

*Proceedings of the Madras Government, Revenue Department,
1st May 1873.*

No. 18. Read the following letter from Captain T. H. GODFREY, of the Bombay Army, to D. F. CARMICHAEL, Esq., Secretary to Government, Revenue Department, Madras, dated Ootacamund, 20th February 1873 :—

I HAVE the honour to beg that you will be so good as to lay the accompanying memorial, with the papers referred to therein, before His Excellency the Governor in Council.

ENCLOSURE No. 1.

Memorial from Captain THURLOW HOVEL GODFREY, of the Bombay Army, and Proprietor of a Coffee Estate and land in Wynaad, to His Excellency the Governor of Madras, dated Ootacamund, 20th February 1873.

SHEWETH,

First,—That your memorialist, in accordance with the Proceedings of Government, dated 28th September 1872, presented a suit to the Civil Court of Calicut, on the 29th of November 1872, praying for a setting aside of the decision of Captain C. Serjeant, Assistant Superintendent of Revenue Survey, concerning certain lands claimed by Mr. James Ouchterlony but belonging to your memorialist, passed on the 30th day of January 1871.

Second,—That this suit (in the form of plaint) was returned by the Court for amendment, and that, on the 10th day of January 1873, the Court passed the order, herewith accompanying, marked No. 1.

Third,—That, agreeably to the suggestion contained in the order above referred to, your memorialist addressed the Superintendent of Revenue Survey, on the 20th day of January 1873, (copy of letter herewith transmitted, marked No. 2), calling his attention to the last paragraph of the order, and received a reply, copy of which is, also, transmitted, marked No. 3.

Fourth,—That, on the 4th day of February 1873, your memorialist again appeared before the Civil Court of Calicut, presenting his suit in the forms of plaint and memorandum of appeal; Section 25 of Act XXVIII. of 1860 rendering it doubtful in which of the two forms the suit should be brought.

Fifth,—That, on the 5th day of February 1873, the Court rejected the plaint as not constituting the form of suit contemplated by Section 25 of Act XXVIII. of 1860, and passed the order, herewith accompanying, marked No. 4 on the appeal.

Sixth,—That your Excellency in Council was pleased to direct, on the 18th of October 1872, (Proceedings of that date), that the Revenue Survey officers should abstain from demarcating Mr. Ouchterlony's western boundary, until after the 31st of December 1872; after which time your memorialist was to obtain an injunction from the Court, in which, he had filed his suit for further suspension of the demarcation.

Seventh,—That the Revenue Survey officers, acting upon this order, have not only commenced but completed the demarcation in question, which, your memorialist finds, encroaches upon his land considerably.

Eighth,—That your memorialist not obtaining an injunction from the Court to which his appeal was presented was due to the circumstances stated in the order of the 5th of February 1873, (marked No. 4), and that, consequently, he must pray your Excellency in Council to issue instructions that the demarcation made by the officers of the Revenue Survey Department should be obliterated. Under this head, your memorialist needs only to remark that an injunction could not be obtained from any Court, unless upon a suit before it, which, in the present instance, was not the case from the rejection of the appeal of your memorialist upon the grounds specified in the order alluded to.

Ninth,—That the demarcation, of which your memorialist complains, not only encroaches on the land which was the subject of the order of the 28th of September 1872, but runs through his

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1st May 1873.*

Arrata Para land,—property in undisturbable possession of which he was left by the Proceedings of the High Court of Madras, dated 28th March 1864, upon an appeal against the Proceedings of the Deputy-Magistrate of Wynaad, dated 22nd January 1864, copies of both which Proceedings are herewith forwarded, marked Nos. 5 and 6.

Tenth,—That your memorialist, in making the request contained in paragraph 8 of this memorial, would add to it the prayer that your Excellency in Council will see the justice of reimbursing him the expense he has been put to, amounting to Rs. 4,000 or more, in combating the blunders committed by the officers of the Revenue Survey Department, whereby, if not for his perseverance under the utmost pecuniary difficulties, your memorialist would have been deprived of possessions lawfully obtained.

And your memorialist shall ever pray.

No. 19.

ORDER THEREON, 1st May 1873, No. 446.

Miscellaneous.

With this memorial, Captain Godfrey transmits a copy of the order passed by the District Court at Calicut

on an appeal presented by him against a decision passed by Captain Serjeant, Assistant Superintendent of Revenue Survey, under Act XXVIII. of 1860.

2. The Court dismissed the appeal on the ground that the decision, having been passed by an officer who required a special authorization to adjudicate, should have shown that such authorization had been granted; and that, inasmuch as it did not do so, it was one that, being passed without jurisdiction, created no necessity for an appeal.

3. Captain Godfrey now prays that the demarcation made by the Survey Department, in accordance with Captain Serjeant's decision, may be obliterated, and that the expenses he has been put to in combating that decision may be reimbursed to him.

4. On mature consideration of all the circumstances of the case, His Excellency the Governor in Council resolves to direct, first, that the Survey Department remove the boundary marks placed by them in accordance with Captain Serjeant's decision; and, second, that his expenses, as far as these were necessarily incurred, be reimbursed to Captain Godfrey.

5. This resolution will be communicated to Captain Godfrey, and he will be requested to submit to Government a list of his expenses, accompanied by such papers as may support the necessity of any particular expenditure.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To Captain T. H. Godfrey.
,, the Superintendent of Revenue Survey.

Exd. F. R. Bantleman.

To
The Secretary to Government
Madras.

Sir
I have the honor to beg that you will be
so good as to lay the accompanying Memorial,
with the papers referred to therein, before
His Excellency the Governor in Council.

Adisamund, }
20th Feby 1873. }

I have the honor to be,
Sir,
Your most Obedt Servant,

L. J. Godfrey Capt
Bombay Army

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5/

c. 29 April 1873

Manuscript 1873. Q145

Ms. 523.

Letter

From

Captain Gregory

To

The Secretary to Govt.

Dated 20th }
Received 24th } July 173.

Regarding the lay before
the Governor in Council
the accompanying Me-
morial & papers referred
to therein regarding his
lands in Wyandott.

P.O. No. 446-1st May 73

Ms. 18-19

with MS. 18.0.7:44.12:18

Ms. 18-19

To

His Excellency, the Governor of Madras
in Council,
Fort Saint George.

The Memorial of Shurlow Hovel
Godfrey, Captain in the Bombay Army, and Pro-
prietor of a Coffee Estate and land in Wynnaad.

Sheweth -

First - That your Memorialist, in
accordance with the Proceedings of Government
dated 28th September 1872, presented a suit to
The Civil Court of Calicut on the 29th of November
1872, praying for a setting aside of the Decision
of Captain C. Sargraunt, Assistant Superintendent
of Revenue Survey, concerning certain lands
claimed by Mr James Buchterlong but belonging
to your Memorialist, and passed on the 30th
day of January 1873.

Second - That this suit (in the form
of Plaintiff) was returned by the Court for amend-
ment, and that on the 10th day of January 1873
the Court passed the Order herewith accompanying,
marked No 1.

Third - That agreeably to the sug-
gestion contained in the Order above referred to,
your Memorialist addressed the Superintendent
of Revenue Survey on the 20th day of January 1873,
(copy of letter herewith transmitted marked No 2)
calling his attention to the last paragraph
of the Order, and received a reply, copy of which
is also transmitted, marked No 3.

Fourth - That on the 4th day of
February 1873, your Memorialist again ap-
peared before the Civil Court of Calicut, pre-
senting his suit in the forms of Plaintiff and
Memo. of Appeals, Section 25 of Act 28 of 1860
rendering it doubtful in which of the two forms
the suit should be brought.

Fifth - That on the 5th day of February
1873, the Court rejected the Plaintiff as not com-
plying with the form of suit contemplated by Section
25 of Act 28 of 1860, and passed the Order
herewith accompanying, marked No 4, on
the Appeal.

Sixth

Sixth - That your Excellency in Council was pleased to direct on the 18th of October 1872 (the proceedings of that date), that the Revenue Survey Officers should abstain from demarcating Mr. Ouchterlony's land as a boundary until after the 31st of December 1872, after which time your Memorialist was to obtain an injunction from the Court in which he had filed his suit, for further suspension of the demarcation.

Seventh - That the Revenue Survey Officers acting upon this order, have not only commenced, but completed the demarcation in question, which your Memorialist finds encroaches upon his land considerably.

Eighth - That your Memorialist not obtaining an injunction from the Court to which his Appeal was presented, was dissatisfied with the circumstances stated in the Order of the 5th of February 1873, (marked No 4), and that accordingly he must pray your Excellency in Council to issue instructions that the demarcation made by the officers of the Revenue Survey Department should be obliterated. Under this head your Memorialist needs only remark that an injunction could not be obtained from any Court unless upon a decision before it, which in the present instance was not the case from the rejection of the Appeal of your Memorialist upon the grounds specified in the Order alluded to.

Ninth - That the demarcation of which your Memorialist complains, not only encroaches on the land which was the subject of the Order of the 28th of September 1872, but also through his Anala Para land; property in undisturbed possession of which he was left by the Proceedings of the High Court of Madras dated 28th March 1864, upon an Appeal against the Proceedings of the Deputy Magistrate of Wynema dated 22nd January 1864, copies of both which Proceedings are herewith forwarded, marked Nos 5 and 6.

Tenth - That your Memorialist in making the request contained in Para eight of this Memorial, would add to it the Prayers, that your Excellency in Council will see the justice of reimbursing him the expense he has been put

to, amounting to 4,000 Rupees or more, in combating the blunders committed by the Officers of the Revenue Survey Department, whereby, if not for his perseverance under the utmost pecuniary difficulties, your Memorialist would have been deprived of possessions lawfully obtained.

Ootacamund,
20th February, 1873.

And your Memorialist shall
ever Pray.

N
H Godfrey Captin
Bombay Army

No 1.

Proceedings of the Civil Court Zila Calicut dated 10th January 1873.

Read again what purports to be a plaint by Captain Thurlow Hovel Godfrey.

The object of this so called plaint is to set aside a decision of Captain Sargeant, Assistant Superintendent Revenue Survey, whereby he has declared Captain Godfrey to be entitled to 600 cawnies only of land within certain boundaries. The Act (No. 28 of 1860) under which Captain Sargeant purports to have proceeded, directs that the deciding Officer shall proceed to mark out the requisite boundary in accordance with his decision, but the Government having been pleased to interfere and forbid his doing so, there is nothing before me from which it can be ascertained what particular 600 cawnies of land out of a very large area Captain Sargeant is good enough to assign to Captain Godfrey.

This ambiguity necessarily creates some difficulty in the valuation and in the specification of boundaries, but at the same time it is manifest that greater precision on both points can be arrived at. The so called plaint will therefore be again returned for amendment, and 1 (one) month will be allowed for the purpose.

It also appears to me that the copy of the decision impeached requires to be on a stamp, and I should suggest that when applying for such copy Captain Godfrey should also apply to the Superintendent Revenue Survey to revise his subordinate's decision until nothing of it is left. With the opinion and action of Government before him it can hardly be but that the Superintendent will arrive at the conclusion that his Department can have nothing to do with what his Assistant himself specifies to be a claim by one party to land within the boundaries of another.

(True Extract.)

(Signed) G. R. SHARPE,

Civil Judge.

Thurlow Hovel Godfrey

1873/73

Capt. Sargeant
Assistant
Superintendent
Revenue Survey
600 cawnies
of land
within
certain
boundaries

No 2.

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6

Copy.

To Colonel F. Priestley,
Superintendent of Revenue Survey
Madras.

Sir, I beg to enclose copy of the order passed by the Civil Court of Calicut on the 10th Instant, from which you will see that I am directed to present Captain Sargeant's decision of the 30th January 1871 upon Stamped paper. I therefore further enclose two one Rupee stamps (but one should not be sufficient) for this purpose, and will be much obliged by your letting me have the authenticated and examined copy by return of post if possible. For although I have been allowed till the 9th proximo for producing stamped copy, I am anxious to have my appeal decided at an earlier date.

With reference to the suggestion made by the Court, I have only to say that your reversal of Captain Sargeant's decision will save me much further expenditure and trouble, circumstances which I trust you will take into consideration.

Atacamund, }
20th Jan'y 1873. }

I am Sir,
Your Obedt. Servant,
(Signed) T. H. Godfrey.

No 3.

Copy.

Revenue Survey Office
Chapank

23 January 1873.

From

The Superintendent Revenue Survey

To

Captain H. Godfrey.

Sir, I have the honor to enclose as requested, the copy of decision on stamped paper. I regret that it is out of my power now to aid you in expediting your case from the delay caused by your forcing this Department to use the powers entrusted to it after every effort to settle the dispute by compromise or arbitration had been rejected.

I have the honor to be

Sir

Your most Obedt Servant.

(Signed) F. Priestley, Col.

Superintendent Rev. Survey.

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*St. Orvieto
place*

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Sheristadar.

Proceedings of the Court of the Deputy Magistrate
of Wynad - Mannutoddy 22nd January 1864.

Read Statement of Captain A. Griffin, Agent to
Mr James Ouchterlong, dated 16th January 1864.

Read Statement of Captain J. H. Godfrey, dated
15th January 1864.

Read Statement of Mr Charles Godfrey, dated
16th January 1864.

Captain Griffin states that the piece of
land on which Mr Charles Godfrey commenced opera-
tions forms part and parcel of a large tract of land
that was leased by Mr Ouchterlong from the Nel-
umboor Rajah in 1857, and that he has exercised the
right of possession by selling portions of it to
various parties.

Captain Godfrey states that he purchased
the portion of land in dispute from Yella Mulla
Chetty about 18 months ago, but that the boundaries
were not marked till about 6 or 8 months ago,
when his Cousin, Mr Charles Godfrey, commenced
opening an estate.

Mr Charles Godfrey states that he pur-
chased 100 acres of this land from Captain Griffin
on the 4th or 5th of October last, when he was placed
in possession and commenced operations.

This dispute has been going on for several
years past and I am myself aware that Mr
Ouchterlong in 1857 leased all the land surrounding
the tract that was purchased by Captain Godfrey
from both the Nelumboor Rajah as well as Yella
Mullah Chetty in 1848, and the tract now in
dispute is situated just beyond the boundary
of his former purchase. I therefore consider that
Captain Godfrey was not justified in either making
the purchase or selling a portion of it to Mr
Charles Godfrey, who states he commenced opera-
tions on the 4th or 5th of October last. Mr Ouchterlong
however, as soon as he became aware of the
circumstance lodged a complaint on the 27th
November last, and orders were issued by
me at once thro' the Sub Magistrate of Goodalier
to stop the work until the question was decided.
On a personal inspection however I found
that Mr Ouchterlong had not marked out
his boundaries properly. Under these cir-
cumstances, and as the dispute is likely
to induce a breach of the Peace, I adjudge
under Sec. 319 of the Code of Criminal Procedure

that neither of the parties shall retain possession
of the tract of land in dispute until a competent
Civil Court shall have determined the rights of the
parties, or who ought to be in possession.

(signed) H. Richardson.

Dy Magatt.

(True copy)

(signed) H. Richardson.

Dy Magatt.

No 6.

Copy.

Proceedings of the Court of the Deputy
Magistrate of Wymad.

Manuntoddy 28th March 1864

Read Proceedings of the High Court of
Judicature at Madras dated 14th March 1864.
and Order thereon.

In conformity with the Order of the
High Court in the case of Beechler v. Godfrey
decided on the 22nd January
1864, I adjudge under Section 318 of
the Code of Criminal Procedure that
Captain Godfrey do retain possession
of the land in dispute until ousted
by due course of Law, and forbid all
disturbance of possession
time.

(Signed) H. Richardson.
Deputy Magistrate. 21

(True Copy)
(Signed) H. Richardson
By Magistrate.

To
Captain J. H. Godfrey.

Memo: for Orders on N^o 523.

In G. O. dated 28th
September 1872 N^o 1363 the Govt
reviewed the papers connected
with a dispute between Captain
Godfrey (Memorialist) and
Mr. Buchterlong regarding the
title to certain land, which
dispute Captain Sargeant and
Colonel Pissotley had dealt with
as one falling within the
provisions of Act 28 of 1860
(The Boundary Act).

A decision of the kind
can only be set aside by regular
suit in the Civil Court filed
within two months after the
date of the decision or within
such extension of time as may
be

be granted by the Govt in Council.

In the G. O. of the 28th Sept^r above quoted the Govt^r stated their opinion that Captain Godfrey might argue that he had reason to suppose that the Proceedings were altogether ultra vires, and consequently resolved to extend the time allowed for appeal up to the 31st Dec^r 1872, and directed that if within that time no injunction was received from the Privy Council, the Survey Officers might proceed with the demarcation in accordance with the decision.

It appears now that the Privy Council have dismissed Captain Godfrey's appeal on the ground that Captain Sargraunt has
no

11/25
no power by virtue of his office to dispose of cases falling under Act 28 of 1865, and that as the decision does not show on its face that he had been specially empowered to deal with such cases, the Court must regard the decision as passed without jurisdiction.

The appeal was thus dismissed not on the merits of the case, but because there is no necessity to appeal against a decision which in itself amounts to nothing.

In the meantime the demarcation in accordance with the decision has been completed.

Captain Godfrey now prays
(1) That the demarcation be obliterated.
(2) That he be reimbursed the expenses (Rs. 4,000 or more)
he

he has been put to in com-
bating the Survey Officers'
blunders.

The courses open to Govt. ap-
pear to be:-

1st To remove the demarcation
marks and to reimburse
Captain Godfrey his costs so
far as they were necessarily incurred.

2^d To remove the boundary
marks but to decline to
reimburse the costs on the
ground that the case has
not been decided on its merits.

3^d To decline either to
remove the boundary marks
or to pay the expenses on the
ground that Captain Tar-
graunt had been empowered
to dispose of such cases, and
that the Court having merely

decided

decided that the decision was
null on the ground of in-
formality, it is still open
to Captain Targraunt to wait
a new and formal decision.

In favour of the first
course it is to be noted that
the papers incorporated with
G. O. dated 24th Sept. 1872
go to show that the Members
of Govt. were of opinion that
the case in question was not
a fit one for the interference
of the Survey Officers, and
in the proceedings of the Civil
Court dated 10 January 1873.

No. 1. The Judge suggests that
Captain Godfrey should apply
to the Supt. of Revenue Survey
to revise his subordinate's
decision until nothing of it
is left.

is left, and proceeds pretty
clearly to intimate his opinion
that the dispute was one with
which the Dept had nothing
whatever to do. If the case
comes finally to be decided
on its merits by that tribunal
there seems little doubt that
the judgment will go against
the Surveying Officer.

Captain Sirignault is
at present at home and
consequently will be unable
to write a formal decision
until he returns. In the
meantime if Captain Godfrey
or Mr. Ouchterlony remove
the demarcation marks
themselves it is exceedingly
doubtful whether they
will

12 29
will be liable to punishment
either under section 9 of the
Boundary Act, or under the
Penal Code.

A concise resumé of the
matter in dispute between
Captain Godfrey and Mr.
Ouchterlony is given in G.O.
dated 28. Sept. 1872 -

H.

I entirely concur

M.E

I agree

S. J. M. D.

As the Court has
declared the de.
Marston null &
void we have no
alternative but
to counsel it - &
re. in House of
 Lords the Exchequer
which he has in-
correct. I.O.S.

Memorandum

Capital & Co's
Memorial regarding
the land in Wyndham

Chas

313

[Signature]

No. 446.

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 1st ^{May} April 1873.

Read the following letter from

Captain Godfrey.

Forwarding a Memorial
and papers referred to therein
regarding his land in Mysore
or submission to the Governor
Council.

H.E. 20 February 1873

10.

1. With his Memorial
Captain Godfrey transmits
a copy of the Order passed
by the District Court at
Calicut on an appeal
presented by him against
a decision passed by
Captain Serjaunt, A.P.
Superintendent of Revenue
Survey under Act 28 of 60.

2. The Court dismissed
the appeal on the ground
that the decision, having
been

2. 15. March 1938 R 1st Upv.

4. On mature consideration

5. This resolution will be communicated to Captain Gosfrey and he will be requested to submit to Government a list of his expenses accompanied by such papers as may support the necessity of any particular expenditure.

135.C. Gift of Rev Henry Dear 8 May/23
1 " Capt. for 2 years — " — 10 —