Proceedings of the Madras Government, Revenue Department,
6th December 1873.

No. 73. Read the following letter from J. W. HANDLEY, Esq., Government Pleader, Madras, to D. F. CARMICHAEL, Esq., Secretary to Government, Revenue Department, Fort St. George, dated 1st December 1873, No. 163 :—

Revenue Dept., G. O., 15th Oct. 1873, No. 1,112.

With reference to the Proceedings of Government noted in the margin, forwarding copy of a despatch from the Right Honourable the Secretary of State for India and original Order of Her Majesty in Council in the matter of the Marungapury Appeals, I have the honour to suggest that some communication should be made by this Government to the Home Government as to the course to be taken on behalf of Government in consequence of the above Order of Her Majesty in Council.

2. The present position of affairs is as follows:—An Appeal to the Privy Council was filed on behalf of Government in 1871 against the judgment of the High Court, deciding that the Civil Court had jurisdiction to entertain the Suit for the Marungapury Pollicm, notwithstanding that the Pollicm was an unsettled one, and as such, according to previous decisions, the right of nomination of a successor was vested in Government alone. On a suggestion from the Secretary of State that the Appeal would probably be rejected on the ground that the ultimate decision of the High Court had been in favour of the Government nominee, it was decided to withdraw the Government Appeal. It appears, however, that the Appeal was not withdrawn, but was allowed to be dismissed for default of prosecution. In the meantime, the plaintiffs in the Suit had filed an Appeal to the Privy Council against the final decree of the High Court in favour of the present Zemindar. This also was dismissed for want of prosecution. Then the plaintiffs applied for the restoration of their Appeal, and upon their petition the Judicial Committee recommended that both Appeals should be restored and consolidated upon certain terms, and it was ordered accordingly. The Order of Her Majesty in Council is sent (to be returned) herewith for reference.

Procs. of Govt., Rev. Dept., 28th Jan. 1873.

Proceedings of Government, 19th July 1873.

Proceedings of Government, 7th July 1873.

This report of the Judicial Committee purports to have been made "on hearing Counsel for the petitioners, the appellants in the second Appeal, and likewise for the Collector of Tinnevelly on behalf of the Zemindar of Marungapury, the appellant in the first Appeal." This is incorrect. The first Appeal was by the Collector on behalf of Government not on behalf of the Zemindar. The report appears to be based upon this erroneous supposition that the appellant in the first Appeal and the respondent in the second (the Zemindar) are the same person, for it directs that there be only one printed case on each side, and that each of the appellants do lodge £300 as security for costs. However, the result of the consolidation of the Appeals would appear to be that the Government will have an opportunity, if so desirous, of raising the question of jurisdiction in the case.

3. As the Secretary of State is fully cognizant of what has been done and of the wishes of this Government, no doubt he will take the necessary steps for

carrying on the case if so advised by the law-officers of the India Office; but it may be well that this Government should communicate with him on the subject for several reasons. The mistake in the Order of Her Majesty in Council should be pointed out, as it is possible that there may be some misunderstanding on the part of the Secretary of State as well as of the Judicial Committee in the matter. The mistake, no doubt, arose from the fact that the Collector was originally made a defendant in the Suit as Agent to the Court of Wards and guardian of the minor Zamindar. Before the first decree of the Civil Court the Zamindar attained his majority, and thenceforward conducted the defence of the Suit and Appeal himself. The Collector was made a party to the Appeal on behalf of Government by the Order of the High Court of 21st October 1870. By the terms of the Privy Council Order, the Zamindar will not share in the expense of preparing the record, and, if the plaintiff were to succeed, the whole costs of both Appeals would have to be paid by Government. If, therefore, it is decided to join the Zamindar in preparing a printed case and opposing the plaintiffs' Appeal, which is the only way in which the Privy Council Order can be worked as it now stands, some arrangement must be made with the Zamindar for his contributing his fair share of the expense of preparing the record and of the general costs of the Appeals. This can, doubtless, be arranged between the Solicitors to the India Office and the Zamindar's Solicitors. That part of the record which was necessary for the first Appeal had, I believe, already been prepared at the expense of Government and transmitted to England before it was decided to withdraw the Appeal; or it might be better to have the mistake in the Privy Council Order pointed out at once to the Judicial Committee, and the Order rectified accordingly. The law-officers of the India Office will advise which is the best course to take. All these matters seem to require explanation to the Secretary of State without which the interests of Government may suffer.

4. By the Order of Her Majesty in Council, the printed cases are to be lodged and the consolidated Appeals set down for hearing by 1st January 1874. No time, therefore, should be lost in communicating with the Secretary of State if deemed advisable, and if any doubt is entertained as to his proceeding in the matter without further instructions from this Government, the telegraph might be employed.

No. 24 Ootacamund, 6th December 1873, No. 1,360.

Miscellaneous

The Governor in Council concurs with Mr. Handley that it may be implied from the tenor of the despatch quoted that the Secretary of State is awaiting a further communication from this Government before taking any steps in the prosecution of this Appeal, which, by Her Majesty's Order in Council, has now been restored to the files of the Judicial Committee.

The time allowed in that Order expires on the 1st January next. In accordance, therefore, with the suggestion of the Government Pleader a telegram

in the annexed words will be forwarded to the India Office, a copy of the foregoing letter being furnished by this day's mail :—

"Your Grace's Judicial despatch, No. 12, of 26th August last. Please instruct Solicitors to prosecute restored Appeal. Letter by this day's Mail."

(True Extract.)

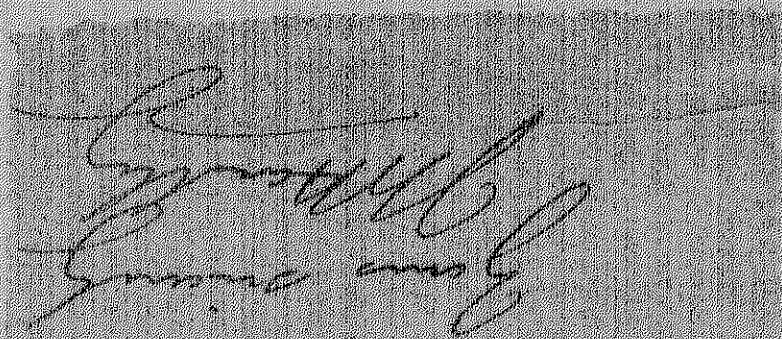
(Signed) D. F. CARMICHAEL,
Secretary to Government.

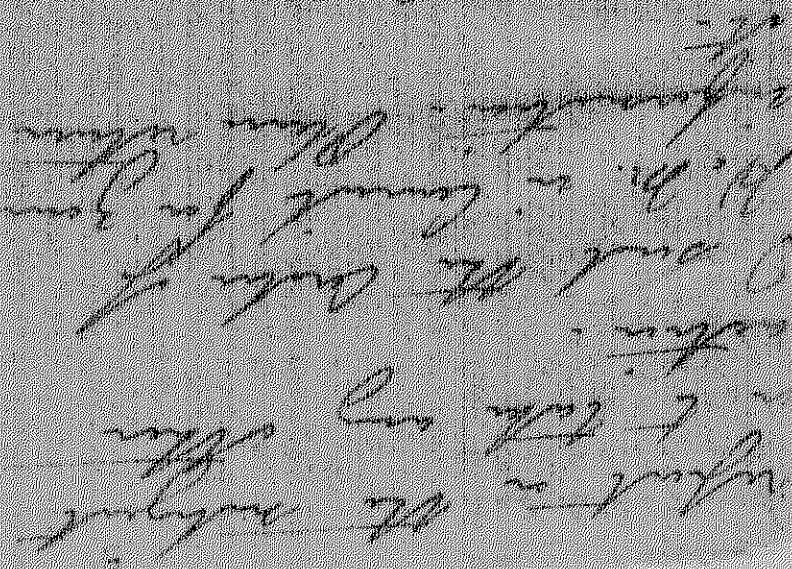
To the Government Pleader.
,, the Board of Revenue.

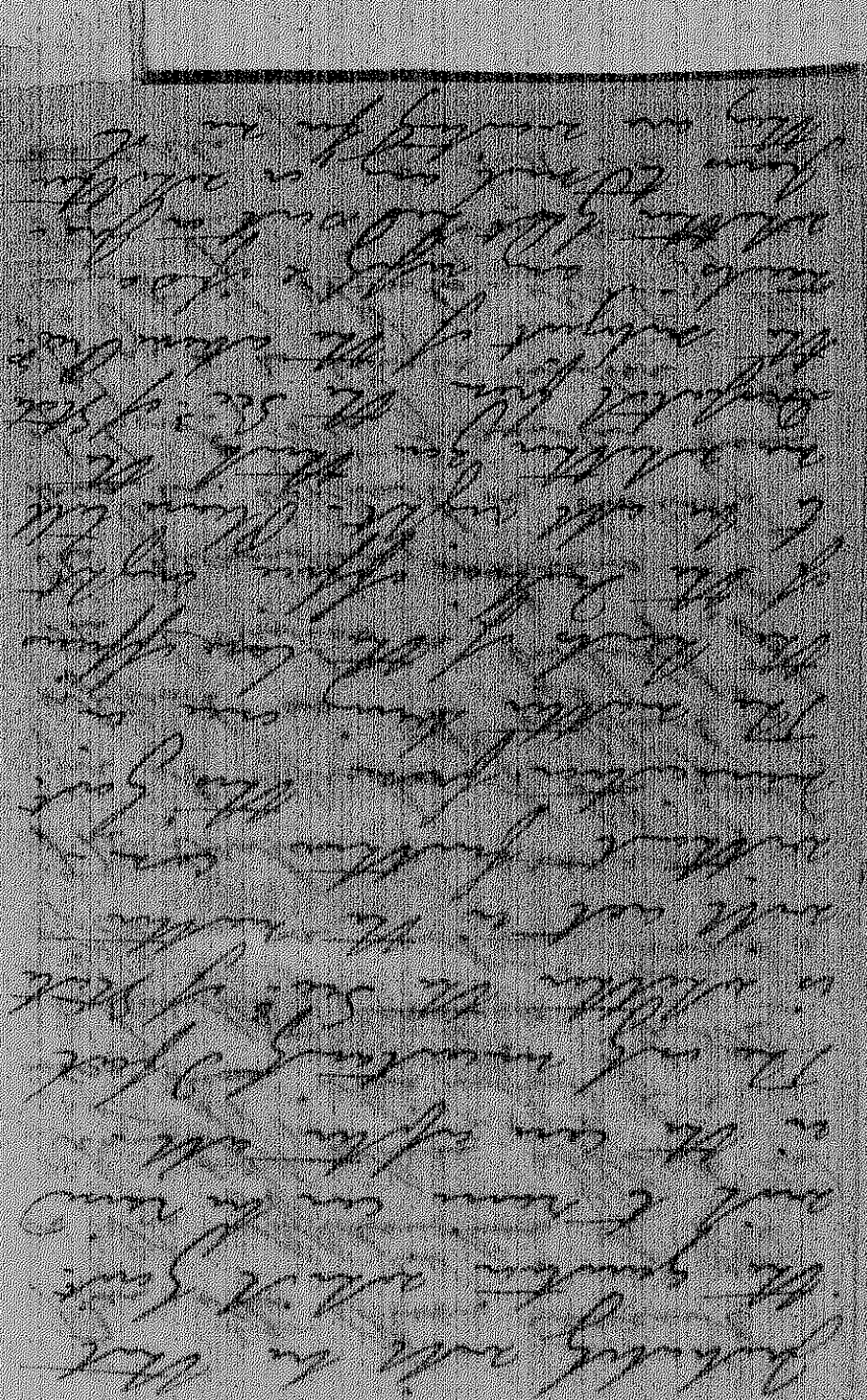
Lad. P. R. Bandelman.

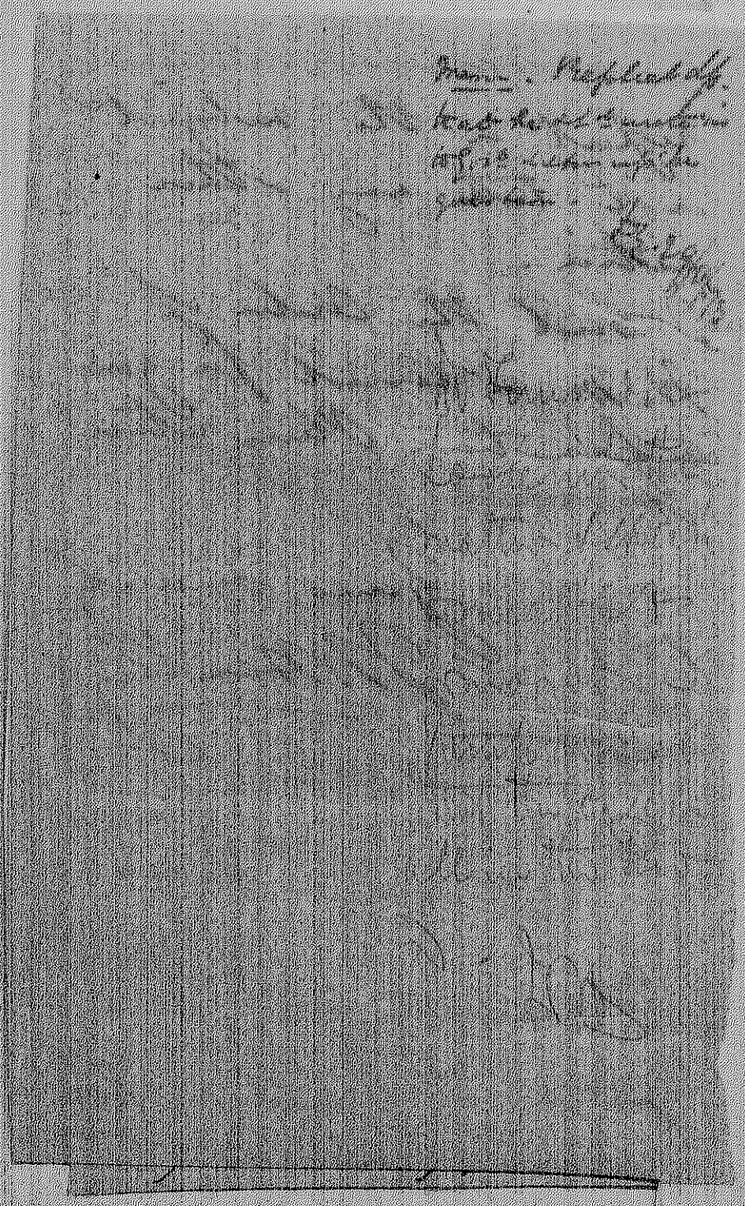
Regt Camp
26th Jan 43











Read Letter from Govt. of Ceylon
No 163 of 1st Dec. 73

The J. of C. concurs with Mr Hamilton
that it may be inexpedient from the
terms of the despatch quoted, that
the Secty of State is awaiting a
further communication from
this Govt before taking any
further steps in the prosecution
of his appeal, which by Her
Majesty's Order in Council had
now been referred to the future of the
Judicial Committee.

2. The time allowed in that Order
expires on the 1st January next. In
accordance therefore with the desire of
the Govt of Ceylon, a Telegram in the
annexed words will be forwarded to the
India Office, a copy of the foregoing
Letter being furnished by Commissioners
Mail. 5th Dec.

Telegram - Govt Ceylon's Judicial Despatch
No 212 of 26th August last. Please communicate
Secretary of Province with Appeal - Letters
following Mail.

6th December 1873