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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue

DEPARTMENT

G.O. No.
B.P. No.

1552

Press
Mis.

Dated

12. 12. 1874 ~~1906~~

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
12th December 1874.*

No. 162. Read the following letter from Captain T. H. GODFREY, to C. G. MASTER, Esq., Acting Secretary to Government, Revenue Department, dated West End, Ootacamund, 24th November 1874:—

I HAVE the honor to solicit the favor of your kindly furnishing me with copies of the papers indicated in the margin, and

No. 171, Letter from Mr. Wapshere, Attorney for Mr. J. Ouchterlony, dated 5th April 1872.
No. 172, Do. from do., dated 16th July 1872, and enclosure.

No. 173, Do. from do., dated 16th July 1872.
No. 174, Letter from Superintendent, Revenue Survey, dated 8th July 1872.

No. 180, Letter from Captain Sargeant, dated 16th August 1872.

No. 181, Letter from Mr. J. Ouchterlony, dated 30th August 1872.

G. O., dated 9th August 1872, No. 1,188A.

advertised to in the Proceedings of Government in the Revenue Department, dated 28th September 1872, No. 1,368, relative to my memorial against the decision of the Revenue Survey authorities upon the question of my title to my land in the district of Wynnad.

2. The Secretary of State for India in his despatch, dated 20th August last

(Revenue No. 17), dismissed Mr. Ouchterlony's appeal to His Lordship against the decision of the Madras Government, declaring the proceedings of the Revenue Survey authorities to be illegal; and as I am desirous of renewing my application to the Commissioner of this district (with reference to his letter to me, No. 270, dated 29th July

1874, which will be found in the accompanying copy* in print of the correspon-

* Sent by book-post.

dence which passed on the subject between myself and that officer) for an order to have my lands demarcated, now that the working season has already commenced, the papers applied for will enable me to meet any objections which that officer may have to comply with my request.

3. I shall be happy to bear the cost of transcribing the papers in question.

No. 163.

ORDER THEREON, 12th December 1874, No. 1,552.

Miscellaneous.

The Government decline to comply with Captain Godfrey's request.

(True Extract.)

(Signed) C. G. MASTER,

Acting Secretary to Government.

To Captain T. H. Godfrey.

Ed. W. H. Pread.

RECEIVED
MAY 20 1874
COMM. OFF. NILGIRIS
COCKERELL
MAY 20 1874
COMM. OFF. NILGIRIS
COCKERELL

[Copy.]

No. 188.

Commissioner's Office,
Ootacamund, 20th May, 1874.

From J. B. COCKERELL, Esq., Commissioner, Nilgiris,
To CAPTAIN T. H. GODFREY, Ootacamund.

SIR,—With reference to your Letter of the 9th March last, requesting me to direct the Revenue Survey Department to prepare a plan showing the boundaries of your land known as the Yellamullay Deshom, near Goodalur, I regret that I am precluded from complying with your request until a competent Civil Court has adjudicated upon the question of your boundaries.

I have the honor to be, Sir,

Your most obedient Servant,

(Signed) J. B. COCKERELL,

Commissioner.

Ootacamund, 26th May, 1874.

To

J. B. COCKERELL, Esq., Commissioner, Nilgiris, Ootacamund.

SIR,—I have the honor to acknowledge receipt of your letter of the 20th instant, No. 188, informing me that you are precluded from directing the Revenue Survey Department to demarcate the boundaries of my land known as the Yellamullay Deshom until a competent Civil Court has adjudicated upon the question of those boundaries.

2. I beg respectfully to submit that my legal position, with reference to the tracts of land held by me, is one which does not create any necessity for my resorting to a Civil Court upon the question of my boundaries. The only question that did ever arise in respect of my "Dodaghada Shola" land, after I had been in uninterrupted possession of the same for upwards of 15 years was, as to whether it was entitled to all the lands within the boundaries of my grant, or whether my right thereunder extended only to 600 acares. This point was tried and decided by a Court of competent jurisdiction 12 years ago. For the last 23 years I have been in legal possession of all the "Dodaghada Shola" land that I claim within my boundaries, and I venture to lay before you the following statement of facts, which I trust, will prove to your satisfaction, that no Court can now be expected to take cognizance of a question so long ago decided by a Court as aforesaid.

3. A portion of the Yellamullay Deshom was assigned to me by

It is necessary to explain that in June 1875, I gave up possession of my Yellamullay land, under the terms of a Mortgage Deed, to Mr. Perumal Natarajan, and have thus lost control over the same to this day. I call upon you to show the Commission that, but for this, I could have shown that the land was assigned to me.

Yellamullay Perumal Natarajan on the 5th of March, 1846, by a deed of sale in which the boundaries of the tract of land which passed thereunder are distinctly described. At the time of the purchase, I entered into possession,

opened out, and marked my boundaries, and since then continued to clear them annually, whilst I was in possession.

4. The remaining portion of the said Deshom was assigned to me by the same Chetty on the 26th September, 1863, by a deed, which also defines the boundaries of the land which passed to me under the said deed.

5. The tract of land, which passed under my grant of the 15th March 1846, is known as the "Dadaghada Shola," and the other tract referred to as "Arrattapama," the whole comprising the Yellanallay Deshom, the boundaries of which are unmistakable. Copies of my two grants from the Chetty are hereto appended marked A. and B.

6. After I had been some time in possession of the "Dadaghada Shola" land, the late Nullamboor Rajah sent his servants to interfere with my works, and represented to me that he had a title to the aforesaid land superior to the Chetty's, and offered to confirm my transaction with the Chetty by giving me a perpetual lease of the said land, in consideration of Rupees 200 and an annual payment of Rupees 15. I agreed to the arrangement, imagining the Rajah might have a title of some kind or other, and executed an agreement under date the 5th December, 1848, embodying the above terms. The Rajah also executed an agreement in my favor granting the said land.

7. It is worthy of remark that the description and boundaries of the land, as given in the Rajah's deed, are the same which are specified in the Chetty's deed, which was produced at the time the transaction with the Rajah took place, and from which, in fact, the boundaries were copied verbatim into the deeds executed simultaneously by the Rajah and myself in favor of each other. Translates of these deeds are hereto appended marked C. and D.

8. These deeds are in the Malayalam language, and I assumed, and was induced to believe, that they conferred on me the right over the entire "Dadaghada Shola" land, as conveyed to me by the Chetty's grant of the 15th March, 1846.

9. It was subsequently ascertained that in 1843, the Rajah had no title whatever to the land, the title under which he now claims having been obtained in 1863 from an estate which he himself had no real title to it. Translate of the deed granted by the said Rajah to the Rajah is in my possession, and will be submitted if necessary.

10. Eleven years after I had been in possession of the "Dadaghada Shola" land, on the 1st January, 1857, Mr. James Ouchterlony, ceased the suzerain of the said Rajah (the present man) to execute a deed in him, whereby he grants to Mr. Ouchterlony a large tract of land entirely within my boundaries, and also land within my boundaries, except 600

cawnies which the said deed treats as the extent of the land which passed to me under his predecessor's grant of 1848.

11. The dispute or contention to which this transaction had given rise, was *not at all a question of boundaries*, but whether, (as I have already remarked,) I had a right to all the land within my boundaries, or whether I was to be confined to 600 cawnies only.

12. With the view of obtaining a solution of this question, and confining my possession to the 600 cawnies, Mr. Ouchterlony sued the Nullamboor Rajah as the first, and me as the second, Defendant (O.S., No. 4 of 1862, on the file of the Civil Court of Calcutta) "to cause the Defendants to mark off, and fix the boundaries of 600 cawnies of land, situated at Numbalacode Amshom, in Wynad Taluk, which is excepted from the grant made by the first Defendant to Plaintiff, on the 19th January 1857." The Plaintiff further stated that "the first Defendant was willing to mark out the boundaries of the 600 cawnies of land at my instance, but the second Defendant objected to it, and accordingly the first Defendant has refrained from doing so." Under these circumstances, I am precluded from making use of my land.

13. About this time the Plaintiff, Mr. Ouchterlony, was in active collusion with the first Defendant the Rajah: and the correspondence betraying their conspiracy with the object of defrauding me of my land, has since come indirectly into my possession, and I enclose for your information copies of certain letters which passed between them bearing on the subject.

14. The Nullamboor Rajah, the first Defendant, in his answer to the Suit, supported the Plaintiff, adding "that he was prepared to assign the 600 cawnies formerly leased to second Defendant, but that the latter refuses to comply with his request."

In my answer to the Suit, I contended that "I hold the entire extent of the 'Dadaghada Shola' land in Wynad, therefore, I am not bound to affix boundaries to 600 cawnies of the same—that the Plaintiff, in collusion with first Defendant, has instituted this Suit, with the view of defrauding second Defendant" (i.e., myself,) of my just rights."

15. I may here remark that the most fatal objection to this Suit was, that it was barred by the statute of limitation,—seeing that I had been in undisturbed possession continuously for sixteen years previously thereto,—a fact which was entirely overlooked by my Pleader; but, notwithstanding this objection, the Civil Court dismissed the Suit on the grounds "that the 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 has suffered a wrong, his remedy was against his landlord; or as the landlord has admitted the Plaintiff's claim, 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." Mr.

Ouchterlony did not appeal from this decision, and neither he, nor the Rajah has thought proper to pursue the course pointed out to them by the Judge in order to right themselves.

16. On the 11th December, 1861, Mr. Ouchterlony brought another Suit against me (O.S., No. 377 of 1861, on the File of the Sadr Amn's Court of Tellicherry) "for payment of Rs. 3000 as penal damages on account of injury done to the Plaintiff by Defendant by trespassing upon his land in Numbalacode Kanchi, on the 11th May last past, and previous thereto, digging up land, and putting in coffee plants, and opening out a road through the land, thereby wantonly causing annoyance to Plaintiff, and doing him serious injury in other ways also, such trespass being, moreover, an infraction of a pledge given by the Defendant to the Assistant Magistrate of Malabar, on or about the 16th of January, 1856."

17. It is manifest from the above plaint, that so far back as the year 1856, I had, under the title derived by me from the Chetty, dated 15th March, 1846, asserted my right, and exercised rights of ownership over certain of the lands to which Mr. Ouchterlony pretended a title under a previous grant from the Rajah, dated 18th December, 1845, (to the value and nature of which grant I will hereafter advert,) and this circumstance I submit gives a death blow to the integrity of his subsequent transaction with the Rajah who, induced by Mr. Ouchterlony, leased to him a larger tract of country in 1857, surrounding my boundaries as a fine the land, which had passed to him under his previous grant, was in my possession, and was, in all probability, to form the subject of serious complications between us. I submit it was Mr. Ouchterlony's duty, under the circumstances, to have set himself right with the Rajah as regards the land he obtained from him in 1845, before he accepted the other land from him in 1857; and had there been honesty of purpose, the Rajah should have considered it his duty to compel me to confine myself to 600 cawnies before lending himself to this questionable transaction; and I also submit, it was but natural to expect he would most assuredly have taken such a precautionary step, if he had the remotest chance of its resulting in his success.

18. Mr. Ouchterlony obtained from the Nallamboor Rajah an agreement (adverted to in para 17) under date the 18th December, 1845, whereby he leased to the tenant land within certain imaginary boundaries; and on the 4th September, 1847, (17 months afterwards,) obtained another document from him, purporting to be an "explanatory note" of the said boundaries, a comparison of which with the boundaries described in the former deed, will easily show, that there is an amount of discrepancy between the two boundaries, which can, by no means, be explained, or overlooked; and this circumstance cannot but strike one forcibly, that the Nallamboor Rajah was either perfectly ignorant of the boundaries of the land at the time he assigned to Mr. Ouchterlony in 1845, or that, in order to embarrass me, he altered the description of the boundaries in 1847; for it is an acknowledged fact, that the hill, denominated "Nookerche Mullay," is not

"Yellamullay," nor is either of these two hills, known as "Nellgherry Mullay," which the "explanatory note" of the 4th of September, 1847, attempts to make it appear it is. Translates of Mr. Ouchterlony's grant of the 18th December, 1845, and of the said "explanatory note" of the 4th September 1847, are hereto appended marked B. and C. I may add that the hills referred to, are widely distant from each other, and derive their respective names from certain peculiarities as to their general features, &c., and I have just as accurate, and as much knowledge and information in regard to them, as any of the oldest inhabitants of that part of the country can possess.

19. To return to the subject matter of the Suit No. 377 of 1861.*

I beg to inform you that the result was unfavorable to Mr. Ouchterlony, the Civil Court at Calicut rejecting as evidence the proceedings of the Assistant Magistrate (Mr. Tod) referred to in the plaint, and deciding the case in my favor. Copies of the principal portions of the record of this Suit are hereto appended marked G.

20. As soon as I became aware, for a certainty, that the Nallamboor Rajah had no title whatever to the land I obtained from Permaul Chetty, I refused by writing to hold under him,—openly denounced his transaction with me as a fraud,—and have not paid him any rent since the year 1859.

21. It is not to be supposed that the Rajah would have allowed me to defy him, and slept over his rights, if he thought it was in his power to enforce the payment of the arrears of rent, and the observance on my part of the other terms embodied in my agreement to him of the 5th December 1843; and I submit for your consideration, whether under Section 2 of Act VIII of 1839, the question as to my right to the entire tract of the land within my boundaries, comprising the "Dodagbada Shola" can, in the face of the unrepented decree of the Civil Court of Calicut in O. S. No. 4 of 1852, and the passive conduct of the parties since that time, be now raised in a Court of Law by either Mr. Ouchterlony or the Nallamboor Rajah.

22. I trust I have now laid clearly before you the fact that my possession of the whole of the "Dodagbada Shola" land dates from 1846; that an attempt made in 1861-62 to disturb that possession, and confine me to 600 cawnies, has resulted in the utter discomfiture of my opponents, and in the continuance of my right of possession over the entire tract of the land within my boundaries, and not 600 cawnies only. These are the boundaries I now seek to have demarcated by the Revenue Survey authorities.

23. I shall now enter upon the history of my title to the "Arrattaparra" land. This land was assigned to me by the said Permaul Chetty on the 26th September 1863, the boundaries of which are definitely laid down in my title deed. I hold besides the original metal-plate evidencing the assignment of the whole of the Yellamullay Deshom to the ancestor of Permaul Chetty, dated so far back as the year 754 of the Malabar Era, or more than 200 years ago, and which I obtained from the Kunarimnall Rajah, the original Jami (proprietor) of the said land.

24. Soon after my entering into possession of the land referred to, (of which I at the time marked out the boundaries, and have ever since continued to clear them annually,) Mr. Ouchterlony brought an action of trespass against me before the Court of the Deputy Magistrate of Wynand who held proceedings, and passed an order under date the 22nd January 1864, attaching the land, and directing, under Section 319 of the late Criminal Procedure Code, that "neither of the parties shall retain possession of the land in dispute until a competent Civil Court shall have determined the rights of the parties, or who ought to be in possession."

25. From this order I appealed to the High Court, and obtained judgment, setting aside the order of the Deputy Magistrate of the 22nd January, 1864, and directing that "Captain Godfrey retain possession of the tract of land in dispute, and forbidding all disturbance of possession." Copies of the several proceedings and orders referred to, are hereto appended marked II.

26. At the time O.S. No. 4 of 1862 was pending before the Civil Court of Calicut, Mr. Ouchterlony sold to persons of wealth and influence portions of the land in dispute, and under litigation; and portions after that but was decided in my favor; and in 1866 I brought a Suit (O.S. No. 8 of 1866 on the file of the Civil Court of Calicut) as against the Nellumbur Rajah, for the cancellation of the document of the 3th December 1848, on the ground of fraud, and as against Mr. Ouchterlony and others, for trespass and for possession of certain lands within my boundaries occupied by him, and by parties who derived their titles from him.* This

Suit was dismissed on mere technical grounds, namely, that it was barred by the statute of limitation as regards fraud against the Rajah, and misjoinder of causes and parties as regards the rest of the Defendants.

27. The effect of this Suit, therefore, does not go beyond barring me from obtaining any remedy against the Rajah on the ground of fraud, and quieting the possession of Mr. Ouchterlony and others of the lands which formed the subject of the plaint, but my right of possession under my title obtained in 1856 over the rest of the land within my boundaries was not, and could not be, by any possible means, affected thereby.

28. Such was my position with reference to my "Dodaghada" and "Arrattaparra" lands up to the beginning of the year 1871, when Captain Sargeant, the late Assistant Superintendent of the Revenue Survey, setting himself up as an authority superior to a Civil Court, passed a decision against all reason, law or justice, declaring me only entitled to 600 cawmes of land, out of the two tracts referred to, and conferring upon Mr. Ouchterlony all the rest of the mentioned lands within my boundaries. A long correspondence ensued between myself and Captain Sargeant, and between myself and his immediate superior, both of whom lent a deaf ear to my representations, a circumstance which led me to seek the protection of Government, who under date the 28th September, 1872,

passed an order, setting out my case, and directing me to appeal to the Civil Court against Captain Sargeant's decision. I accordingly appealed to the Civil Court of Calicut and obtained two orders, dated 10th January and 5th February, 1873, denouncing the said decision of Captain Sargeant as illegal, invalid, and passed without authority. I next submitted to Government copies of these orders, and they were pleased, under date the 1st May, 1873, to direct, "that the Survey Department remove the boundary marks placed by them in accordance with Captain Sargeant's decision." Having passed this decision, Captain Sargeant reported to Government that he had demarcated my boundaries, without giving a correct account of my position with reference to my lands, and Mr. Wapshare, the Agent of Mr. Ouchterlony, having been aware of what Captain Sargeant had done, made a simultaneous application to Government to put him in possession of all the lands he claimed within my boundaries. These facts would not have come to my knowledge, but for the Secretary to Government, on my waiting upon that functionary, having read over to me Captain Sargeant's report, and Mr. Wapshare's letter on the subject. The result was the decision of Government that the Revenue Survey authorities should remove the demarcation stakes fixed by them in accordance with Captain Sargeant's decision. Copies of the Civil Court and Government orders referred to are hereto appended marked I, J, K, and L, and I submit that it is not at all likely the Government would have interfered in this case, and incurred a large outlay, if there were grounds for challenging my right to all the lands within my boundaries, and for upholding Captain Sargeant's decision confining me to 600 cawmes.

29. The decision referred to, which affected me as regards my "Dodaghada" and "Arrattaparra" lands, having been thus cancelled, it follows that my position now is the same, as it was before it was passed, and which, as regards the "Dodaghada Shola" lands, was the same which the Decree of the Court in O.S. No. 4 of 1862, secured to me, and as regards the "Arrattaparra" land, the same, which I hold under the orders of the High Court, and the Deputy Magistrate of Wynand, dated respectively the 14th and 26th March, 1864, retaining my possession, and forbidding all disturbance of possession. These decrees and orders recognize my previous possession of the "Dodaghada Shola" lands from 1848, and the "Arrattaparra" land from 1862, a possession from which Mr. Ouchterlony has not, by any law or legal means, sought to oust me since his unsuccessful attempts in 1861, 1862, and 1863.

30. Under these circumstances, I applied to you as the Chief Revenue Authority of the District for an order, under the provisions of Section VII, of Act 28 of 1860, directing the Revenue Survey authorities to demarcate my lands, and prepare a plan of the same, and I respectfully submit, that I am entitled to the benefit of the provisions of the said Act, as much as any other subject of Government. The Revenue Survey authorities did an illegal act in entering upon the question of my title, and deciding upon a point with which it was not within their province to deal, thereby causing

me serious injury, and the Government unnecessary trouble and loss. I now ask them to do what is right, and what they are authorized to do, and I humbly venture to submit that I am justified in making the request to you to have my lands demarcated. The law has hitherto given me its protection, and if any adverse claim is set up to the lands declared by law to be in my possession, it is for the claimant to seek his remedy in a Court of Law. Trusting that you will deign to afford my case a patient and dispassionate consideration,

I have the honor to be, Sir,

Your most obedient Servant,

(Signed) T. H. GODFREY.

A.

Translate of Deed granted by PERMAUL CHETTY, alias YELLAMULLAY CHETTY, and his son KALAPEN CHETTY, to Captain T. H. GODFREY dated 15th March 1846.

Koyoo (ploughshare) Jenmom deed, executed on the 4th Moonom 1021, by Yellamullay Permaul Chetty and his son Kalapen, residing at Chettacooddy in Paddaturray, Numbalacode Umshom, Wynaad Talug, to Captain Godfrey of the 28th Regiment. In consideration of the sum of Rs. 600 this day received by us, we have sold you our Koyoo Jenmom right to Dodaghada Shola lands 600 Cawnies situated North of the Yellamullay, said Turray Umshom and Talug, the farm of the Numbalacode Vayanoor, for the purpose of planting Coffee and being enjoyed. The boundaries of the same are—East, up to the Dodaghada Paddy lands, South, up to the Pandom tree, West, up to Koopa Kooly, and North, up to the Pondy river. We have received Rs. 600 our right in full on the aforesaid Dodaghada Shola land, situate within the said boundaries, and given the same up to you. The Witnesses to this transaction are Turrayl Chettacooddy Kalapa Chetty, Marakurray Maden Chetty, in the handwriting of Ramarayee, at the request of Permaul Chetty and son Kalapen, 4th Moonom (15th March, 1846.)

(Signatures)

A Koyoo Jenmom Title of land sold to Captain T. H. GODFREY of the Bombay Army, dated 15th March 1846, by YELLAMULLAY PERMAUL CHETTY and his son KALAPEN CHETTY.

In this deed we have sold to you the whole of the land set forth in the deed abovementioned, without reference to the number of cawnies contained therein.

Yellamullay, 8th April, 1861.

(Signatures.)

Witnesses.

(Signed) JOHN LEIPENSTEIN.

W. L. WRIGHT.

MAREKAE MADEN CHETTY.

And two more Witnesses.

B.

The Indenture is made the 18th day of July 1865, between Permaul Chetty, commonly called the Yellamullay Chetty, of the Yellamullay Deshom, in the Numbalacode Umshom, in the Talug of Wynaad, in the District of Malabar, the head of the family of the Chetties, settled in that part of the country, of the one part, and Tancior Hovel Godfrey, of Ootacamund, in

the Taluk of Nallcherry, in the District of Coimbatore, Captain in the Bombay Army, of the other part.

Whereas by an assignment known as Koyee Jomom or demise, made in or about Meenam 793 of the Malayalam era, and made between the then Rajah of Koorumbrenad of the one part, and Yellamullay Veeran Chetty, of the Doshom and Anshom aforesaid, (the ancestor of the said Permaul Chetty) of the other part, as appears by reference to an inscription in the Malayalam language on a certain metal-plate, the same being considered as a genuine monument of title, and which is now in the possession of the present Rajah of Koorumbrenad, the then said Rajah did assign to the said Veeran Chetty, his successors and assigns, seven forests with other intermediate small hills, seven houses and sholais connected therewith, situated in Nembakazhian in Wynad, bounded on the East by Arakkappara up to the Nallai at Bhokkoochee Malai, West by Annaparrab, South by Villaded Mullaib, and North by the Pottipora river with the appurtenances, to hold the same unto the said Veeran Chetty, his successors and assigns, in perpetuity, subject to the observance and performance of the conditions as to certain annual ceremonies, and yielding up the Elephants, which might be captured therein. And whereas the said premises have been held by each successive Yellamullay Chetty in an uninterrupted order of descent from Veeran Chetty, to whom the original assignment was made, down to the said Permaul Chetty, the present Yellamullay Chetty, and are now absolutely vested in the said Permaul Chetty, and his assigns for the residue now to come and unexpired of the said term, but subject to the performance and observance of the said conditions. And whereas by an assignment bearing date the 24th Meenam 1021, or A.D. the 15th day of March 1846, the said Permaul Chetty assigned to the said Thurlow Hovel Godfrey certain premises therein described, and which were part of the premises assigned to the said Veeran Chetty as aforesaid. And whereas the said Permaul Chetty did, on the 26th day of September 1867, contract with the said Thurlow Hovel Godfrey for sale and assignment to him of that part of the said premises firstly hereinbefore described which were not included in, or did not pass by, the said assignment of the 15th day of March 1846 for the residue of the said term, for the sum of one thousand rupees, subject to the observance and performance of the conditions (not idolatrous) contained in the said original assignment. Now this Indenture witnesseth and importuneth, if the said contract, and in consideration of and sum of Rs. 1,000 paid at the same time by the said Thurlow Hovel Godfrey to the said Permaul Chetty, the receipt whereof in full for the consideration money for the assigned sale of the remainder of the hereditaments firstly hereinbefore described by the residue of the said term, the said Permaul Chetty doth hereby, and by the receipt for the said sum hereinbefore inserted and acknowledged, and therefrom, and from every part thereof doth hereby acquit, release, and discharge the said Thurlow Hovel

Godfrey, his executors and assigns, and also the said premises. He the said Permaul Chetty doth grant, bargain, sell, assign, transfer, and set over unto the said Thurlow Hovel Godfrey his heirs, executors, administrators, and assigns, all and singular the said premises hereinbefore firstly described (except the premises conveyed in, and by the said assignment of the 15th day of March 1846), and which said firstly described premises form the whole of the Yellamullay Doshom aforesaid.—And all, and singular the rights, members, and appurtenances to the said premises, or any part thereof respectively, belonging, or appertaining thereto or therewith usually held and enjoyed; And all the estate, right, title, interest, benefit, claim and demand whatsoever of him the said Permaul Chetty into or out of the said premises, and every part thereof respectively. To have and to hold the said premises hereby assigned or expressed, or intended so to be unto the said Thurlow Hovel Godfrey, his executors, administrators, and assigns henceforth for, and during all the residue and remainder now to come and unexpired of the said term granted as aforesaid, and all the other estate, term, and interest of him the said Permaul Chetty in the said premises, and every part thereof subject nevertheless to the observance of the conditions (not idolatrous) contained in, and by the said original assignment. And the said Permaul Chetty for himself and his legal representatives, doth hereby covenant and agree to, and with the said Thurlow Hovel Godfrey, his executors, administrators, and assigns that, notwithstanding any act done or permitted by the said Permaul Chetty, he the said Permaul Chetty hath good right and full power, and lawful and absolute authority by these presents, to grant, bargain, sell, assign, and set over all and singular the said premises in manner aforesaid. And notwithstanding any such act, the said hereditaments and premises shall and may at all times hereafter, during the residue of the said term, be entered into, held, and enjoyed accordingly without any denial, eviction, disturbance, claim, or demand whatsoever of, or by the said Permaul Chetty, or any person or persons rightfully claiming, or to claim under, or in trust for him or them. And free from all rights, charges, and incumbrances, created, occasioned, or suffered by him or any other person or persons aforesaid. And that the said Permaul Chetty and all persons rightfully claiming or to claim any right, title, or interest as aforesaid into or out of the said hereditaments and premises respectively, or any part thereof shall and will at all times hereafter, upon the request and at the cost of the said Thurlow Hovel Godfrey, his executors, administrators, or assigns, do execute and perfect all such further acts as may be reasonably required for more perfectly or substantially conveying and assuring the said hereditaments and premises respectively to the use aforesaid as the said Thurlow Hovel Godfrey, or his executors or administrators shall direct. And the said Thurlow Hovel Godfrey doth hereby for himself, his heirs, executors, administrators, and assigns, covenant and agree to, and with the said Permaul Chetty, and any person or persons rightfully claiming under him, that he the said Thurlow Hovel Godfrey, his executors and administrators and assigns shall and will from time to time duly observe and perform the conditions (not idolatrous) in the said original assignment contained. In witness whereof, the said

parties to these presents have heretofore set their hands and seals, the day and year first hereinbefore written.

Signed, sealed and delivered by the within-named Pernal Chetty, the contents having been first read to him and fully explained in the presence of

(Signed) SUNKERIAH, doct.
TINKET VUTHY,
Sub-Magistrate of Goolah.

Signatures.

C.

Translate of Karar (Agreement) executed by Captain Godfrey of the 28th Regiment to the Thackarakavil Tirumalpad, Rajah of Nallumboor, in the Ernad Taluk.

Having advanced Rs.200 for 600 cawies of the land called "Dodaghada Shola" the Jenu of the Rajah, and situated to the Northern side of the Yellamullay (mountain) attached to a Numbalacode Amshom, in the Wynaad Taluk, and bounded on the East by the Western side of the Dodaghada Nilom, on the South by the Northern side of the Pandamarum, on the West by the Eastern side of the Koopakoolley land, and on the

North by the Southern side of the Pandy river, and agreed to pay

annually a Jenmom Bhogum of Rs.15, I have this 22nd Vrischigom 1024, or 26th December 1848, executed this Karar. Therefore, I shall manage the aforesaid land from this date, pay annually to the Rajah Rs.15 as agreed upon in this Karar, and obtain a receipt for the same. Whenever I may not require the aforesaid land, I shall restore it to the Rajah, but not give it to any other person. In the event of my desiring to give any body, the coffee plants, &c., which I may raise thereon, I shall do so when such person also will pay the Jenmom right, &c., to the Rajah. On the vacation, &c., of the land as aforesaid, the Rs.200 now given need not be repaid to me. On the

vacation of 12 years, I shall obtain a

renewal of this Karar according to the

local custom. The value of any improvements or expenses need not be paid to me when I shall not require the land, and give up possession of the same. Witness on the 22nd Vrischigom 1024 or 26th December 1848.

(Signed) T. H. GODFREY.

Witnesses

KAPIL MADATHIL MAHADEVAN PUTTER.
KOONOMPARAMBATH RAMEN MENON.

D.

Translate of Contract executed by the Nallumboor Thackarakavil Tirumalpad residing in the Ernad Taluk, to Captain T. H. Godfrey of the 28th Regiment.

In consideration of Rs.200 received, and the annual payment of Rs.15 on account of Jenmom Bhogum, I have granted you for the purpose of plant-

ing coffee my Jenmom land called the Dodaghada Shola, 600 cawies, situated in the Numbalacode Amshom, Wynaad Taluk, north of Yellamullay, bounded East by the Dodaghada paddy lands (nilom) and Westward, South by the Pandamarum, and Northward, West by Koopakoolley, and Eastward, North by the Pandy river and Southward. You are to hold the land henceforward according to the terms of this contract, paying the aforesaid Rs.15 per annum, and taking my receipt for the same. When you do not require the land,* you are bound to return to me and no one else. You are not prevented from selling the coffee trees and other improvements you have made upon it, the purchaser paying me the Jenmom Bhogum.

The Rajah obtained this title in 1023 M.S. 1832-53 A.D. from a female who herself had not this title to give.

The Rs.200 being a superior right of contract, I am not bound to return it. You are to renew the contract every twelve years according to the usage of the country. When you return the land,* I am not bound to pay for the improvements you have made upon it.

Dated 22nd Vrischigom 1024, (26th December 1848.)

(Signature.)

Witnesses.

KAPIL MADATHIL MAHADEVAN PUTTER.
KOONOMPARAMBATH RAMEN MENON.

N.B.—Captain Godfrey made an absolute gift of a parcel of *this land*, estimated at 220 cawies, about the year 1837. It is known as the "Gumbiloo Mulla" Estate, and is now owned and enjoyed without interruption by Mr. H. G. Sinclair.

Captain Godfrey made an absolute gift of another parcel of *this land*, estimated at 180 cawies, about the year 1837. It is known as the "Peria Shola" Estate, and is now owned and enjoyed without interruption by Mr. Robinson.

Captain Godfrey made an absolute gift of another parcel of *this land*, estimated at 120 cawies, about the year 1837. This is known as the "Chusan" Estate, and it is now owned and enjoyed without interruption by Mr. Pestonjee Sarwanjee.

Captain Godfrey made an absolute gift of another parcel of *this land*, estimated at 150 cawies, about the year 1837. It is known as the "Charleston" Estate, and is now owned and enjoyed by Mr. Charles Godfrey.

The "Yellamullay" Coffee Estate comprises an area of about 200 cawies, a portion of which is under cultivation, and the remainder includes sites for buildings, &c. All the above parcels have been demarcated by the Revenue Survey.

None of the parties have paid any rent to the Rajah, or acknowledged him as their landlord. Under the agreement C. Captain Godfrey has only the power of paying with the improvements made on the land, not with the land. If, on any portion of it, which he did not require, was to be restored or given back to the Rajah.

These facts are given to show that if the Rajah had any right to these lands, (which, with the exception of the Yellamullay Estate, have absolutely been transferred to others, and could have enforced this term of this agreement, he would not have forfeited his claim to about 1,000 cawies of land valued at about Rs.5,000.

If the settlement was of any value, he would not have allowed the status of a landlord to have passed to others, (Captain Godfrey having been in possession for the last 25 years) or his claims to repurchase his title or such like.

The above note is made by me on the 9th September, 1873.

E.

Translate of Karar (Agreement) executed by THACKARAKAVIL TIRUCHILPAD of Nallamoor, residing at Ernad Taluq, in Zillah Malabar, to J. OUCHTERLONY, Esq.

The following are the particulars of the spot of ground specified hereunder, situated close to Noddiyuttam, in Numbalacode Amshom, of Wynad Taluq, belonging to me, which has been leased to you for the purpose of planting coffee plants, and of the boundaries thereof, as well as of the terms which you should conform to hereafter.

1. The said spot of ground is bounded on the East by the Western side of the Palansali Koorde (Hills), whereon the Bullia Nedamattam Dargahom is situated, on the South by a line drawn due North of Yellamallay Hill, and on the West and North by the Western and Southern sides of the Porang Talukko Mullay.

The said spot of ground is bounded on the East by the top of the Nedamattam Hills, on the South by Mookrechee Mullay or Yella Mullay or Noddiyuttam Mullay, on the West by a line drawn due North from Mookrechee Mullay, and on the North by a line drawn due West from Gudalur Mullay, according to the plan attached to this Note. In this manner both parties have agreed and set their signatures hereunto.

4th September 1847

(Signatures.)

2. I hereby agree to lease to you the land contained within the said boundaries for planting it with coffee plants, and as I have now received from you Rs.1500, you should hereafter from 1846, corresponding with 1021, pay to me a Jenmombogum (Proprietor's fee) of Rs.20 annually.

F.

Translate of Note to Agreement entered into between Nallamoor THACKARAKAVIL TIRUCHILPAD of Ernad, in Zillah Malabar, and J. OUCHTERLONY Esq., of Madras, on the 5th Dhano 1021 (18th December, 1845.)

As the boundaries of the spot of ground required for coffee and other plantations in the locality adjacent to Noddiyuttam, Numbalacode Amshom, in Wynad Taluq, and which was agreed upon and granted for the sum of Rs.1500 paid in ready cash, and for the further payment of an annual sum of Rs.20 on account of Jenmombogum, should be more distinctly and positively defined, it is hereby agreed upon between Thackarakavil Tiruchilpad and J. Ouchterlony, Esq., that the hereunder specified boundaries of the aforesaid ground under the agreement, dated 5th Dhano 1021 (18th December 1845) should be considered permanent.

3. You and your kins are to raise coffee trees and other improvements, on the said spot of land, and enjoy the produce. The above mentioned sum of Rs.20 being the Jenmombogum should be paid to me annually during the time that the said spot of ground is in the enjoyment of you, your kins, or any other person to whom the right thereon might be transferred. I shall not oust you from the spot of land as long as you continue to pay the Jenmombogum of Rs.20, as above agreed upon.

4. Should you, your kins, or assignees, give up possession of the aforesaid land from unwillingness to continue in management thereof, and enjoy the produce, I shall not pay you the aforesaid sum of Rs.1500, and the expenses of the planting which you may have incurred on the aforesaid piece of ground.

5. The spot of ground for which this Karar has been executed has until now remained in my possession, but I have not assigned it over to any body on any right; therefore, should any dispute be hereafter raised thereon, the same shall be settled by me.

6. This Karar should be renewed on the expiration of 12 years. On obtaining such a renewal by you, you need not pay me the renewal fee. I have not given my consent for planting the aforesaid land with Teak, Black and Sandalwood trees.

In proof whereof I have affixed my signature to this Karar in the presence of the undermentioned two witnesses.

(Signature.)

* Written on the 5th Dhano 1021, (18th December 1845.)

G.

To

THE CIVIL COURT Zillah, Tellicherry.

Mr. E. N. OUCHTERLONY, Attorney of Mr. JAMES OUCHTERLONY, residing at Quetacmand, in the Zillah Combarone—Plaintiff.

Verus

1. The THACKARAKAVIL MANAYICKAMEN TIRUCHILPAD, of Nallamoor, in Ernad Taluq, Zillah Calicut, 1st Defendant.

2. Captain T. H. GORMLEY, residing at Yellamallay Thoom, near Gudalur, in Wynad Taluq—2nd Defendant.

This Suit is instituted by me to cause the Defendants to mark off and fix the boundaries of 600 cawies of land, situated at Numbalacode Amshom, in Wynad Taluq, which is excepted from the grant made by the 1st Defendant to me on the 8th Magaram 1082 or 19th January 1857. By the aforesaid grant, I am entitled to a fine lands not selected surrounding the 600 cawies of land. The above grant of 600 cawies was excepted on

the ground that it was previously leased to 2nd Defendant. The 1st Defendant was willing to mark out the boundaries of the 600 cawnies of land at my instance, but the 2nd Defendant objected to it, and accordingly the 1st Defendant has refrained from doing so. Under these circumstances, I am precluded from making use of any land. I estimate the value of the Suit at Rs. 10,500.

P.

THE CIVIL COURT, *Wich Collect.*

The statement of Vakeel SYED ALI MOONSHIEH, on behalf of Captain T. H. GODFREY, 2nd Defendant in O.S., No. 4 of 1862, on the file of the Court.

RESPECTFULLY SHEWETH,—The Defendant cannot, from the Plaintiff, ascertain the exact land alluded to.

This Defendant holds the *entire extent of his own Dotalahade Shala land in Wynad*; therefore he is not bound to affix boundaries to 600 cawnies of the same.

Plaintiff in collusion with 1st Defendant has incited this Suit, with the view of demanding 2nd Defendant of his just rights.

Therefore it is prayed that this vexatious Suit may be dismissed with costs.

This Defendant has various vouchers to submit at the hearing, copies of which he will have to obtain from the Courts of the Chancery and Tellicherry Principal Quarter Armoors, from the Court of the Magistrate of Malabar, &c.

Calicut, 27th February, 1863.

Original Suit No. 4 of 1862, transferred from the Civil Court of Tellicherry.

This Suit is brought to procure under Section 15 of Act VIII of 1859, a declaration of Plaintiff's right to all the grounds specified in a grant executed by 1st Defendant on the 19th January 1857, excepting a portion of 600 cawnies, situated within the area of the aforesaid grounds, and assigned by 1st Defendant to 2nd Defendant.

Plaintiff states that in consequence of 2nd Defendant's opposition to the demarcation of his 600 cawnies, he (Plaintiff) is unable to make use of his own land.

Plaintiff and 1st Defendant to prove that 2nd Defendant holds only 600 cawnies of land within his several grants under the deed granted by the Rajah dated 19th January 1857.

2nd Defendant to negative the Plaintiff's evidence, and prove that he carries more.

The case will be taken up for trial on or about the 15th June, 1863.

(Signed) H. D. COOK, *Civil Judge.*

Original Suit No. 4 of 1862, on the file of the Tellicherry Civil Court, in the Civil Court of Calicut.

PRESENT.—H. D. COOK, Esq.

Dated 7th October, 1863.

Mr. J. L. CAMERON, Attorney of J. QUINTERONY, Esq., Plaintiff.

1st, Thackarakavil Mana Vickaramen
Tiroomelpad of Nellumboor. } Defendants.
2nd, Captain T. H. GODFREY.

1st Defendant by Vakeel SHAKARA GOOROO.

2nd Do. by Vakeel SYED ALI, Moonshie, and subsequently by J. D. MAYNE, Esq.

The Plaintiff sues the Defendants to compel them to demarcate and assign limits to 600 cawnies of land, situated in Nambalacode Amshom, in the Wynad Talook, excepted from a grant of land made to Plaintiff by the 1st Defendant, under date the 19th of January, 1857, by which grant the 1st Defendant makes over to Plaintiff all the lands surrounding the abovesaid 600 cawnies which were excepted on account of such having been previously leased to the 2nd Defendant by the 1st Defendant's late uncle, on the 5th December, 1818. The Court dismisses the suit, assessing each party with their respective costs.

Given under my hand and seal of the Court, this 7th day of October, 1863.

(Signed) H. D. COOK, *Civil Judge.*

The period for preferring an appeal will expire on the 5th January 1864.

(Signed) H. D. COOK, *Civil Judge.*

JUDGMENT.

Original Suit No. 4 of 1862 on the file of the Tellicherry Civil Court in the Civil Court of Calicut.

PRESENT.—H. D. COOK, Esq.

Dated 7th October, 1863.

The Plaintiff sues the Defendants to compel them to demarcate and assign limits to 600 cawnies of land, situated in Nambalacode Amshom, in the Wynad Talook, excepted from a grant of land made to Plaintiff by the 1st Defendant, under date 19th January 1857, by which grant the 1st Defendant makes over to the Plaintiff all the lands surrounding the above 600 cawnies which were excepted on account of such having been previously

leased to the 2nd Defendant by the 1st Defendant's late uncle, on the 5th December 1848.

2. The first Defendant in his answer supported the Plaintiff, adding that he is prepared to assign the 600 cawnies formerly leased to second Defendant, but the latter refuses to comply with his request.

3. In his answer, the second Defendant contends that the whole of the "Dodaghada Shola" land, which he, second Defendant, has in Wynaul, belongs to him, and that he is not bound to mark off the 600 cawnies as sued for.

4. On the 29th February, 1863, the Court recorded the following points:— "Plaintiff to prove that second Defendant holds only 600 cawnies of land within his Plaintiff's second grant by the first Defendant, dated 19th January, 1857. Second Defendant to negative the Plaintiff's evidence, and prove that he holds the lands within the four boundaries specified in his grant."

The following documents were filed in evidence:—

PLAINTIFF'S EVIDENCE.

a.—Karn executed to the Plaintiff by the Thackarakaval Tiroomelpad, receiving from the former Rs. 1,500, and assigning to him for the purpose of coffee plantation the land situated within certain specified boundaries, dated 5th Chingom 1021, (18th December, 1843.)

b.—Karn, with a plan attached, executed to the Plaintiff by the aforesaid Tiroomelpad, explaining the boundaries and cawnies of the land mentioned in the aforesaid Karn, dated 21st Chingom 1022, (4th September, 1847.)

c.—Karn with a plan attached thereto executed to the Plaintiff by the Nallumboor Thackarakaval Tiroomelpad, assigning certain lands within the boundaries shown in the plan, and stipulating the payment of a Jemmombhogum of Rs. 2,000, dated 8th Magarom 1032, (19th January, 1857.)

d.—Letter addressed by the second Defendant to the Plaintiff, complaining of some persons from the latter's Estate having broken into his, second Defendant's, Estate, and taken possession of the same, and requesting that the same may be prevented.

e.—Karn executed by the Nallumboor Tiroomelpad to second Defendant, assigning 600 cawnies of the Dodaghada Shola land, situated within certain specified boundaries for Rs. 200, and stipulating the yearly payment of a Jemmombhogum of Rs. 15, dated 22nd Vrishagom 1024, (3th December 1846.)

f.—Karn executed on the same date by the second Defendant to the Nallumboor Tiroomelpad, to the effect that he has taken charge of the said land, upon the stipulated conditions.

g.—Letter addressed by the second Defendant to Mr. Tod, the Assistant Magistrate, agreeing to leave the disputed land in the possession of the Plaintiff until legally decided to whom it belongs, dated 3rd January, 1856.

h.—Deposition given by second Defendant, in Suit No. 183, of 1862, before the P. S. A.'s Court of Calicut, dated 20th February, 1863.

i.—Letter addressed by the Nallumboor Raja to the second Defendant, requesting the payment of the balance Jemmombhogum on 600 cawnies in Dodaghada Shola land, also the demarcation of the boundaries of the said 600 cawnies, as the surrounding lands have been assigned to the Plaintiff, dated 23rd Kani, 1037.

2ND DEFENDANT'S DOCUMENTS.

No. 1.—Document executed to the second Defendant by Vella Mulay Permal Chetty, and his son Kalapen Chetty, assigning to the former the Jemm right to Dodaghada Shola land of 600 cawnies for the purposes of coffee plantation on the receipt of Rs. 600, dated 4th Magarom, 1021, 15th March, 1846.

No. 2.—Copy of a letter addressed by the Nallumboor Thackarakaval Tiroomelpad, to the Collector of Malabar, dated 16th Vrishagom, 1026.

PLAINTIFF'S WITNESSES.

1. J. Ouchterlony, Esq., (Plaintiff.)
2. Aimmungalath Kadangi Nedungadi.
3. Keenum Perambath Ramen Menon.
4. Pathoor Viti Ramen Menon.
5. Nappa Row, Record Keeper of the Huzoor Cutcherry, and the late Bernard Talack Sherstadler.
6. Mr. Alfred Wright.
7. Mr. Adolphus Wright.

2ND DEFENDANT'S WITNESSES.

1. Captain T. H. Godfrey, (2nd Defendant.)
2. Vella Mulay Permal Chetty.
3. Vella Mulay Kangan Chetty.
4. Mathon Chetty (Amstom Peon.)
5. Chingaville Anyon Kallachal Ramen Chetty.

5. The case was tried in the Civil Court of Tellicherry, and I observe that Plaintiff in his written statement says that he doubts if he could have

filed a Suit of this nature prior to the passing of the Code of Civil Procedure, but that he has been induced to think that under Section 15 of that Act, he can sue for a declaratory order to the effect that second Defendant holds only 600 cawnies of land within the limits of his (Plaintiff's) second grant from the first Defendant.

6. Whether this statement was put in to satisfy any doubt the Judge of that Court may have had, I have no means of knowing; but be that as it may, it is evident that Plaintiff himself had some doubts about the expediency of bringing the suit under the Section alluded to.

7. The counsel for the Defendant contended that Plaintiff is not in a position to seek such a declaratory order under Section 15 against the second Defendant.

8. On the other hand, the Plaintiff pleading his own case says, that these Courts are not to be guided by the technical rules of English law alone, but they are in fact Courts of Equity as well as Courts of Law, and as he has suffered a wrong, he is entitled to a remedy.

9. Before going into the merits of the case on the evidence, I think it is of importance first to decide whether or not the Suit can be sustained in the manner in which it has been brought into Court.

10. Let us look at the position of the Plaintiff and second Defendant. Both hold lands under lease from the first Defendant, the Rajah of Nollamoor. The second Defendant alleges, however, that he holds his land by a prior grant from one Permaul Chetty; admitting however that he subsequently obtained a grant from the first Defendant, and that he pays to him a yearly rent. I will therefore assume that both are tenants holding lands from the first Defendant on the same terms, namely, simple rent. The question therefore is, can one tenant come forward and seek a declaratory order under Section 15 of the Code of Civil Procedure, against another tenant because he alleges that that other tenant refuses to demarcate his boundaries, and thus hinders him from the use of his land rented to him by the same landlord? In my opinion he cannot do so. It is a rule in Malabar, that a simple tenant cannot sue for restoration from another simple tenant under cover of a dispute by the samud. Now, what would be the effect of a declaratory order in the case before us? It would be in fact to cause the second Defendant to make over to Plaintiff all the lands beyond the 600 cawnies situated within the limits of Plaintiff's second grant. This is surely not a case coming within Section 15 of the Code of Civil Procedure which treats the Court simply to give a declaratory order only conferring no immediate consequential relief. But to compel the second Defendant to demarcate 600 cawnies is a very different thing from a mere declaratory order.

11. It appears to me that a party before he can sue for a declaratory order under the Section alluded to, that party must have some kind of proprietary right in the property; in this case there is nothing of the kind.

and consequently, I do not see how the Plaintiff can bring an action of this kind against these Defendants.

12. The Plaintiff says he has suffered a wrong in equity; admitting that he has suffered a wrong, to remedy that wrong he must proceed in the right way. Who has wronged him in the case? Is it the first Defendant under whom he holds, or the second Defendant, another tenant? I think it was partly the Plaintiff's duty to have first ascertained the extent of the second Defendant's holding, before he leased the surrounding land from the first Defendant, and it was equally the duty of the latter before leasing those lands to Plaintiff to set himself right with the second Defendant. What is the result? The Plaintiff is now subject to annoyance, and second Defendant sets up an adverse holding altogether, saying he had a previous grant from Permaul Chetty. Whether there is anything in this allegation or not, it is not for me to say in this suit where Permaul Chetty is not included, but it is obvious that it would be necessary to determine upon this point before a Court could give a declaratory order in the strength of leases granted by the first Defendant, whose proprietary right is now impugned by the second Defendant. To do so would be in fact to affirm the Jenm right of the Rajah without putting him to the trouble of proving anything.

13. If Plaintiff suffered a wrong, it appears to me he must seek a remedy by a suit against the first Defendant, to put him in possession of all lands leased to him by the deed granted on the 19th of January, 1847, or as the first Defendant has admitted that deed, the Plaintiff's wrong can be redressed by the first Defendant instituting a suit against the second Defendant, for restoration of any lands he may possess within the limits of the grant to Plaintiff, over and above the 600 cawnies leased to second Defendant by first Defendant's late uncle in December, 1843; and looking at the nature of the Defendant's defence, Permaul Chetty should be included as a Defendant.

14. I don't see otherwise how the Plaintiff can obtain what he asks for. Under the circumstances set forth, a declaratory order would be entirely inoperative.

15. Such being my view of the case, it is needless for me to go further and to give my opinion on the evidence adduced on the merits. Suffice it to say that in dismissing the suit, the circumstances on record are such as to lead me to assess each party with their respective costs.

(Signed) H. D. COOK, Civil Judge.

(True Copy)

(Signed) H. D. COOK, Civil Judge.

* The letter from the Nollamoor Raja to Mr. Qualtebury, dated (page) proves the understanding upon which this grant was given by the former to the latter.

In the Principal Sadr Amin's Court of Tellicherry.

Plaintiff—JAMES OUCHTERLODY, Esq., residing at Ootacamund.

Defendant—Captain T. H. GORTER, residing at Yellamullay Coffee Estate, Retired List, Bombay Army, Goodahur.

Plaintiff sues for payment of Rs. 3,000 as penal damage on account of injury done to the Plaintiff by Defendant by trespassing upon his land in Numbalacode Amshoon on the 11th May last past, and previous thereto digging up land and putting in coffee plants and opening out a road through the land, thereby wantonly causing annoyance to Plaintiff, and doing him serious injury in other ways also, such trespass being moreover an infraction of a pledge given by Defendant to the Assistant Magistrate of Malabar on or about the 10th of January, 1856.

11th December, 1861.

Reply of Captain T. H. GORTER,

Defendant in O.S. No. 377 of 1861, in the file of the Sadr Amin's Court of Tellicherry.

1. I deny having trespassed on the Ouchterloxy Estate, opened out a road on the said land, or dug pits as alleged by the Plaintiff both in his plaint and bill of plaint, consequently there is not the least cause or reason whatever for the payment of the imaginary penal damages claimed by the Plaintiff.

2. I opened a road, cleared jungle, and planted Coffee trees on the hill denominated Yellamullay, which I originally purchased from Yellamullay Perumal Chetty, and his son Kanneer, on the 4th of Medam, 1021, (15th March, 1846,) after the four boundaries had been clearly defined in the deed of sale, but subsequently upon the Nollamboor Rajah raising disputes thereon, I returned it from him, as per an agreement, dated 22nd Vrischicam, 1024, or 21st December, 1843, in which also the boundaries thereof are clearly shown.

3. My Estate is bounded on the North by a river, on the Southern side of which is Plaintiff's land.

4. A considerable period has elapsed since I have, at a vast outlay, planted coffee on the land I have, and having been in undisturbed possession and enjoyment of the same, the Plaintiff has no right or title to it.

5. The Plaintiff not having produced in Court the Magistrate's report

of the land transferred from the Plaintiff and plate alluded to in his bill of plaint, I refuse from any comments thereon.

I pray that the suit may be dismissed with costs. Two deeds, one on stamped paper, and the other on plain paper

are herewith presented, and I do declare that what is stated herein, is true to the best of my information and belief.

Copy of Diary passed by the Principal Sadr Amin, Zillah Calicut, under date 3rd March, 1863.

MISCELLANEOUS PETITION No. 127 of 1863, O.S., No. 183 of 1862.

Vakeel Syed Ally states in petition presented in the case on the 26th instant that if Mr. Lascelles, residing at Ootacamund, in the Wynad Taluk, is examined as a witness by the Court, or by Commission before the Subordinate Judge of Neilgherry, it will be proved that Plaintiff has not the right to obtain restoration, and that the plaint land is included in the Defendant's title deeds.

ORDER.

If the examination of the witness appears necessary, the application will be complied with if required at that time.

(Signed) K. KELLLOO NAIR,

Principal Sadr Amin.

Extract from deposition of Plaintiff's sevenfoldness, Udalath Ramen Menon, Karisten (Minister) of the Nollamboor Palace in O.S., No. 183 of 1862.

"It is not customary to ascertain the extent of earnings by an actual measurement of the ground."

JUDGMENT.

A.S. No. 260 of 1863.

In the Civil Court of Calicut.

Present—H. W. COOK, Esq.

Dated 8th October, 1863.

1. This is an appeal from the decree of the Principal Sadr Amin of Calicut in O.S., No. 183 of 1862, awarding to the Plaintiff the sum of Rs. 300, as damages on account of alleged trespass committed by the Defendant on lands within the boundaries of Plaintiff's Estate, about the 11th May 1861.

2. The Defendant denies that he had committed any trespass on Plaintiff's Estate, contending that the land on which the trespass is said to have been committed is within the boundaries of his Estate.

3. On reference to the record of the case, the Court finds that Plaintiff and Defendant both hold lands under grants from the Nollamboor Rajah. So long ago as 1859, disputes arose between them regarding their boundaries, and an inquiry was held by the Assistant Magistrate, the result of

which was a report marked C, in the Suit. *This, however, I cannot receive as evidence in this Suit, nor the plan which it refers to.*

4. The Plaintiff contends that the trespass complained of was made on the same land which the Defendant agreed to leave in the Plaintiff's possession until a Court of law has decided upon their respective rights; up to this time no authoritative decision has been passed, and the boundaries of their Estates still remain in uncertainty.

5. The Plaintiff instituted O.S. No. 4 of 1862, for a declaratory order for demarcation of the boundaries of the Defendant's Estates, but this Suit has been dismissed.

6. The point for decision therefore in this case was, has the Defendant committed a trespass on the land which he agreed should be left in the Plaintiff's possession?

7. I have gone over the evidence adduced by the Plaintiff, and I can find no evidence in support of the Plaintiff's allegation. The fourth witness, Mr. Wright, can say nothing about it, neither can the Rajah's Kariestan, the seventh witness. The only evidence I can find is the Defendant's answer to the sixty-second question put to him where he says, "I admit I worked on that land and acts complained of." But this admission is not enough to prove the Plaintiff's case.

8. Before a decree awarding damages can be given, there must be clear and decisive evidence when and in what spot the alleged trespass took place, and that the land on which the alleged trespass took place was in possession of the Plaintiff. Now, the record does not afford that information, for not one of the witnesses can say a single word in support of the Plaintiff's plea. In fact, the Plaintiff himself does not know where the Defendant's boundaries are; while so I fail to see how he can expect a decree for an act which has not been proved.

9. The Defendant admits that he worked on certain lands which, he says, are within the boundaries of his grant; but this admission can go no way to prove that this working was an invasion upon property belonging to the Plaintiff, for, as before remarked, the record of the case gives no evidence whatever upon which I can decide that any trespass took place.

10. The decree of the Court below, in fact, gives the right to all the lands within the boundaries in the Plaintiff's documents to Plaintiff, before there is evidence to show where the boundaries of their Estates are.

11. The Plaintiff seeks only damages for an alleged trespass. This trespass has not been proved, therefore, his case for damages cannot be sustained.

12. I therefore reverse the decree of the Court below, and dismiss this Suit, assessing the Plaintiff with all costs both in original and appeal Suits.

(Signed) H. D. COOK, Civil Judge

H.

Proceedings of the Court of the Deputy Magistrate of Wynaul.

Manantoddy, 22nd January, 1864.

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

Read statement of Captain T. H. Godfrey, dated 15th January, 1864.

Read statement of Mr. Charles Godfrey, dated 15th January, 1864.

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

Captain Godfrey states that he purchased the portion of land in dispute from Yellamullay Chetty, about 18 months ago, but that the boundaries were not marked till about six or eight months ago, when his cousin, Mr. Charles Godfrey, commenced opening an Estate.

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

This dispute has been going on for several years past, and I am myself aware that Mr. Ouchterlony in 1857 leased all the land surrounding the tract that was purchased by Captain Godfrey from both the Nollamboor Rajah as well as Yellamullay Chetty in 1848, and the tract now in dispute is situated just beyond the boundary of his former purchase. I therefore consider that Captain Godfrey was not justified in either making the purchase or selling a portion of it to Mr. Charles Godfrey, who states he commenced operations on the 4th or 5th October last. Mr. Ouchterlony, however, as soon as he became aware of the circumstance, lodged a complaint on the 27th November last, (1863) and orders were issued by me at once through the Sub-Magistrate of Cuddalore, to stop the work until the question was decided. On a personal inspection, however I found that Mr. Ouchterlony had not marked his boundaries properly. Under those circumstances, and as the dispute is likely to induce a breach of the peace, I adjudge under Section 119 of the Code of Criminal Procedure that neither of the parties shall retain possession of the tract of land in dispute until a competent Civil Court shall have determined the rights of the parties or who ought to be in possession.

(Signed) B. RICHARDSON,

Deputy Magistrate

In the High Court of Judicature at Madras.

Monday, the 14th day of March 1864.

PRESENT.

The Honble Sir C. E. SCOTLAND, *Knight Chief Justice,*

The Honble Mr. Justice FARRER.

Criminal Petition, No. 22 of 1864.

Captain T. H. GOSWAMY and another, — *Petitioners.*

Application under Section 404 of the Code of Criminal Procedure for an order calling for the record of a certain Judicial proceeding held before the Court of the Deputy Magistrate of Wynnad on the 22nd of January, 1864.

This application coming on this present day to be reheard, the Court after hearing J. D. Mayne, Esq., counsel for the petitioners, delivered the following Judgment. The object of Sections 318 and 319, is to guard against forcible entries and acts of violence upon land, the right to which is in dispute with the view of obtaining, or securing, actual possession.

The foundation of the Magistrate's jurisdiction is that he shall be satisfied that a dispute exists which is likely to induce a breach of the peace. If satisfied of that, he is to inquire and decide which of the disputing parties was in actual possession, without reference in any way to the question of whether the possession is lawful or not, and when he had decided that one of the parties was in actual possession of the subject of dispute, he has no discretion, but is bound to make a proceeding declaring such party entitled to retain possession, and forbidding all disturbance of his possession until ousted by law. It is only when the Magistrate finds that neither party is in possession or is unable to decide which party is in possession that a discretion is given him under Section 343 to attach the subject of dispute. We may observe that Act XIV of 1859, Section 15, makes express provision for cases of unlawful dispossession and gives a right to recover independently of title, provided the person dispossessed dies within six months.

2. The proceedings in this case show that the Deputy Magistrate was clearly of opinion that Mr. Charles Godfrey was in actual possession of the land in dispute when Mr. Ouchterlony made his complaint on the 28th November, and that he had been carrying on operations upon the land since the 1st of October. The case therefore was excluded from the operation of Section 319, and the Deputy Magistrate being satisfied that the dispute was likely to lead to a breach of the peace, applied under Section 318, to have ordered Mr. Godfrey to possession until the right to the land should have been determined. We are consequently of opinion that the Deputy

Magistrate was wrong in point of law in proceeding under Section 319, and our order is, that the order passed by the Deputy Magistrate be set aside, and that the Magistrate be directed to record the proceeding required by Section 318.

(A true copy.)

(Signed) C. F. CHAMBER,
Registrar, Appellate Side.

Proceedings of the Court of the Deputy Magistrate of Wynnad.

Mamutoddy, 25th March, 1864.

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

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

(Signed) H. RICHARDSON.

Deputy Magistrate.

Proceedings of the Madras Government, Revenue Department, 25th Sept. 1872.

Read the following papers:—

No. 170. Petition from Captain T. H. GOSWAMY.

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. WATSHAM, 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 relative to the boundary between his and Mr. Ouchterlony's estates. (Here enter 5th April, 1872.)

No. 172. From Mr. H. WATSHAM, Attorney for Mr. J. OUCHTERLONY.

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

No. 173. From Mr. H. WATSHAM, Attorney for Mr. J. OUCHTERLONY.

Praying for a writ of Habeas Corpus. (Here enter 16th July, 1872.)

No. 174. Letter from Superintendent of Revenue Survey.

Submitting report of the Proceedings at the Survey Department on the above subject. (Here enter 3rd July, 1872.)

No. 175. Petition from Captain T. H. GOSWAMY.

Praying that the Revenue Survey authorities be directed not to determine the boundaries of his land until the dispute is determined. (Here enter 25th July, 1872.)

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

Calling in the title deeds of his estate.

(Here enter 10th August, 1872.)

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

Replying to the above.

(Here enter 16th August, 1872.)

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

Submitting three, in reply to decision of the Superintendent of Revenue Survey, in regard to his land, as has fully complied with the requirements of Act XXVIII of 1860.

(Here enter 16th August, 1872.)

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

Forwarding the plan of his estate called for by Government.

(Here enter 17th August, 1872.)

No. 180. From Captain Sandhuva, Asst. Superintendent of Rev. Survey.

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

(Here enter 16th August, 1872.)

No. 181. From Mr. J. OUCHTERLONY.

Submitting for consideration certain circumstances and observations under Act XXVIII of 1860.

(Here enter 20th August, 1872.)

No. 182. Order. Dated 28th September 1872. No. 1,303.

The Government have already decided in G. O., dated 9th August, 1872, No. 1,188-A, what is the eastern point to which they will admit claims to land in the so-called "Ouchterlony Valley," based on titles derived from the Nallambur 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 amenable 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 northerly part of his claim, the western boundary of which is described as a line drawn due north from Mukurichi Mulla; and it intersects one drawn due west from Gaddala Mulla, which is the northern limit.

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

* He took documents and of the same date—23rd December, 1845.

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

In the same the southern point is stated to be "Mukurichi Mulla, or Yella Mulla, or Nilgiri Mulla."

* There is no such case. The deed of lease is dated 25th December, 1845, whereas the note referred to is dated 2nd September, 1872—see first page of this paper.

7. Mr. Assistant Collector Tod, in his report* of 15th January, 1856,

* Reported in evidence by the Court. (see page 24.)

states that the people resident in that part of the country recognized the identity of Mukurichi Mulla and Nilgiri Mulla.

8. On 5th December, 1848, Captain Godfrey obtained from the same

Tirupad a lease for certain land, the eastern boundary of which appears by Mr. Tod's report to have been described in the deed as a line drawn north from a hill and swamp called "Doddagudda Nilam" to the Pandi River, which river forms the northern boundary, the southern point being the tree called Pandam and the western the "Coruh Colly Hill."

9. From Mr. Tod's report it would appear that the eastern point is described as a hill and swamp called "Doddagudda Nilam" which is to the north

and attached to the large hill called "Yella Mulla," and he states that on inspection he found that the "Doddagudda" 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.

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 cawmes.

11. From the judgment in Original Suit, No. 8 of 1866 on the Circuit Court file, Captain Godfrey's claim appears to be that, on 15th March, 1846, two Chetties conveyed to him their "Koyad Tenm" right over the Doddagudda Shola lands (undoubtedly as of 600 cawmes only), and gave up possession thereof to him; that after some time the then Tirupad alleging himself to be the Jemra (proprietor) offered to grant Captain Godfrey a perpetual lease of the land in question, on which the title-deed, on which he

* I have never replied upon the lease grant since the discovery of the fraud. These events which Captain Godfrey does not understand, and that in the boundaries, etc., were copied from the deed of March, 1846, but that Captain Godfrey understood, and both parties intended that the whole of the land (and not merely 600 cawmes) within those boundaries should pass thereby.

12. On 19th January, 1857, Mr. Ouchterlony obtained from the then and successor of the Tirupad, who granted him, and Captain Godfrey & Co.,

* Should be "Pandam" and not "Pandam."

* Should be "Coruh Colly Hill" and not "Coruh Colly Hill."

* Should be "Pandam" and not "Pandam."

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 continuous with those of the original grant, and the western limit is defined by a line drawn north and south through two specified points. The deed, according to the translation before Government, which appears to have been produced in court, proceeds thus: "All the boundaries are, as delineated in the 2^d lease attached. Excepting the extent of 600 ca. of the land called Dodda Shola, bounded on the east by the Dodda Shola land on the south by the Pantha-tree, on the north by the Pantha-tree, and on the west by the Kapaⁿ Kothal, and included in the above-mentioned boundaries, which has been assigned to Captain Godfrey by my note in virtue of a karni 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 ca. of land situate at Namunade Avasang, in Wynad Taluk, which are excepted from the grant made by his 1st defendant to plaintiff on 19th January, 1857," and which the 1st defendant was willing to mark out, but the 2^d defendant objected.

Second defendant answered that he "holds the entire extent of his own Chottas, Shola lands in Wynad; therefore, he is not bound to affix boundaries to any portion of the same."

14. The case framed issues the following:—

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

"2^d defendant to negative plaintiff's evidence, and prove that he holds all the land within the true boundaries stated."

15. Evidence was adduced on either side in favour of their respective pleas, and incidentally it appeared that in 1857 (that is before Mr. Ouchterlony obtained his second lease) Captain Godfrey had, under his lease of 1843, acquired a considerable tract of land on the eastern side of Mr. Ouchterlony's western boundary under his first lease of 1841, which dispute was investigated by Mr. Assistant Collector Bell, on the spot in 1855, with the result of recognising Mr. Ouchterlony's prior possession and of Captain Godfrey relinquishing it, with a view to its being 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.

Richard C. Kinnel, Esq.

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 2^d defendant for restoration of any lands he might possess within the limits of plaintiff's 2^d lease, over and above 600 ca. waies.

17. In Original Suit No. 8 of 1865 on the Calicut Court 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 1875, the Tirupad had no right in the land concerned, and consequently was not competent to make any assignment of it, and that the lands sought to be recovered were within the boundaries of that originally obtained by the plaintiff from the Chetties.

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

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

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

"Whether plaintiff obtained possession of the property named in the document of 14th March 1846 under that document."

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

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

21. Captain Godfrey appealed to the High Court in Appeal Suit No. 45 of 1867 on the grounds that the reason assigned for dismissing the original suit was 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 Sargeant of the Survey Department, and submitted by Colonel Priestley, states "the nature of the dispute as follows:—

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

26. The "summary of evidence and grounds of decision" states: "I have examined the title-deeds of Mr. Ouchterlony and Captain Godfrey, and am of opinion that even if there be any vagueness as to the amount of land specified in Captain Godfrey's title-deeds—which I do not perceive—the second title-deed given by the Rajah to Mr. Ouchterlony on 19th January 1857, fully explains the meaning. It is plainly stated in Mr. Ouchterlony's deed that the Tirmulpad assigns to Mr. Ouchterlony all the land within certain boundaries, with the exception of 600 cawrees of land called Doddigada Shola already granted to Captain Godfrey."

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

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

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

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

30. Captain Godfrey appeals to Government to reclaim the Survey Department from "dismantling all the lands belonging to me and mine, with the exception of 600 cawrees as Mr. Ouchterlony's."

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

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

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

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

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

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

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

38. The Act, however, enables Government, on just and reasonable cause shown, to extend the period for appeal within such further period as may seem proper, and as it may, with some reason, be argued in this case, that the issue determined by the Survey Officers 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 jurisdiction of the Survey Officers barred by the decision of the Civil Court in the same dispute, and by its very nature, the Governor in Council resolves to extend the time for appeal to the Civil Court up to 11th December 1873, within which time Captain Godfrey must file his appeal in the Civil Court to set aside the decision; should he fail to do so, the decision will become final in law.

39. Pending the result of this appeal the Survey Officers will take no further action in the matter of defining Captain Godfrey's estate, or that of Mr. Ouchterlony, under his *seignior* 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 Pripud by Captain Godfrey on which a claim must be based according to the High Court's decision.

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

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. CALTON,

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 Madhav,
the Superintendent of Revenue Survey.

Proceedings of the Civil Court, Zilla Calicut, dated 11th January, 1873.

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

The object of this so-called plaint is to set aside a decision of Captain Sargeant, Assistant Superintendent, Revenue Survey, whereby he has declared Captain Godfrey to be entitled to 600 cawnies *only* of land within certain boundaries. The Act (No. 25 of 1860) under which Captain Sargeant purports to have proceeded, shows that the deciding Officer was to mark out the requisite boundary in accordance with his decision, but the Government having been pleased to interfere and forbid

his doing so, there is nothing before me from which it can be ascertained what particular 600 cawnies of land out of a very large area Captain Sargeant is good enough to assign to Captain Godfrey.

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

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

(True Extract.)

(Signed) G. A. SHARPE, Civil Judge.

K.

Proceedings of the Civil Court of Calicut, dated 5th February, 1873.

Read Memorandum of Appeal by T. H. Godfrey *versus* James Ouchterlony.

This appeal calls in question a decision purporting to have been passed under Act 25 of 1860 by Captain Sargeant, 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 Sargeant is specially empowered by Government under the Act, but if so the power should have been shown upon the face of the decision, and not having been shown, the decision itself is a nullity. For this position it is sufficient to refer to Brown's legal maxim under "*Omnia presumuntur esse verum*" which, as is there explained, does not apply to give jurisdiction to inferior Courts.

Captain Sargeant, 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 18 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) Turner 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 anxious to enquire whether Captain Sargeant has been empowered by Government to pass decisions under Act 28 of 1860. From the Government

Would not that order operate as a revocation of the power at my already granted?

Order of the 28th September last, it would rather appear that he has not, but 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 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 induced to produce what Lord Westbury in *Lane* Report Section 74, designates a "vicious amount of uncertainty upon which no satisfactory judgment could have been pronounced by any Court."

Upon the ground that Captain Sargeant, Assistant Superintendent, Revenue Survey, had no jurisdiction to pass the decision impugned, 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 Sargeant's decision been valid.

(True extract.)

(Signed) G. R. STARKE, Chief Judge.

L.

Proceedings of the Madras Government, Revenue Department.

Read the following letter from Captain T. H. Godfrey:

Requesting to be referred to the Government for consideration.

Memorial and papers referred to therein regarding the land in question.

Order thereon, 1st May, 1873, No. 113.

1. Whereas Memorial Captain Godfrey requesting a copy of the order passed by the District Court at Calcutta on an appeal presented by him against a decision passed by Captain Sargeant, 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 do so, and that, inasmuch as it did not appear that such authorization had been granted, and that, inasmuch as it did not appear that it was one that being passed without jurisdiction, created no necessity for an appeal.

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

4. On mature consideration of all the circumstances of the case, His Excellency the Governor in Council resolves to direct, 1st that the Survey Department remove the boundary in accordance with the decision passed by them in accordance with Captain Sargeant's decision; and 2nd that his expenses, as far as those were necessarily incurred, be re-imbursed 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.)

R. A. DALYELL, *Ag. Secy. to Govt.*

To Captain T. H. Godfrey.

Copies of Mr. JAMES OUCHTERLONY'S correspondence with the Nellore Rajah and his Kameestans.

OTTAVAMEND, 5th February, 1862.

SIR.—I have received your letters of the 15th and 27th ultimo. I write this through my Agent, Mr. Reid, at Beypoor, with the chance of its reaching you at Calcutta. The Rajah must, on no account, agree to give a new deed to Captain Godfrey, until he agrees to the measuring out of his 600 cawnies of ground. The very fact of Captain Godfrey calling for it shows that he feels insecure in the line he has adopted. I suppose, however, the Rajah will do nothing till you return. As soon as I hear from you that you have had an interview with Captain Godfrey, who is sure to refuse every thing, I will write a letter to the Rajah, so that it may arrive there as you return, and in the letter I will say that as in an action by me for trespass Captain Godfrey has put in as a defence that he bought all the land (he wishes to appropriate) from *Perumal Chetty* and another, and so would make out that it belonged to them and not to the Rajah, it is impossible to expect that he will now draw back from this; that the Rajah must now keep entirely aloof from him, and if Captain Godfrey himself should attempt any communication with him, he must simply say that he can give him no reply, or do anything until he assents to having the 600 cawnies of his land marked out; that if the Rajah is not careful to act thus, it may cause him great trouble; that I had better bring the action at once, and then the Rajah will have nothing to do, but to put in, as his answer, that my plaint is true; that all the land has been made over to him except the 600 cawnies originally granted to Captain Godfrey on the ———; that he file Captain

Godfrey's deed, acknowledging that the 600 carnies alone were granted to him, and that he called upon Godfrey to meet him in marking out the boundaries of the 600 carnies, but that Captain Godfrey has positively refused to do so, and has meanwhile, as he believes, appropriated all the land to which he is entitled. But when the time arrives, I will send to you a draft of what should be run in. The Rajah *will not accept any fresh document*—he will lose his advantage should he do so; and being unserviceable to me, my loss would fall upon myself. Let him do nothing except under my counsel.

Yours faithfully,
(Signed) J. GUCHTERLONY.

Mr. J. D'ARLEO of Nellore.

Kottam, 2nd April 3rd, 1862.

Sir,—Your letter of the 22nd ultimo, reached me on the 30th idem. I wrote to Framjee and Co. about the gentlemen, and enclosed their reply, so I trust it has reached you long ere this.

The Thirupad has certainly behaved ill about the land, but I suppose it is all that ~~is~~ doing. I am not able to look into these matters just yet, but when I get back and ~~to~~ have received my information from Godley, I think I may let him know some of my mind.

You will see that he wants a writ to perambulate the land, and that I tell him so. He will do himself harm if he attempts it, for he has no tangible case.

Captain Godfrey's bad letter is only a sign of his fear as the case draws on for trial. He wants to frighten the Rajah into giving up the land. He could only summon the Rajah to produce a paper (in which case he could send it) for it is too late now to produce any new documents which he could call upon the Rajah to acknowledge.

The Thirupad need answer no letter of Captain Godfrey's.

Yours faithfully,
(Signed) J. GUCHTERLONY.

From P. KARAKAVIL, Thirupad of Nellore.

To James Ouchterlony, Esq., Government.

With respect, Sir,

My Dear Sir,—By this time you must have received my letter of the 2nd idem.

I enclose Mr. Richardson, the Deputy Collector of Nellore, some had sent me at Nellore, and we had a very long conversation on the follow-

ing subject. He said to me that from the villagers and other respectable he found that the land taken for the of Government, and not mine, at the same, as otherwise I would not those granted to you, Mr. Lascelles considered and held to be Government if I would act as advised by him, or other lands adverted to (I mean of those assigned to you, Mr. Lascelles and others.) I told Mr. R. in reply that the property in question was the Jenu of the late Vayanoor, that all his property was purchased and obtained by me, which I would prove by several deeds in my possession. I told Mr. R. also that I had appointed you to plead for me in the case in question, and that therefore, I could not, in any way, act without consulting you and taking your opinion on it, and that I would write to him on the subject after hearing from you. Mr. R. wishes that though the said spot may be my Jenu property, still I should give it up to Government as a present.

More or less you must have heard some particulars of the inquiry already made in that quarter regarding the matter. You are also aware of the nature and extent of my property at that place, so I shall feel greatly obliged by your letting me know, at your earliest convenience, your opinion as to how I should act in the matter. All the property of the Vayanoor which were not included in the stand of the property, sold by public auction on account of the judgment debt of the Vayanoor, (proprietor) were purchased by me from him subsequently to the said auction sale, under the perpetual tenure, and the deeds are in my possession. As the Cutchina comes on well on the spot in dispute, I think I had better assign the spot unto Government, but at all events, it ought to be done in the regular way by the execution of a katar between myself and Government, fixing certain rent for it.

I remain, &c.
1st February, 1863.

(Signature)

From P. KARAKAVIL, Thirupad of Nellore.

To James Ouchterlony, Esq., Government.

My Dear Sir,—You must have, by this time, received my letter of the 6th idem, acknowledging yours of the 2nd idem with its accompaniments.

I have now received a summons, dated 3rd February, from the Civil Court at Cutch, informing me that the O. S. No. 4 of 1862, would be taken up by that Court for hearing on the 21st instant. I have appointed Kottam as my Valued to plead in the said case, and desired my Kamesan at Cutch with instructions that after consulting you, the needful paper may be prepared and filed in the said suit for me. The said Valued

is a very clever Pleader, and well acquainted with the English language. The said suit is for the amount of Rs. 10,500, but my Vakeel has only to put in an answer or statement (as you will have to consult him). I hope you will let me know when I should pay him for his trouble, as some other circumstances notwithstanding in the matter. On the receipt of this, please let me know on what day I shall leave for Calcutta.

17th January, 1863.

I am, Sir,
Yours faithfully,
Signature.

From TAGHABAKUL TEHVAN of Nellore.

To JAMES OUCHERLONY, Esq., Ootacamund.

With many Salutations.

My Dear Sir,—I have had the pleasure of receiving your kind letter, enclosing copy of an address you submitted to Government for me regarding the spot of land situated at Gollalar belonging to me, which has been taken by the Sirkar without my consent being obtained, for the purpose of making the Cutcherry Station.

May I be assured a reply to the address to Government, if and when you know the reason for the delay? I am anxious to know about this and shall feel obliged for any reply on the subject.

On the 24th November and 11th December last, 1862, the Warranted Deputy Collector, Mr. Richardson, having written to me to submit for his inspection the documents connected with the property of the late Vayandor, purchased by me both in auction and privately, as he wanted to refer to them on account of some disputes which were being investigated last by him, I submitted the same, which were returned to me on the 13th December. Mr. Richardson then, and since my visit to Nellore, and during the conversation, he said he had the documents shown by me did not clear up the boundaries of the lands, asking me to produce further deeds, if any, for that purpose. When I showed him copy of a deposition which I had of the principal inhabitants and others of the place, given before the Sirkar confirming, under oath, that there was a dispute about the boundaries of the district and some those of the Vayandor's property. A copy of the said copy of the deposition has been taken by Mr. Richardson.

If the suit between yourself and Captain Godfrey, I shall content myself as suggested in your letter, should I be called upon to interfere. May let me know how that case stands.

17th Jan. 1863.

I am, Sir,
Yours faithfully,
Signature.

Mr. J. D'MELLO.

Sir,—I hope the Rajah and
are concerned in meeting the
extraordinary means Captain G.
have a heavy compensation to in
deed made over to me.

2nd. I presume the present Rajah has no knowledge of what passed at the time of the grant to Captain Godfrey by his late uncle. If he was present, and knows about it, you might put the same questions to him.

I am, your's obediently,

(Signed) J. OUCHERLONY.

I think I heard awhile ago of grants given by the Rajah, in which boundaries were named, and the cawmes given, and it was provided that if more than the stated quantity was cultivated, additional payment in proportion were to be made. Can you ascertain of any such, and tell me particulars.

(Signed) J.O.

To J. OUCHERLONY, Esq., Ootacamund.

Sir,—Your kind letter of the 8th reached me on the 11th instant. The other letter mentioned therein was also received by me.

You say, that if by any extraordinary means Captain Godfrey were to succeed, the Rajah would then have to make a heavy compensation to you, &c. But the Rajah says that should such be the case, you ought to bear the loss yourself, and not him, because it was upon your application that the land was granted to you agreeably to the plan of the said land which you prepared and sent to him, and he, replying on the correctness thereof, signed the same. Moreover, in your letter to the Rajah of the 1st April, 1862, you distinctly said that you would institute the suit against Captain Godfrey without giving any trouble to the Rajah, and to your letter of the 3rd March, 1862, you mentioned that in the event of the said suit being instituted, the Rajah has only the little trouble, without any expenses, to give an answer admitting the Plaintiff, and show the Kavar. The Rajah further says that to oblige you, he gave an answer to the suit No. 4 in the Civil Court favorable to you through a Vakeel, and paid the fee. In short the Rajah says that your affairs have always been looked into by him as his own. Under such circumstances, he deploras what you have written to him.

Transmitted
(Signed) J. D. METCAL.

No. 970

Commissioner's Office
Ootacamund, 29th June 1874

From J. R. COCKRELL, Esq., Commissioner, Nilgiris.
To Captain T. H. GORRILL, Ootacamund.

Sir.—With reference to your application of 25th May last, for the
demarcation of your property in this district, known as the Yellamthi
Beds, I regret that, on a careful consideration of all the circumstances
connected with this property, I do not deem it advisable to direct a survey
to be made at present.

Please the honor to be, Sir,
Your most obedient servant,
(Signed) J. R. COCKRELL, Commissioner.

Recd 11/5/74
Pls 7/12 Dec 74
S. H. 1/1/75

West End, Ootacamund
21st November 1874

To
The
Revenue Department
Ootacamund

Sir,

I have the honor to solicit the
favor of your kindly furnishing
me with copies of the
papers indicated in the
margin, and adverted to
in the proceedings of
Government in the Revenue
Department dated 28
September 1872 & 1873.
I have to say likewise
against the decision of
the Revenue survey Authorities upon
the question of my title to my land
in

in the District of Wyand.

The Secretary of State for

India in his despatch dated 18th

March 1874 has directed the

Government of India to

decide on the expediency of

declaring the proceedings of the

Revenue Survey Authorities to be

illegal, and as I am desirous of

renewing my application to the

Commissioner of this District with

reference to his letter to me No 294

dated 29th July 1874 which will

be found in the accompanying

copy in proof of the consideration

which passed on the subject between

myself and (then I fear) for

the Government of India.

I am, Sir, very respectfully,

Your obedient servant,

season has already commenced, the
papers applied for will enable me
to meet a & objections which that
office on, not to comply with
my request.

I shall be happy to bear the
cost of transcribing the papers in
question.

I have the honor to be,
Sir,
Your most obedient servant,
of
Edgely

