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Proceedings of the Madras Government, Revenue Department,
28th September 1872.

Read the following papers :—

No. 170. Memorial from Captain T. H. GODFREY, Bombay Army, Proprietor of the Yella Mullay Coffee Estate and Lands in Wynaad, to His Excellency the Governor of Madras, dated Ootacamund, 2nd April 1872.

SHEWETH,

First.—That your memorialist in the year 1846 purchased some lands, called the Yella Mullay, in Wynaad from a Chetty who was reputed to have the right of sale; but that subsequently, or in the year 1847, some doubts having been raised as to the qualification of the Chetty to dispose of the said lands, your memorialist had the sale confirmed by the Nellambur Rajah who asserted a superior title of ownership.

Secondly.—That, after having been in possession of the said lands to the extent of the boundaries described in the deed of sale for fifteen years or thereabouts, Mr. J. Ouchterlony, who was also a purchaser of lands from the Nellambur Rajah, brought an action in the Civil Court of Calicut to confine your memorialist to 600 cawnies, which he asserted was all that your memorialist was entitled to.

Thirdly.—That in this action Mr. Ouchterlony was defeated, and your memorialist left in possession of all the lands he had purchased—in possession of which he had been for fifteen years before the action was brought and for about ten years since. Your memorialist would here observe that the action of 1862 should not have been entertained by the Civil Court of Calicut as it was barred by Statute, but the counsel employed by your memorialist somehow omitted to raise this fatal objection.

Fourthly.—That after having been in possession for nearly twenty-five years, and Mr. Ouchterlony never having been able in all that time to oust your memorialist by any adequate legal proceeding, the Revenue Survey authorities now threaten to do for Mr. Ouchterlony what Mr. Ouchterlony has not attempted to do for himself, nor obtain the aid of the law to help him, that is, demarcate all the lands belonging to your memorialist, with the exception of 600 cawnies, as Mr. Ouchterlony's.

Lastly.—It is against this threatened action of the Revenue Survey authorities that your memorialist appeals to your Excellency, memorializing that your Excellency will be pleased to restrain the said authorities from the perpetration of the gross act of injustice contemplated, whereby your memorialist is put to serious inconvenience and loss for the proposed demarcation having got abroad, your memorialist is prevented from selling timber and land for which he can prove he has had applications.

And your memorialist will ever pray.

TRANSFERRED to the Chief Secretary to Government for reference to the Superintendent, Revenue Survey.

(By Order.)

(Signed) R. C. STEWART,
Private Secretary.

OOTACAMUND,
3rd April 1872.

No. 171. From H. WAPSHARE, Esq., Attorney for J. OUCHTERLONY, Esq., to the Secretary to Government, Fort St. George, dated Rose Mount, Ootacamund, 5th April 1872.

I HAVE the honour to request you will be so good as to lay this letter before His Excellency the Governor in Council.

I am informed that Captain T. H. Godfrey, taking advantage of the last "paragraph" of "Section 25 of Act XXVIII. of 1860," has memorialized the Government to extend the time that he is allowed by said Section of said Act to file a suit against the award of Colonel Priestley, Superintendent, Revenue Survey.

I most respectfully submit that Captain Godfrey has no reasonable cause that an extended period should be granted him, and I humbly beg to bring to the notice of "His Excellency the Governor in Council" the following:—

For many years past Captain Godfrey, without the least title or legal right, has been claiming lands belonging to Mr. Ouchterlony.

I would first ask the Government to peruse Mr. Assistant Magistrate Tod's report and Mr. Collector Clarke's letter to Mr. Ouchterlony; both of these documents are in Colonel Priestley's possession.

After this followed suits in the minor Mofussil Courts.

Captain Godfrey in 1866 filed Suit No. 8 in the Calicut Court against Mr. Ouchterlony to dispossess him of certain lands (a certified copy of this suit is with Colonel Priestley), it will be seen that judgment was given against Captain Godfrey; to upset this verdict Captain Godfrey appealed to the High Court, Appeal Suit No. 45 of 1867. The High Court dismissed the appeal without calling upon Mr. Ouchterlony's counsel to reply (a certified copy of this is also with Colonel Priestley).

During the months of December 1870 and January 1871 Captain Sargeaunt, Assistant Superintendent, Revenue Survey, working under Act XXVIII. of 1860, called upon me for Mr. Ouchterlony's title-deeds, and all documents connected with this dispute.

On the 2nd of February 1871 Captain Sargeaunt gave his decision and restricted Captain Godfrey to 600 cawnies of land to which he was entitled as by his deed acquired from the Nellambur Tirmulpad, to which deed he was confined by Suit No. 8 of 1866.

Captain Godfrey then appealed to Colonel Priestley as head of the Revenue Survey, and Colonel Priestley ratified Captain Sargeaunt's decision. Colonel Priestley's award was given on the 6th May 1871. A copy of both the awards was given to me.

It will be seen in the proceedings of Suit No. 8 of 1866 that Captain Godfrey even then acknowledged himself in possession of all the lands he had acquired from the Tirmulpad, but since that time he has been giving endless trouble and entailing great expense upon us by recklessly squatting upon our lands, endeavouring to stop our work and our men from sawing timber upon lands which belong to Mr. Ouchterlony.

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I am of opinion that Captain Godfrey is now in actual possession of the following lands which he either holds himself or has disposed of:—

		Acres.	
1. Peria Shola Estate sold by Captain Godfrey	...	200	
2. Umbella Mullay given by Captain Godfrey...	...	200	
3. Cusroo Estate sold by Captain Godfrey ...	...	191	
4. Captain Godfrey's own Estate	...	82	and more.
5. Captain Godfrey's ,, ,, ...	...	14	,,
6. Charleston given by Captain Godfrey to his son	...	100	
	Total...	787	and some roods.

the area that has been surveyed comprises cultivated land and cultivable forest only, bungalows, stores, pulp-houses, barbecues, lines, cattle-sheds, etc., have not been surveyed, and these cover ground which would more than make up his holdings to 800 acres.

I was stopped by a Magistrate's order, as was Captain Godfrey, from crossing a certain laid down line until the Survey Officer's decision should have been given. I read by the Act XXVIII., Section 25, that this order was powerless on the 6th of July, or two months after Colonel Priestley's decision, but I refrained from asserting Mr. Ouchterlony's just rights in any one way until the boundary stones of Captain Godfrey's holdings were laid; these being now completed, I wish to open out land for coffee cultivation, and I humbly pray, from the reasons above given and from the fact that Colonel Priestley's award was given eleven months ago, that the Governor in Council will be pleased to refuse to extend the period (which has now long passed) which is allowed by the Act for Captain Godfrey to appeal in, and that he may be told that the course for him to pursue is the one laid down by the Act.

—

No. 172. Endorsement of the Superintendent of Revenue Survey, dated 17th July 1872.

Read the following letter from H. WAPSHARE, Esq., Attorney for J. OUCHTERLONY, Esq., to the Superintendent of Revenue Survey, dated Ootacamund, 16th July 1872.

I HAVE the honour to send you Mr. Ouchterlony's title-deed of the second grant of land acquired from the Nellambur Tirmulpad, and would ask you kindly to grant me a receipt for the same.

P.S.—An English translation is also enclosed.

—

FORWARDED, in original, with the enclosure to the Secretary to Government, Revenue Department.

(Signed) F. J. B. PRIESTLEY, Colonel,
Superintendent of Revenue Survey.

No. 173. Endorsement of the Superintendent of Revenue Survey, dated 17th July 1872.

Read the following letter from H. WAPSHARE, Esq., Attorney for J. OUCHTERLONY, Esq., to the Superintendent of Revenue Survey, dated Ootacamund, 16th July 1872.

I HAVE the honour to acknowledge the receipt of your official memorandum No. 80 of the 15th, and I herewith send you a certified copy of Appeal Suit of 1867. I also enclose Mr. Assistant Magistrate Tod's report, Mr. Collector Clarke's letter, and Original Suit No. 8 of 1866, which I beg may be forwarded to Government; for I respectfully submit that the case cannot be understood without the perusal of the last-named documents, especially that of Original Suit No. 8 of 1866 against which the suit of 1867 before the High Court was the appeal.

FORWARDED, in original, with the enclosures to the Secretary to Government, Revenue Department.

(Signed) F. J. B. PRIESTLEY, Colonel,
17th July 1872. *Superintendent of Revenue Survey.*

No. 174. From the Superintendent of Revenue Survey, to the Chief Secretary to Government, Revenue Department, Fort St. George, dated Chepauk, 8th July 1872, No. 1,340-40.

IN returning the original petitions from Messrs. Godfrey and Wapshare, I have the honour, in obedience to the order of Government of the 25th June last, to submit an abstract report of the proceedings of the Revenue Survey Department relative to the disputed boundary between the properties of the petitioners situated on the confines of the Nilgiri and Malabar Districts.

REPORT.

CAPTAIN C. C. SARGEAUNT, Assistant Superintendent, Revenue Survey, in charge of Demarcation and Survey of Nilgiri Hills and Wynaad, commenced in December 1870, under the provisions of Act XXVIII. of 1860, to inquire into the disputed boundary between the properties of Captain Godfrey and Mr. Ouchterlony situated on the confines of the Nilgiri and Malabar Districts.

2. The parties to the dispute having declined arbitration, Captain Sargeaunt, after examination of the documents produced, recorded, on 30th January 1871, his decision, under Section 25, to the effect that Captain Godfrey is only entitled to 600 cawnies of land called Dodiga Shola within certain limits mentioned in the Tirmulpad's title-deed of 1848. The decision was communicated to both parties.

3. A true copy of the extract (Enclosure A) from the register of boundary dispute is enclosed for information.

4. Captain Godfrey appealed (2nd March 1871) to the Superintendent, Revenue Survey, against this decision.

5. The Superintendent, Revenue Survey, after examining the title-deeds and other documents, connected with the dispute, and considering the grounds for the appeal, saw no reason to upset

Captain Sargeaunt's decision, and therefore declared on the 6th May 1871 that the decision must stand good, unless set aside by further proceedings as provided for in the Boundary Act.

6. The Collector of Malabar suggested in his letter of 8th November last that the final decision should be postponed until the boundary line of Mr. Ouchterlony's estate had been actually fixed and marked out, and an opportunity offered to him in the interests of Government to advance any objection he might have to the decision.

7. The Board of Revenue also, on representations from the Collector of Malabar and Commissioner of the Nilgiri Hills, submitted to Government, with their Proceedings as per margin, correspondence relative to the claims of Messrs. Ouchterlony and Godfrey to the lands under dispute, and stated that it appeared to them necessary that the Survey Department should abstain from taking any action with regard to demarcating the boundaries of the estates.

No. 464 of 18th March 1872
" 622 of 18th April "

8. On receipt of these Proceedings Captain Sargeaunt was directed to stop all work in the Ouchterlony Valley and to confine himself, in the event of no orders being received from Government by the beginning of the next working season, to the demarcation and survey of cultivated lands.

9. Since the date that Captain Sargeaunt's decision was confirmed various strongly worded letters from Captain Godfrey have been received. One of them is enclosed for information with the memorandum to Captain Sargeaunt issued on its receipt and his reply.

Enclosure B.
Dated 24th March 1872.

10. The Superintendent of Survey felt it his duty to fortify himself with a legal opinion on the point particularly dwelt on by Captain Godfrey and his Attorney Mr. Kenrick, namely, that the decision of the Court at Calicut in 1862 barred the proceedings of the Survey Department under Act XXVIII. of 1860. A copy of Counsel's opinion (Enclosure C) is appended.

CHEPAUK,
8th July 1872.

(Signed.) F. J. B. PRIESTLEY, Colonel.,
Superintendent, Revenue Survey.

No. 175. Memorial from Captain T. H. GODFREY, Bombay Army, Proprietor of the Yella Mullay Coffee Estate and Lands in Wynaad, to His Excellency the Governor of Madras, dated Yella Mullay, 23rd July 1872.

SHEWETH,

First.—That your memorialist addressed your Lordship's immediate predecessor, the Honourable A. J. Arbuthnot, Acting Governor of Madras, on the 2nd of April last, on the subject of this memorial, and that, without any desire to press for an immature reply to that memorial, your memorialist would simply bring the circumstance to your Lordship's notice, hoping that, if possible, your Lordship in Council will afford him the redress he sought and seeks with as little lapse of time as practicable.

Second.—That, avoiding a recapitulation of the contents of the memorial referred to, which your memorialist presumes has ere this been placed on the records of Government, and consequently of ready access to your Lordship, your memorialist would here observe that Act XXVIII. of 1860 could not surely have been intended to apply to cases of boundary which had been made the subject of legal inquiry, or over rule the judgment of a Court of competent civil jurisdiction; such, however, being the course of action threatened to be adopted by the Revenue Survey autho-

rities, against which your memorialist has already appealed, and now further appeals to your Lordship:

Third.—That some grounds afforded for it by the Superintendent of Revenue Survey has caused an impression to get abroad that the land belonging to your memorialist is to be demarcated as Mr. Ouchterlony's, whereby parties have been deterred from purchasing parts and portions thereof, and your memorialist prevented from selling valuable timber for which he would otherwise obtain large and ready sales.

Lastly, that the prayer of your memorialist is that your Lordship in Council would be pleased to direct that the Revenue Survey authorities should not presume to demarcate the boundaries of lands which are not now in dispute, as for the last ten years Mr. Ouchterlony has not attempted to press the absurd claim instituted by him in the Civil Court of Calicut in 1862, and which abortive effort is sufficient to show that the Revenue Survey Department should not venture upon re-opening a question which a tribunal of competent jurisdiction has disposed of once and for ever. Further, that the Superintendent of Revenue Survey should be commanded to issue instructions to his Assistant, Captain Sargeaunt, disclaiming in a clear and uncompromising manner the impression above alluded to, by which procedure alone will your Lordship's memorialist be indemnified for the serious losses he has sustained, and shall have to experience in the interim.

And, as in duty bound, your Lordship's memorialist will ever pray.

TRANSFERRED to the Secretary to Government, Revenue Department.

(By order.)

(Signed) J. C. LOCH,
Private Secretary.

29th July 1872.

A.

Extract from the Register of Boundary Dispute settled under Act XXVIII. of 1860, *between Captain Godfrey and Mr. James Ouchterlony.*

Date of the Presentation of the Case.	Number of the Case.	Names of Parties to the Dispute.	Nature of Dispute or Claim in full.	Summary of Evidence and Grounds of Decision.	Decision or Order.	Date of Reference to Arbitrator or Arbitrators.	Date of Decision.	By whom decided or confirmed.
23rd January 1871.	8	Captain T. H. Godfrey and Mr. James Ouchterlony.	Captain Godfrey claims land within the boundaries of Mr. Ouchterlony's property on the plea that the Tirmulpad of Nellambur granted him all the land within certain boundaries mentioned in the title-deeds given by the Tirmulpad to Captain Godfrey and executed on the 5th December 1848.	I have examined the title-deeds of Mr. Ouchterlony and Captain Godfrey, and am of opinion that even if there be any vagueness as to the amount of land specified in Captain Godfrey's title-deeds, which I do not perceive, the second title-deed given by the Rajah to Captain Godfrey is plainly stated in Mr. Ouchterlony's title-deeds that the Tirmulpad on the 19th January 1857, fully explains the meaning; it is plainly stated in Mr. Ouchterlony's deeds that the Tirmulpad assigns to Mr. Ouchterlony all the land within certain boundaries, with the exception of 600 cawnies of land called Dodiga Shola of 600 cawnies already granted to Captain Godfrey. By the Tirmulpad's title-deeds of 1848 as translated to me Captain Godfrey is granted to the 600 cawnies, included in certain boundaries.	I have therefore come to the decision that as the High Court has decreed that the Rajah's title of 1848 to Captain Godfrey cannot be set aside, and as the second title of Mr. Ouchterlony directly states that he is entitled to all the land within certain boundaries with the exception of 600 cawnies already granted to Captain Godfrey, Captain Godfrey is only entitled to the 600 cawnies, and I have written him to meet me on Thursday the 2nd of February 1871, to point out the boundaries of the same.	The disputants declined to arbitrate.	30th January 1871.	Captain C. C. Sargeaunt, Assistant Superintendent, Revenue Survey.

(Signed) C. C. SARGEAUNT, Captain,
Assistant Superintendent, Revenue Survey.

OOTACAMUND,
2nd May 1871.

B.

From Captain T. H. GODFREY, to the Superintendent of Revenue Survey, dated Ootacamund, 24th March 1872.

I HAVE the honour again to represent to you that I am suffering much injury from your most unwarrantable intrusion on my rights. Your unlawful contention to confine me to 600 cawnies of land has been going on now for a year, and you neither decide one way nor the other. I deputed a gentleman as my Agent to meet you and obtain your decision, but this also has failed, and I consider all the treatment I have received at your hands shamefully unjust and unlawful, and for which you are responsible to me in heavy damages, every day increasing the damage as I reminded you in a former communication lately.

From Colonel F. J. B. PRIESTLEY, Superintendent of Revenue Survey, to the Assistant Superintendent of Revenue Survey, dated Chepauk, 6th April 1872, No. 633-123.

I ENCLOSE for your information copy of a letter of the 24th March 1872 from Captain Godfrey.

2. I do not feel disposed to reply to a communication couched in such strong language, and therefore beg that at your convenience you will communicate to him the purport of my memorandum No. 574-109 of the 27th ultimo, but no reference should be made to the Proceedings Board of Revenue No. 464 of 18th March 1872, which have not yet been considered by Government.

From Captain C. C. SARGEAUNT, Assistant Superintendent, Revenue Survey, to the Superintendent, Revenue Survey, Madras, dated Ootacamund, 10th April 1872, No. 226-25.

REFERENCE to your docket No. 633-123, dated 6th April, requesting me to communicate to Captain Godfrey the purport of your docket No. 574-109 of the 27th ultimo, but not to inform him of the Proceedings Board of Revenue No. 464 of 18th March 1872.

Informs that, on receipt of the above memorandum, I sent copy of the last paragraph to Messrs. Wapshare and Godfrey demi-officially, but made no reference to Proceedings of Board of Revenue No. 464 of 18th March, as they had not been before the Government. I have now written officially on the subject to Captain Godfrey.

C.

From the Government Pleader, Madras, to Colonel F. J. B. PRIESTLEY, Superintendent, Revenue Survey, dated Madras, 3rd April 1872, No. 49.

IN reply to your letter of the 16th ultimo No. 415-75, I have the honour to state that, in my opinion, the right of the department to take any proceedings which may be properly taken under Act XXVIII. of 1860 for settling the boundary between the properties of Mr. Ouchterlony and Captain Godfrey therein referred to is in no way affected by the decree of the Civil Court of Tellicherry in O. S. No. 4 of 1862, copy of which accompanied the above letter.

2. That suit was dismissed upon the purely technical ground that the plaintiff, Mr. Ouchterlony, was not entitled, as his suit was framed, to the declaratory decree therein sought for. The merits of the dispute between himself and Captain Godfrey, the 2nd defendant, were not gone into, and no decision was given upon them; the Court expressly declining to decide the question of title between them.

3. Whether the case is a proper one for the interference of the department under the Act I have no means of judging on the information at present before me. If Captain Godfrey is right in stating that he is in admitted possession of the lands in dispute, and has been so for a long time, it would seem to be more a case in which the party out of possession should be left to assert his rights in the ordinary legal tribunals, especially as he has once done so and failed through bringing his suit in the wrong form. If he does not choose to take the proper legal measures to assert his rights, I cannot at present see why the department should go out of its way to help him.

No. 176. From the Secretary to Government, Revenue Department, Ootacamund, to Captain T. H. GODFREY, Yella Mullay Estate, Wynaad, dated Ootacamund, 10th August 1872.

WITH reference to your two addresses to Government on the subject of the action of the Survey Department relative to the dispute between you and Mr. Ouchterlony, I am directed to request that you will forward for inspection the title-deeds obtained by you from the Chetty and the Nellambur Tirupad respectively for the lands claimed by you, with any authenticated translations and plans appertaining thereto.

No. 177. From Captain T. H. GODFREY, Bombay Army, to the Secretary to Government, Revenue Department, dated Ootacamund, 10th August 1872.

IN reply to your letter of to-day, I have the honour to inform you that the title-deeds of my estate are in the hands of the mortgagee of the estate Mr. Pestonjee Neserwanjee of this place, but I will endeavour to have them sent to you. Allow me to correct a mistake in your letter. There is no dispute between me and Mr. Ouchterlony. A dispute did exist, but was settled by due course of law, and Mr. Ouchterlony cannot now dispute with me or raise any question of my right to the Yella Mullay lands. This fact is of the utmost importance, therefore I allude to it. My dispute is with the Revenue Survey and my complaint against them. If it had been against Mr. Ouchterlony I should not have ventured to appeal to Government on the subject.

No. 178. From Captain T. H. GODFREY, Bombay Army, to the Secretary to Government, Revenue Department, dated Ootacamund, 16th August 1872.

I HAVE the honour, in regard to the decision of the Superintendent, Revenue Survey, in regard to my land, most respectfully to submit that I have fully complied with the requirements of Act XXVIII. of 1860 by producing a formal decree of a Civil Court, and that the decision of the Revenue Survey is set aside thereby from the instant it was made, and that the interference of the Revenue Survey is illegal and uncalled for, and made in defiance of protest against its illegality.

No. 179. From Captain T. H. GODFREY, Bombay Army, to the Secretary to Government, Revenue Department, dated Ootacamund, 17th August 1872.

I HAVE the honour to send the plan you require. I am quite ashamed to send such a tattered rag, but you will excuse it I am sure.

No. 180. From Captain C. C. SARGEAUNT, Assistant Superintendent, Revenue Survey, to the Secretary to Government, dated Ootacamund, 16th August 1872.

IN accordance with your request that I would furnish you with a memorandum showing the action the Survey Department had taken in the case of the dispute

between Captain Godfrey and Mr. Ouchterlony, I have the honour to inform you that on the 31st January 1871 I came to the decision that Captain Godfrey was entitled to 600 cawnies of land only, situated within certain boundaries. Captain Godfrey appealed against this decision to the Superintendent of Survey.

The Superintendent, after due consideration, confirmed my proceedings in the matter. The Superintendent's decision was sent to Captain Godfrey on the 11th May 1871.

Copies of both decisions are herewith enclosed.

The demarcation of the 600 cawnies of land is incomplete. I could not take Captain Godfrey round the estates and tell him that he must not sell, take up, or build on, any land beyond certain limits.

After intimating to Captain Godfrey that I was of opinion that he was only entitled to 600 cawnies of land within certain boundaries, I met him by appointment in order that he might point out where he wished to take up any balance of land there might be after the area of land taken up, given away, and sold by him had been ascertained. He declined to do this, or point out any boundaries, except those to which he conceived he had a right by title including an area of some 4,000 or 5,000 acres, perhaps more. On this I commenced the demarcation of the lands taken up and disposed of by him.

Captain Godfrey protested frequently against the proceedings of the survey; but thinking that I was right, I persisted in the work.

The demarcation of Captain Godfrey's and his son's coffee cultivation is completed; the demarcation and survey of the "Kusroo" estate sold by Captain Godfrey to Pestonjee is completed; the demarcation of Umbella Mullay and Peria Shola is incomplete; the former estate was given by Captain Godfrey to his nephew Mr. Sinclair, and the latter was sold by Captain Godfrey some years ago, and is now the property of Mrs. Robertson.

As all these estates form a part or the whole of the 600 cawnies, I am unable, as stated above, to point out to Captain Godfrey any lines beyond which he must not trespass until the demarcation and survey have been carried out and the areas ascertained.

Decision of the Assistant Superintendent, Revenue Survey, in dispute between Captain Godfrey and Mr. James Ouchterlony.

I HAVE therefore come to the decision that as the High Court has decreed that the Rajah's title of 1848 to Captain Godfrey cannot be set aside, and as the second title of Mr. Ouchterlony directly states that he is entitled to all the land within certain boundaries with the exception of 600 cawnies already granted to Captain Godfrey, Captain Godfrey is only entitled to the 600 cawnies, and I have written him to meet me on Thursday the 2nd of February to point out the boundaries of the same.

DAVALAH, (Signed) C. C. SARGEAUNT, Captain,
30th January 1871. *Assistant Superintendent, Revenue Survey.*

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No. 1021-199.

THE Superintendent, Revenue Survey and Demarcation, having carefully perused, the title-deeds, decrees, reports, and other documents connected with the boundary dispute between Captain Godfrey and Mr. Ouchterlony, having also considered the grounds on which Captain Godfrey appeals against the decision of Captain C. C. Sargeaunt, Assistant Superintendent, Revenue Survey, in charge of Nilgiri Demarcation and Survey, sees no reason to upset this decision.

2. It must, therefore, stand good unless set aside by further proceedings as provided in Act XXVIII. of 1860.

CHEPAUK, (Signed) F. J. B. PRIESTLEY, Colonel,
6th May 1871. *Superintendent, Revenue Survey.*

No. 181. From J. OUCHTERLONY, Esq., to the Secretary to Government, Revenue Department, Fort St. George, dated London, 30th August 1872.

I HAVE the honour to request that you will submit the under-mentioned circumstances and observations for the consideration of the Right Honourable the Governor in Council.

2. In the latter half of the year 1870 the Government, in view to a definition and demarcation of the boundaries of estates in South-East Wynaad, set in motion the Act No. XXVIII. of 1860, and appointed, as the officer to conduct the duty under it, the Assistant Superintendent of Revenue Survey Captain Sargeaunt. The Act is one especially framed "for the establishment and maintenance of boundary marks and for *facilitating the settlement* of boundary disputes;" and to carry out such settlement it lays down a quasi-judicial process to be observed, providing at the same time for cases being despatched with promptitude. Thus, if disputing parties agree to a reference of their differences to arbitration, a decision according to the award of the arbitrators is absolutely *final*; but if a reference to arbitration be *not* agreed to, then the "officer" is to investigate the case judicially and pronounce a decision, which decision, subject to two checks (the one a power of revision by "the authority to whom the said officer is immediately subordinate;" and the other, a right of appeal to the Civil Court within a limited period of two months, which limit may, however, be *extended* by the Governor in Council "on just and reasonable cause for the same being shown,") is to be "the determination of all claims and disputes until set aside by a formal decree of a Civil Court."

Section XXI.

3. At the outset of Captain Sargeaunt's work, under Act XXVIII. of 1860, there arose a question of disputed boundary between Captain T. H. Godfrey and myself. We did *not* agree to refer this to arbitration; consequently Captain Sargeaunt had to investigate the case and pronounce a decision, which he did on the 30th January 1871.

4. For a "revision" of this decision by "the authority to whom" Captain Sargeaunt was "immediately subordinate," viz., the Superintendent, Revenue Survey Colonel Priestley, Captain Godfrey appealed. The result was a formal confirmation, under date the 6th May 1871, of Captain Sargeaunt's decision.

5. The limit of "two calendar months" for preferring an appeal to the Civil Court from the decision, taking its date even as that of the ratification on 6th May 1871, was thus the 6th July 1871. But within this time no appeal was made, and neither was there any application preferred to the Government to "extend" the two months' time for this being filed. Therefore, *under the Act* Captain Sargeaunt's original decision stood on that 6th day of July 1871 as *final* in respect of "the determination of all suits and claims" between Captain Godfrey and myself "until set aside by a formal decree of a Civil Court."

6. *Eight months subsequent* to his loss of the right of appeal to the Civil Court against Captain Sargeaunt's decision, Captain Godfrey memorialized the Government, under the proviso at the end of Section 25, to give him a further time for appealing. My Agent, Mr. H. Wapshare, hearing of this, took the liberty of addressing a remonstrance to Government. But nothing having subsequently transpired on the subject, I have been led to conclude that Captain Godfrey's application had not been entertained, and have therefore refrained from further troubling Government about it. My excuse for doing so now is that a rumour has reached me by the last Mail that Captain Godfrey's application is, on the contrary, likely to be favourably considered, and I am induced, therefore, with all respect, to submit the following remarks for the consideration of Government.

7. I think it will be admitted that the clear and palpable intention of the Act No. XXVIII. of 1860 was to further promptness and finality in the determination of boundary disputes. The processes laid down in Sections 21 and 25 (above quoted) seem abundantly to show this.

8. But what of promptness or finality could there be if a new right of appeal could at any time be created? And a new right, I venture to submit, that it must necessarily be when the old right has absolutely lapsed by effluxion of time. Indeed, the only legal means of keeping it alive would have been in an application to Government before the expiration of its term to *extend* this term for a further period, and this was not resorted to. As I have already observed Captain Godfrey only made his application to Government *eight months after* his right of appeal to the Civil Court *had lapsed* under the Act. And it follows, of course, that if this might be legally done at eight months, there could be no limit of time to the application or its entertainment even to the same number of years. Surely, looking at the purposes of the Act, such an anomaly could never have been intended by its framers!

9. The Act in its 25th Section lays down very distinctly that the "officer" "*shall* proceed to mark out the requisite boundaries in accordance with his decision." When? Incontestably as soon as the decision is (negatively) confirmed by there being no "revision" of the superior officer, and by there being no appeal to the Civil Court within the limited term, nor any order of Government *extending* the term *beyond* this limit.

10. Lastly, I respectfully submit that the very word employed in the Act "*extend*," especially when used in conjunction with a mere period of time for an appeal, can only be interpreted as belonging to a time in actual existence, so to

Proceedings of the Madras Government, Revenue Department,
28th September 1872.

speak, when application is made to extend or enlarge its term. The "just and reasonable cause" to be shown for an extension of the term of appeal has obviously no reference to any question of the merits of the boundary dispute, but solely affects what may be considered a just and reasonable difficulty in the way of a party preferring an appeal within the prescribed limit of two months.

11. I have been induced to offer the foregoing observations under the idea that the question may not have occurred to Government in the light I have sought to put it in, and also because it is my earnest desire to avoid every difficulty as far as I can by candid explanation. But residing at this distance and my health not allowing me just now to return to India I am constrained to add that I reserve all my rights in this matter, and especially those which I firmly believe the Act No. XXVIII. of 1860 to assure to me.

P.S.—I beg the favour of any reply being addressed to me to the care of Henry Wapshare, Esq., Ootacamund.

No. 182. ORDER THEREON, 28th September 1872, No. 1,363.

Forests No. 14.

THE Government have already decided in G. O. dated 9th August 1872, No. 1,188-A, what is the extreme eastern point to which they will admit claims to land in the so-called "Ouchterlony Valley" based on titles derived from the Nellambur Tirupad.

2. The question raised in the papers above recorded is as to the respective claims of Mr. Ouchterlony and Captain Godfrey west of that limit, which have long been in dispute, and which have been brought under the consideration of Government by the action of the Survey Department in proceeding to demarcate and survey the estates and decide on the dispute as one adjudicable under the Boundary Act XXVIII. of 1860.

3. The facts of the case appear to be as follow:—

4. In 1845 Mr. Ouchterlony obtained from the then Tirupad the lease for the most *easterly* part of his claim, the western boundary of which is described as a line drawn due north from Mukurichi Mullay till it intersects one drawn due west from Gudalur Mullay, which is the northern limit.

5. This description is given in the note attached to the deed of lease expressly for the purpose of more exactly defining the boundaries.

Both documents are of the same date—18th December 1845.

6. The attached plan attested by the Tirupad designates the southern boundary "Mukurichi Mullay, or Yella Mullay, or Nilgiri Mullay."

In the *note* the southern point is stated to be "Mukurichi Mullay, or Yella Mullay, or Nilgiri Mullay."

7. Mr. Assistant Collector Tod, in his report of 15th January 1856, states that the people resident in that part of the country recognized the identity of Mukurichi Mullay and Nilgiri Mullay.

8. On 5th December 1848 Captain Godfrey obtained from the same Tirupad a lease for certain land, the eastern boundary of which appears by Mr. Tod's report to have been described in the deed as a line drawn north from a hill and swamp called "Doddagudda Nillum" to the Pandy river, which river forms the northern boundary, the southern point being the tree called Pandah and the western the Corah Colly Hill.

NOTE.—In the papers furnished by Captain Godfrey purporting to be translations of the documents of title obtained by him from Perumal Chetty (*a*) in 1021 (1846) and from the Nellambur Tirmulpad (*b*) in 1024 (1348), the land conveyed is thus described:—

(*a*.) "The land denominated Doddagudda Shola, containing 600 cawnies, lying to the north of the 'Elamullah' Hill * * * *." "The said land called Doddagudda Shola is bounded on the east by the Doddagudda land, on the south by the Sandum tree, on the west by the Kooppa Koly, and on the north by the Pandy river. So this land situated within the said boundaries is hereby sold and transferred."

(*b*.) "I, the said Rajah, granted unto the said Captain Godfrey my Jenmum land, containing 600 cawnies, situated in the Wynaad Taluq, Nambalacode Amshom, on the north of Yella Mullay Hill, and extending from the south of Panthoomaram to Surrangupoly and from Thodicoddu on the east to Coopaholi on the west."

9. From Mr. Tod's report it would appear that the eastern point is described as a hill and swamp called "Doddagudda Nillum" which is to the north and attached to the large hill called "Yella Mullay," and he states that on inspection he found that the "Doddagudda" and "Yella Mullay," though connected by a saddle, were upwards of 1,200 yards apart, so that there was an intervening space of nearly a mile between the nearest boundaries of the two estates, Mr. Ouchterlony's to the east and Captain Godfrey's to the west.

10. Mr. Tod states that "the full extent" of the land granted to Captain Godfrey in his title-deed is "definitely laid down" as 600 cawnies.

11. From the judgment in Original Suit No. 8 of 1866 on the Calicut Court file, Captain Godfrey's claim appears to be that, on 15th March 1846, two Chetties conveyed to him their "Koyoo Jenmi" right over the Dodda Ghaut Chola lands (misdescribed as of 600 cawnies only), and gave up possession thereof to him; that after some time the then Tirupad alleging himself to be the Jenmi (proprietor) offered to grant Captain Godfrey a perpetual lease of the land in question, on which the title-deed, on which he relies, was executed in Malayalum which Captain Godfrey does not understand, and that in it the boundaries, etc., were copied from the deed of March 1846, but that Captain Godfrey understood, and both parties intended that the whole of the land (and not merely 600 cawnies) within those boundaries should pass thereby.

12. On 19th January 1857 Mr. Ouchterlony obtained from the nephew and successor of the Tirupad, who granted his and Captain Godfrey's titles above-mentioned, a further lease for the western portion of his estate, in which the eastern boundary of the land newly leased is described as being the western boundary of the land formerly conveyed, the northern and southern boundaries continue westward those of the original grant, and the western limit is defined by a line drawn north and south through two specified points. The deed, according to the translation before Government, which appears to have been produced in Court, proceeds thus: "All the boundaries are, as delineated in the plan, hereunto attached. Excepting the extent of 600 cawnies of the land called Doddiga Cholah, bounded on the east by the Dodigadu land, on the south by the Pantha tree, on

Proceedings of the Madras Government, Revenue Department,
28th September 1872.

the north by the Pandi river, and on the west by the Kupa Kolial, and included in the above-mentioned boundaries, which has been assigned to Captain Godfrey by my uncle in virtue of a karar document dated 5th December 1848, the whole of the remaining lands are hereby assigned to you."

13. In Original Suit No. 4 of 1862 on the Calicut Court file, Mr. Ouchterlony sued the Tirupad and Captain Godfrey in order "to cause the defendants to mark off and fix the boundaries of 600 cawnies of land situate at Nambalacode Amshom in Wynaad Taluq, which is excepted from the grant made by the 1st defendant to plaintiff on 19th January 1857," and which the 1st defendant was willing to mark out, but the 2nd defendant objected.

Second defendant answered that he "holds the entire extent of his own Dodagady Cholah land in Wynaad; therefore, he is not bound to affix boundaries to 600 cawnies of the same."

14. The Court framed as issues the following:—

"Plaintiff and 1st defendant to prove that 2nd defendant holds only 600 cawnies within plaintiff's second grant, dated 19th January 1857.

"Second defendant to negative plaintiff's evidence, and prove that he holds all the land within the four boundaries stated."

15. Evidence was adduced on either side in favour of their respective pleas, and incidentally it appeared that in 1855 (that is, *before* Mr. Ouchterlony obtained his second lease) Captain Godfrey had, under his lease of 1848, occupied a considerable tract of land on the eastern side of Mr. Ouchterlony's western boundary under his first lease of 1845, which dispute was investigated by Mr. Assistant Collector Tod on the spot in 1855, with the result of establishing Mr. Ouchterlony's prior possession and of Captain Godfrey consenting to withdraw from possession until placed therein by a Court of Law. It is thus evident that before Mr. Ouchterlony obtained his *second* lease, dated in 1857, he was aware that Captain Godfrey claimed to hold an extensive tract of land up to at least Mr. Ouchterlony's original western boundary.

16. The Court dismissed this Suit, No. 4 of 1862, on the grounds that plaintiff as tenant could not sue another tenant of their common landlord for a declaratory order requiring him to demarcate his boundaries. That if he had suffered a wrong, his remedy was against the landlord; or as the landlord admitted the plaintiff's claim, then the landlord should sue the 2nd defendant for restoration of any lands he might possess within the limits of plaintiff's 2nd lease, over and above 600 cawnies.

17. In Original Suit No. 8 of 1866 on the Calicut file, Captain Godfrey sued for the cancelment of the document (counterpart) executed by him in 1848 to the Tirupad for a declaration that the original was null and void and for possession of certain land held by Mr. Ouchterlony or on titles derived from him, the ground of action being that, as plaintiff had discovered since 1857, the Tirupad had no right in the land concerned, and consequently was not competent to make any assignment of it, and that the lands sought to be recovered were within the boundaries of that originally obtained by the plaintiff from the Chetties.

18. The Court dismissed the suit with costs and decided that the alleged cause of action as against the Tirupad was an act of fraud, and as against the other defendants several distinct acts of trespass; that the law did not admit of such a joinder of distinct causes of action and parties in the same suit; that, as regards the fraud, the Statute of Limitations barred the action as not brought within six years from 1857, or twelve years from 1848, inasmuch as plaintiff having previously dealt with other parties as the "jenma" proprietors was bound to investigate carefully and fully the title of the Tirupad, and that it was not, therefore, open to him in 1866 to challenge the *bona fides* of the document of 5th December 1848.

19. The Court went on to state that plaintiff admitted he was in possession of all the land that was granted to him at that date, and must be content with that possession.

20. The Court had framed the following among other issues:—

"Whether plaintiff obtained possession of the property named in the document of 15th March 1846 under that document.

"What rights the Chetties named in the plaint held, or hold, on the property sued for."

But these issues were not tried, the suit being dismissed on preliminary objections as above stated.

21. Captain Godfrey appealed to the High Court in Appeal Suit No. 45 of 1867 on the grounds that the reasons assigned for dismissing the original suit were insufficient, and that he had never admitted he was in possession of all the land granted to him in 1848 by the Tirupad.

22. The High Court upheld the decree of the Lower Court, and dismissed the appeal on the grounds that the suit was in part barred by statute and in part involved a misjoinder of causes and persons.

23. So far as regards the relative position of the parties.

24. The application to Government is consequent on the action of the Survey Department under Act XXVIII. of 1860 in proceeding to define the respective estates of Mr. Ouchterlony and Captain Godfrey.

25. The extract from the register of boundary disputes, settled under Act XXVIII. of 1860 by Captain Sargeaunt of the Survey Department, and submitted by Colonel Priestley, states the nature of the dispute as follows:—

"Captain Godfrey claims land within the boundaries of Mr. Ouchterlony's property on the plea that the Tirmulpad of Nellambur granted him *all the land* within certain boundaries mentioned in the title-deeds given by the Tirmulpad to Captain Godfrey, and executed on 5th December 1848."

26. The "summary of evidence and grounds of decision" states: "I have examined the title-deeds of Mr. Ouchterlony and Captain Godfrey, and am of opinion that even if there be any vagueness as to the amount of land specified in Captain Godfrey's title-deeds—which I do not perceive—the second title-deed given by the Rajah to Mr. Ouchterlony on 19th January 1857 fully explains the meaning. It is plainly stated in Mr. Ouchterlony's deed that the Tirmulpad resigns

to Mr. Ouchterlony all the land within certain boundaries, with the exception of 600 cawnies of land called Doddiga Shola already granted to Captain Godfrey.

"By the Tirmulpad's title-deed of 1848, as translated to me, Captain Godfrey is granted 600 cawnies included in certain boundaries."

27. The "decision" states, "as the High Court has decreed that the Rajah's title of 1848 to Captain Godfrey cannot be set aside, and as the second title of Mr. Ouchterlony directly states that he is entitled to all the land within certain boundaries, with the exception of 600 cawnies already granted to Captain Godfrey, Captain Godfrey is only entitled to the 600 cawnies."

28. The decision is dated 30th January 1871, and notes that the parties declined arbitration.

29. Captain Godfrey appealed to Colonel Priestley who, on 6th May 1871, decided that the decision must stand good, unless set aside by further proceedings, as provided in the Act, viz., by regular suit in the Civil Courts preferred within two months from the date of the original decision, unless the period be prolonged by the Governor in Council. This decision was communicated to Captain Godfrey on 11th May 1871.

30. Captain Godfrey appeals to Government to restrain the Survey Department from "demarcating all the lands belonging to memorialist, with the exception of 600 cawnies as Mr. Ouchterlony's."

31. Mr. Wapshare, on behalf of Mr. Ouchterlony, prays Government to refuse to extend in Captain Godfrey's favour the time for appeal to the Civil Courts allowed by the Act.

32. The Government observe, in the first place, as regards the action of the Survey Officers in this matter, that the law under which they have proceeded is expressed to be for the establishment and maintenance of boundary marks and for facilitating the settlement of boundary disputes, and it prescribes certain procedure to be adopted by, or towards, the parties interested "in boundaries under dispute" according as they agree to refer the dispute to arbitration (Sections 10 to 24) or do not agree so "to refer the dispute" (Section 25).

33. So far as regards the determination of the boundaries specified in the documents taken from the Tirupad by Mr. Ouchterlony and Captain Godfrey, it may be admitted that the Survey Department were competent to make investigation and pass a decision; but, in point of fact, the question of identification of boundary marks or lines does not appear to have been at all in issue between Mr. Ouchterlony and Captain Godfrey. What was disputed was their respective rights within certain specified boundaries, and it is this question which Captain Sargeaunt's decision professes to settle.

34. Further, it is observed from Captain Sargeaunt's decision that he has assumed, as sufficient evidence of the intention of the lease in 1848 to Captain Godfrey, that interpretation of it, which is given in the subsequent lease obtained by Mr. Ouchterlony in 1857; but it is to be remarked that these two documents, whatever may be their worth, were obtained from two different Tirupads, and that the interpretation by one of the intention of the other is in no way conclusive.

35. As regards the decision of the High Court the Government observe that all it decides on the point at issue is that Captain Godfrey cannot claim to

base his title on any deed other than that of 1848, but it in no way settles what the force and effect of that deed is.

36. The effect, in fact, of Captain Sargeaunt's proceedings is to settle summarily on a necessarily imperfect investigation the force and value of a title to land which it had been previously declared by a Civil Court could only be determined by a regular suit.

37. The only remedy provided by the Act for alleged injury sustained by the summary decisions of officers acting under it is by regular suit in the Civil Courts within two calendar months from the passing of the decision, which period, in the present instance, expired on 31st March or at latest on 11th July 1871.

38. The Act, however, enables Government, on just and reasonable cause shown, to extend the period for appeal within such further period as may seem proper, and as it may, with some reason, be argued in this case that the issue determined by the Survey Officers is not within their competency to decide according to the real object and intention of the Act, that the investigation was unavoidably imperfect, and that Captain Godfrey had reason to suppose that the proceedings were altogether *ultra vires*, and the jurisdiction of the Survey Officers barred by the decision of the Civil Court in the same dispute and by its very nature, the Governor in Council resolves to extend the time for appeal to the Civil Courts up to 31st December 1872, within which time Captain Godfrey must file a regular suit in the Civil Court to set aside the decision; should he fail to do so, the decision will become final in law.

39. Pending the result of this appeal the Survey Officers will take no further action in the matter of defining Captain Godfrey's estate, or that of Mr. Ouchterlony under his *second* lease, although the area of cultivation may, of course, be surveyed for revenue purposes.

40. There appears to be no objection to their demarcating the boundaries under the *first* lease, which was prior to that obtained from the Tirupad by Captain Godfrey on which his claim must be based according to the High Court decision.

41. The boundary to be so demarcated at once will be from Nilgiri Mullay to Gudalur Mullay as lately decided by Government, and due north from Nilgiri Mullay till the line intersects one drawn due west from Gudalur Mullay.

42. Ordered that the original documents received from Mr. Wapshare and Captain Godfrey be returned to them direct, and that receipt be requested for the same.

(Signed) W. HUDLESTON,
Secretary to Government.

Exd. F. R. Bantleman.

15/1/84
6-90

Govt. of [1872] Madras.

REVENUE.

To

CAPTAIN J. H. GODFREY,

&c., &c., &c.

Dated September 28th.

Recd. 2nd

G. O., 28th September 1872, No. 1,363.

Boundary between Captain Godfrey's Estate and that of Mr. Ouchterlony on the Nilgiris.—Passing orders on the letters from Captain Godfrey and Mr. Wapshare, Agent to Mr. Ouchterlony,

Read

Nos. 170—182.

No 6

To

His Excellency the Governor of Madras.
Ootacamund.

The Memorial of Captain J. H. Godfrey, Proprietor of the Yellamullay Coffee Estate and Lands in Wynaad.

Sheweth—

First, that your Memorialist in the year 1846 purchased some Lands, called the Yellamullay in Wynaad, from a Chetty, who was reputed to have the right of sale; but that subsequently, or in the year 1847, some doubts having been raised as to the qualification of the Chetty, to dispose of the said Lands, your Memorialist had the sale confirmed by the Nellambore Rajah, who asserted a superior title of ownership.

Secondly, that after having been in possession of the said Lands to the extent of the boundaries described in the Deed of Sale for fifteen years or thereabouts, Mr. J. Ouchterlony who was also a purchaser of Lands from the Nellambore Rajah, brought an action in the Civil Court of Calicut, to confine your Memorialist to 800 Cawnies, which he asserted was all that your Memorialist was entitled to.

Thirdly, that in this action Mr. Ouchterlony was defeated, and your Memorialist left in possession of all the Lands he had purchased in possession of which he had been for fifteen years before the action was brought, and for about ten years since. Your Memorialist would here observe that the action of 1862 should not have been entertained by the Civil Court of Calicut, as it was barred by Statute, but the Counsel employed by your Memorialist somehow omitted to raise this fatal Objection.

Fourthly—that after having been in possession for nearly twenty five years, and Mr Ouchterlony never having been able in all that time to oust your Memorialist by any adequate legal proceeding, the Revenue Survey Authorities now threaten to do for Mr Ouchterlony what Mr Ouchterlony has not attempted to do for himself, nor claims the aid of the law to help him to—that is demarkate all the Lands belonging to your Memorialist, with the exception of 800 Cawnies, as Mr Ouchterlony's.

Lastly—it is against this threatened action of the Revenue Survey Authorities that your Memorialist appeals to your Excellency, Memorializing that your Excellency

Excellency will be pleased to
authorities from the perpetual
act of injustice contemplate
your Memorialist is put to
convenience and loss, for
demarkation having got
Memorialist is prevented fr
timber and land for which
he has had applications.

And your Mem

ever pray.

Collacamund,
2nd April, 1872.

Bla

Petition

Rec'd 23/9/72

Return

Copy

Petition

To His Excellency
the Governor in
Council

Transferred to the
Chief Secretary to
Government for
reference to the
Superintendent
Revenue Survey.
by order.
Millward
Asstt Secretary

forwarded
2.4.72.
6.4.72

Rosemount Vizagapatam
From H. Godfrey April 5th 1871

To
W. Sudlestan Esq.
Secretary to The Government Fort St George
Madras.

Sir.

I have the honour to request you will be
to lay this letter before H. E The Govenor in Counc
I am informed that Captain J. H. Godfre
advantage of the last "Para" of "Section 25 of Act 28
memorialized the Goverment to extend the time tha
ed by said Section of said Act to File a Suit against
of Col Priestly, Superintendent Revenue Survey.

I most respectfully submit that Captain Go
reasonable cause that an extended period should be
I humbly beg to bring to the notice of H. E The Gov
Council the following:

For many years past Captain Godfrey
least Title or legal right has been claiming lands belonging
Mr Ouchterlony

I would first ask the Government to peruse the
Magistrate Todds Report, & Mr Collector Clarkes letter
terlony; both of these Documents are in Col Priestly's

After this followed Suits in the Minor Mofussil
Captain Godfrey in 1866 Filed Suit No8 in the
Court against Mr Ouchterlony to dispossess him of certain lan
(a certified copy of this Suit is with Col Priestly), it will
that Judgement was given against Captain Godfrey —
his verdict Captain Godfrey appealled to the High Court of
Suit No 45 of 1867 — The High Court dismissed the Appe
out calling upon Mr Ouchterlonys Counsel to reply. (a certified
of this is also with Col Priestly)

During the months of Decr 1870 & Janry 187
Sargeaunt Asst Superintendent Rev. Survey working in

Oct 28 of 1860, called upon me for Mr Ouchterlonys Title Deeds, and all Documents connected with this dispute.

On the 2nd of Feb.y 1871 Captain Sargeaunt gave his decision, & awarded Captain Godfrey to five Hundred Cawnies of land, to which he was entitled as by his Deed acquired from the Pellemboor Timulpad to which Deed he was confined by Suit No 8 of 1866.

Captain Godfrey then appealled to Col Priestly as Head of the Revenue Survey — & Col Priestly ratified Captain Sargeaunts decision - Col Priestlys award was given on the 6th May 1871. A copy of both the awards was given to me.

It will be seen in the proceedings of Suit No 8 of 1866 that Captain Godfrey even then acknowledged himself in possession of all the lands he had acquired from the Timulpad. but since that time he has been giving endless trouble & entailing great expense upon us by recklessly squatting upon our lands, endeavouring to stop our work & our men from Sawing timber upon lands which belong to Mr Ouchterlony.

I am of opinion that Captain Godfrey is now in actual possession of the following lands which he either holds himself, or has disposed of.

1	Pira Shola Estate sold by Captain Godfrey	—	200 acres.
2	Umbilla Mullay given by Captain Godfrey	—	200 "
3	Cusroo Estate sold by Captain Godfrey		191 "
4	Captain Godfreys own Estate		82 acres & more
5	Captain Godfreys " "		14 " & more
6	Charleston given by Captain Godfrey to his son		100 "
	Total		787 acres & Some Odds

The area that has been Surveyed comprises Cultivated Land, & Cultivable Forest only. Bungalows. Stores. Pulp Houses, Barbacues Lines. Cattle Sheds &c have not been Surveyed, & these even provided which would more than make up his Holdings to Eight Hundred acres.

Steps stopped by a Magistrates order, as was Captain Godfrey, from cutting a certain laid down line until the Survey Officers decision should have been given. I read by the Act 2 Sec: 25 that this order was powerless on the 6th of July or two months after Col Priestlys decision, but I refrained from asserting Mr Ouchterlonys just rights in any one way until the Boundary Stones of Captain Godfreys Holdings were laid, these being now completed I wish to open out land for Coffee Cultivation, & I humbly pray from the reasons above given, and from the fact that Col Priestlys award was given Eleven months ago, that the Governor in Council will be pleased to refuse to extend the period (which has now long passed) which is allowed by the Act for Captain Godfrey to appeal in, & that he may be told that the course for him to pursue is the one laid down by the Act.

I have the Honour to be
Sir
Your most obedient Servant
Henry Washbourn

Attorney for James Ouchterlony.

No 72.

Oklacannud
July. 16th. 1872

Col Priestly
Superintendent
Revenue Survey.

Sir.

I have the honor to send you Mr Pachtas Title Deed of the 2nd part of land acqd from the Nellencheer Zemindar. & to ask you Kindly to grant me a receipt for same.

I have the Honor to be
Sir
Your most obedient Servant
Henry Wakshall
for
James Pachtas Esqr.

P.S. An English translation is also enclose
HW.

From Capt. Walker
H. Wakshall Esq
Offg. Collector Esq
Dated 5th Sept. 1872
Rec'd 7th Sept 72

Reporting that he has received from Col. Priestley the Title Deeds for the land which Mr. Pachtas has purchased from the Nellencheer Zemindar, and requesting a receipt for the same.

SUPERINTENDENT 1872 27 REVENUE SURVEY

C.O. No 1363—25 Sept.

Col Prestley
Superintendent
Kamloops District

Victoria Island
July 16th 1872

Sir.

I have the Honor to acknowledge the receipt of your Office Memorandum No 80 of the 15th & I herewith forward you a Copy of the Appeal Suit of 1867. I also enclose for your information Code Report of Chief Justice Begbie's Letter and Original Suit No 26 1866 Book 2 folio 6 forwarded to me by Mr Justice Crease & I respectfully suggest that the Case should be thoroughly investigated before the Appeal Suit of 1866 against which Suit of 1867 before the Court was the Appeal.

I have the Honor to be
Sir
Your most obedient Servant
Henry Wadsworth
for
Lt Governor Trutch

Received 1872 August
No 3143.
From
Lt. Governor Trutch
Re: Quilchena Claims
Copy Report Rev. Council
Dated 16th July 1872
Rec'd 24th "

Lt. Governor Trutch
Re Quilchena Claims
Copy Report Rev. Council
Dated 16th July 1872
Rec'd 24th "
Forwarded from the Colonial Secretary's Office
Victoria 22nd August 1872

I.O. No 1363 - 22nd Aug 72

Lieutenant Wadsworth in charge
H.M. Gun Vessel Sparrowhawk
Esquimalt Harbour
Victoria
B.C.
July 25



N
W E
S

SKETCH MAP

Shewing land claimed by CAPTAIN GODFREY.

The Eastern Boundary of Mr. OUCHTERLONY's property has not as yet been determined.

(Signed) C. C. SARGEAUNT Capt.,
Asst. Superintendent Revenue Survey.

(True copy)

Colonel,
Superintendent Revenue Survey.

Central Office
Copied by C Ruthnasamy
Examined by M. D.
9th July 1872

9. July. 72

Supt. Revenue

Rec. 25/9/72

Ans 28 September 72
No 1363.

To

Lord Henry Vere Hobert

&c &c &c

Govern of Madras.

The Memorial of Thurlow Hovel Godfrey late a Captain in the Bombay Army, but now a Planter in Wynaad, and the Proprietor of the Gellamuddy Coffee Estate.

Sheweth.-

First- that your Memorialist addressed Your Lordships immediate predecessor, the Honorable A. J. Arbuthnot, acting Governor of Madras, on the 2nd of April last, on the subject of this memorial, and that without any desire to press for an immature reply to that memorial, your Memorialist would simply bring the circumstance to your Lordship's notice, hoping that if possible, your Lordship in Council will afford him the redress he sought and seeks, with as little lapse of time as practicable.

Second- that avoiding a recapitulation of the contents of the memorial referred to, which your Memorialist presumes has ere this been placed on the records of Government, and consequently of ready access to your Lordship, your Memorialist would here observe that act 28 of 1860 could not surely have been intended to apply to cases of boundary which had been made the subject of legal inquiry, or over-rule the judgment of a court of competent civil jurisdiction; such however being the course of action threatened to be adopted by the Revenue Survey authorities, against which your Memorialist has already appealed, and now further appeals to your Lordship.

Third- that some grounds afforded for it by the Superintendent of Revenue Survey, has caused an impression to get abroad, that the lands belonging to your memorialist is to be demarkated as Mr Auchterlonys,

whereby parties have been deterred from purchasing
and portions thereof, and your Memorialist prevent
selling Valuable Timber for which he would otherwise
large and ready sales.

Lastly - that the Prayer of your M
is, that your Lordship in Council would be please
that the Revenue Survey authorities should not pr
to demarkate the boundaries of lands which are
in dispute, as for the last ten years Mr Pechter
has attempted to press the absurd claim instituted
in the Civil Court of Calicut in 1862, and which
effort is sufficient to show that the Revenue Survey
should not venture upon re-opening a question
Tribunal of Competent jurisdiction has disposed of
and former. Further, that the superintendent of
Survey should be Commanded to issue instructions
Assistant, Captain Sargeant, disclaiming in a cl
uncompromising manner the impression above a
by which procedure alone will your Lordships Mem
be indemnified for the serious losses he has sustained
shall have to experience in the interim

And as in duty bound your
Memorialist will ever Pray.

Yellamullay
23rd July 1872

T H Goodfellow Captain
Assistant
Bombay Army

2014

Calcasieu 12th Dec 1872

To the Gentlemen of Gudlest in

Duty to Grant

Dear Sirs

I trust to your Kindness to allow me to lay before you the enclosed Memo. We are not Certain, but the Judge on filing a Suit told us he was nearly sure he could not take a declaratory Suit stamp That it would require a Stamp according with the Value of the property effected If this be to decided I could not afford the expense and the Consequence would be as depicted in the Memo it would But that I of Course am quite sure Can never be the intention of Grant. I think however I Cannot be far wrong in requesting your Consideration of the Matter

Peterborough
Dear Sir
Yours faithfully
D. A. Godfrey

Note Cancelled
1st December 1873

13

Reserve Defaulters

To Captain J. H. Godfrey
Gelenmulay Station
Wynaad

Sir

With reference to your two addresses to Government on the subject of the action of the Survey Department relative to disputed between you & Mr Ochterlony, I am directed to acquaint you with reference to the title deeds obtained by you from the Society, and the Collector has simply to inspect the lands claimed by you, with any authentic detail translation & plan appertaining thereto.

JK

To
Capt. J. H. Godfrey
Yellamullay Estate
Wynaad

Dated 18th August 1872

S.C. No 1363 - 28th Septr 72

2/0

To the Secretary to Govt
Revenue Dept.

Sir,

In reply to your letter of today I have the honor to inform you that the Title Deeds of my Estate are in the hands of the Mortgagee of the Estate Mr Pestonjee Nesserwanjee of this place but I will endeavour to have them sent to you. Allow me to correct a mistake in your letter. There is no dispute between me and Mr Ouchterlony. A dispute did exist but was settled by due course of law, and Mr Ouchterlony cannot now dispute with me or raise any question of my rights to the Yellamullee lands. This fact is of the utmost importance therefore I allude to it. My dispute is with the Revn Survey and my Complaint against them. If it had been

against Her Quebec boy I should not have
ventured to appeal to You in the subject

I have the honour to be
Sir
Your most Obedt Servant
D Gibb Jacob

Capta Carleton
Light Augt 1812

To the Secty to Govt
Revenue Department
Octacamund

Sir

I have the honor in regard to the De
of the Settlt Revn Survey in regard to
most respectfully to submit that I have
complied with the requirements of Act X
1860 by publishing a formal Notice of
Cutcherie and that the decision of the Re
Survey is set aside thereby from the in
it was made. And that the interfere
the Revn Survey is illegal and uncal
and made in defiance of protest ag
its illegality.

I have the honor to be
Sir
Your most obedt humble
A. H. Godfrey Capt
Bombay Army

Octacamund
16th August
1872

Received
26 Aug 1872

Revenue 1872 Uffl

Nr. 2712

From

Capt Godfrey.

Dated 18th } August 1872

Rec'd 17th }

Forwarding Agents

Liverpool 6th December

Per Str. Saxony

Liverpool to Sierra Leone

Per Str. Corsica

Entered in Register

Port Regd. 1872.

Sierra Leone 12th December

Revenue 1872 Dept
No. 2768.

From
Capt. T. H. Godfrey

Dated 17th Augt 1872
Recd. 17

Forwarding the plans of his Estate called for by Govt.

No 179

50. No 1363 - 28th Septr 72

1872

Revenue Survey Office
Ootacamund.

Lr. Under Secy Govt.
Lectr to Govt &c. 16. Augt. 1872

Sir

I do myself the honor to request that I would forward for the information of Government the following statement of the circumstances connected with the dispute between Capt. Godfrey and Mr. Buchanan, & I am to state that in the first place on the 31st July 1871 I came to the decision that Capt. Godfrey was entitled to two annas of land only, situated within certain boundaries — Capt. Godfrey appealed against this decision to the Superintendent of Survey —

The Superintendent after due consideration confirmed my proceedings in the matter.

The Superintendent's decision was sent to Captain Godfrey on the 11th June 1871.

Copies of both decisions are herewith

[illegible] to which he conceives he had a right by title, including an area of [illegible] and [illegible] and [illegible] to this I commenced the demarcation of the lands taken up and occupied by [illegible] Captain Goldfrey [illegible] frequently [illegible] disputes of the bounds but this I [illegible] to the [illegible]

The demarcation of Captain Goldfrey's [illegible] estate is [illegible]

The demarcation and survey of the Kurroo Estate sold by Capt. Goldfrey to Vertanjee is completed. The demarcation of Lambillee Mudley & Bria Chetlah is incomplete, the [illegible] estimations given by Goldfrey & his nephew

Revenue Survey Office
Ootacamund.

5th Inclosed.

The demarcation of the two Coonoor Estates Coolidge & Hulkot, Capt. Godfrey Capt. Godfrey & the Inhabitants and Tahsildar

That we proceeded to the Hill, taken proper bridle Path, and Coolidge & Hulkot Estates, Coffee cultivation to Capt. Godfrey's Estate of opinion that he was only entitled to two Coonoor of land, but that certain boundaries which him by appointment to enable him he might point out where he wished to take up any Extent of land there, after the area of land, taken up, given away, and sold by him had been ascertained He declined to do this, & found out any boundaries

for Estate to which he Succession had a right by title, including an area of some four or five thousand acres Jenkins Commenced the demarcation of the Estate by Capt. Godfrey to Portuguese is incomplete. The demarcation of Mr Miller Mulley & Rice Estate is incomplete, the Estate was given by Capt. Godfrey & his Assistant

Mrs. Sinclair and two children
were robbed by Capt. Wolfe
some years ago, under
pretence of search
for Mrs. Robertson.
He left these articles from
a part of the whole
he was commissioned
to enable us to take above,
& promised to restore Capt. Wolfe
any time beyond which
he would not be responsible
for damages sustained
by keeping them here.
Capt. Wolfe commissioned
and the articles contained
Memorandum &c
to
Jno. Hunt & P. Lewis
Lieut. Sargeant Hick
Capt. Insp. Newhouse

Aug. 16. 1814

Revenue 1872 Dept.

No. 2796.

From

Capt. C. Sargeaunt

Asst. Supt. Rev. Survey.

Rec'd 16th Augt. 1872

Encls: 2

Shewing the action the Survey Depart. had taken in the case of the dispute between Capt. Godfrey & Mr. Inchterlony about their lands.

No 180

S.O. No 1363 - 28th Septr 72.

№ 1021/199

21

30

The Superintendent Revenue Survey and Demarcation, having carefully perused the Title Deeds, Decrees, Reports and other documents Connected with the boundary dispute between Captain Godfrey and Mr Cuchterlony having also Considered the grounds on which Captain Godfrey appeals against the decision of Captain C.C. Sargeaunt Assistant Superintendent Revenue Survey in charge of Neilgherry Demarcation and Survey, sees no reason to upset this decision. 30.

2. It must therefore stand good unless set aside by further proceedings as provided in Act XXVIII of 1860.

Revenue Survey office
Chepauk —
6th May 1871 —

{Signed} H. Priestley Colo
{True Copy} Supt Rev. Surv

Cld. Sargeaunt Asst
Supt. Revg

To the Secretary
to Government - 31
Revenue department
Fort St George, 19

Sir,

I have the honor to request that you will submit the enclosed memorandum for the consideration of the Right Honble the Governor in Council.

2. In the latter half of the year 1870 the Government came to a definite determination of the boundaries of Estates in South East Wynaad under the Act XXVII of 1860, and appointed the Officer to conduct the Survey under it the Assistant Commissioner Survey, Capt. Sampson. The Act is not especially framed for the establishment of Commissioners for settling disputes, and to carry out such settlement, it was deemed a quasi Judicial process & be desirable, providing at the same time for cases being dealt with through Courts. This - if disputing parties

further upon to a consumer
of their different decisions,
time a decision according
to the merits of the subject-
ter is absolutely final, but
for a consumer to substantiate
is not open to them that
officers is to investigate the
same judicially & pronounce
decision; which decision,
subject to the check (the con-
sumer of review by the au-
thority to whom the said
officers immediately subor-
dinate, the Chief might
appeal to the Civil Court
there a limited period of
two months, which Court may
consumer has appointed by the
Governor in Council in just
reasonable cases by the same
being shown) as to the de-
termination of all claims &
disputes which, exceeding £5
[illegible] Civil Court
3 of the Statute of Labor
Amendment Act
XXVIII of 1860. There was a very
case of dispute between
between Capt. Fb. Forsyth & Lieut
of the Civil Commissioners
after this determination. Case
formally Capt. Sargent had
to submit to the case there
decision which he
did on the 30th January 1871.

4. For a revision of this
decision by the authority to
whom Capt. Sargent was immedi-
ately subordinate, viz the
Superintendent Land Survey,
Colonel Priestley, Capt. Forsyth
appealed. The result was a
formal confirmation under
date the 6th May, 1871, of Capt.
Sargent's decision.

5. The limit of two calendar
months for bringing an appeal
to the Civil Court from the de-
cision - taking its date from
that of the notification on the
6 May, 1871 - ran thus the
6 July, 1871; but neither then
nor no appeal was made; nor
neither was there any applica-
tion preferred to the Governor
to extend the two months time
for this being filed. Therefore,
under the date, Capt. Sargent's
original decision stood as
that 6th day of July, 1871, as final
in respect of the determination
of all claims & disputes between
Capt. Forsyth & himself
as made by a formal decree
of the Civil Court.

6. Eight months subsequent
to his loss of the right of appeal
to the Civil Court against Capt
Sargent's decision, Capt.
Forsyth memorialized the
Government, under the provi-
sions of the end of Sec. XXX, to give
him

time for further time for the
hearing by Court & Wash.
Terr. hearing of the Court
the liberty of addressing
remonstrance to Government
that nothing having subse-
quently transpired in the
subject, I have been led to
conclude that Capt Ford's
application had not been
entertained and have there-
fore prepared for further
proceedings about to
leading Government about to
long expense for long to non-
that a memorial be received
in by the last mail, that Capt
for pre- application in the
petitioning likely to be favourably
considered, and I am
directed therefore with the
request to submit the following
remarks for the consideration
of Government.

1. I think it will be admitted that the clear and
evident intention of the act
of 1860 cap 28 sections
xxvii of 1860, as further
explained & qualified by the
Ordinance of Boundary dis-
putes, the proceedings had upon
(see xxiv & xxv (above quoted)
should clearly to show the
claim of pre-emption
purchase could there be of
any valid ground could
any time be counted? and
any right of purchase to
exhibit

exhibit that it must rest
be where the right has ab-
solutely lapsed by efflux of
time. Indeed the only legal
means of keeping it alive
could have been, in an appli-
cation to Government before
the expiration of the time to
extend the term for a
further period; and this was
not resorted to. As I have
already observed, Capt Ford may
only make his application to
Government after the
time might be applied to the Civil
Court that lapsed under the
act. And to follow in some
state of this might be legally
done at 8 months, three months
two months after the ex-
piration or to entertainment,
even the same number of
years, strictly looking to the
purpose of the act, such an
enquiry could never have
been intended by its framers!

2. The act in its xxxv Sec
says most distinctly that
the Officer shall proceed to
mark out the requisite town
lots in accordance with
his decision: when? when
actually as soon as the decision
is (negatively) confirmed, by
there being no revision of
the

the Commissioners by them
being not subject to the civil
Courts within the limited
Area, nor any order of Court
made extending the term
beyond the limit.

10. Lastly I respectfully
submit that the very words
employed in the Act extends
especially when read in con-
junction with a more limited
time for an appeal can
only be interpreted as belonging
to cases in which evidence
is to be taken when application
is made to extend the
time. The fact of
a limited time for appeal
in the Act of Parliament
conferring the jurisdiction
to the Court below is
a strong argument
that no appeal was intended
to be given from the
decisions of the Court below
in cases where the time
for appeal was limited.

11. I have included
in the foregoing observations
under this head that the
petitioners may not have an
appeal to Parliament in the
event of my not allowing
an appeal, and also because I

any

any earnest desire to avoid
giving difficulty or fear as I can
by candid explanations. But
considering at this distance, and
my health not allowing me
just now to return to India,
I am constrained to adhere
to my decision adverse to my rights in this
matter, and especially those
which I firmly believe the
Act XXVIII of 1860 to observe
to me

I have the honor to be
Sir
Your most obedient
humble Servant
H. Oxenham

London
May 30. 1872

P.S. I beg the favour of
any reply being addressed
to me at the care of
Messrs Grahame Esqr
Octavius

H.O.

Putting aside the prospects of Captain
Sergeants decision (as to which I cannot
in the Huddleston remarks in Jan. 34 & 35
of this book.) I do not perceive that in
proceeding to investigate a Death under
Section 25 of Act 28 of 1860 Captain
Sergeant was acting contrary to, or
so far as that act is concerned,
irregularly.
The dispute between Mr Auchterlony &
Captain Godfrey seems to me to be
essentially one of boundaries
Captain Godfrey claims that
the boundaries of his estate shall

Colonial Sec. 1852 Rec'd
No. 1890
from Commissioner Eastern Districts

Read 20 Aug. 1852
Rec'd 24 Sept. -
Requiring that certain documents and observations under Act XXIII of 1850, regarding the State Prisoners Released by Govt. Notice, be forwarded by Govt. Steamer

C.O. No 1863-28 Sept. 52

to allow of the inspection of the deed of
3 Dec.r 1848, or to yield to Bachelor's
Bay lands which Captain Godfrey
claimed to hold under the previous
grant from the Chiefs.
Nor do the words of section 25 appear
to invite the additional work the
Settlement Officer should be called
in cases where arbitration is declined,
viz. "proceed to investigate" — the words
are "shall proceed to investigate"
with regard to the subsequent
duties to mark out the bounds
in accordance with the decision,

by which Act the boundaries of his estate shall be then
fixed and his claim finally settled in his favor of 19 June 1857.
If it clearly the intention of Act 25 of 60
that the deciding authority should
investigate the whole circumstances of the
matter in dispute for the purpose of
coming to a decision.
The former Judge did not preclude the
investigation by Captain Sergeant:
the decision in O.S. 4 of 1862 was
on technical grounds: that in O.S
8 of 1866 merely decided that
Captain Godfrey could not

it would appear from Col C Prendergs

letter of 8 July '72 par 8 & 9 that

he omission to do so was in

accordance with the instructions

issued -

Great delay appears to have

occurred in petitioning Government

to enlarge the time for appeal.

Col C Prendergs decision was

communicated to Capt Godfrey

11 May 1871 (para 18 of his

work) & the memorial is dated

2 Sept 1871. This Ind. reed with

Includes H.E. from pending his

Calcutta

H.S.C

20.9.72

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The idea of punishing one for the fault of the R.S. is quite unjust. The R.S. have made a decision quite unlawfull as allowed by Govt and ~~wrong~~ unauthorized, an awfull Mistake in fact, and I am to suffer for it, being told by Govt to file a suit at law to set it aside. To do this would cost me thousands of rupees And I cannot afford to do it, Govt say I must do it, or lose my land, worth more than a lack. I then on account of the Gross faults of the Revenue Survey am to be punished by the loss of my land, worth more than a Lack of rupees, and the R.S. are to present it to another party a Mr Auchterlony who claiming it, filed a Suit at law to obtain it. But failed, his suit being dismissed, making my fault 26 years tried by law all explained & to the Superior Landants of the Revenue Survey and the decree produced and laid before them

No. 1363 Revenue Dept.

Proc. of the Madras Government
under date the 28th Sept. 1872.

Read the following papers.—

Petn. from Capt: J. H. Godfrey. Praying interference of Govt. on his behalf in bar of action of Survey Dept: relative to the boundary between his Estate and that of Mr. Ouchterlony.	H. E.	2. April 1872.
From Mr. H. Wapshare, Attorney for Mr. J. Ouchterlony Praying Govt. to reject Capt: Godfrey's application for extension of time for appeal against the decision of the Survey Dept: relative to the boundary between his & Mr. Ouchterlony's Estate.	"	5 April 1872.
Petn. from Capt: J. H. Godfrey Praying that the Rev: Survey authorities be directed not to demarcate the boundaries of his land not in dispute.	Copy of appeals Code of 1867	16: July 1872 16: July 1872 23. July 1872. 2
From Supt. Revenue Survey Submg: report of the proceedings of the Survey Dept on the above subject.	"	8 July 1872. 1
To Capt: J. H. Godfrey Calling for the Title deeds of his Estate.	"	10 Augt 1872
From Capt: J. H. Godfrey Replying to the above	"	10 Augt 1872
From Capt: J. H. Godfrey Submg: that in regard to decision of the Supt. Rev: Survey in regard to his land, he has fully complied with the requirements of Act 26 of 1860	"	16 Augt 1872
forwarding the plan of his Estate called for by Govt	"	17th Augt 1872
From Capt Sargeaunt, Asst Supt the Survey Shewing the action the Survey Dept had taken in the case of dispute between Capt: Godfrey & Mr. Ouchterlony about their lands.	"	16 Augt 1872.
Mr. J. Ouchterlony Submg. for consideration a statement of circumstances & observations under Act 26 of 1860	"	30 Augt 1872 The Govt have already decided in G. O. dated

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as the extreme eastern point
to which they will admit
claims to land in the
so called "Cuchterlony
Valley" based on titles
derived from the Vellambom
Jaripad

2. The question raised
in the papers above record-
ed is as to the respective
claims of Mr Cuchterlony
and Capt Godfrey west of
that limit, which have
long been in dispute and
which have been brought
under the consideration of Govt
by the action of the Survey
department in pro-
ceeding to demarcate

and

10

and survey the Estates and
decide on the disputed claims
adjudicable under the
Boundary Act 28 of 1860.

3. The facts of the
case appear to be as follows

4. In 1845. Mr Cuchter-
lony obtained from the
then Jaripad the last
for the most easterly
part of his claim, the
western boundary of
which is described as a
line drawn due north
from Mukurichi Mullay
till it intersects one drawn
due west from Guddalur
Mullay, which is the
northern limit

Thus

5. The description to be
made to be attached to the
deed of lease expressly for
the purpose of more exactly
defining the boundaries.
Both documents are of
the same date 28th Decr 1845

6. The attached plan attes-
ted by the Tirupad desig-
nates the southern boundary
"Mukuruchi Mullay or Ella
Mullay or Nilgeri Mullay"

In the note the southern
point is stated to be "Muku-
ruchi Mullay or Ella Mullay
or Nilgeri Mullay."

7th. Lieut Col. Tod in
his report of 15th Janry. 1856
states that the people
residing in that part of
the country recognized the

the identity of Mukuruchi
mullay and Nilgere mullay.

8. On 5th Decr 1848, Capt.
Godfrey obtained from the
same Tirupad certain land
the eastern boundary of
which appears by all
Tod's report to have been
described in the deed as
a line drawn north from
a hill and swamp called
"Doddagudda Nillum" to
the Sandy river, which river
forms the northern boundary,
the southern point being
the tree called Sandak
and the western the Corak
Colly hill.

9. From Mr Tod's report

of

Note

In the papers furnished
by Capt. Godfrey purporting
to be translations of the
documents of title obtained
by him from Tirumul Chetty
in 1821/1845 and from the Tellumboor
Tirumulpad in 1824/1845 the land
conveyed is thus described

1st "the land denominated
Dodda-gudda Cloda containing
two enquiries. lying to the North
of the "Elemullay" hill. xx
xx "The said land called
Dodda-gudda Cloda is bounded
on the east by the Dodda-gudda
land - on the North by the Sandra
tin - on the west by the Korkka-koly
and on the North by the Sandy river
"In this land situated within
the said boundries is hereby
sold and transferred".

16th "The said Rajah granted
unto the said Capt. Godfrey key
Tirumum Land containing two
enquiries situated in the Hyund
Taluk Ramballacode Aundrum
on the North of Tellamullay
hill and extending from the North of

it would appear that the
eastern point is described
as a hill and swamp
called "Dodda Guidda Pillum"
which is to the north and
attached to the large hill
called "Ysilla Mullay", and
he states that on inspection
he found that the "Dodda
-gudda" and "Ysilla Mulla"
though connected by a saddle
were upwards of 1200 yds
apart, so that there was
an intervening space of
nearly a mile between
the nearest boundaries of
the 2 Estates, Mr. Buchtelaz

to

* Pasture
land from
Mr. L.

to the east and Captain
Godfrey's to the west.

10. Mr. Jod states that
"the full extent" of the land
granted to Capt. Godfrey
in his title deed is "de-
-finitely laid down" as
per contract.

11. From the judgment
in C.S. No 8 of 1866 in the
Talicut Court file, Capt.
Godfrey's claim appears
to be that on 15th March
1846 two Chettis conveyed
to him their "Koyoo Jummi"
right over the Dodda ghaut
Cholah lands, (mis describe)

as

as of 600 cawnies only) and
gave up possession thereof
to him, that after some
time the Hon Jenupad al-
-leging himself to be the
Janmi (proprietor) offered
to grant Capt. Godfrey
a perpetual lease of the
land in question, on which
the title deed on which he
relies was executed in
Malayalam which Capt.
Godfrey does not under-
-stand, and that in it
the boundaries as were
copied from the deed of
March 1846, but that Capt.
Godfrey understood, and

both

both parties intended that
the whole of the land (and
not merely 600 cawnies)
within those boundaries
should pass thereby.

12. On 19 January 1857
Mr. Richterlony obtained
from the nephew & Succes-
-sor of the Jenupad who
granted his and Capt.
Godfrey's titles above-
-mentioned, a further
lease for the western
portion of his Estate, in
which the eastern boundary
of the land newly leased
is described as being the
western boundary of the
land formerly conveyed,

the

the northern and southern
boundaries continue westward
those of the original grant, and
the western limit is defined
by a line drawn north and
South through two specified
points. The deed according
to the translation before
Govt. which appears to
have been produced in
Court, proceeds thus - "All
the boundaries are as
delineated in the plan
hereunto attached Except
-ing the extent of 600
cawnies of the land
called Doddiga Cholah
bounded on the east
by

by the Dodigadu land, on
the south by the Pantha tree,
on the north by the Pandi
river, and on the west by
the Kupa Kolial and in=
=cluded in the above mentioned
boundaries, which has been
assigned to Capt. Godfrey
by my uncle in virtue of
a Karar document dated
5th Decbr. 1848, the whole of
the remaining lands are
hereby assigned to you."

13. In O.S. 4 of 1862, on
the Calicut Court file, Mr.
Ouchterlony sued the Tirapad
and Capt. Godfrey in order
"to cause the Defendants to
mark off and fix the
boundaries of 600 cawnies

of

of land situate at Nam-
balakode Unichom in
Wynad taluk which is
excepted from the grant
made by the 1st Deft to
Plaintiff on 19 Jany 1857"
and which the 1st Deft was
willing to mark out, but
the 2d Deft objected.

2d Deft answered that
he "holds the entire extent
of his own Dodagady Cho-
lah land in Wynad;
therefore he is not bound
to affix boundaries to
600 cawnies of the same."

14. The Court framed
as issues the following.

"Plaintiff and 1st Deft

6

to prove that 2d Deft holds
only 600 cawniss within
Plaintiffs second grant
dated 19 Jany 1857.

2d Deft to negative
Plaintiffs evidence and
prove that he holds all
the land within the 4
boundaries stated."

15. Evidence was adduced
on either side in favor
of their respective pleas
and incidentally it
appeared that in 1855.
(that is before Mr Ouch-
terlony obtained his
second lease) Capt Godby
had under his lease of
1848 occupied a considerable
tract-

tract of land on the
Eastern side of Mr Ouchterlony's western boundary
under his first lease of
1845, which dispute was
investigated by Mr Assist.
Collector Tod on the spot
in 1855 with the result of
establishing Mr Ouchterlony's
prior possession, and of
Capt. Godfrey consenting
to withdraw from possession
until placed thereon by
a Court of Law. It is
thus evident that before
Mr Ouchterlony obtained
his second lease, he was
aware that Capt. Godfrey
claimed

claimed to hold an ex-
-tensive tract of land
up to at least Mr Ouchter-
-lony's original western
boundary.

16. The Court dismissed
this Suit No 4 of 1862 on
the grounds that Plaintiff
as tenant could not
sue another tenant
of their common land-
-lord for a declaratory
order requiring him
to demarcate his
boundaries.—
— That if he had
suffered

suffered a wrong, his
remedy was against
the Landlord, or as
the Landlord admitted
the Plaintiff's claim,
then the Landlord
should sue the 2d
Defendant for resto-
ration of any lands
he might possess
within the limits
of Plaintiff's 2d Case,

over

over and above 600 cawnies
17 In O.S.D. of 1866
on the Calicut file,
Capt: Godfrey sued
— for the cancelment
of the document
(counterpart) ex-
ecuted by him in
1848 to the Irapad-
— for a declaration that
the original was null
and void — and for
possession

possession of certain land held by Mr Cuchterlony ~~and titles derived from him~~, the ground of action being that, as Plaintiff had discovered since 1857, the Tirupad had no right in the land concerned, and consequently was not competent to make any assignment of it, and that the lands sought to be recovered were within the boundaries of that originally obtained by the Plaintiff from the Chetties.

18. The Court dismissed the Suit with costs and decided that the cause of action as against the Tirupad was

was an act of fraud - and as against the other defendants, several distinct acts of trespass.

— that the law did not admit of such a joinder of distinct causes of action - and parties in the same suit.

— that, as regards the fraud, the Statute of Limitations barred the action as not brought within 6 years from 1857, or 12 years from 1848 - inasmuch as Plaintiff having previously dealt with other parties as the "Jemma" proprietors was bound to investigate carefully and fully the title of the Tirupad - and that it was not therefore open to him in 1866 to challenge the bona fides of the document of 5th. Dec. 1848.

19. The Court went

on

on to state that Plaintiff admitted he was in possession of all the land that was granted to him at that date, and must be content with that possession.

20. The Court had framed the following among other issues

"whether Plaintiff obtained possession of the property named in the documents of 15: March 1846 under that document"

"what rights the Chetties named in the plaint held or held on the property sued for"

But these issues were not tried. the suit being dismissed on preliminary objections as above stated

21. Captain Godfrey appeals to the High Court in ~~Defendants~~ Appeal suit 45 of 1867 on the grounds that the reasons assigned for dismissing the original suit were insufficient -

and

and that he had never admitted he was out of possession of all the land granted to him in 1848 by the Tinpad

22. The High Court upheld the decree of the lower Court and dismissed the appeal on the ground that the suit was in part barred by Statute - and in part involved a mis-joinder of causes and persons -

23. So far as regards the relative position of the parties -

24. The application to Govt. is consequent on the action of the Survey Dept. under Act 28 of 1866 in proceeding to define the respective Estates of Mr Cruchterlony and Captain Godfrey

25. The Extract from the Register of Boundary disputes settled under

Act

Act 28 of 1860 by Captain Sargeant of the Survey Dept and submitted by Col: Priestley states the nature of the dispute as follows.

"Captain Godfrey claims land within the boundaries of Mr Onckelonny's property on the plea that the Trimulpad of Nellumboor granted him all the land within certain boundaries mentioned in the title deeds given by the Trimulpad to Captain Godfrey and granted on 5th Dec: 1848"

26. The "Summary of Evidence and grounds of decision" states: "I have examined the title deeds of Mr Onckelonny and Capt Godfrey. and am of opinion that even if there be any vagueness as to the amount of land specified in Capt Godfrey's title deed - which I do not perceive - the 2d title deed given by the Rajah to Mr Onckelonny on 19th January 1857 [illegible] explains the meaning. It is plainly stated in Mr Onckelonny's deed that the Trimulpad resigns to Mr Onckelonny all the land within certain boundaries with the exception of 600 cawnies of land called Dodiya Chola already granted to Capt Godfrey

"By the Trimulpads title deed of 1848 as translated to me Capt Godfrey is granted 600 cawnies included in certain boundaries"

27. The "Decision" states "As the High Court has decreed that the Rajahs title of 1848 to Captain Godfrey cannot be set aside. and as the 2d title of Mr Onckelonny directly states that he is entitled to all the land within certain boundaries with the exception of 600 cawnies already granted to Captain Godfrey = Captain

Godfrey

Godfrey is only entitled to the
403 Cawnies.

28. The decision is dated
29. January 1871, and notes that
the parties declined arbitration
29. Captain Godfrey appeals
to Col: Priestley who on 6th May 1871
decided that the decision must
stand good, unless set aside by
further proceedings, as provided in
the Act Viz: by Regular Suit in
the Civil Courts instituted within
2 months from the date of the
original decision unless the
period be prolonged by the
Governor in Council. His decision was received by Capt.
Godfrey on 11. May 71.
30. Captain Godfrey
appeals to Government
to restrain the Survey
Department from
"demarcating all
the lands belonging to
Immovables with the
exception of 600
Cawnies as per
Ouchterlony's".
31. Mr Wapshare on

30

on behalf of Mr Ouchterlony
prays Govt to refuse to
extend in Capt. Godfrey's
favor the time for ap-
peal to the Civil Courts
allowed by the Act.

32. The Govt observe
in the first place as
regards the action of
the Survey Officers in
this matter, that the
law under which they
have proceeded is ex-
pressed to be for the
establishment and main-
tenance of boundary
marks and for facilitating
the settlement of boundary
disputes - and it prescribes
certain

certain procedure to be adopted by or towards the parties interested in boundaries under dispute."

33. So far as regards the determination of the boundaries specified in the documents taken from the Trusts by Mr Ochterlony and Capt Godfrey, it may be admitted that the Survey Dept were competent to make investigation and pass a decision, ~~although it is open to question whether the circumstance warranted their interference~~, but in point of fact the question of identification of

according as they agree with the decision of Arbitrators thereon, or does not agree with the decision of Arbitrators (Cl. XXV.)

or lines of boundary marks does not appear to have been at all in issue between Mr Ochterlony and Capt Godfrey. What was disputed was their respective rights within certain specified boundaries ~~and for the determination of this question the Govt of India Capt Sargeaunt's decision Court considered that the Law Courts had no power whatever to confer on the Survey Dept~~

34. Further it is observed from Capt Sargeaunt's decision that he has assumed as sufficient evidence of the intention of the lease in 1848 to Capt Godfrey - that interpretation

interpretation of it which is given in the subsequent case obtained by Mr Ochterlony in 1857, but it is to be remarked that these two documents whatever may be their worth were obtained from two different Principals and that the interpretation by one of the intention of the other in no way conclusive is ~~of no legal value~~.

35. As regards the decision of the High Court, the Govt observe that all it decides on the point at issue is, that Capt. Godfrey cannot claim to base his title on any deed other than that of 1848, but it in no way

way settles what the force and effect of that deed is.

36. The effect in fact of Capt. Jacquemont's proceedings is to settle summarily on a necessarily imperfect investigation [~~and on grounds which are clearly not sufficient to establish his conclusion~~,] the force and value of a title to land which it had been previously declared by a Civil Court, could only be determined by a regular suit.

Better omit - The Court may take its view of the case.

J. D.L.

A/A.

37. The remedy provided by the Act for alleged injury sustained by the summary decisions of officers acting under

under it, is by regular
suit in the Civil Courts
within 2 calendar months
from the passing of the
decision, which period in
the present instance expires
on 31st March or at latest
on 11th July 1871

38. The Act however
enables Govt on just and
reasonable cause shown
to extend the period for
appeal within such further
period as may seem proper
and as it [appears to the
Governor in Council] in this
case that the issue deter-
mined by the Survey
Officers

I would in lieu of
"may with due
reason be argued"
J. O'S.

officers was not within
their competency to decide
according to the real object
and intention of the Act,
that the investigation was
unavoidably imperfect,
that the grounds assigned
for the decision were
inconclusive, and that
Capt. Godfrey had good
reason to suppose that
the proceedings were
altogether ultra vires, and
the jurisdiction of the
Survey officers barred by
the decision of the Civil
Court in the same dispute,
and by its very nature,

Yes.

Better omit &
leave it to Court
to decide
J. O'S.

I would in lieu of
"may with due
reason be argued"
J. O'S.

~~The Collector~~ resolves to extend the time for appeal to the Civil Courts up to 31st Decr 1872, within which time Capt. Godfrey must file a regular suit in the Civil Court to set aside the decision.

39. Pending the result of this appeal the Survey Officers will take no further action in the matter of defining Capt. Godfrey's Estate, or that of Mr Ouchterlony under his second lease, although the area of cultivation may of course be surveyed for revenue purposes.

40. There appears to be no objection to their demarcating the boundaries under the first lease, which was prior to that obtained from the Troops by Capt. Godfrey on which his claim must be based according to the High Court decision.

41. The boundary to be so demarcated at once will be from Nilgiri Mullay to Gudalur Mullay as lately decided by Govt, and due north from Nilgiri

Shall be filed with decision in due course.

I should file decision with reasons in due course.

I should file decision with reasons in due course.

I.O.L

Nilgiri Mullay till
the line intersects one
drawn due west from
Cyudalur Mullay -

L.S.

I would register
these - & that
there may be
no doubt as to
receipt.

WS

AV.

WS

Ordered that the original Documents
received from W. Shepherd Esq.
Capt Godfrey be returned
them Direct. & Master
write to the requisite
for the same -

L.S.

1 Copy to Capt. Godfrey dec 3 Octr 72.
1 — Mr. Shepherd, Attorney for Mr. Cruickshanks dec 3 Octr 72
14 — Rev. Board — dec 3 Octr 72 — — —
3 — Comm. Nilgiris — — — —
4 — Coll. of Malabar — — — —
13 — Supt. Rev. Survey 1 — — —

See revised draft of concluding paras.

way settles what the force and effect of that deed is. 16

36. The Govt. therefore are of opinion that Captain Sargeaunt, as Survey Officer, had no jurisdiction under Act 28 of 1860 to decide as he assumed to do, what were the respective rights of Captain Cooper and Mr. Ouchterlony within the limits of the lands leased by the Tinpads by the documents dated 18th Decr 1845 - 5th Decr 1848 and 19th January 1857, and further that the reasons assigned by him in his decision will not warrant his conclusions.

37. From Captain Sargeaunt's letter of 16th August 1872, the Govt learn that, as was to be expected, he has been unable to complete the procedure required

required by Sec: 25. Act 28 of 1860 and "mark out the requisite boundary in accordance with the decision" for Captain Godfrey naturally declines to do what the Civil Court in 1862 decided he could only be compelled to do by an adverse decree in a regular suit. Viz: select and demarcate 600 Cawnies within his stated boundaries as the whole area of his property within them - and Captain Sargeant in point of fact has not himself decided any line of boundary whatever as limiting Captain Godfrey's State - while the demarcations and survey by him of several detached plots of cultivated land would certainly not meet the requirements of the Act

or be a proceeding in accordance with its intention 57

38. The action of the Survey Dept in the matter has evidently been irregular and beyond their competence from the beginning - and as their proceedings are also manifestly incomplete even according to the letter of the Act - to say nothing of its spirit - the Governor in Council resolves to direct them to stop all further action in the way of demarcating Captain Godfrey's State.

39. It is evident that on the North, South, and West, the lines of boundary claimed by him fall within those claimed under his two leases by Mr Cruickshank, and on the East the Govt have decided what is the extreme

extreme limit up to which they will admit any claims based on titles derived from the Quinquads.

40. If necessary therefore for survey purposes these outside lines of boundary may be demarcated and surveyed, but as to rights of property within those limits the Survey Dept have no power whatever to decide.

41. The area of cultivation may, of course, be surveyed for revenue purposes.

[illegible]

There can be no doubt I think that the Survey Officers could adjudicate in the matter - as stated in para 33 of this Draft. but it certainly is not a case which should be decided by such a tribunal. The Survey Act, I believe, puts it beyond the power of annulling a decision such as this - the official to the Civil Court within a stated period, which [illegible] can indefinitely extend. If I am right the proper course is, I think, for the Dept to extend the period - say for a year - from date - and for the Govt or Govr. in Council to issue a regularly [illegible] notification such as I have made in para 33 - saying that the case is one which can be decided in Court at different times since the regular Courts and is manifestly not one for summary decision by a Survey Officer would give the Govt a reasonable time to withdraw. It is very dangerous for Govt without professional and