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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No. / B.P. No.	128	Press / Mis.
Dated	28 th Jan	1874 ~~196~~ .

Not to be folded or roughly handl

No. 248. Read the following letter from J. OUCHTERLONY, Esq., to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated London, 25th November 1873:—

In compliance with the direction contained in the annexed letter of the 9th ultimo from the Secretary, Revenue Department, of the India Office, I have the honour to request that the Right Honourable the Governor in Council will be pleased to forward the accompanying mem[illegible]orial (submitted in triplicate) to His Grace the Secretary of State for India in C[illegible]uncil.

2. To prevent misapprehensio[illegible] and seeing that Mr. Secretary Anderson's above-quoted letter refers to my [illegible] as "on the subject of disputes with Captain Godfrey relative to some la[illegible]naad," I would beg to be permitted to observe that my object is not, and h[illegible] any time been, to submit the merits of these disputes to the consideration [illegible]rnment,—my allusion to them having been solely, as it were on compul[illegible] following the proceedings of Government,—but to base my appeal as agai[illegible]urse pursued by the Executive Administration, which I am led to believe to [illegible]sed to my just rights as an independent British subject.

3. As it is my desire, in sub[illegible] the accompanying memorial, to make the case as complete as possible, [illegible] the honour to request that the Right Honourable the Governor in Council [illegible] pleased to cause to be forwarded therewith to the India Office copies of th[illegible]s, of which a list is subjoined, and the contents of which have not hithert[illegible] communicated to me. I would, also, further respectfully solicit that a cop[illegible] present letter may be sent with them.

1. Letter from the Collector of Malabar [illegible]ernment, or to the Government through the Board of Revenue, dated in or abou[illegible]nning of March 1872, in which allusion is made to the tenour of Captain Godfr[illegible]f 1848 from the Nellumbore Tirupad I am led to believe that the version here[illegible]s as erroneous as that recapitulated in the G. O. of 28th September 1872, N[illegible]paragraph 9, Note B), as Captain Godfrey's translation of the original deed.
2. Captain Godfrey's petition to Governm[illegible] April 1872, alluded to in the same G. O. of 28th September 1872, as No. 170.
3. Captain Godfrey's letter of 10th Aug[illegible]uded to in the same as No. 177.
4. Captain Godfrey's memorial of 20th F[illegible]3, alluded to in Government Proceedings of 1st May 1873.
5 and 6. Captain Godfrey's letters to [illegible]n May and in July 1873, with the orders thereon, having relation to the bo[illegible] set by the officer appointed to such duty under Act XXVIII. of 1860.
7. Captain Godfrey's letter to Governm[illegible]g detail of expenses "necessarily incurred in combating Captain Sargeaunt's [illegible]de paragraphs 3 and 4 of order of 1st May 1873.
8. Order of Government on the above, sa[illegible] payment of Rs. 3,500 of public money to Captain Godfrey. The newspapers [illegible]cly that such a payment had been made. Having some acquaintance with the [illegible]licial proceedings, and as in this case there appears to have been no regular suit, [illegible] appeal and a Court's order, a "necessary" expenditure of Rs. 3,500 upon the p[illegible] seems impossible.

From H. L. ANDERSON, Esq., Secretary, Revenue Department, to J. OUCHTERLONY, Esq., dated India Office, S.W., 9th October 1873, No. 8,144.

I AM directed by the Secretary of State for India in Council to acknowledge the receipt of your memorial, dated 12th August, on the subject of your disputes with Captain Godfrey relative to some land in Wynaad, and to inform you, in reply, that the memorial should, in accordance with the rule maintained in this office, be forwarded to the Duke of Argyll in Council through the Government of Madras.

—

ENC... BER No. 1.

TO HIS GRACE THE DUKE OF ARGYLL, ...
Her Majesty's Principa... of State for India.

...lumble Memorial of JAMES OUCHTERLONY, ...Ouchterlony Valley, Numblacode Umshom, ...naad.

SHEWETH,

That your memorialist finds himself un... ...ous necessity of making an appeal to your Grace against the acts of the Government of ... ...der the following circumstances.

2. That your memorialist craves leav... ...instance, to give a brief prefatory explanation, in view to elucidate the position wh... ...cupies :—

3. (*a.*) In May 1845, memorialist was ... ...y the cultivation of coffee in a valley in Wynaad (now known as the Ouchterlony Va... ...cordingly applied for land for the purpose to the then Collector of Malabar, Mr. H. ... Mr. Conolly replied that the land was ...llamboor Teroopad as the proprietor. Eventually, with the full cognizance and c... ...f the said Collector, memorialist took a grant of land, in December 1845, from the ...d.

(*b.*) In 1848, a Captain Godfrey of ... Army obtained a grant for a portion of land in the same valley from the same Te... ...m he acknowledged as proprietor), such act being consequent upon the Teroopad den... ...t of certain other parties who had made an assignment of land to him (Godfrey).

(*c.*) In the year 1855, the said Capt... having entered within the boundary of memorialist's land (under pretext of his own... ...ing so far), a reference to the Magistrate grew thereout, and the inquiry of the Mag... ...osed by the said Captain Godfrey giving an undertaking, in writing, to leave the dis... possession of memorialist till a decision should be arrived at in a Court of law.

(*d.*) In 1857, memorialist took anot... land in the same valley from the said Nellamboor Teroopad, by which he obtai... nd encircling that of the said Captain Godfrey, and excepting from the area there... ...ific quantity already assigned to Captain Godfrey, which was 600 cawnies (800 acres...

(*e.*) The said Captain Godfrey having ... ed upon memorialist's land in 1861, a suit was filed for trespass, which was met b... ...ction for trespass, and another suit was also instituted by memorialist against the ... Godfrey to compel a demarcation of boundaries ; but all these fell through on ...unds, and left nothing authoritatively decided.

(*f.*) In 1866, the said Captain Go... an action against the said Nellamboor Teroopad to cancel the deed of 1848 on th... fraud, and joined as defendants to the same suit memorialist and others whom he'... dispossess of certain coffee estates. The decision of the Courts, both original and a... that the said deed of 1848 could not be disputed, and dismissed the suit generally ... of misjoinder. But the High Court of ... the suit brought on an alleged title

4. That your memorialist begs to represent that he has not entered into the foregoing recital under any view of seeking an opinion from your Grace upon the controversy between himself and Captain Godfrey ; for he is sensible how such can only be determined in due course of law ; and that, indeed, the whole object of his present appeal is to secure such "due course of law" from what he humbly deems to be an unauthorized interference.

5. That all legal action in respect of these disputes between memorialist and the said Captain Godfrey remained in abey... from the aforesaid suit of 1866, until, in 1870, the Government of Madras, by an order, da... , published in the *Fort St. George Gazette*, ... the 23rd idem, formally invested Captain ...rgeaunt, Assistant Superintendent of Revenue Survey, with the powers conferred on of... ...d by Government for purposes of demarcation under Act XXVIII. of 1860.

Appendix A.

6. That the said Act XXVIII. of ... ne passed "for the establishment and main- ...nance of boundary marks and *for facilitating ... settlement of boundary-disputes* in the Presidency of Fort St. George ;" and that ... provisions may be summarized as follows :—

Appendix B.

(*a.*) Any Collector or Revenue S... officer or other officer appointed by Government can exercise the powers given unde...

(*b.*) Such officer may call for all gr... ...e-deeds, etc., of land, and register the same.

(*c.*) If arbitration is assented to b... ...nterested in boundaries under dispute, then the award under such arbitration (with certa... ...ry restrictions) is to be final.

(*d.*) If arbitration be not agreed t... he officer is, after a due investigation of the respective claims, to record his decision ... rounds for it, and, after informing the parties of the same, "*he shall proceed to mark o... equisite boundaries in accordance with the decision* ;" and this, subject to the revisi... officer's immediate superior, is to be considered as the *determination* of all claims and d... ...ntil set aside by a formal decree of a Civil Court. An appeal to the Civil Court fro... ...sion *by regular suit* is allowed, provided the same be preferred within a limit of *two* ... But the Government, on just and reasonable cause shown, may extend this period, an... *r or endorsement by a Secretary of Government* shall be sufficient authority for an ...eal of appeal beyond the two months' limit.

7. That in the same year, 1870, C... ...eaunt commenced his survey of your memorialist's estates, when the said Captain G... ...ediately raised a dispute upon the question of the land each was entitled to.

8. That in the investigation co... ...on such dispute all the requirements of the ...ct were fully observed, with the result that

Appendix E, paragraphs 24 to 28.

ment officer was in favour of your ... he decision by the duly appointed Government officer. That this decision was given on the *30th January* 1871.

9. That the said Captain Godfre... appealed to Captain Sargeaunt's immediate ...perior, Colonel Priestley, who, after due ...vestigation, confirmed the original decision on the *6th May* 1871.

Appendix E, paragraph 29.

10. That a period of two month... of fact of *fourteen* months,—from the date of the original decision elapsed without a... ainst it being made in the Civil Court, and that the whole dispute was then naturally e... be at an end.

11. That, however, the said Cap... as it would appear, petitioned the Government on the 2nd April 1872, presumably for an ...xtension of the time for appeal, but that the real tenour of his address is not know... nemorialist beyond the version given by the Government in its order, and which rep... only as seeking "interference in bar of action of Survey Department."

Appendix E, Paper 170.

12. That your memorialist would here venture to submit that if the petition of Captain Godfrey were, indeed, restricted to this request, such would be, on the one hand, an application for an illegal interference, and, on the other, could not justify the grant of what was not prayed for. And that, further, it is open to question whether, after the right of appeal had lapsed by the efluxion of the limited two months, the Govern-

Appendix D.

ment had authority to *revive* that, under the power given by the Act simply to "extend" the term.

13. That on the 28th September 1872 [illegible] recorded Proceedings on the petition

Appendix E, paragraph 38.

Godfrey of the 2nd April, by which December following for an appeal to the Civi[illegible] an extension of time to the 31st your memorialist begs to annex a copy

Appendix E.

id Proceedings, which take the form of unavoidably the grave imperfection of placing judicial investigation, but which have light; for that the Government recital of fa[illegible] issue in a very partial and erroneous

Appendix F, paragraphs 7 to 10.

cal expression of an opinion proceeded accepted as a true (while it was an unfaith[illegible] ery limited acquaintance with the papers

Appendix E, paragraph 9, note B.
Appendix F, paragraphs 3 to 5.

ase. That the Government, moreover, of an important document, what one unsubstantiated statements of a "plaint" in [illegible] d party *represented* as its purport, ny call for the production of the actual

Appendix E, paragraph 11.
Appendix F, paragraph 6.

d, also, took as a recital of "facts" the endorsement to that effect by one of the Secr[illegible] your memorialist humbly submits that cannot be denied that such an order as that act Government had resolved to extend the could not fail to create an undue bias in man[illegible] appeal to the Civil Court no further

14. That, however, the portion of the [illegible] as required under the Act than an memorialist humbly desires to bring under th[illegible] vernment; and that he apprehends it when publicly promulgated (as it was),

Appendix E, paragraphs 39 to 41.

torily *required by Section* 25 *of the* Ac[illegible] he 28th September 1872, which your throughout obeyed, as he always considers he[illegible] e of your Grace, is, that which directly legislature; and that he deems it a grievous h[illegible] with the marking out of the boundaries prescribed course of law, the Executive Gove[illegible] rdance with the decision" as peremp- officers, duly empowered to act under the[illegible] f 1860. That your memorialist has unreservedly prescribed to them. And that[illegible], the plain provisions of an Act of the

Appendix E, paragraph 39.
Appendix H.
Appendix I.

when certain results follow from such use its power to step in and say to its they shall not pursue the conduct

Appendix C, four last paragraphs.

ist considers himself the more entitled representation that Captain Godfrey's estate h[illegible] ain, because the Government, in its was referred to the Survey officer for a verifi[illegible] h 39, forbids its officers taking "further 15. That, under the permission given b[illegible] the matter of defining Captain God- have presented an appeal against Captain Sa[illegible] tate," while it had before it, in which appeal, it seems, was returned for amend[illegible] share's letter of 5th April 1872, a

Appendix L.

dy demarcated, and the Government [illegible] me.

[illegible] the said Captain Godfrey appears to [illegible] ision to the Civil Court at Calicut, [illegible] ntually presented on the 5th February [illegible] n an order was passed on the same [illegible] ting it for reasons stated. That your [illegible] and, therefore, could not be bound by [illegible] the fact that the appeal was rejected;

and that, as a "*formal decree*" in a "*regular suit*" is required by the Act to "set aside" a decision by the duly appointed officer, so the decision of Captain Sargeaunt remained valid until [illegible] so overruled. That, as questions of fact, Captain

Appendix A.

Sargeaunt *had been* "especially empowered by Government under the Act" (the *Fort St. George Gazette* is sent officially to the Courts for their information and *guidance*, and thus its appointments are bound to be officially recognized); and it could have been equally shown, as regards "[illegible] no demarcation" (of Captain Godfrey's land)

Appendix C. Four last paragraphs.

"subsequently taking place," that such demar- [illegible] ion *was* actually made.

16. That subsequent proceedin[illegible] of the Gove[illegible] ment have, however, greatly aggravated the grievance inflicted on your memorial[illegible] it now appears, the said Captain Godfrey addressed a petition to Government on t[illegible] ruary last, (with the contents of which your memorialist is unacquainted) conveying [illegible] e foregoing order of the Civil Court. That

Appendix M.

[illegible] the 1st May the Government passed orders [illegible] on the same, recapitulating the simple fact, that the Civil Court had said that an officer who required a special authorization to adjudicate should have shown that authorization on the face of his decision, and that, from Captain Sargeaunt not having done so, his decision was passed "without jurisdiction;" and that accordingly the Government resolved, *first*, to direct the Survey Department to *remove the boundary-marks placed in accordance with Captain Sargeaunt's decision*; and, *secondly*, to reimburse Captain Godfrey for all the expenses he had been put to. That no part of these proceedings was communicated to your memorialist or his representative in India by the Government; and that he owes a knowledge of the order passed solely to Captain Godfrey having attached apparently such importance to it, that he sent a copy of the same to your memorialist's representative.

17. That your memorialist is advised that the purely technical difficulty raised by the Civil Court constitutes, and can constitute, no valid objection to the decision of a duly empowered officer, besides that it cannot affect one who was made no party to the proceedings that elicited the remarks. That the character of the Government action upon it is the most grievous hardship your memorialist has yet endured at its hands, seeing how, in the exercise of an arbitrary power, it tends entirely to frustrate nearly thre[illegible] simple obedience to the requirements of the law, and, in combination with the other[illegible] e Government, has subjected your memorialist to heavy expenses, not to speak of atte[illegible] and anxiety. That your memorialist entirely admits, as he has before observed, that [illegible] between private individuals as to their respective rights are only to be decided in du[illegible] law, and that he himself seeks no interference of any kind on his own behalf by the ex[illegible] ority. But that he humbly considers that he should be equally freed from all simil[illegible] ce to his prejudice; and that his respectful prayer, therefore, is, that your Grace [illegible] d to interpose in restraint of the action of the Government of Madras by cancelling [illegible] rders, (viz., paragraphs 39, 40, and 41, of the 28th September 1872, Proceedings [illegible] ber 1872, as far as regards interference with demarcation, and paragraph 4 of 1st [illegible] 3), and by directing the Government to pass no further order which may have the effe[illegible] ing with the action of the officers appointed under Act XXVIII. of 1860 in follo[illegible] t that Legislative enactment plainly enjoins them to do.

And your memorialist, as in dut[illegible] ever humbly pray.

(Signed) J. OUCHTERLONY.

London, 21*st July* 1873.

P. S. That your memorialist has [illegible] submission of this memorial to your Grace in

Appendix P.

Appendix R.

view to receiving the order of the Government arrived, and that its tenour precludes [illegible] of Madras on a representation made by him on hands of the Madras Government. [illegible] he 2nd May last. That such order has now

12*th August* 1873.

(Signed) J. OUCHTERLONY.

ENCLOSURE No. 2.

LIST OF DOCUMENTS IN APPENDIX.

PAGES.

A. Extract from *Fort St. George Gazette* of 23rd August 1870, investing Captain Sargeaunt with powers under Act XXVIII. of 1860. ... ... i.

B. Extracts from Act XXVIII. of 1860, showing its *object* and *the powers and duties* of officers duly appointed under it. ... ... ii.

C. H. Wapshare's letter to Government ... April 1872 (alluded to in Appendix E as paper No. 171), praying a refus... odfrey of an extended time for appeal, *and informing Govern... ain Godfrey's land had been already demarcated in accorda... n Sargeaunt's decision.* ... iii.

D. J. Ouchterlony's letter to Government ... ust 1872, arguing the point of the legality of *extension of time aft...* f the ordinary right of appeal. .. iv.

E. Proceedings of Government of 28th Se... granting an extension of time for appeal, and *ordering arrest of dem...* ... ... v.

F. Petition by J. Ouchterlony of 15th November 1872, praying a re-consideration of the order of 28th September 1872, on the ground of *divers errors in its recital of facts* and its *interference with the duties enjoined upon the officer* appointed under the Act. ... ... ix. xi.

G. Government Order thereon, 19th December 1872. ... ...

H. Government Proceedings of 18th October 1872, further *interfering with the demarcation.* ... ... xii.

I. J. Ouchterlony's petition to Government of 20th November 1872 on the order of 18th October ... ... xiii. xiv.

K. Government Order of 24th January 1873 on the above. ... ... xiv.

L. Proceedings of the Civil Court of Ca... t of 5th February 1873, *rejecting Captain Godfrey's appeal for reasons s... ed.* ... ... xv.

M. Government proceedings of the 1st M... 1873 ...ering *a removal of the boundary marks placed in accordance wit... rgeaunt's decision* and a reimbursement to Captain Godfrey of his ex... ... ... xvi.

N. H. Wapshare's letter to Government o... 73, on the above. ... ... xvi.

O. Government Order thereon, 17th May ... ... xvi.

P. J. Ouchterlony's letter to Government ... 873, recapitulating the proceedings under Act XXVIII. of 1860, and ... the demarcation according to the decision should be proceeded with. ... ... xvi.

R. Government Order thereon, 18th June ... ... xvii.

No. 249. ORDER THEREON, ...ry 1874, No. 128.

Miscellaneous.

...R. OUCHTERLONY is informed that ...morial has been received, and will ...nsmitted to the Secretary of State.

(...)

D. F. CARMICHAEL,
Secretary to Government.

To J. Ouchterlony, Esq.

Exd. F. R. Bantleman.

Govt. of 1874 Madras.

REVENUE.

J. OUCHTERLONY, Esq.

JANUARY.
Nos. 248-249.

Memorial.—Informing Mr. Ouchterlony that his — will be transmitted to the Secretary of State.

128

To His Grace the Duke of Argyll, K.T. *Her Majesty's Principal Secretary of State for India.*

The Humble Memorial of James Ouchterlony, of Ouchterlony Valley, Numblacode Umshom, Wynaad.

Sheweth,

That your Memorialist finds himself under the onerous necessity of making an appeal to your Grace against the acts of the Government of Madras, under the following circumstances.

2. That your Memorialist craves leave in the first instance to give a brief prefatory explanation, in view to elucidate the position which he now occupies.

3. (*a*) In May 1845, Memorialist was induced to try the cultivation of coffee in a valley in Wynaad (now known as the Ouchterlony Valley), and accordingly applied for land for the purpose to the then collector of Malabar, Mr. H. V. Conolly. Mr. Conolly replied that the land was private property, and referred Memorialist to the Nellamboor Teroopad as the proprietor. Eventually, with the full cognisance and concurrence of the said collector, Memorialist took a grant of land, in December 1845, from the said Teroopad.

(*b*) In 1848, a Captain Godfrey of the Bombay army, obtained a grant for a portion of land in the same valley, from the same Teroopad (whom he acknowledged as proprietor), such act being consequent upon the Teroopad denying the right of certain other parties who had made an assignment of land to him (Godfrey).

(*c*) In the year 1855, the said Captain Godfrey having entered within the boundary of Memorialist's land (under pretext of his own limits extending so far), a reference to the Magistrate grew thereout, and the enquiry of the Magistrate was closed by the said Captain Godfrey giving an undertaking, in writing, to leave the disputed land in possession of Memorialist till a decision should be arrived at in a Court of law.

(*d*) In 1857, Memorialist took another grant of land in the same valley, from the said Nellamboor Teroopad, by which he obtained all the land encircling that of the said Captain Godfrey, and excepting from the area thereof only the specific quantity already assigned to Captain Godfrey, which was 600 cawnies (800 acres).

(*e*) The said Captain Godfrey having again entered upon Memorialist's land in 1861, a suit was filed for trespass, which was met by a counter action for trespass, and another suit was also instituted by Memorialist against the Teroopad and Godfrey to compel a demarcation of boundaries; but all these fell through on technical grounds, and left nothing authoritatively decided.

(*f*) In 1866, the said Captain Godfrey brought an action against the said Nelamboor Teroopad to cancel the deed of 1848, on the ground of fraud; and joined, as Defendants to the same suit, Memorialist and others whom he claimed to dispossess of certain coffee estates. The decision of the Courts, both original and appellate, held that the said deed of 1848 could not be disputed; and dismissed the suit generally, on the ground of misjoinder. But the High Court of Madras intimated that, had the plaint been amended, and the suit brought on an alleged title said to be derived from another party, it might have been allowed. This suggestion however was not, and has never since been, acted upon.

4. That your Memorialist begs to represent that he has not entered into the foregoing recital under any view of seeking an opinion from your Grace upon the controversy between himself and Captain Godfrey; for he is sensible how such can only be determined in due course of law: and that indeed the whole object of his present appeal is to secure such "due course of law" from what he humbly deems to be an unauthorized interference.

5. That all legal action in respect of these disputes between Memorialist and the said Captain Godfrey remained in abeyance from the aforesaid suit of 1866, until, in 1870, the Government of Madras, by an order dated 16th August, published in the "Fort St. George Gazette" of the 23rd idem, formally invested Captain Sargeaunt Assistant Superintendent Revenue Survey, with the powers conferred on officers appointed by Government for purposes of demarcation under Act XXVIII. of 1860.

Appendix A.

6. That the said Act XXVIII. of 1860, was one passed "for the establishment and maintenance of boundary marks and *for facilitating the settlement of Boundary disputes* in the Presidency of Fort St. George"; and that its leading provisions may be summarized as follows:—

Appendix B.

(*a*) Any Collector, or Revenue Settlement Officer, or other Officer appointed by Government, can exercise the powers given under the Act.

(*b*) Such Officer may call for all grants, title deeds, &c. of land, and register the same.

(*c*) If arbitration is assented to by parties interested in Boundaries under dispute, then the award under such arbitration (with certain necessary restrictions) is to be *final*.

(*d*) If arbitration be not agreed to, then the Officer is, after a due investigation of the respective claims, to record his decision and the grounds for it, and, after informing the parties of the same, "*he shall proceed to mark out the requisite Boundaries in accordance with the decision*;" and this, subject to the revision of the Officer's immediate superior, is to be considered as the *determination* of all claims and disputes until set aside by a formal decree of a Civil Court. An appeal to the Civil Court from the decision *by regular suit* is allowed, provided the same be preferred within a limit of *two months*. But the Government, on just and reasonable cause shewn, may extend this period, and *an order or endorsement by a Secretary of Government* shall be sufficient authority for an entertainment of appeal beyond the two months limit.

7. That in the same year 1870, Captain Sargeaunt commenced his survey of your Memorialist's Estates, when the said Captain Godfrey immediately raised a dispute upon the question of the land each was entitled to.

8. That in the investigation consequent upon such dispute, all the requirements of the Act were fully observed,—with the result that the decision by the duly appointed Government Officer was in favour of your Memorialist. That this decision was given on the 30*th January* 1871.

Appendix E. paras. 24 to 28.

9. That the said Captain Godfrey thereupon appealed to Captain Sargeaunt's immediate superior, Colonel Priestly, who, after due investigation, confirmed the original decision on the 6*th May* 1871.

Appendix E. para. 29.

10. That a period of two months, in point of fact of *fourteen* months, from the date of the original decision elapsed without any appeal against it being made in the Civil Court, and that the whole dispute was then naturally concluded to be at an end.

129/16

11. That, however, the said Captain Godfrey, as it would appear, petitioned the Government on the 2nd April 1872, presumably for an extension of the time for appeal, but that the real tenour of his address is not known to your Memorialist beyond the version given by the Government in its order, and which represents this only as seeking "interference in bar of action of Survey Department."

Appendix E., Paper 170.

12. That your Memorialist would here venture to submit that if the Petition of Captain Godfrey were indeed restricted to this request, such would be on the one hand an application for an illegal interference, and on the other could not justify the grant of what was not prayed for. And that further it is open to question whether, after the right of appeal had lapsed by the effluxion of the limited two months, the Government had authority to *revive* that, under the power given by the Act simply to "extend" the term.

Appendix D.

13. That on the 28th September, 1872, the Government recorded proceedings on the Petition of Captain Godfrey of the 2nd April, by which it granted an extension of time to the 31st December following for an appeal to the Civil Court. That your Memorialist begs to annex a copy of the said proceedings, which take the form of a *quasi*-judicial investigation, but which have unavoidably the grave imperfection of placing the case at issue in a very partial and erroneous light. For that the Government recital of facts and practical expression of an opinion, proceeded upon a very limited acquaintance with the papers in the case. That the Government moreover accepted as a true (while it was an unfaithful) version of an important document, what one interested party *represented* as its purport, without any call for the production of the actual deed; and also took as a recital of "facts" the unsubstantiated statements of a "plaint" in Court. That your Memorialist humbly submits, that when the Government had resolved to extend the time for appeal to the Civil Court, no further record was required under the Act than an endorsement to that effect by one of the Secretaries to Government: and that he apprehends it cannot be denied that such an order as that actually passed, when publicly promulgated (as it was), could not fail to create an undue bias in many minds.

Appendix E., para. 38.
Appendix E.
Appendix F., paras. 7 to 10.
Appendix E., para. 9, note B.
Appendix F., paras. 3 to 5.
Appendix E., para. 11.
Appendix F., para. 6.

14. That, however, the portion of the said order of the 28th September 1872, which your Memorialist humbly desires to bring under the special notice of your Grace, is that which directly interferes with the marking out of the boundaries in "accordance with the decision" as peremptorily *required by Section* xxv. *of the* Act XXVIII. of 1860. That your Memorialist has throughout obeyed, as he always considers he is bound to do, the plain provisions of an Act of the legislature; and that he deems it a grievous hardship that, when certain results follow from such prescribed course of law, the Executive Government shall use its power to step in, and say to its officers—duly empowered to act under the Statute—that they shall not pursue the conduct unreservedly prescribed to them. And that your Memorialist considers himself the more entitled to complain, because the Government, in its paragraph 39, forbids its officers taking "further action in the matter of defining Captain Godfrey's "Estate," while it had before it, in Mr. Wapshare's letter of 5th April 1872, a representation that Captain Godfrey's Estate *had been already demarcated*, and the Government was referred to the Survey Officer for a verification of the same.

Appendix E., para. 39.
Appendix H.
Appendix I.
Appendix C., four last paras.

15. That under the permission given by Government, the said Captain Godfrey appears to have presented an appeal against Captain Sargeaunt's decision to the Civil Court at Calicut, which appeal it seems was returned for amendment, and eventually presented on the 5th February 1873, when an order was passed on the same day, rejecting it for reasons stated. That your Memorialist was *no party in any way* to these proceedings, and therefore could not be bound by any remarks of the Court. That he was simply concerned

Appendix L.

in the fact that the appeal was rejected; and that, as a "*formal decree*" in a "*regular suit*" is required by the Act to "set aside" a decision by the duly appointed officer, so the decision of Captain Sargeaunt remained valid until so overruled. That, as questions of fact, Captain Sargeaunt *had been* "especially empowered by Government under the Act" (the *Fort St. George Gazette* is sent officially to the Courts for their information and *guidance*, and thus its appointments are bound to be officially recognised); and it could have been equally shown, as regards "no demarcation" (of Captain Godfrey's land) "subsequently taking place," that such demarcation *was* actually made.

Appendix A.

Appendix C. Four last paras.

16. That subsequent proceedings of the Government have, however, greatly aggravated the grievance inflicted on your Memorialist. That, as it now appears, the said Captain Godfrey addressed a Petition to Government on the 20th February last (with the contents of which your Memorialist is unacquainted) conveying a copy of the foregoing order of the Civil Court. That on the 1st May the Government passed orders on the same, recapitulating the simple fact, that the Civil Court had said that an officer who required a special authorisation to adjudicate should have shown that authorisation on the face of his decision, and that, from Captain Sargeaunt not having done so, his decision was passed "without jurisdiction;" and that accordingly the Government resolved; *first*, to direct the Survey Department to *remove the boundary marks placed in accordance with Captain Sargeaunt's decision;* and, *secondly*, to reimburse Captain Godfrey for all the expenses he had been put to. That no part of these proceedings was communicated to your Memorialist or his representative in India by the Government; and that he owes a knowledge of the order passed solely to Captain Godfrey having attached apparently such importance to it, that he sent a copy of the same to your Memorialist's representative.

Appendix M.

16. That your Memorialist is advised that the purely technical difficulty raised by the Civil Court constitutes, and can constitute, no valid objection to the decision of a duly empowered officer, besides that it cannot affect one who was made no party to the proceedings that elicited the remarks. That the character of the Government action upon it is the most grievous hardship your Memorialist has yet endured at its hands, seeing how, in the exercise of an arbitrary power, it tends entirely to frustrate nearly three years of simple obedience to the requirements of the law, and, in combination with the other acts of the Government, has subjected your Memorialist to heavy expenses, not to speak of attendant worry and anxiety. That your Memorialist entirely admits, as he has before observed, that contentions between private individuals as to their respective rights are only to be decided in due course of law, and that he himself seeks no interference of any kind on his own behalf by the Executive authority. But that he humbly considers that he should be equally freed from all similar interference to his prejudice; and that his respectful prayer therefore is, that your Grace will be pleased to interpose in restraint of the action of the Government of Madras, by cancelling its various orders, viz., paragraphs 39, 40, and 41 of the 28th September 1872, proceedings of 18th October 1872, as far as regards interference with demarcation, and paragraph 4 of 1st February 1873; and by directing the Government to pass no further order which may have the effect of interfering with the action of the officers appointed under Act XXVIII. of 1860 in following out what that Legislative enactment plainly enjoins them to do.

And your Memorialist as in duty bound will ever humbly pray.

London, 21st July 1873. L. Ouchterlony

P. S. That your Memorialist has delayed the submission of this Memorial to your Grace in view to receiving the order of the Government of Madras on a representation made by him on the 2nd May last. That such order has now arrived, and that its tenour precludes the hope of your Memorialist obtaining any redress at the hands of the Madras Government. L. Ouchterlony

Appendix P.

Appendix R.

LIST OF DOCUMENTS IN APPENDIX.

A Extract from *Fort St. George Gazette* of 23rd August 1870, investing Captain Sargeaunt with powers under Act XXVIII. of 1860. Page i.

B Extracts from Act XXVIII. of 1860 showing its *object* and *the powers and duties* of officers duly appointed under it. ii.

C H. Wapshare's letter to Government of 5th April 1872 (alluded to in Appendix E as paper No. 171), praying a refusal to Captain Godfrey of an extended time for appeal, *and informing Government that Captain Godfrey's land had been already demarcated in accordance with Captain Sargeaunt's decision.* iii.

D J. Ouchterlony's letter to Government of 30th August 1872, arguing the point of the legality of *extension of time after the lapse* of the ordinary right of appeal. iv.

E Proceedings of Government of 28th September 1872, granting an extension of time for appeal, and *ordering arrest of demarcation.* v.

F Petition by J. Ouchterlony of 15th November 1872, praying a reconsideration of the order of 28th September 1872, on the ground of *divers errors in its recital of facts*, and its *interference with the duties enjoined upon the officer* appointed under the Act. ix.

G Government order thereon, 19th December 1872. xi.

H Government proceedings of 18th October 1872, further *interfering with the demarcation.* xii.

I J. Ouchterlony's petition to Government of 20th November 1872 on the order of 18th October. xiii.

K Government order of 24th January 1873 on the above. xiv.

L Proceedings of the Civil Court of Calicut of 5th February 1873, *rejecting Captain Godfrey's appeal for reasons stated.* xiv.

M Government proceedings of the 1st May 1873, ordering *a removal of the boundary marks placed in accordance with Captain Sargeaunt's decision*, and a reimbursement to Captain Godfrey of his expenses. xv.

N H. Wapshare's letter to Government of 12th May 1873, on the above. xvi.

O Government Order thereon, 17th May 1873. xvi.

P J. Ouchterlony's letter to Government of 2nd May 1873, recapitulating the proceedings under Act XXVIII. of 1860, and claiming that the demarcation according to the decision should be proceeded with. xvi.

R Government Order thereon, 18th June 1873. xvii.

APPENDIX.

[A]

INVESTITURE OF POWERS, &c.

REVENUE DEPARTMENT.

OOTACAMUND, 16*th August* 1870.

CAPTAIN C. C. SARGEAUNT, Assistant Superintendent Revenue Survey, in charge of the detachment on the Neilgherry Hills, is hereby invested with the powers conferred on Officers appointed by Government for purposes of Demarcation under Act xxviii. of 1860.

Page 1056 *Fort St. George Gazette*, 23rd August 1870.

[B]

Extracts from

ACT No. XXVIII. OF 1860.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

Received the assent of the Governor General on the 29th June 1860.

An Act for the establishment and Maintenance of Boundary Marks, and for facilitating the settlement of Boundary Disputes in the Presidency of Fort Saint George.

WHEREAS it is desirable, with a view to the better definition and security of landed property, the prevention of encroachments and disputes, and the identification of lands assessed to, or exempted from, the public revenue in the Presidency of Fort Saint George, that provision should be made for the establishment and maintenance of permanent marks to distinguish the boundaries of fields, holdings, estates, and villages, and for facilitating the settlement of Boundary disputes and claims; it is enacted as follows:—

Preamble.

Repeal of Act XX of 1855.

I. Act XX of 1855 is hereby repealed.

Collector &c. to fix boundaries of fields, &c., and to require owners or occupants to clear boundary line and form and maintain Boundary marks, &c.

II. It shall be lawful within the said Presidency for a Collector of Land Revenue, or person exercising the powers of Collector or for any Revenue Settlement Officer, and also for any other Officer appointed by the Government for the purpose, whenever he may be of opinion that such demarcation is necessary for the prevention or adjustment of disputes (or for conducting and perpetuating a survey or a settlement of land revenue), to fix the boundaries of fields, holdings, estates, or villages, and to require the owner or occupant of the field, holding, or estate, or the headman (by whatever name designated) of the village, to clear the boundary line where overgrown with jungle, and also to set up, form, and maintain Boundary marks, of such materials, and in such number and manner, as may be determined by such Officer under the direction of the Board of Revenue, or of the Director of Revenue Settlement, as the case may be, to be sufficient to distinguish the limits of the field, holding, estate or village.

Collector to call upon owners or occupants to register and produce title deeds before survey.

III. It shall further be lawful for such Officer aforesaid to call upon the owners or occupants of land about to be surveyed, and also on all persons claiming to have any rights or interests in such lands, to register the rights and titles exercised or claimed by them in the lands, and to produce before him for inspection and registry all grants, title deeds and other documents connected with their claims.

Procedure when parties do not agree to refer their dispute to arbitration, &c.

XXV. Where the conflicting parties may not signify their agreement to refer the dispute to the final decision of arbitrators, or where any of the parties interested or concerned shall after due notice fail to attend for the investigation of the same, the Settlement or other Officer aforesaid shall proceed to investigate the claims, and in the case of any party failing to attend as aforesaid, shall make an *ex parte* investigation and after examination of the witnesses and documents shall record his decision, and the grounds for arriving at it, and after duly informing the parties of the same, he shall proceed to mark out the requisite boundaries in accordance with the decision, which, subject to the revision of the authority to whom the said officer is immediately subordinate, shall be considered as the determination of all claims and disputes until set aside by a formal decree of a Civil Court. An appeal shall lie to the Civil Courts from this decision by regular suit, provided it be preferred within two calendar months from the passing of the same. Provided also that it shall be lawful for the Governor in Council, on

Proviso.

just and reasonable cause for the same being shown, to extend the period for such appeal within such further period as may seem proper, and an order or endorsement under the signature of one of the Secretaries to Government shall be sufficient authority for the Civil Court to entertain such appeal beyond the limit above specified.

Government may invest any subordinate in the Revenue or Survey Department with powers under this Act.

XXX. It shall be lawful for the Governor in Council to invest any of the Subordinates of the ordinary Revenue establishments, or of the Settlement or Survey departments, with any portion of the powers conferred under this Act.

[C]

To W. HUDDLESTON, ESQ.,

Secretary to the Government at Fort St. George, Madras.

SIR,—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 28, of 1860, has memorialised Government to extend the time that he is allowed by said section of said Act, to file a suit against the award of Colonel Priestly, Superintendent Revenue Survey.

I most respectfully submit that Captain Godfrey has no reasonable cause that an extended period should be allowed 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 a particle of title or legal right, has been claiming lands from Mr. Ouchterlony.

I would first pray the Government to peruse Mr. Assistant Magistrate Tod's report (the report is in Colonel Priestly's possession), and Mr. Collector Clarke's letter to Mr. Ouchterlony.

Then followed several minor suits in the Mofussil Courts.

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

During the months of December 1870, and January 1871, Captain Sargeaunt, Assistant Superintendent Revenue Survey, working under Act No. 28 of 1860, called upon me for Mr. Ouchterlony's title deeds, and all documents connected with this dispute.

On the 2nd 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 Nellamboor Tirupad, to which deed he was confined by Suit No. 8, of 1866.

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

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

I am of opinion that Captain Godfrey is in actual possession of the following, but a true map of the extent of his acreage can be obtained from the Revenue Officer who has demarcated the lands and placed the stones.

1. Perea Shola, sold by Captain Godfrey	200 acres
2. Umbella Mullai	200
3. Cusroo, sold by Captain Godfrey	191
4. Captain Godfrey's own estate	82 and some roods
5. Ditto ditto	14
Charleston belonging to Captain Godfrey's son	100
	787 acres

And the area that has been surveyed comprises cultivated land and cultivable forest only. Bungalow, stores, pulp-houses, barbacues, lines, cattle sheds, have not been surveyed, and these cover ground which would more than make up his holding 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 have obeyed this order to the letter, whilst Captain Godfrey has been continually trespassing.

I read by Section 25, of Act 28, that this order was powerless after the 11th of July, or two months from Colonel Priestly's decision, but I have 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 up our lands, and I humbly pray for the reasons above given, and from the fact that Colonel Priestly's award was given 11 (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 to appeal in, and that he may be told that the course for him to pursue is the one laid down by the Act.

I have, &c.,

(Signed) H. WAPSHARE.

[D]

To the Secretary to Government Revenue Department, Fort St. George.

Sir,—I have the honour to request that you will submit the undermentioned 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 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 shewn") is to be "the determination of all claims and disputes until set aside by a formal Decree of a Civil Court."

3. At the outset of Captain Sargeaunt's work under Act XXVIII. of 1860, there arose a question of disputed boundary between Captain 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 Priestly, 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 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 memorialised the Government, under the proviso at the end of Sec. XXV., to give him a further time for appealing. My agent, Mr. H. Wapshare, hearing of this, took the liberty of addressing a remonstance 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 that it will be admitted that the clear and palpable intention of the Act XXVIII. of 1860, was to further promptness and finality in the determination of boundary disputes. The processes laid down in sec. XXI. and XXV. (above quoted) seem abundantly to shew 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 applicatfon 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 as of course that if this might be legally done at eight months, there would 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 XXV. sec. 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 time, 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 speak, when application is made to extend or enlarge its term. The "just and reasonable cause" to be shewn 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 XXVIII. of 1860 to assure to me.

I have the honour to be, Sir,

Your most obedient servant,

(Signed) Jas. Ouchterlony.

London, 30th August 1872.

[E]

GOVERNMENT OF (1872) MADRAS.

REVENUE.

To Captain T. H. Godfrey, &c., &c., &c.

Dated September 28th. G.O. 28th September 1872. No. 1,363. September, No. 170—182.

Boundary between Captain Godfrey's estate and that of Mr. Ouchterlony's, on the Neilgherries. Passing orders on the letters from Captain Godfrey and Mr. Wapshare, agent to Mr. Ouchterlony, on the subject.

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

Read the Following Papers:

No. 170. Petition from Captain T. H. Godfrey,

Praying interference of Government on his behalf in bar of action of Survey Department relative to the boundary between his estate and that of Mr. Ouchterlony. (Here enter 2nd April 1872.)

No. 171. From Mr. H. Wapshare, Attorney for Mr. J. Ouchterlony,

Praying Government to reject Captain Godfrey's application for extension of time for appeal against the decision of the Survey Department between his and Mr. Ouchterlony's estate. (Here enter 5th April 1872.)

No. 172. From Mr. H. Wapshare, Attorney for Mr. J. Ouchterlony,

Sending Mr. Ouchterlony's second lease. (Here enter 16th July 1872.)

No. 173. From Mr. H. Wapshare, Attorney for Mr. J. Ouchterlony,

Copy of Appeal suit of 1867. (Here enter 16th July 1872.)

No. 174. Letter from Superintendent, Revenue Survey,

Submitting report of the proceedings of the Survey Department on the above subject. (Here enter 8th July 1872.)

No. 175. Petition from Captain T. H. Godfrey,

Praying that the Revenue Survey authorities be directed not to demarcate the boundaries of his land not in dispute. (Here enter 23rd July 1872.)

No. 176. To Captain T. H. Godfrey,

Calling for the title-deeds of his estate. (Here enter 10th August 1872.)

No. 177. From Captain T. H. Godfrey,

Replying to the above. (Here enter 10th August 1872.)

No. 178. From Captain T. H. Godfrey,

Submitting that, in regard to the decision of the Superintendent of Revenue Survey in regard to his land, he has fully complied with the requirements of Act XXVIII. of 1860.) Here enter 16th August 1872.)

No. 179. From Captain T. H. Godfrey,

Forwarding plan of his estate called for by Government. (Here enter 17th August 1872.)

No. 180. From Captain Sargeaunt, Assistant-Superintendent of Revenue Survey,

Showing the action the Survey Department had taken in the case of dispute between Captain Godfrey and Mr. Ouchterlony about their lands.

No. 181. From Mr. J. Ouchterlony,

Submitting for consideration certain circumstances and observations, under Act XXVIII. of 1860. (Here enter 30th August 1872.)

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 the land in the so-called "Ouchterlony Valley," based upon titles derived from the Nellumbar 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 follows :—

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 the 15th January 1856, states that the people resident in that part of the country recognised the identity of "Mukurichi Mullay and Nilgiri Mullay."

8. On the 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 "Dodda Gudda Nillum" to the Panda river, which river forms the northern boundary, the south point being a tree called Pandah and the western the Corah Colly hill.

9. From Mr. Tod's report it would appear that the eastern point is described as a hill and swamp called "Dodda Gudda Nillum," which is to the north and attached to the large hill called "Yella Mulla," and he states that on inspection he found that "Dodda Gudda" and "Yella Mulla," 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.

NOTE.—In the papers furnished by Captain Godfrey, purporting to be translations of the documents of title obtained by him from Perumal Chetty (A) 1021 (1846), and from the Nellumbur Tirupad (B) in 1024 (1848), the land conveyed is thus described :—

(A). "The land denominated Dodda Gudda Shola, containing 600 cawnies, lying to the north of the Elamullah Hill, &c. &c. &c." The said land called Dodda Gudda Shola is bounded on the east by the Dodda Gudda land, on the south by the Paudum tree, on the west by 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 Mulla hill, and extending from the south of Panthoomaram to Surrangapoly, and from Thodicoddu on the east, to Coopakoli on 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, and which title deed, on which he relies, was executed in Malayalum which Captain Godfrey does not understand, and that in it the boundaries, &c., 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—runs thus: "All boundaries are as delineated in the plan hereunto attached, excepting the extent of 600 cawnies of the land called Doddega Cholah, bounded on the east by the Dodegadu land, on the south by the Pantha tree, on 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 Talug, which is excepted from the grant made by first defendant to plaintiff on 19th January, 1857, and which first defendant was willing to mark out, but second defendant objected.

Second defendant answered that he "holds" the entire extent of his own Dodagady Chola 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 first defendant to prove that second 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 lands 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 second defendant for restoration of any lands he might possess within the limits of plaintiff's second 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 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. 43 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 Priestly, 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 Tirupad of Nellambur granted him *all the land* within certain boundaries mentioned in the deeds given by the Tirupad to Captain Godfrey, and executed on 5th December 1848.

26. The "Summary of evidence and grounds of decision" states: "I have examined the title de Mr. Ouchterlony and Captain Godfrey, and am of opinion that even if there be any vagueness as amount of land specified in Captain Godfrey's title deeds, which I do not perceive; the 2nd title given by the Rajah to Mr. Ouchterlony of 19th January 1857, fully explains the meaning. It is stated in Mr. Ouchterlony's deed that the Tirupad resigns to Mr Ouchterlony all the land within boundaries, with the exception of 600 cawnies of land called Doddega Shola already granted to Godfrey. By the Tirupad's title deed of 1848, as translated to me, Captain Godfrey is grante cawnies included in certain boundaries."

27. The "decision" states: "As the High Court has decreed that the Rajah's title of 1848 to Godfrey cannot be set aside, and as the 2nd title of Mr. Ouchterlony directly states that he is entit all the land within certain boundaries, with the exception of 600 cawnies already granted to Godfrey, Captain Godfrey is only entitled to 600 cawnies."

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

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

30. Captain Godfrey appeals to Government to restrain the Survey Department from "demarcatin 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 Cap 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 matter, that the law under which they have proceeded is expressed to be for the establishment and mai nance of boundary marks and for facilitating the settlement of boundary disputes, and it prescribes cer procedure to be adopted by, or towards, the parties interested "in boundaries under dispute," according they agree to refer the dispute to arbitration (Sections 10 to 24), or do not agree so "to refer the dispu (Sec. 25).

33. So far as regards the determination of the boundaries specified in the documents taken from Tirupad by Mr. Ouchterlony and Captain Godfrey, it may be admitted that the Survey Department w competent to make investigation and pass a decision; but, in point of fact, the question of identificat of boundary marks or lines does not appear to have been at all in issue between Mr. Ouchterlony Captain Godfrey. What was disputed was their respective rights within certain specified boundaries, 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 suffic evidence of the intention of the lease in 1848 to Captain Godfrey, that interpretation of it which is giv in the subsequent lease obtained by Mr. Ouchterlony in 1857; but it is to be remarked that these documents, whatever may be their worth, were obtained from two different Tirupads, and that the interp tation 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 t point at issue is that Captain Godfrey cannot claim to base his title on any other deed than that of 184 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 necessaril imperfect investigation, the force and value of a title to land, which it had been previously declared by 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 o officers acting under it, is by regular suit in the Civil Courts within two calander 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 shewn, 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 was 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 Juris diction of the Survey Officers, barred by the decision of the Civil Court in the same dispute, and by it very nature, the Governor in Council resolves to extend the time for appeal to the Civil Court up t 31st December 1872, within which time Captain Godfrey must file a regular suit in the Civil Court to se 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

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.

(True Extract.)
(Signed) C. A. Galton,
Acting Under Secretary to Government.

To Captain T. H. Godfrey.
,, Mr. H. Wapshare, Attorney for Mr. Ouchterlony.
,, The Board of Revenue.
,, The Commissioner of Nilgiris.
,, The Collector of Malabar.
,, The Superintendent Revenue Survey.

[F]

To the Right Honourable the Governor in Council of Fort Saint George.

The Petition of James Ouchterlony of Ouchterlony Valley, in Numbalacode Umshom, Talook of Wynaad.

Humbly Sheweth:

That your Petitioner appeals to your Lordship in Council for a reconsideration of the Government order, No. 1,363 of the 28th September 1872, whereby under the provision at the end of Section 25 of Act XXVIII. of 1860, an extension of time to the 31st December proximo is granted to Captain T. H. Godfrey, for the filing of a suit in the Civil Court against the decision of the Survey Officers in the matter of disputed boundaries between the said Captain Godfrey and your Petitioner.

2. That your Petitioner does not presume to urge, as a ground for such appeal, any question of the legal force of the term "extend," seeing that the Government has not deemed the argument on that point contained in his letter of the 30th August 1872 (No. 181 in Government order) worthy of any notice; but that he bases it upon the circumstance of the Government having been misled as to the "facts of the case" (paragraph 3), by which its decision has been influenced.

3. That the leading fact in the recital of the Government order, is the deed granted by the Nellamboor Tirupad in December 1848 to Captain Godfrey, and a version of which is given (note B, paragraph 9) as what has been furnished by the said Captain Godfrey, "purporting to be a translation" of the original.

4. That had your Petitioner been cognisant of what was put in before Government by Captain Godfrey, he would then have had the opportunity of undeceiving it in this important particular; for that, as he has now to observe, the rendering of the deed as furnished is an incorrect translation.

5. That this translation, as recorded in the order of Government, runs thus: "I, the said Rajah, granted unto the said Captain Godfrey my jenmum land, containing 600 cawnies, situated in the Wynaad Taluq, Nambalacode Umshom, on the north of Yellamullay Hill, and extending," &c.

Whereas the true translation of the deed, as given to your Petitioner by natives of the country, and confirmed by all Malyalim scholars, is that, after the recital of the boundaries of the land alluded to, it proceeds to say: "Out of the land I give you 600 cawnies for making coffee cultivation." And that this presents no ambiguity or vagueness, such as has been assigned to it.

6. That further, the order of Government (paragraph 11) sets out an unsupported plaint of Captain Godfrey's, in O.S. No. 8 of 1866, as showing his "claim," in which it is said that at a certain time "the then Tirupad alleging himself to be the jenmu (proprietor) *offered to grant* Captain Godfrey a perpetual lease of the land in question;" and the extract winds up with the assertion, "that Captain Godfrey understood, and both parties intended, that the whole of the land (and not merely 600 cawnies) within those boundaries should pass" by the Deed of 1848, executed on the occasion.

7. That had the whole record of the above Suit No. 8 of 1866, as well as that in No. 4 of 1862, been referred to (as your Petitioner humbly submits that he was justly entitled to expect) before any matter to be recorded in a statement of facts was drawn from a fragmentary portion and made to exhibit "the relative position of the parties," it would have been found that the real facts were these:—

First—That instead of the Tirupad *offering to grant*, &c., his first step was to complain to the Col-

lector and Magistrate of Malabar, of Captain Godfrey's interference with his land; that the Collector thereupon deputed the Seristadar of the Ernaad Talook to make enquiries and try to settle the matter amicably; that in consequence, all parties attended at Nellamboor; that the Chetties gave depositions on the occasion, which may be left to speak for themselves; and that the whole ended in Captain Godfrey recognising the Tirupad as Jenmee of the land, taking a grant from him and executing reciprocal Deeds accordingly. And that all this will be found set forth in the reply of the Tirupad to the plaint in O.S. 8 of 1866 (of at least equal force to the statements in the plaint), in the evidence of the Seristadar above named in O.S. 4 of 1862, and conclusively by the records in the office of the Collector of Malabar.

Second—That although, as remarked in the Government Order (paragraph 34), the interpretation of one Tirupad of what was intended by another, may be inconclusive (though in the intimate relation, equivalent to that of father and son, existing between the two, the one might be ordinarily assumed to be cognisant of the intention of the other), there was, in addition, evidence given in O.S. 4 of 1862 by the Seristadar above spoken of, that 600 cawnies was the quantity of land spoken of, and by the Karistan (or Kariastans) of the Rajah (the name your Petitioner cannot quote, from not having the record of the suit by him), and who was present at the proceedings of 1848, that a limited quantity of 600 cawnies was *purposely* inserted in the grant, because they did not know the real extent of land within the boundaries named.

8. That your Petitioner craves leave to observe, in reference to certain issues framed in O.S. No. 8 of 1866 (paragraph 20), and the judgment of the High Court in appeal from that suit (paragraph 22), as they bear upon the question of a claim by Captain Godfrey under a title derived from certain Chetties, that the High Court in its said judgment expressly recorded that it had suggested to Captain Godfrey an amendment of the plaint "by striking out the relief sought upon the document" (of 1848), and "proceeding upon the title acquired from *Permal Chetty*," but that the suggestion "was *not accepted*." And that the omission then and thereafter to proceed to establish any claims under a title acquired from the Chetties, clearly made Captain Godfrey responsible for any consequences that might attach thereto.

9. That, as resulting from the foregoing, the relative position of the parties at the time of the action under Act XXVIII. of 1860 commencing, was, your Petitioner humbly submits, as follows:—

That Captain Godfrey had obtained a deed for land from certain Chetties in 1846, and again in 1848, for 600 cawnies of the same land, from the Nellamboor Tirupad, whom he acknowledged as the proprietor. That your petitioner received a grant in 1845 from the same Tirupad, and another in 1857 (this latter encircling the land in the grant of 1848) from this Tirupad's successor.

That, in 1855, Captain Godfrey claimed that his grant of 1848 gave him an extent of land entering into your Petitioner's holding of 1845; that such pretension was referred to the magistrate; and that the issue was an agreement by Captain Godfrey that your Petitioner should hold possession of the land till a court of law decided the matter. That Captain Godfrey brought no suit to gain such decision till 1866, and, by not proceeding with that suit as suggested by the High Court, and not instituting any other, he had, up to 1870 or 1871, taken no steps to establish any right. And that, from more than twelve years having passed since the respective dates of your Petitioner's grants, he was apparently estopped from any action by the Law of Limitation.

10. That further, as to the construction to be put upon the Tirupad's deed of 1848 to Captain Godfrey (which had been held by the courts to be binding upon Captain Godfrey), the evidence of the Tirupad's Karistan, who took part in the proceedings connected with that deed, confirmed the interpretation of the Tirupad of 1857, that it was only intended to grant a specific quantity of 600 cawnies. That such evidence could, however, certainly not affect the plain meaning of the deed itself, which, like all deeds, must be taken as it stands; but that such meaning is evident and unambiguous, and has been regarded as such, officially, by Mr. Assistant-Magistrate Tod in his report of 15th January 1856, and by Mr. Judge Sharpe in his decree in O.S. 8 of 1866, where it is said that Captain Godfrey admitted that he had in possession all the land given to him by the deed of 1848.

11. That, under these circumstances, your petitioner humbly submits that the survey officer (who, equally with the above-mentioned judicial officers, could "not perceive" any vagueness in the wording of the deed of 1848), could not but take the deeds of 1848 and 1857, as the very basis of the "settlement of the boundary dispute" between the parties, and hold that such deeds were to be accepted in their plain import. That the "dispute" was one to be determined under the Act, according to the "grants, title-deeds, and other documents" connected with the claims, which documents were to be investigated for the purpose, and a decision recorded.

12. That had your Petitioner been aware of the nature of the investigation that was designed, he would have submitted at an earlier period to the Government;—that it had never been denied that under the deed of 1848 Captain Godfrey had a right of selection to the extent of 600 cawnies; and that this quantity he was not considered to have appropriated at the time of the suit 4 of 1862. But that there could be no doubt of his having done so at the time of the investigation of 1870-71. That this could obviously

not be demarcated until an opinion or "decision" had been arrived at as to the extent of land held under the "titles" filed; and that the determination of this point became therefore a necessary preliminary in the matter.

13. That your Petitioner may be permitted to enquire respectfully, in what suit a Civil Court had "previously declared" that the force and value of the title, "(that of 1848) to certain land, could only be "determined by a regular suit" (par. 36); and also (par. 38) from what suit "Captain Godfrey had reason to suppose" that "the jurisdiction of the Survey Officers" was barred by the decision of the "Civil Court in the same dispute, and by its very nature." That, if it be the Decree in O. S. 4 of 1862, your Petitioner would humbly submit, that *this* simply dismissed the suit (par. 16) as irregularly brought, and further observed that a different course should be pursued, if a wrong had been suffered.

14. That in now for the above considerations soliciting a review by the Right Honourable the Governor in Council, of the order passed on the 28th September 1872, your Petitioner hopes he may be allowed to say how greatly he feels aggrieved at the interference that has taken place with the legitimate action of the Survey Officers. That according to Act XXVIII., of 1860, the limit of two months for an appeal to the Civil Court, expired either in March or in July 1871; and that then, or as soon as the season admitted of it, a demarcation of Boundaries should have been proceeded with. But that, before even Captain Godfrey appealed to the Government (which was thirteen months after the first date, and nine after the second), the regular course of the demarcation seems to have been in some way interfered with; and that that part only had been accomplished, which consisted in the demarcation of the Boundaries of Captain Godfrey's 600 Cawnies (as was notified to Government in April, 1872),

And your Petitioner will ever pray. (Signed) J. Ouchterlony.

London, 15th November 1872.

[G]

GOVERNMENT OF (1872) MADRAS.

REVENUE.

To James Ouchterlony, Esq., &c., &c., &c.

Dated December 19th 1872. G.O. 19th December 1872. No 1,693. December, Nos. 126, 127.

Boundary between Captain Godfrey's and Mr. Ouchterlony's lands.

Letter from Mr. Ouchterlony praying for a reconsideration of the order on this subject, with orders thereon.

No. 127. Order thereon, 19th December 1872.

Forests, No. 7.] The Governor in Council understands that Captain Godfrey has already filed his suit, but in any case he sees no sufficient reason for reconsidering the Government order extending the time for him to do so up to 31st December 1872.

The arguments against his claim set forth in this address can be urged in the Civil Court.

[True Extract.] (Signed) D. J. Carmichael, Secretary to Government.

To James Ouchterlony, Esq.

Care of H. Wapshare, Esq.

Board of Revenue.

The Commissioner of the Nilgiris.

[H]

PROCEEDINGS OF THE MADRAS GOVERNMENT. REVENUE DEPARTMENT.

Read the following papers:

To the Honourable W. Huddleston, Secretary to Government, Stonehouse, Ootacamund.

Sir,—I have the honour to request you will do me the favour to lay my Memorial before His Excellency the Governor.

I have, &c., &c.,

(Signed) T. H. Godfrey.

To his Excellency the Governor of Madras, Ootacamund.

The Memorial of Captain T. H. Godfrey, proprietor of the Yellamulla estate lands in Wynaad.

Sheweth:

That your Memorialist having perused the proceedings of Government of the 28th September 1872, begs to represent that Mr. Ouchterlony never obtained any legal title to any land within your Memorialist's boundaries, by his first deed, from the Rajah of Nellumboor.

That Mr. Ouchterlony's first deed only gave him a title as far as Mookerjee Mulla, to the immediate south of which is the Paudy river, your Memorialist's northern boundary.

That Yellamullu and Neilgherry Mulla are not identical with Mookerjee Mulla, but widely separated mountains perfectly well known and south of the Pandy river.

That Mr. Ouchterlony did endeavour, through a suit at law in the Civil Court of Calicut, No. 183 of 1862, to oust your Memorialist from off the land, but failed on Appeal, 260 of 1863, and your Memorialist has since been in quiet possession.

That Mr. Tod's report and plans were rejected as evidence in the trial of No. 260, of 1863.

That Mr. Tod was a stranger, unacquainted with the country, and was completely deceived by false representations.

That the demarcation ordered to be made in the proceedings of Government will cut off about one-half of your Petitioner's land he believes, and doubts if it will not go through his plantations.

That your Memorialist has been twenty-seven years in true and lawful possession of all the land within his Boundaries, excepting that portion occupied by the defendants in the late suit No. 8, of 1866.

And your Memorialist as in duty bound will ever pray.

(Signed) T. H. Godfrey,
Capt., Bombay Army.

Order thereon, 18th October 1872. No. 1446.

Captain Godfrey will be informed that the Government cannot go further into the arguments adduced in support of his claim, all which it is open to him to urge in the Civil Court. That the High Court having decided that Captain Godfrey must base his claim on the title obtained from the late Tirupad in 1848, it does not appear possible that his claim can affect Mr. Ouchterlony's title to the land obtained from the same Tirupad in 1845, but that the latter title must have superior force.

That the deeds executed to Mr. Ouchterlony on this occasion, and the plan thereto attached, leave no doubt as to what constituted the Western Boundary of the land conveyed. That from the plans and maps submitted to Government, it appears to be impossible that the Western boundary can touch any land actually dealt with by Captain Godfrey, except prior to the date of Mr. Tod's enquiry in 1856. But that, as the Government is anxious by no act of theirs or their officers, to prejudice the claim of either party by anticipating the judgment of the Court, the Governor in Council resolves to direct the Survey Officers to run a trial line of survey, and in the event of its being found to intersect or fall to the West of any land actually in occupation by Captain Godfrey, then to suspend further action on that part of the G. O. dated 28th September 1872, No. 1363, Revenue Department, which permits them to demarcate Mr. Ouchterlony's Western Boundary under his first grant or lease, until after 31st December 1872, which will enable Captain Godfrey, if he thinks fit, to obtain an injunction from the Civil Court in which his Appeal must be filed by that date, still further suspending the action of the Survey Department.

(True Extract.)

(Signed) W. Huddleston,
Secretary to Government.

To H. Wapshare, Esq.,
for Mr. Ouchterlony.

[I]

To the Right Honourable the Governor in Council of Fort St. George.

The humble Petition of James Ouchterlony, of Ouchterlony Valley, Nunbalacode Umshom, Wynaad, Talook. Sheweth:

1. That your Petitioner has had communicated to him the order of Government of 18th October 1872, No. 1,446, embracing copy of a memorial by Captain T. H. Godfrey. That the said memorial is full of misrepresentations, with an exposure of which your Petitioner would not deem it necessary to trouble Government, were it not that they are placed on record, through an active Government order being based upon them; and that he therefore feels it necessary to place his contradiction equally on record, while praying for such redress as the Government may consider him entitled to under the circumstances.

2. That the assertions of Captain Godfrey may be enumerated as follows:—(1) That your Petitioner, by his first grant from the Rajah of Nellumboor, did not obtain any legal title to land extending up to Neilgherry Peak. (2) That your Petitioner instituted a suit, No. 183, of 1862, "to oust" Captain Godfrey "from off his land," which suit was dismissed on appeal. (3) That Mr. Assistant Magistrate Tod's report of 15th January 1856 did not deserve consideration, because of his being a stranger to the country, and that he "was completely deceived by false representations;" and (4) that Captain Godfrey has been "in true and lawful possession of the land within his boundaries" for "27 years."

3. That on the *first* point, your Petitioner apprehends that it will hardly be deemed necessary that he should enter upon any serious refutation. The Government has before it the plan attached to your Petitioner's first grant from the Nelumboor Tirupad. It is unmistakable as to the boundary point of the Neilgherry Peak. The deed and plan both fix it, under that name and with its *aliases* of Yella mullay and Mookooritchy Mullay. These *aliases* were purposely given, because it was found that different natives knew the mountain by one and the other name, and the Government can conclusively satisfy itself of this, by a reference to the triangulation sheet, No 1, of the survey of the Neilgherry Mountains, of which your Petitioner has a copy, certified under the signature of Lieut.-Col. Thullier, Surveyor-General of India. The name of Neilgherry Peak (or Mullay) was inserted, because of its being the name by which the mountain was best known to Europeans; and it was desired that there should be no misunderstanding about what was intended.

4. That your Petitioner referring to the *second* point, has not by him the record of the suit No. 183 of 1862 to refer to, and so cannot quote exact language; but that it will be better treated of in explaining the *third* point, your Petitioner meanwhile remarking, that it was not a suit "to oust" Captain Godfrey from possession, but a suit against him for penal damages for trespass.

5. That the occasion of Mr. Assistant Magistrate Tod's enquiry on the spot, was this same trespass—or rather character of trespass, occurring in 1855—and a reference to the collector and magistrate of Malabar (then T. Clarke, Esq.) arising out of it. Mr. Tod was deputed by the latter to the duty of this enquiry. That any "false representations" were made on the occasion to "deceive" Mr. Tod, your Petitioner must be allowed to denounce as a wicked and malicious fabrication; and equally to deny—and this in justice to the memory of that gentleman—that he was incompetent to the task assigned to him, that mere unacquaintance with the country rendered him incapable of understanding what was before his eyes. Mr. Tod's report is before Government, and your Petitioner appeals to it to show that his enquiry was alike painstaking, intelligent and impartial.

6. That in his investigation on the spot, Mr. Tod was, amongst others, accompanied by the Nellumboor Tirupad's agents, who had been concerned in giving, or pointing out, the land under the respective deeds of 1845 and 1848, and by Captain Godfrey himself and Permaul Chetty. That the examination was openly conducted before all parties; and that it concluded by the following letter being voluntarily addressed to Mr. Tod by Captain Godfrey:—"I have seen the Monsiff this morning with the Rajah's agent, and I shall now leave the disputed land in Mr. Ouchterlony's possession, till legally decided to whom it belongs." That your Petitioner submits how utterly unlikely it is that any person would pen such a letter when he thought the enquiring officer was both ignorant of the merits of the case and the weak dupe of false representations about it; and that he should take no steps thereafter to vindicate legally what he assumed to be his rights.

7. That the above agreement by Captain Godfrey had the effect of staying all proceedings before the Magistrate of Malabar, as will be found on reference to the records of the Cutcherry of that date; and your Petitioner was left to conceive, both in the legal import and the moral obligation of such a pledge, that he was safe from the risk of any further intrusion on his land by Captain Godfrey, until of course a decision might be given by a court of law adverse to your Petitioner's title.

8. That nevertheless Captain Godfrey committed acts of trespass in 1861, upon the land he had pledged himself to leave in your Petitioner's possession; and the consequence was the suit, No. 183 of 1862,

(orginally filed in the Court at Tellicherry as No. 377 of 1861, but, on the change of jurisdiction, transferred to the P. S. Ameens Court of Calicut) for the trespass. This suit was dismissed on appeal on purely technical grounds, as will be seen by a reference to the decree.

9. That at the time of the above suit your petitioner had not had access to Captain Godfrey's letter to Mr. Tod, quoted in paragraph 6, from the collector of Malabar having furnished him, on his application, with a certified copy of Mr. Tod's report alone; but that the original letter came forward on the hearing of the suit, O.S., No. 4 of 1862, when the court sent for the record from the magistrate's office. On the letter being put into Captain Godfrey's hands during his evidence in the suit, he acknowledged it, but excused a previous declaration that he had not the slightest recollection of ever having agreed to leave the land in your Petitioner's possession, by saying that his memory had entirely failed him in the matter.

10. That Captain Godfrey had thus at all events his memory refreshed in 1862 as to his real (conditional) relinquishment of the land in dispute, and therefore his own act will suffice to carry the refutation of his *fourth* point that he has had "true and lawful" possession of it for 27 years.

And your petitioner will ever pray.

(Signed) James Ouchterlony.

London, 20th November 1872.

[K]

PROCEEDINGS OF THE MADRAS GOVERNMENT, REVENUE DEPARTMENT, 24th Jan. 1873.

Mr. Ouchterlony's Memorial to Government, dated London, 20th Nov. 1872.

No. 178. Order thereon. 24th Jan. 1873. No. 89.

[Forests, No. 15.] "The Governor in Council understands that, as regards the land included in Mr. Ouchterlony's first grant from the Nellumboor Tirupad, Captain Godfrey is absolutely concluded by the appeal decision of the High Court, that Captain Godfrey can only base his claim on his title derived from the Tirupad, which is of later date than that held by Mr. Ouchterlony.

[True Extract.] (Signed) D. E. Carmichael."

[L]

PROCEEDINGS OF THE CIVIL COURT OF CALICUT,

dated 5th February 1873.

Read Memorandum of Appeal by Thurlow Hovel Godfrey *versus* James Ouchterlony.

This appeal calls in question a decision purporting to have been passed under Act 28 of 1860 by Captain Sargeaunt, Assistant Superintendent Revenue Survey, but upon reference to the Act, I do not find that Assistant Superintendents Revenue Survey do as such possess any authority to pass decisions thereunder. Of course it may be that Captain Sargeaunt has been especially empowered by Government under the Act, but if so the power should have been shewn upon the face of the decision, and not having been shewn the decision is itself a nullity. For this position it is sufficient to refer to Broom's legal maxim under "Omnia præsumunter rite esse acta," which, as is there explained, does not apply to give jurisdiction to inferior Courts.

Captain Sargeaunt, Assistant Superintendent Revenue Survey, having then passed a decision without jurisdiction, will his doing so give me appellate jurisdiction in the matter? The case at 3 High Court, Reports 93 shows clearly that it will not, and I think that instead of coming to me Captain Godfrey might have profited by the advice to be extracted from the judgment in Attorney General *versus* Hotham (Lord) 1 Turn. and Russ. 219 "where a limited tribunal takes upon itself to exercise a jurisdiction which does not belong to it, its decision amounts to nothing and does not create any necessity for an appeal."

This is sufficient to dispose of this appeal, and I shall not therefore be curious to enquire whether Captain Sargeaunt has been empowered by Government to pass decisions under Act 28 of 1860. From the Government order of the 28th September last it would rather appear that he has not, for otherwise it is difficult to see how when an Act of the Legislature had directed that officers after decision should proceed to mark out the boundary in accordance therewith, the Government should prohibit his doing so. The decision itself

(? Would not this order operate as a revocation of the power (if any) already granted.)

did not and possibly could not specify what particular 600 cawnies of land Captain Godfrey was to have, whether swamp, coffee planted, or jungle, and the result of no demarcation subsequently taking place was necessarily to embarrass the ascertainment of the correct valuation and actual subject matter of this appeal, and indeed, to produce what Lord Westbury at Law Report 1 Sc. 74 designates "a vitious amount of uncertainty upon which no satisfactory judgment could have been pronounced by any Court."

Upon the ground that Captain Sargeaunt, Assistant Superintendent Revenue Survey, had no jurisdiction to pass the decision impeached, and that I therefore have no jurisdiction to hear an appeal from a decision so passed, I reject this appeal; and doubtless all those whom it may concern will be guided by this expression of opinion by the authority which would have had jurisdiction to entertain the appeal had Captain Sargeaunt's decision been valid.

(True extract

(Signed) G. R. Sharpe,
Civil Judge.

(True copy, on r. rolls)
(Signed) J. M. D'Araujo,
Sheristadar.

[M]

(Copy.)

REVENUE DEPARTMENT.—PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following Letter from Captain T. H. Godfrey,

Requesting to lay before the Governor in Council his memorial and papers referred to therein regarding his land in Wynaad. } H.E., 20th February 1873.

Order thereon, 1st May 1873, No. 446.

1. 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 Sargeaunt, Assistant Superintendent of Revenue Survey, under Act 28 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 Sargeaunt'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 Sargeaunt'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.

F. A. G.

[N]

To R. A. Dalyell, Esq., Secretary to Government Revenue Department, Ootacamund.

Sir,—I respectfully request that you will lay this letter before His Excellency the Governor in Council.

The proceedings of Government of the 1st May 1873, No. 446, with reference, to the dispute between Messrs. Godfrey and Ouchterlony have come to my knowledge.

I beg to say that Captain Godfrey's appeal was dismissed by the Civil Court, Calicut, because *his* Plaint or Petition shewed no grounds of appeal. Surely Mr. Ouchterlony should not suffer for that? for, as a matter of fact, Captain Sargeaunt had full authority to adjudicate, as Mr. Ouchterlony will be prepared to shew if and when the matter comes before a proper tribunal.

That the demarcation having been made in accordance with the decision of an Officer having jurisdiction to decide the question—*vide Fort St. George Gazette*, Tuesday evening, 23rd August 1870, page 1,056—is as binding upon Government as on any private individual, and that, as I am advised, any attempt to obliterate it will be a trespass, for which the person or persons making the attempt will be civilly, if not criminally, liable.

I have the honor to be, &c., &c.

(Signed) Henry Wapshare.

Ouchterlony Valley, 12th May 1873.

[O]

GOVERNMENT OF MADRAS. REVENUE.

To H. Wapshare, Esq., Attorney for Mr. Ouchterlony.

Dated 17th May. G.O. 17th May 1873. No. 496. May, Nos. 116—117.

Boundary between Captain Godfrey and Mr. Ouchterlony's estates. Letter from Mr. Wapshare on the proceedings of Government in connection with it. Recorded.

[P]

To the Chief Secretary to Government, Fort St. George.

Sir,—I have the honour to request you will bring the following circumstances and request under the consideration of the Right Honourable the Governor in Council.

2. By an official notification in the *Gazette* of the 23rd August 1870, Captain C. C. Sargeaunt, Assistant-Superintendent Revenue Survey, was specially invested by Government "with the powers conferred on officers appointed by Government for purposes of demarcation, under Act XXVIII. of 1860."

3. Pursuant to such appointment, Captain Sargeaunt commenced the survey of my estates in Wynaad.

4. A question of right of boundary at once sprang up, Captain T. H. Godfrey disputing what I claimed as my line.

5. Under the provision of Section III. of the Act, Captain Sargeaunt called upon each of us to produce his muniments of title; and this requisition was duly complied with.

6. As it was not agreed to refer the dispute to arbitration, Captain Sargeaunt "proceeded to investigate the (rival) claims," and recorded his "decision" (on the 30th January 1871) as required by Section XXV. of the Act.

7. From this "decision" Captain Godfrey appealed to Colonel Priestley, "the authority" to whom Captain Sargeaunt was "immediately subordinate," under the provisions of the same Section XXV.; and, after due investigation, Colonel Priestley confirmed the same decision (on the 6th May 1871).

8. No appeal from this was made to the Civil Court within the two months provided for in the same Section XXV.

9. But, presumably under a further provision of the same Section XXV., which makes it "lawful for the Governor in Council, on just and reasonable cause for the same being shown, to extend the period for [illegible] proper," Captain Godfrey

28th September 1872, by which the time for Captain Godfrey to appeal to the Civil Court against Captain Sargeaunt's decision was extended to the 31st December 1872.

10. I may here be permitted to reserve such rights as I may have in respect of this being a legal interpretation of the authority to "extend" when the ordinary term for an appeal to the Civil Court had already lapsed; and also in respect of what may be the tenour of Captain Godfrey's address to the Government, of which I know nothing more than the summary contained in No. 170 of the Government proceedings of 28th September 1872, and which simply denotes an application for "interference in bar of action of Survey Department," or a request for an act that I respectfully submit was unlawful, as being opposed to the express provisions of Act XXVIII. of 1860. For these latter lay down (Section 25), in the most clear and unmistakable language, that, on recording and notifying his decision, the officer "shall proceed to mark out the requisite boundaries in accordance with the decision," and no authority whatever is given to the Government to interfere with this in any way; nor indeed in *any* proceedings under the Act, save and except its having power to "extend" the time for appeal to the Civil Court; and the very conferring of this special authority seems to lead to the decided inference that the Legislature did not intend to confer any other rights on the executive authority.

11. But in its proceedings of the 28th September 1872, the Government not only extended the time for appeal to the Civil Court, but (para. 39) arrested the action of the Survey Officer in "marking out" boundaries, thereby inflicting great hardship on me, alike in the prejudicial delay caused and by rendering valueless all the considerable expense I had been put to in meeting the requirements of the Survey Officer —in other words, *in obeying the orders of Government*, which set in motion the Act XXVIII. of 1860; and by officially appointing an officer with full powers to conduct proceedings under it, virtually directed me, as one amongst parties interested, to conform to its provisions.

12. I am now given to understand that still greater injury, and of a serious nature, is being inflicted on my interests by the marking out of my boundary lines having been arrested by the executive authority. Quantities of valuable timber are being surreptitiously cut and removed from what I believe to be my land, and in respect of which there would have been no doubt or difficulty had the provisions of the Act been duly carried out.

13. The month of May 1873 has now arrived, and Captain Sargeaunt's decision in all its integrity stands good, since it has not been "set aside" (in the only way in which it can be under the express words of the Act) "by a formal decree of a Civil Court." This formal decree, it may further be observed, is, by the same Section 25 of the Act, made to follow an appeal "*by regular suit;*" and no such suit has been instituted.

14. I have, therefore (while in justice to myself reserving any claims to compensation, as I may be advised, for losses and injuries already sustained), respectfully to request that the Government will order the officers of the Revenue Survey to proceed at once with the demarcation of my lands in accordance with Captain Sargeaunt's decision.

I have, &c.,

(Signed) J. OUCHTERLONY.

London, 2nd May 1873. Care of H. Wapshare.

[R]

GOVERNMENT OF (1873) MADRAS.
REVENUE.

To J. Ouchterlony, Esq.

Dated June 18th. G.O. 18th June 1873. No. 629. June, Nos. 141—142.

Mr. Ouchterlony's lands. Request of Mr. Ouchterlony to order the Survey Department to proceed with their demarcation in accordance with Capt. Sargeaunt's decision, with order thereon.

Order thereon, No. 142. Miscellaneous.

The Government must decline to comply with the application contained in the foregoing letter, and Mr. Ouchterlony will be informed that it has been found necessary to direct the removal of all boundary marks laid down in accordance with Captain Sargeaunt's decision, as that decision has been declared invalid by a Civil Court, owing to its failing to show that the Officer passing it had been specially authorised to adjudicate.

(True Extract, &c.)

G

Rec No 4131/23

GO 28th January/74

No 128

L. B. N. 248

The Chief Secretary
to Government
Fort St. George

Sir,

In compliance with the direction contained in the accepted letter of the Secretary Revenue Department of the Indian Office, I have the honor to request that the Right Honorable the Governor in Council will be pleased to forward the accompanying memorial (submitted in triplicate) to His Grace the Secretary of State for India in Council.

2. To prevent misapprehension and seeing that Mr. Secretary Anderson's above quoted letter refers to my memorial as in the "subject of" "disputes with Captn "Godfrey relative to some land "in Coyaadi, I would beg to be permitted to observe, that my object is not, and has not at any time been, to submit the merits of these disputes to the consideration of Government - my attention to them having been solely as it were an explanation following the proceedings of Government - but to lessen my

pursued by the Executive Administration, which I am led to believe to be opposed to my just rights as an independent British subject.

3. As it is my desire, in submitting the accompanying Memorial, to make the case as complete as possible, I have the honor to request that the Govt. would be pleased to cause to be forwarded therewith to the India Office, copies of the papers of which a list is subjoined, and the contents of which have not hitherto been communicated to me. I would also further respectfully solicit that a copy of my present letter may be sent with them.

1. Letter from the Collector of Malabar to the Government, or to the Government through the Board of Revenue, dated in or about the beginning of March 1872, in which allusion is made to the terms of Capt.n Sodfrey's Deed of 1848 from the Tellicherry Cutcherry.

I am led to believe that the version here given was is erroneous, as recapitulated in the Govt. order of 28th Sept.r 1872, p. 1363, (para 4 note B) — Capt.n Sodfrey's translation of the original deed.

2. Govt. order of 28th Sept.r 1872, alluded to in the same Govt. order of 28th Sept.r 1872 — p. 170.

3. Capt.n Sodfrey's letter of 10 Aug.t 1872 alluded to in the same as p. 177

4. Capt.n Sodfrey's memorial of 20th July 1873, alluded to in Govt. proceedings of 1st Aug.t 1873

5 & 6. Capt.n Sodfrey's letter to Govt. in Aug.t & 12th July 1873, with the orders thereon, having relation to the boundary marks cut by the Officer appointed to such duty under Act XXVIII of 1860.

7. Capt.n Sodfrey's letter to Govt. submitting details of 4 persons "convicted" in combating Capt.n Sargeant's decision — vide para 3 & 4 of order of 1st Aug.t 1873.

8. Order of Govt. on the above, sanctioning payment of £3,500 to Capt.n Sodfrey

The newspapers stated publicly that such a payment had been made having some reference to the cost of the Civil proceedings; but in this case there appears to have been no regular suit, but only an appeal to Court against an order, — necessary to the procedure seems impossible

I have the honor to be
Sir,
Your most obed.t humble Servant
J. Donaldstone

London, Aug.t 25 1873
St. 11, Bradshaw Street
Broadway

(Copy)

(8144)

India Office S.W.
9th October 1873

Sir

I am directed by the Secretary of State for India in Council to acknowledge the receipt of your memorial dated 12th August on the subject of your dispute with Capt. Godfrey relative to some land in Egmore, and to inform you in reply that the memorials should in accordance with the rule maintained in this Office, be forwarded to the Board of Revenue in Council through the Government of Madras.

I am
Sir
Your obedient Servant
(signed) H. L. Anderson
Secretary Revenue Department

J. Ouchterlony Esq

Enc. copy
J. Ouchterlony

Revenue Department.

No. 128.

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 26th January 1874.

READ the following letter from Mr. James Ouchterlony, London

Requesting that his Memorial on the subject of his disputes with Capt. Godfrey relative to some land in Egmore, may be transmitted to the Secretary of State. — H. E. 25th November 1873

Mr. Ouchterlony is informed that his Memorial has been received and will be transmitted to the Secretary of State.

J. Ouchterlony Esq.

I. C. J. Ouchterlony Esq.
dis. 3 Feby 74

Note

Mr. Ouchterlony appeals against paras 39. 40 & 41 of G.O. 28 September 1872 No. 1363 in which Government ordered the demarcation of part of the ground

21

248-246

Rec 18th Dec
No 4131.

From James Richardson Esqr
Madras.

D/ 25th Nov
R 30th Dec 1873.

S.O. No 128 — 28th January 74

Requesting that the accompanying Memorial on the subject of his disputes with Capt. Godfrey relative to some land in Wynaad, may be transmitted to the Secretary of State. —

248.

C 13 January 74. R 23.