(1) பக்கங்களின் எண்ணிக்கை 28

(2) புதுக்கித் திருப்பிய நாள் [illegible]

(3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம் [illegible]

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

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PWD

துறை

அரசாணை எண். 1991

மு. கோப்புத் தாள் எண்.

அச்சகம்
பலவகை

நாள் : 23 7 1889

மடிக்கவோ கண்டபடி கையாளவோ கூடாது

14 Sheets

ஆவண. கா-1—18,000—15-6-87.

1991

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Buildings and Roads.
Civil Works.

No. 68.

READ—the following letter from Colonel R. MURRAY, Director-General of Telegraphs in India, to the Secretary to the Government of Madras, Public Works Department, dated Simla, 28th April 1882, No. 309 C.G. :—

I have the honor to acknowledge the receipt of the Madras Government Order, No. 568 W., of the 6th March 1882, in which I am asked to favor His Excellency the Governor with my views on the following proposals for the extension of telegraphs, principally in the Wynaad.

2. The proposals are—

I. By the Nílgiri Planting and Mining Association—
An extension to Vayitri *viâ* Pandalur and Cherambádi of the Devála telegraph line.

II. By the Wynaad Planting and Mining Association—
A provision of a line of telegraph.

III. By the North Wynaad Address—
An extension of the line of telegraph from Vayitri to Teriote and Manantoddy, instead of from Vayitri to Calicut.

IV. By the North Wynaad Native Address—
The opening up of telegraphic communication.

3. Proposals II and IV are too vague for me to express any opinion on them beyond that they probably refer to the general subject of schemes I and III.

4. With reference to proposals I and III, I must premise that last year the Wynaad Planters' Association addressed the Collector of Malabar inquiring what guarantee would be required by the Government "to ensure the extension of telegraphic communication between Calicut and Ootacamund *viâ* Vayitri, Meppádi, and Devála." I was obliged to reply that, in the first place, I could quote no terms until a survey of the line had been made, and, in the second, that on account of other works I could not undertake any extension beyond Devála last working season (1881-82).

5. The line from Devála through Cherambádi, Meppádi, Vayitri, and the Támrachéri Ghât to Calicut has now been surveyed and found practicable, although 59 miles of forest cutting will prove troublesome and costly.

6. The recommendation of the North Wynaad Address for a line to be made from Vayitri to Manantoddy, instead of from Vayitri to Calicut, it is evident, is in favor of Manantoddy alone, and would not be of such general advantage as a through line from Ootacamund to Calicut.

7. Considered as purely telegraph projects, and irrespective of how far the proposals under review are likely to be affected by the Malabar-Mysore Railway scheme, I recommend the extension of the Devála line along the before-mentioned route to Calicut, and if the Madras Government is prepared to grant the same terms of limited guarantee for the extension beyond Devála as it has given for the extension up to Devála (*vide* Order No. 2219 W. of the 7th September 1881), with the addition of Rs. 5 a mile a year for 59 miles of annual jungle clearing, I will apply to the Government of India for sanction to the work, and will, if possible, have the line constructed next working season (*i.e.*, between October 1882 and February 1883).

8. On terms similar to those of the Devála guarantee, *plus* the extra charge of Rs. 5 a mile for 59 miles for annual jungle clearing, I estimate that the annual guarantee for the extension from Devála to Calicut with an office at Vayitri would be Rs. 5,200 a year, exclusive of free office accommodation.

9. The question of the local extension from Vayitri to Manantoddy should, I consider, be deferred until that of the through line from Ootacamund to Calicut has been decided.

No. 68-A.

READ—the following letter from C. L. B. CUMMING, Esq., Acting Collector of Malabar, to the Secretary to Government, Public Works Department, Ootacamund, dated Calicut, 2nd June 1882, No. 1561 :—

In reply to your memorandum, dated 11th ultimo, No. 91 E., I have the honor to inform you that the only building available at Vayitri for a Telegraph Office is one belonging to Messrs. Hinde and Co. Mr. Ferguson, a partner of the firm, is willing to rent it out or to sell it outright to Government. I enclose a copy of his letter, dated 31st May, to me on the subject.

ENCLOSURE.

From T. J. FERGUSON, Esq., Senior Partner of Messrs. Hinde and Co.,. to the Acting Collector of Malabar, dated Calicut, 31st May 1882.

I have not seen our bungalow at Vayitri for nearly four years; so cannot say exactly what condition it is in. I would either sell outright or let for Rs. 25 per month, Government executing all repairs.

As regards the price for which I would sell, that to a certain extent would depend a good deal on the ground required with the bungalow.

No. 69.

ORDER—dated 10th June 1882, No. 1453 W., Public Works.

The Right Honorable the Governor in Council approves of the recommendation of the Director-General of Telegraphs for the extension of the Devála line of telegraph *viâ* Cherambádi, Meppádi, Vayitri, and the Támrachéri Ghât to Calicut under the limited guarantee system as described in G.O., No. 2219 W., dated 7th September 1881, with the addition of Rs. 5 a mile a year for 59 miles for jungle clearing.

2. Free office accommodation will also be provided. The Superintending Engineer, Fourth Circle, will arrange for the purchase of Messrs. Hinde and Co.'s building at Vayitri at a proper valuation.

3. It is hoped that the line will be completed during next working season, *i.e.*, before February 1883.

4. The question of the extension from Vayitri to Manantoddy will be deferred for the present.

(True Extract.)

(Signed) R. H. SANKEY, Colonel, R.E.,
Secretary to Govt., P.W.D.

To the Director-General of Telegraphs.
" Superintending Engineer, Fourth Circle.
" Examiner of Public Works Accounts.
" Superintendent of Telegraphs, West Coast Division.
" Public Department.

Exd. A. F. Goodall.
Spare Copies

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BUILDINGS AND ROADS.
CIVIL WORKS.

Govt. of {1882} Madras.

PUBLIC WORKS.

Dated June, 10*th*.

Recd. *Encl.*

G.O., 10th June 1882, No. 1453 W.

JUNE.

Nos. 68-69.

Telegraph.

Extension of the Devâla line of — to Calicut, approved, and instructions issued for its completion before February 1883.

PUBLIC WORKS SECRETARIAT MADRAS

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GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Buildings and Roads.
Civil Works.

No. 40.

Read—the following letter from Colonel J. BEATTY, R.E., Superintending Engineer, Fourth Circle, to the Chief Engineer, Public Works Department, dated Coimbatore, 1st February 1883, No. 47 :—

With reference to G.O., No. 1453 W., of 10th June 1882, I have the honor to report that the building therein referred to, Messrs. Hinde and Company's, was inspected and pronounced unsuitable * for the Vayitri Telegraph office and two other buildings have since been under consideration, viz., a house belonging to the Basel Mission Establishment and Messrs. Brown and Company's property.

Two tracings.
Four letters.

* *Vide* Superintendent's letter, No. 2062, of 23rd November 1882.

2. The Mission house was priced at Rs. 2,500, and was inspected by Mr. Trail, the Executive Engineer, in company with Mr. Gosselin, the "Chief Superintendent of Telegraphs in charge Construction." These officers rejected it on the ground of insufficient accommodation and the walls being honeycombed with white-ants.

3. They also inspected Messrs. Brown and Company's property and pronounced it in "every way the most suitable building." Mr. Trail valued the building at Rs. 3,627, and Mr. Gosselin considered the arrangement of the rooms suitable, and that he "could establish an office there in ten minutes."

4. Mr. Trail was mistaken in supposing that the owner was willing to part with it for Rs. 3,500, his price having been Rs. 4,500, as will be seen from the accompanying copy of his original offer of 6th November.

5. The property consists of a house and godowns with three acres of land, and Messrs. Brown are reported to be willing to make petty repairs, and the place is considered in every way suitable and ready for occupation.

6. The Chief Superintendent of Telegraphs is urgent to have the matter arranged, as the telegraph line has been completed to Vayitri.

7. The submission of this application has been delayed by want of the plans † promised in Mr. Trail's report, and in order to obtain Mr. Gosselin's opinion ‡ on that report.

† Herewith sent.

‡ *Vide* his letter, No. 24, of 16th January 1883.

8. In your No. 2047 C. of 11th November 1882 I was directed to submit a complete estimate, including any additions considered necessary. In my letter, No. 461, of 14th November 1882, I asked Mr. Gosselin's opinion on Messrs. Brown's property, and whether any additions or improvements were considered necessary, and I understand from his reply of 16th January that he is satisfied with the building as it stands.

9. As Messrs. Brown's property appears to be the only *suitable* building available, ready for occupation, and approved by the Telegraph Department, I request permis-

3

sion to complete the purchase, and have telegraphed to the Chief Superintendent of Telegraphs that he may arrange to occupy the property at once, conditionally on sanction of Government being given.

No. 41.

ORDER—dated 3rd February 1883, No. 383 W., Public Works.

The Superintending Engineer is authorised to complete the purchase of Messrs. Brown and Company's house for Rs. 4,500, an appropriation of this sum being now made for the purpose from the Provincial Reserve.

2. It is necessary that a formal valuation estimate should be submitted for sanction, and this should be done as soon as possible.

(True Extract.)

(Signed) R. H. SANKEY, Colonel, R.E.,
Secretary to Govt., P.W.D.

To the Superintending Engineer, Fourth Circle.
" Examiner, Public Works Accounts.
" Superintendent of Telegraphs, Malabar Division.
" Public Department.

Exd. A. F. Goodall.
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BUILDINGS AND ROADS.
CIVIL WORKS.

Govt. of {1883} Madras.

PUBLIC WORKS.

Dated February, 3rd.

Recd. *Encl.*

G.O., 3rd Feb. 1883, No. 383 W.

FEBRUARY.

Nos. 40-41.

Telegraph Office at Vayitri.

Sanctioning the purchase of Messrs. Brown and Company's house for the —.

PUBLIC WORKS SECRETARIAT MADRAS

No 2921 Mw 26.xi.86

Mr Brown's property at Vayitri. Letter from the Supt Engr IV Circle forwarding copy of a letter from the Collector of Malabar regarding the acquisition of — under the land acquisition Act.

— 19/91/5

CAW.

The papers sent are incomplete. Most of the correspondence was brought to the Eserie — (Outr)

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7th September 1885, No. 2093 W., Public Works.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Buildings and Roads.
Civil Works.

Read—the following papers :—

Letter from the Superintending Engineer, IV Circle, dated 4th August 1883, No. 322.
" " " " " 7th May 1884, No. 217 E.W.
" " " " " 10th " " " 246 C.-E.W.

From E. BARCLAY, Esq., Government Solicitor, to the Executive Engineer, Nílgiri Division, dated Madras, 5th May 1884, No. 250.

In reply to your letter of 1st instant, I beg to inform you that no suit has yet been filed against Mr. Brown, and I hope that no suit will be necessary. The matter is a complicated one, and I am in communication with Mr. Brown's legal adviser on the subject, and I hope eventually to be able to make out in Mr. Brown such a title to the property bought from him by Government as I can advise Government to accept.

Endorsement on the above.

No. 227 E.W.

Forwarded to the Chief Engineer, Public Works Department, for information, with reference to this office letter, No. 217, of 7th instant.

Ootacamund,
5th May 1884.

(Signed) J. BEATTY, Colonel, R.E.,
Suptg. Engineer, IV Circle.

From E. BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 14th October 1884, No. 541.

I beg to acknowledge receipt of your memorandum, dated 10th instant, No. 747 E.

2. After very considerable difficulty I prepared, in consultation with the Advocate-General, such a conveyance of the property at Vayitri sold by Mr. Brown to Government as we could advise Government to accept. A fair draft of this conveyance which, from the state of the title, is somewhat long, was sent by me on the 15th August last to Mr. Rosario, Mr. Brown's legal adviser at Tellicherry, for approval; and, at the same time, I requested Mr. Rosario to send me for perusal a reconveyance of the Pookote estate (part of which is the land sold to Government) from a Dr. Henderson, to whom I had learnt that the estate had been mortgaged to Mr. Brown. On the 1st September I received from Mr. Rosario a reconveyance not from Dr. Henderson, but from his executors, Dr. Henderson having died, and on the 2nd idem I wrote to Mr. Rosario inquiring whether Dr. Henderson's will was proved by either of the executors (Mr. Ferguson and Mr. Mitchell), and, if so, in what court, as no mention was made in the reconveyance of any probate, and requesting, if the will was proved, that I might be allowed to see the probate. To this letter I have as yet received no

reply, but I am writing again to Mr. Rosario, and if the question about probate of Dr. Henderson's will is satisfactorily answered, I have every hope that this long-pending matter will shortly be settled.

From the same officer, dated Madras, 24th April 1885, No. 146.

I beg to acknowledge receipt of your memorandum, dated 18th instant, No. 12 E.

2. Since my letter, dated 14th October last, No. 541, I have been endeavouring to have the conveyance of the property at Vayitri, sold by Mr. Brown to Government, completed; but, I regret to say, so far without success.

3. On the 14th October last I wrote to Mr. Brown's legal adviser at Tellicherry, calling his attention to the matter, and informing him that I could not allow it to remain in abeyance any longer. On the 23rd idem I wrote to Messrs. Oakes and Company, informing them of the purchase by Government of this property, which was included in a mortgage to them by Mr. Brown, that I had prepared a conveyance of the property and had sent it to Mr. Brown's legal adviser for approval, but could get no reply from him.

4. On the 5th November last, Messrs. Oakes and Company wrote requesting me to take notice that the purchase-money of any property mortgaged to them, which might have been sold by Mr. Brown to Government, was to be paid to them direct, and that as Mr. Brown could not dispose of any portion without their joining in the conveyance, they presumed I would inform them when the deeds had to be executed and the money paid. In reply, I had to inform Messrs. Oakes and Company that Government had already paid the purchase-money to Mr. Brown.

5. On the 13th November I received back the draft conveyance from Mr. Brown's legal adviser, approved by him, subject to the omission of a recital therein that Messrs. Oakes and Company's mortgage had been paid off. This recital had been inserted as I was under the impression that the mortgage had been paid off.

6. On the 14th November I forwarded the draft conveyance to Messrs. Oakes and Company for approval, with an inquiry whether it would be executed when engrossed. In reply, Messrs. Oakes and Company informed me the next day that the deed would be executed on payment of the purchase-money to them as mortgagees. On the 17th November I wrote to Messrs. Oakes and Company that Mr. Dawson in his own right and as executor of Mr. James Oakes and the Administrator-General as executor of Mr. W. T. S. Oakes were the necessary parties to the deed, and that as Government had already paid the purchase-money to Mr. Brown, I trusted that Mr. Dawson would not insist upon the position he had taken up. On the same day I also wrote to Mr. Brown's legal adviser, informing him that I had altered the deed as requested by him and of the correspondence which had passed between myself and Messrs. Oakes and Company, and inquiring whether Mr. Brown was prepared to pay Messrs. Oakes and Company the purchase-money he received from Government, so that the matter might be completed.

7. On the 18th November I received a letter from Messrs. Oakes and Company, informing me that the interest in the property of Mr. W. T. S. Oakes and Mr. James Oakes had, under their partnership arrangements, become vested in the present firm, and that the executors of Mr. W. T. S. Oakes and Mr. James Oakes were not entitled to receive any portion of the debt due by Mr. Brown, but would, at the firm's request, sign any deeds necessary for the realisation of the property, and that it was out of the question to expect that the firm could permit the alienation of any portion of the security mortgaged unless the value was paid to them direct.

8. Having received no reply to my letter of 17th November to Mr. Brown's legal adviser, I wrote to him again on the 16th January last calling attention to the matter, but I have received no reply from him.

9. I have seen Mr. Dawson about this matter on several occasions since the beginning of the year. He informed me that Mr. Brown had been very ill, and I requested Mr. Dawson, who is a personal friend of Mr. Brown, to see whether some

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arrangement could not be made regarding the payment of the purchase-money by Mr. Brown to Messrs. Oakes and Company. I have reason to believe that Mr. Dawson did attempt to make such an arrangement as my firm has recently heard twice from Mr. Brown regarding moneys coming to a person indebted to him, but my firm was not in a position to furnish the information asked for. I understand from Mr. Dawson that Mr. Brown is in poor circumstances.

10. My difficulties in taking proceedings to compel the completion of the conveyance are—(1) that such proceedings will have to be taken up-country, and (2) that Messrs. Oakes and Company, Mr. Dawson as executor of Mr. James Oakes, and the Administrator-General as executor of Mr. W. T. S. Oakes will all have to be joined in such proceedings. If, however, Government are prepared to give up possession of the property, Mr. Brown might be sued for a refund of the purchase-money, though he will probably be entitled to deduct therefrom a reasonable amount as rent during the occupation of the premises by Government, unless Government can show that they have sustained damages to an equal or greater amount than such rent.

No. 39 E.

Referred to the Superintending Engineer, IV Circle, for early remarks on the suggestion (paragraph 10) of the Government Solicitor to sue Mr. Brown for the purchase-money, possession of the property being given up.

OOTACAMUND, 28th April 1885. (Signed) J. SHAW-STEWART, Colonel, R.E., Secretary to Govt., P.W.D.

From Colonel J. BEATTY, R.E., Superintending Engineer, IV Circle, to the Chief Engineer, Public Works Department, dated Coimbatore, 18th May 1885, No. 204 E.W.

As directed in G.O., No. 39 E., of 28th ultimo (herewith returned), I have the honor to report that I see no objection to the course proposed by the Government Solicitor, and to request permission to hand the building back to Mr. Brown.

2. The building is now in temporary charge of the Deputy Collector, who provides a caretaker, and it may be at once handed over to Mr. Brown.

From the same Officer, dated Ootacamund, 12th June 1885, No. 235 E.W.

In reply to your memorandum, No. 216 E., of 11th June 1885, I have the honor to inform you that the house purchased from Mr. Brown for a Telegraph office was only occupied by that department for a few months, and on the amalgamation of the Postal and Telegraph departments, the Telegraph office of Vayitri was transferred to the Post office, where it now is.

2. Hitherto the Deputy Collector has provided a watchman and made occasional use of the building on his visits to Vayitri; but as he is unwilling to pay the usual rent, I requested him to vacate* it, and would propose utilising it in future for the storage of tools. I understand there is a large number of famine tools in North Wynaad, which the Revenue Department desire to hand over.

* I have just learnt that it was vacated from 1st instant.

From the same officer, dated Coimbatore, 22nd June 1885, No. 252 E.W.

In reply to your memorandum, No. 246 E., of 18th instant, I have the honor to inform you that the house at Vayitri, purchased from Mr. Brown, if not applied to the storage of tools, may best be utilised as quarters for subordinates employed in the Wynaad roads sub-division.

From E. BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 7th July 1885, No. 234.

In reply to your memorandum of the 1st instant, No. 217 E., I beg to inform you that on receipt of your memorandum of the 11th June last of same number, I wrote to Messrs. Oakes and Company requesting them to let me know, if they had no objection, for the information of Government, the amount due to them on Mr. Brown's mortgage in their favor of the Pookote estate. Messrs. Oakes and Company have not yet replied to my letter.

2. In September 1873, Mr. Brown mortgaged to the then partners of the firm of Messrs. Oakes and Company his undivided half part or share in the Pookote estate to secure the balance of his account with the firm. This mortgage was stamped to cover Rs. 10,000; but I believe there is a much larger sum than that due to Messrs. Oakes and Company and secured by this and another mortgage. It is extremely unlikely, therefore, that Messrs. Oakes and Company would accept less than Rs. 10,000 to clear off the mortgage on the Pookote estate. But it must be borne in mind that it is only a comparatively small portion of the estate which Mr. Brown sold to Government, and it would therefore hardly do for Government to pay, not only the purchase-money paid to Mr. Brown, but also to pay off the mortgage, and only to secure a portion of the mortgaged property.

3. I have no reason to believe that there are other incumbrances on the property; but, to ascertain this positively, I shall have to employ some one in the Wynaad to search the registers there for incumbrances. I have thought it better not to go to this expense until I hear from Government that they are prepared to pay off such incumbrances as there may be, which, under the circumstances, I think is hardly likely.

4. I am writing again to Messrs. Oakes and Company for the information required, but unless Government are prepared to pay off Messrs. Oakes and Company's claim on the estate, I think the only course will be, if Government wish to retain the land they bought, to take it up under the Land Acquisition Act, and let Mr. Brown take such steps as he may think fit to recover the value fixed by the Collector. It would be as well, however, to refer the matter again to the Advocate-General before taking this step.

Letter from the Government Solicitor, dated 13th August 1885, No. 307.
" " " " " 28th " " " 336.

Order—dated 7th September 1885, No. 2093 W., Public Works.

In Proceedings, dated 3rd February 1883, No. 383 W., the Government sanctioned the purchase, for Rs. 4,500, of a house at Vayitri from a Mr. H. W. Brown.

2. After the purchase-money had been paid, and the building taken over, the Government Solicitor found that the title was in an unsatisfactory state; and, on the Advocate-General's opinion, printed with Proceedings, dated 11th October 1883, No. 2857 W., the Government authorised the institution of a suit against Mr. Brown to compel him to convey the property to Government with a good title.

3. Subsequently, however, the Government Solicitor endeavoured to obviate the necessity for legal proceedings by preparing, in communication with Mr. Brown's legal adviser, such a conveyance of the property as he could advise the Government to accept; but the difficulties in accomplishing this proved insuperable, and, as a last resource, the Government Solicitor, in his letter, No. 146, dated 24th April 1885, suggested that the property be handed back to Mr. Brown, and that a suit be filed to compel that gentleman to refund the purchase-money.

4. On further advice, the Government now resolve to direct the Superintending Engineer to take the necessary steps, in communication with the Collector, to put into

force the provisions of the Land Acquisition Act, and thus to secure to the Government an unquestionable title to the property. As, however, the adoption of this course will involve the payment of the compensation awarded under the Act to the persons found to be entitled thereto, the Superintending Engineer will further, in communication with the Government Solicitor, institute a suit against Mr. Brown, to compel him to refund the purchase-money, and the amount of the damages resulting to Government.

5. The house, on its formal acquisition, may be utilised as quarters for the subordinates employed on the Wynaad road improvements.

(True Extract.)

(Signed) J. SHAW-STEWART, Colonel, R.E.,
Secretary to Govt., P.W.D.

To the Superintending Engineer, IV Circle, with manuscript copy of the Advocate-General's opinion.
" Examiner, Public Works Accounts.
" Government Solicitor.

Exd. J. Henricus.
Spare Copies

BUILDINGS AND ROADS.
CIVIL WORKS.

Govt. of {1885} Madras.

PUBLIC WORKS.

Dated September, 7th.

Read. *Encl.*

G.O., 7th Sept. 1885, No. 2093 W.

SEPTEMBER.

Mr. Brown's Property at Vayitri

Orders issued for acquiring — under the provisions of the Land Acquisition Act and for instituting a suit against Mr. Brown for refund of the purchase-money.

PUBLIC WORKS SECRETARIAT MADRAS

1991.

REVENUE DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read again the following G.O. 2/15 may 1889 no 3035 mis on B.P. 2R. 7/8 April 1889 no 2178 mis.

I Read again B.O. 2/6 February 1889 no 701 mis on

(1) petition from messrs Oakes & Co, madras 7/1 june 1888, praying that Rs2250 which is half of the total amount of compensation awarded for land &c at Vythiri belonging to mr H. W. Brown garnished a part of the Pookote coffee Estate may be paid to them as mortgagees of the land &c

(2) letter from messrs Oakes & Co 7/10 August 1888 to W. Wilson Esq. C. S. Acting 2nd member.

We have the honor to invite your attention to our letter of the 1st june last addressed to the then acting 2nd member regarding the acquisition by government of a piece of land situated at Vythiri the interest in a moiety of which had been mortgaged to us.

2. The govt have now been in occupation of the land for some years and we respectfully submit that the amount of compensation which we agreed to accept should have been paid to us long ago and we therefore hope that no further delay will occur in the settlement of this matter.

(3) the following reference on the above letter from the Secretary to

to the Commr of R. S. & R. & A. d/18th August 1888.

Transferred to the Land Revenue Department. There is no correspondence on the subject in this Department.

(4) The following reference, d/7th September 1888 to the Collector of Malabar.

The Collector is requested to report fully on the claim put forward in the papers read above, at an early date.

(5) Report from the Collector of Malabar d/1st December 1888 no 3581/F

(6) The following letter from messrs Oakes & Co to the Secretary to the Commrs of L. R. d/10th January 1888.

We have the honor to invite your attention to our letter of the 10th August 1888 addressed to the Acting 2nd member of the Board which we were informed by the Secretary (no 4064 of 1888) under date of the 18th August had been transferred to your Department.

The matter in question has been pending for several years and was fully explained by us in our letter of the 1st June 1888 addressed to the then Acting 2nd member.

We trust you will be able to settle the matter without unnecessary delay.

Resolution. no 701 mis. In the opinion of the Board messrs Oakes & Co are wrong in contending that the matter was settled by the Dy Collector and that Government ought to pay them Rs 2250 on that account, but it seems to them that they have a good claim on another ground. The decision of the Sub Judge on the 9th August 1887 was to the effect that Rs 4500, should be paid as the value of the property "to such persons as may establish their claim to it." This order has never been satisfied. The Rs 4500 had been already paid to mr Brown, and nothing was paid in pursuance of the decree. The papers show that messrs Oakes & Co were entitled to some part of it. Government in G.O. dated 7th September 1886 no 2093 had ordered that a suit should be instituted against mr Brown for refund of the Rs 4500 already paid to him, but this suit seems never to have been filed. If it had been filed and Government had got the money, it should have been paid into Court and mr Brown and messrs Oakes & Co told to settle their claims there. The Collector is now requested to report why the suit against mr Brown was not filed.

II The following letters from the Collector of Malabar, dated 19th and 26th February 1889 nos 324/F & 523/F respectively.

With reference to the Board's Proceedings dated 6th instant no 701 mis, I have the honor to point out that the order in G.O dated 7th September 1886 no 2093 W Public Works and quoted in para 2 of my letter read in the Proceedings under reply was that the Superintending Engineer will further in communication with the Government Solicitor institute a suit against mr Brown

10 to

to compel him to refund the purchase money and the amount of the damages resulting to Government."

2. The institution of the suit was thus a matter for which the D. N. Department was responsible, the Collector having been merely charged with the acquisition of the site under Act X of 1870.

3. Under G. O. dated 6th November 1886 No 2921 N. Public Works, the institution of the suit was ~~de~~deferred "until the the act and the compensation paid, as property has been taken up under these facts must form part of the cause of action." Government have not been compelled to pay the compensation a second time and as I have already pointed out messrs Oakes & Co's recovery against Government under the Sub Judge's decree is barred by lapse of time. I have no information at hand as to whether Mr Brown is now in the Wynaad and solvent: but I am making enquiries on this point and will report the result to the Board as soon as possible.

Border matter illegible

In continuation of my letter dated 18th instant No 394/6, I have the honor to report that from what I can learn, Mr Brown is not likely to be able to repay the sum disbursed to him in case a decree be obtained against him. All that he possesses is, I understand, mortgaged to messrs Oakes & Co.

Resolution.

Resolution.

The petition from messrs Oakes & Co will be submitted to Government for orders.

2. Messrs Oakes & Co ask for a moiety of a sum of money already paid to mr H. W. Brown for land and a house taken up under Act X of 1870 forming part of the Pookote Estate in the Wynaad. The report from the Collector of Malabar explains the position.

3. In February 1883 the Government sanctioned the purchase for Rs 4500 of the land and house belonging to mr Brown, and the purchase money was paid. It was then found that mr Brown had no good title to convey to Government and the Government authorised a suit to be brought against him to recover the purchase money. That suit has not yet been brought. In the meantime steps were taken under Act X of 1870 to acquire the land, which resulted eventually in the matter being referred to the Civil Court under Sec. 15 of the Act. The Sub Judge delivered his judgment on 9th August 1887. That judgment was to the effect that Rs 4500 should be paid as the value of the property to such persons as may establish their claim to it. The Government had already paid the sum to mr Brown.

4. The contention now was made by messrs Oakes & Co that the correspondence which passed between them and

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the Dy Collector amounted to an agreement that the Govt should pay them Rs 2250 appears to the Board to be groundless. But on the other hand the papers appear to show that messrs Oakes & Co were entitled to some part of the money paid over to mr Brown, and if any money had been recovered from mr Brown, it should have been paid into the Court and messrs Oakes & Co and that gentleman referred there for a settlement of their claims. The Board doubt whether by non appearance before the Subjudge messrs Oakes & Co can be said to have waived their claim as against Govt. They would suggest that the opinion of the legal advisers of the Govt be taken upon the claim now made.

Order. No 3035 Mis: 15.8.89.

Referred accordingly to the Government Pleader for opinion.

Read also the following letter from the Acting Govt Pleader dated 20th June 1889 No 5-20.

I have the honor to return herewith the papers forwarded to me for opinion in connection with the claim of messrs Oakes & Co for payment of Rs 2250 with interest, on account of a house and land taken up by Govt under Act X of 1870 and forming part of the Probate Estate in the Myaad.

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2. I do not think it is material for the purpose of this reference to advert to the prior sale to Govt of the property in question by mr H. W. Brown or to the circumstances which prevented the completion of that sale or to the payment of the whole of the price agreed upon, namely Rs 4500, as messrs Oakes & Co do not base their claim on that previous transaction but rest it upon the proceedings taken under Act X of 1870.

3. messrs Oakes & Co seem to have obtained in 1873 a mortgage on mr Brown's undivided moiety in the Probate estate, of which the house and land acquired by Government form but a small part. mr Barclay in his letter to Govt dated 7th July 1885 No 234 (vide Govt Proceedings O.W.D No 2993, dated 7th September 1885) stated that he believed that a much larger sum than Rs 10,000 was due to messrs Oakes & Co under that and another mortgage. It does not appear what the amount due to them now, is. I presume that they have still a subsisting mortgage right. The effect of acquiring property under the Act is to vest it in Govt free from all incumbrances (sec 16). If messrs Oakes & Co had a subsisting mortgage right at the time the property was taken up, they were entitled to be paid a share of the compensation proportionate to their interest.

4. The correctness of the amount fixed as compensation is not questioned and messrs Oakes & Co claim only a moiety of the amount so fixed. Therefore the first point to

to be ascertained is what is the amount properly due to them. The question is one as to the apportionment of compensation and in the circumstances of the case it must be determined by the Court under Part III of the act and I do not see how the matter can be satisfactorily or legally dealt with otherwise. moreover looking to the history of the previous transaction with mr Brown, I should very much hesitate to recommend govt to enter into any adjustment out of court with mr Brown's mortgagees.

5. I do not think there is any force in the contention that messrs Oakes & Co are entitled to the money because of the contract alleged to have been entered into by them with the Dy Collector. The Deputy Collector of Malabar was authorized to take order for the acquisition of the land under the act and proceeded under it. He had only power to settle the amount of compensation either himself under Sec 14 or to refer the matter to the Court under Sec 15. He adopted the latter course I can not see that he had any authority to bind the govt by contract in a case of dispute as to apportionment of compensation. Even if the Dy Collector had the power, I do not think the correspondence discloses any intention on his part to enter into a contract regarding the matter with messrs Oakes & Co and I do not think messrs Oakes & Co can establish from the correspondence any agreement that will bind govt to recognize and pay their claim on that footing. nevertheless messrs Oakes & Co are entitled in my opinion to sue the govt for their share of the compensation. The payment of Rs 4500 to mr Brown before the Proceedings under the Act were taken, can not be relied on as a payment under the act and I do not see that the govt have any defence on the merits, ~ should messrs Oakes & Co institute a suit for recovering the portion of the money due to them. Of course, the Court must decide in the suit what is the proper sum due to messrs Oakes & Co.

6. There remains the plea of limitation suggested by the Collector. The question depends on the construction of Art 17 of act XI of 1877 which lays down one year from the date of determining the amount of compensation as the period within which a suit should be brought for the recovery of compensation money. The ~ article doubtless refers to the provisions of Act X of 1870 regarding the determination of the amount of compensation. If, however, the reference is only to the date of the award under Sec 14 or that under Sec 34 of Act X of 1870, messrs Oakes & Co's claim will be clearly barred as the amount was determined by the Sub Judge in July 1877. It may however be contended on behalf of messrs Oakes & Co that in Cases in which there is a dispute as to apportionment of compensation, the starting point is the date of the decision by the Court under Sec 39 as to apportionment; in other words, that the date of determination is that on which the amount due to the Plaintiff in the suit was fixed and not the date of the

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the award settling the amount of compensation generally. The language of Sec. 40 and the proviso to Sec 41 seems to support that contention. Sec 40 which imposes on the Collector the duty of paying the compensation lays down that payment shall be made according to the award to the persons named therein. This seems to show that the payment of compensation is to follow an award stating the names of persons entitled to the payment, and as in the present case, no award has yet been made as to who the persons entitled to the payment are, it may be contended that limitation has not yet begun to run within the meaning of Art 17. The further provision in Sec 40, that, in cases of appeals under Sec 34 payment should be made according to the decision on appeal points to time when payment can be claimed being different according as there is dispute or not as to apportionment of compensation. In short, the argument is that if there is no dispute as to apportionment, compensation is payable from date of award under Sec 34 or 40 but that, if there is dispute compensation is payable & limitation will begin
and limitation will begin to run only from the date on which the decision under Sec 34 becomes final, no appeal being preferred against it or if an appeal has been preferred only from the date of its disposal (Proviso Sec 41). This argument seems to me to be not without force and if it is well-founded — and I am inclined to think it is — messrs Oakes & Co's claim will not be barred, as no decision under Sec 34 has yet been given.

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7. All things considered, I think the best course to adopt would be to instruct the Collector to refer the matter under Part II of Act X of 1870 to the District Court, unless the Govt resolve to leave the question of law noticed above, for the decision of the Courts in any suit which messrs Oakes & Co may be advised to institute against Govt for the recovery of their claim.

Read also letter from messrs Oakes & Co Madras, dated 8th July 1889, requesting that payment of money may be made without further delay, for compensation awarded for a piece of land situate at Porkote Vythery acquired under the Land Acquisition Act, Malabar District.

Order thereon, 12th July 1889 No 1372.

Messrs Oakes and Co will be referred to the Civil Courts for a settlement of their claim.

(True Extract)

Secretary to Govt.

SECRETARY TO GOVERNMENT
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P.W. DEPARTMENT, MADRAS.

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The Comms of L R.
- P. W. D. ✓
- messrs Oakes & Co.

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2093 w 7 b. 715
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1453 w 9 b. 952

Communicated to
the Supt Engineer 1st
Circle.

Rueds
18.7.84

S. E. 1st Circle

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