of the fence in question, which he, Mr. Travers, subsequently changed on further information. Mr. Blair was however wrong in allowing Captain Orr to interfere in any way with his business, ~~though~~ when he must have been fully aware of the terms on which that Officer and

and Dr. Miller were, and this of course led to a further personal difference between Mr. Blair and Dr. Miller. On the whole the Right Honorable the Governor in Council can see no reason to change the orders which have already been passed on the subject.-

Copy to the Sub. Judge & Collr. Rajahmundry.

Public Works 1857 Depts.
Do. to Cons: 8th Decr.

No. 2251.

Extract Mins of Cons.
Dy 3d Decr. /57.

Reviewing the case of Dr. Miller on the one side & Mr J. St Clair & Capt. Orr on the other, & observing that Govt can see no reason to change the Orders which have been already passed on the subject.

No: 27 & 28.

C24 Nov 0230