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# TAMIL NADU ARCHIVES

## GOVERNMENT OF TAMIL NADU

REVENUE DEPARTMENT

G.O. No. 1519 Press.
~~B.P. No.~~ Mis.

Dated 19-9-1878 ~~197~~ .

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Archives I—5,806—24-2-78.

1519
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GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

19th September 1878, No. 1,519.

Read the following paper:—

No. 209. Proceedings of the Board of Revenue, dated 19th August 1878, No. 2,326.

Read the following letters:—

From J. W. HANDLEY, Esq., Government Pleader, Madras, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 9th August 1876, No. 96.

With reference to the Board's Proceedings noted in the margin, I have the honor to submit the following opinion.

29th May 1876, No. 1,405.

2. I am of opinion that there is no course open now for the reassertion of the claim of Government to the hills involved in Suit No. 28 of 1870 in the District Court of Madura, or for setting aside the Razinamah decree in that suit. The grounds suggested by the Collector for an application for review of judgment would not, I think, be any grounds for review even of an ordinary judgment, still less of a judgment passed by agreement of the parties, which can only be set aside on proof of direct fraud in inducing either party to enter into the compromise. The grounds suggested are, 1st, that important evidence in support of the claim of Government has been discovered since the Razi decree was passed; 2ndly, that the Zemindar filed his suit in Madura, and not in Tinnevelly where the Government village concerned is situated; and, 3rdly, that he produced false documents in support of his case. The first of these would be no ground for review in any case unless it were shown that the evidence could not possibly have been produced or discovered before which can hardly be said. It certainly is no ground for impeaching a Razi decree. As to the second ground, the Zemindar could hardly have done otherwise than file the suit in the Madura Court, as it was his case that the hill was in his Zemindari, and therefore in the Madura District and within the jurisdiction of the Madura Courts alone. No objection to the jurisdiction of the Madura Court appears to have been taken either by Government or the Court, and it seems to me that the allegation of fraud in this matter is quite unfounded. Then as to the alleged production by the Zemindar of false documents to support his case. The Court cannot assure the falsity of the documents merely on the statement of one party, but must go into evidence on the point, and even if satisfied that the documents are false must go into the whole evidence in the case and pass judgment thereon, *i.e.*, do what by the Razi both parties agreed should not be done, for the case for the Zemindar might still be strong enough to succeed without the false documents. Altogether I can see no ground on which an application for review could be founded with any prospect of success.

3. The Collector further proposes to ignore the Razi decree and to re-open the whole question in the form of a proceeding under the Boundary Marks Act. This would be as it appears to me a defiance of the District Court, and I could not advise any such course being adopted. It is quite true of course that the Wattrap villagers and the hill tribes not having been parties to the suit are not bound by the decree, and if any of their legal rights are affected by that decree they can obtain redress in due course of law, but Government and its officers are bound by the decree, and any

proceeding taken by them to settle the boundaries must take the decree as its basis. I think, therefore, that any demarcation of boundaries must be in accordance with the decree. Of course if the Zemindar now claims lands not strictly included in the decree that matter may be disposed of under the Boundary Marks Act. I do not quite understand the meaning of the statement at the end of paragraph 5 of the Collector's letter. If the boundaries given in the plant, and which are adopted by the decree are too vague for the lands to be ascertained, there might be some ground for applying to the Court to reform the decree.

4. With regard to the question whether Government can now contest the Saptur Zemindar's claim to the hill (A) decreed to him in Suit No. 6 of 1868 against the Pagoda Trustee, I do not quite understand how it can be of any importance, as this same hill appears to have been also included in the Suit No. 28 of 1870 against Government. If this were not so, no doubt the decree in No. 6 of 1868 would be no bar to the assertion of any claim of Government to the hill in question. I gather, however, from the papers that the right to this hill appears to have been always treated by the Revenue officials as if it lay between the Zemindar and the Pandaram, and the title of Government appears to have never been set up. If, however, this hill is not included in the Suit No. 28 of 1870, I should like to be furnished with further information as to the nature of the title of Government to it, and how it has been dealt with in past times, before advising definitely as to a suit to recover it from the Zemindar. It must be remembered that in such a suit, the Zemindar being in possession, Government must succeed on the strength of their own title and not on the weakness of his.

5. I return all the original enclosures to the above Proceedings.

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From the Collector of Tinnevelly, to the Secretary to the Board of Revenue, dated 20th November 1877, No. 844.

WITH reference to Board's Proceedings, No. 1,405, dated 29th May 1876, requests to be informed what opinion, if any, has been pronounced by the Government Pleader in the matter of the boundary dispute referred to.

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THE Board regret that this matter should have remained so long undisposed of owing to an oversight. The Board's Proceedings, dated 29th May 1876, No. 1,405, with Mr. Handley's reply thereto will now be submitted for the orders of Government with reference to G.O., dated 30th October 1874, No. 1,380, and previous correspondence.

2. A brief history of the case being given in the Proceedings just quoted it is unnecessary to recapitulate. Mr. Handley's opinion was requested as to whether the additional facts brought to light regarding the boundary dispute between the Government village of Wattrap and the Zemindar of Saptur afforded any grounds on which an application for review of the Razinamah decree passed by the District Court of Madura in Original Suit No. 28 of 1870 could be sustained, or whether the whole question could be reopened in the form of proceedings under the Boundary Act as proposed by Mr. Stuart. Mr. Handley expresses a very decided opinion that there is no course open now for the reassertion of the claim of Government to the hills involved in the suit in question. It is much to be regretted that further enquiry was not made at the time with a view to procuring all the evidence available in support of the Government claim before a compromise was determined upon, but this mistake does not now admit of remedy, and the only thing which can be done is to determine the extent of country to which the Zemindar is entitled under the agreement and mark the boundaries so as to obviate further encroachment and dispute. It seems that whereas the area specified in the original claim was only 6 square miles, a range of hills comprising about 22 square miles is now in dispute. The Board have not got a copy of the plaint in the suit, but it will no doubt be possible to identify on the spot the tract to which the Zemindar's title has been conceded, and the rest of the hills should be declared to be the property of Government, the Zemindar being left to



prosecute his claim in the Courts, if not satisfied with the decision. The rights of the villagers of Wattrap who were not parties to the agreement are not affected; if the Zemindar interferes with their privileges, they can sue him in the Civil Courts, but in the interests of the jungle tribes inhabiting these hills who appear from the Deputy Collector's account to be in a debased and helpless condition and to be oppressed by the Zemindar's servants it is desirable that steps should be taken to ascertain the area over which the Zemindar can exercise authority in order to restrain him from interference beyond those limits.

3. The Board recommend that the Deputy Superintendent of the Madura Survey Party be deputed to investigate the matter on the spot under the Boundary Act, and to carry out the demarcation in accordance with the Razinamah decree; the range of hills in question forms a portion of the boundary between Madura and Tinnevelly, and the dspute must be settled before the line can be fixed; further complication may be avoided by taking up this portion as soon as Mr. Gompertz can be spared: he will have to meet Mr. Munro in November for the settlement of the Travancore frontier, and if the interval is insufficient to admit of his settling this dispute he might proceed to the spot immediately after the completion of the Travancore boundary operations.

G.O., dated 12th July 1878, No 1,061.

(True Copies and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

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No. 210. ORDER THEREON, 19th September 1878, No. 1,519.

Miscellaneous.

COMMUNICATED to the Acting Superintendent, Revenue Survey, who will arrange for the boundary of the Saptur Zemindari referred to in these papers being settled and demarcated at a very early date, either by a special detachment or by that already engaged* in Madura on such work.

* *Vide* his letter in G.O., 8th May 1878, No. 695.

(True Extract.)

(Signed) L. A. CAMPBELL,
Under-Secretary to Government.

To the Superintendent of Revenue Survey.
,, the Board of Revenue.

Exd. F. R. Bantleman.

Govt. of [illegible] Madras.

REVENUE.

To the SUPERINTENDENT of REVENUE SURVEY,

&c., &c., &c.

Fort St. George, 10th September 1878.

Sir,

I have the honor to forward herewith, for the information of the Board of Revenue, the Boundary of the Saptur Zemindari, Tinnevelly District—Commencing Proceedings of the Board of Revenue, the Acting Superintendent, Revenue Survey, who will arrange for the [illegible] and demarcation as a very early date, either by a special establishment or by [illegible] already engaged in Madura on such work.

I have, &c.,

Fort St. George, 10th September 1878.

SEPTEMBER.

Nos 209-210.

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Boundary of the Saptur Zemindari, Tinnevelly District—Commencing Proceedings of the Board of Revenue to the Acting Superintendent, Revenue Survey, who will arrange for the [illegible] and demarcation as a very early date, either by a special establishment or by [illegible] already engaged in Madura on such work.

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FOREST No. 50.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 29th May 1876, No. 1,405.

Read the following letter from A. J. STUART, Esq., Acting Collector of Tinnevelly, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Strivaikuntam, 26th October 1875.

I HAVE the honor, with reference to Board's Proceedings, dated 28th December 1874, No. 9,004, to report upon the dispute between the Government and the Wattrap village (Tinnevelly) on the one side and the Saptur (Madura) Zemindar on the other as to the right to a range of hills forming the boundary between Tinnevelly and Madura Districts and containing a considerable quantity of valuable forests, as well as inhabited by a tribe of hillmen in no way connected with the plains. The hills are about twenty-two square miles in extent and of very considerable altitude. Enclosed is a very full report from the General Charge Deputy-Collector of this district, who has spared no pains to get to the bottom of this matter. I send it in original to save time.

2. The ridge in dispute with a plateau on its top may be roughly divided into three portions as per Deputy-Collector's plan herewith sent. For convenience, I will call the northern portion A, the centre portion B, the southern portion C. There is yet another piece (D) about which there is no dispute, all agreeing that it belongs to Wattrap village. Wattrap I should explain is a Government Ryotwari village, and lies at the foot of this range on the Tinnevelly side. On the Madura side are, at the foot of A the Saptur Zemindari, opposite B the village of Narasingapuram, and opposite C the village of Varisanadu, these two last villages belonging to the Gandappanaiken Zemindari.

3. On the top of A is a temple holding as Inam the hill A upon which it stands under an Inam Commissioner's putta. This hill A is of little value.

4. The disputes began between the Zemindar and the person in charge, or Dharmakarta, of this pagoda. The Zemindar filed a Suit (No. 6 of 1868) in the Civil Court of Madura against this person for the possession of the hill. The Dharmakarta instead of setting up as defence that he held it under the Government on Inam tenure, and that the hill belonged to Government produced a copper sasanam to establish a right of his own against the Zemindar. This was considered to be, and doubtless was, a forgery, and so the Zemindar won his case, and was put in possession of the hill A. It will be observed that neither the Government nor the Wattrap villagers were parties to, or concerned in, this case, which does not in any way affect their rights.

5. The next step was a claim set up by the Zemindar *against the Government* for this hill A and some part of B not defined, but on the whole estimated to measure six square miles, with damages claimed for proceeds of the hill or forests on it for some years, and for timber cut on it by the Forest Department. This suit was filed in the District Court of Madura in the year 1870 (Suit No. 28 of 1870).

The claim then made for six square miles was made to include the whole twenty-two square miles contained in A, B, and C together.

6. It must here be observed that all the interests of the Government in this hill, and indeed of any one else than the Saptur Zemindar, belonged to the Tinnevelly District, and, therefore, it was a stroke of considerable acuteness on the Zemindar's part to file his suit in Madura; of course he must have known that there was no one in Madura who knew anything about it, or cared to resist it either on behalf of Government or on their own account.

7. The consequences justified his skill; no resistance was made; the Madura Collector knowing of no rights against the Zemindar on behalf of the Madura District, and there being no one else in that district concerned, proposed to Government to Razi the case, and this was done, the Government giving up their claims and the Zemindar waiving his demand for damages.

8. I must not omit to mention that Mr. Symonds, as Settlement Officer in Tinnevelly shortly before this, had been requested to inquire into the question of the boundary between Wattrap village and the Saptur Zemindari; and if the present Deputy-Collector's careful inquiry is to be trusted, as I very decidedly think it is, Mr. Symonds was somehow misled by the agents

of the Zemindar, or by the remissness, or worse, of the Tinnevelly officials, and reported in favor of Saptur ; fortunately this report was never acted on, and no boundary decision was ever passed. This report may have influenced the Collector of Madura in recommending to Government to Razi the suit in the Madura Court.

9. The Collector of Madura appears to have been further misled by a false measurement account of 1804 of Wattrap village obtained by the Saptur Zemindar from the Huzur records of the Tinnevelly District for the purpose of Suit No. 6 of 1868, from which it appeared that the Wattrap village ended at the foot of the hills on the Tinnevelly side. The Deputy-Collector gives strong reasons for thinking this document was false, and obtained by fraud from the Tinnevelly Collector's office, where it was concocted for the purpose of Suit No. 6 of 1868, the suit against the trustee of the temple on A, but made use of afterwards in the suit against Government.

10. The Deputy-Collector's remarks upon this and the other numerous documents (list enclosed) produced by the Zemindar are well worthy of attention, and, in my opinion, clearly establish the fraudulent nature of the Zemindar's claim, and especially of this document No. IV. I recommend paragraphs 59 to 76 of the Deputy-Collector's report to special notice, as quite disposing of the Zemindar's evidence.

11. The Deputy-Collector also produces a large body of evidence to show that the hills were included in the Wattrap village, and dealt with both by the Wattrap villagers and by the Tinnevelly authorities on behalf of Government from very early times. The most important of this evidence are the Ayacut accounts of the Madura villages lying at the foot of B and C, which show the Wattrap village boundary as conterminous with theirs, and as being on the *Madura* side of the range.

Other old documents prove letting of these hills by the Collector or Sub-Collector of Tinnevelly, and dealing with it by the Wattrap villagers.

There is also a document showing that the Saptur Zemindar has for many years been paying, *and is still paying*, assessment to Government for certain tamarind trees which he enjoys on the Tinnevelly slopes of these hills, which he has got possession of by the Razi decree.

12. There is documentary evidence to show that in 1858 the Saptur Zemindar and the Wattrap villagers were disputing about hill A, and that Mr. Mayne, as Collector of Tinnevelly, decided that the southern or Tinnevelly slopes of this hill belonged to Wattrap. This was confirmed by the Board, but upset by Mr. Silver in 1860 on the strength of the copper sasanam produced by the Dharmakarta of the temple, in whose favor, not in that of Saptur, Mr. Silver decided the matter ; this copper sasanam being the very one found by the Madura Court in Suit No. 6 of 1868 to be a forgery.

13. At first sight the strongest point the Zemindar has on his side is the fact that at the foot of the hills on the Tinnevelly side he undisputedly owns a strip of land marked x on the plan, running nearly parallel with the line of the hills and reaching the length of the ridge B. This fact is, however, very satisfactorily accounted for by Wattrap as being due to the Zemindar in ancient times having the Kaval of the Wattrap village, and in consideration of that duty having received a strip of land at the foot of the hills in the Wattrap village, no doubt for the maintenance of the Kaval guard of the Wattrap village.

There are several old accounts in support of this fact, and it cannot, I think, be disputed that this area, the property of the Saptur Zemin, is quite unconnected with the Zemindari on the other side of the mountains, and is an isolated property within the limits of the Wattrap village.

14. It thus appears that there is a large and important body of evidence in favor of the claims either of Government or of the Wattrap villagers, or of both, which was unknown to the Government at the time the suit in the Madura Court was Razied ; and there is further strong reason to believe that the Zemindar both deceived the Government into a fraudulent Razi by concocting a false account of the Wattrap village lands ; and further fraudulently preferred his suit in Madura, knowing that all the interests of Government in the hills were in Tinnevelly, with the intention of taking an unfair advantage of the Government.

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15. On these grounds, I recommend that the Government apply to the Madura Court at once for a review of the judgment on the Razi in that suit, impeaching the Razi as fraudulently obtained, and stating that further evidence which was not then in the possession of Government, owing to the manner the Zemindar brought his suit, has since been discovered. The main ground put forward should be fraud on the part of the Zemindar.

16. If this should fail, I recommend that the matter be taken up as a question of boundary between the village of Wattrap and the Zemindari by the Tinnevelly Collector or one of his Assistants, and decided on the evidence now forthcoming and any more that may be produced. In such an inquiry, the decision obtained by the Zemindar against the Government would probably not be a bar against the claims of the villagers of Wattrap, who were no parties to it.

17. It must further not be lost sight of that there is a population of hillmen on the plateau at the top of these hills* no doubt more ancient in their possession of the hills they inhabit than any of the present claimants, and, in an attempt to settle the boundaries of the various parties claiming these hills, the interests of this half-savage tribe must not be lost sight of.

* *Vide* paragraphs 14 to 18 of Deputy-Collector's report.

18. I am inclined to think that the fact of their existence is at once a bar to the claims of all the other parties to sole possession of the entire hill range, and suggests a solution of this dispute.

19. Neither the Wattrap villagers nor the Saptur Zemindar can claim any other right over the hillmen than that of force, from the first illegal and so still, since no right of conquest accrues to the feudal chief or subject of a State who makes a conquest within the territories of a sovereign without that sovereign's consent or knowledge.

20. The solution I would suggest from this fact is as follows :—

That the plateau belongs to the hillmen, of course subject to the Government for the time being.

That the villagers on this side and on that are only entitled to the slopes of the hills extending from the boundaries of the plateau down to their respective village lands in the plains. The boundary of the plateau to be settled under the Boundary Act chiefly upon physical evidence ; where the range contains no such plateau on its top, the water-shed to be taken as the boundary between the villages on either side, and the divisions of the three villages one from another on the Madura side to be determined under the Act.

21. On this basis I would propose to deal with this range eventually, but in the first place I recommend the application for revision of the Madura Judgment in order that all false claims on the part of the Saptur Zemin may be cleared up and exploded, and the ground cleared for independent action.

22. Besides it might be set up, I do not know with what success, that the Government has long asserted that the Government villagers bordering the mountains, ranges have no right in the mountains otherwise than on sufferance and permission of the Government ; and, if a Civil Court should happen to take this view, the result would be that the Wattrap village would be just as much compromised by the Madura Razi decree, though not actually parties to it, as the Government now is, the Court holding that the Wattrap village held whatever rights they enjoyed only as tenants of the Government, and had no independent right whatever, and so lost all they had when the Government lost it. Such a finding would probably involve the Government in a series of appeals, all of which would be avoided if the Madura suit can be re-opened, re-heard, and the Zemindar's obviously improbable, and falsely supported, claims dismissed.

23. I do not doubt that the Wattrap villagers and all others have rights in the land within their village areas and limits independent of the Government, but I think there is a difference of opinion on the point, and this might lead to trouble if the Zemindar's right against Government is not upset. Moreover, the hills are valuable and Government has hitherto held that they have a better right to levy a seigniorage or other tax on timber in a Ryotwari village than in a Zemin village.

24. As regards the communal rights of the Wattrap villagers, I beg to refer to paragraphs 99, 100, and 101 of the Deputy-Collector's report. I think there can be no doubt that that, as in

all the villages along the base of the range, the villagers have a communal right to graze their cattle, to cut timber and firewood for domestic use, &c. At the same time it must be noticed that every Collector does not think so, and that the Forest Department are very far indeed from admitting this. So that Government might find themselves in a rather embarrassing position if they support the Wattrap villagers in the assertion of communal rights to the hills enjoyed by them independently of Government, and to a continuance of which they have a right, even after the Government has parted with their right.

25. I have one more point to bring forward. From the nature of things it is improbable that in the early times from which the Ayacut accounts date, there should have been much communication between the Tinnevelly side of these hills and the Madura side. The Deputy-Collector's report shows that even now the crossing is no easy task; does it then appear probable that the whole of ranges B and C ever belonged to Wattrap, as claimed, right down to the foot of the slopes on the Madura side; is it not far more probable that the Tinnevelly village (the jungles being then much thicker and by all accounts at least scrub coming lower down the ranges and spurs into the plain) practically enjoyed only the outer slopes of the hills on their side, the Madura villages doing the like on the Madura side of the range, and that the Ayacut accounts now produced are not worth much more on one side than on the other, being, even if genuine documents of the date they profess to be, more assertion of a right or rights which were never in possession or enjoyment, and which were of no use to any one.

26. I think any one adjudicating this question would attach far more weight to physical and natural considerations than to the village accounts, exposed as they are to so many causes of error and fraud. One would naturally expect to find the whole range included in every village Ayacut that bordered the hills at all, and would attach no great weight to finding it so. As regards the evidence of the Ayacuts of the two Gandamanaik Zemin villages on the Madura side, which give the Wattrap boundary as their boundary and made it include the whole range, it is very extraordinary that the Gandamanaik Zemindar should allow such documents to be produced except to serve some purpose, and it is very likely that he would rather see the hill taken from the Saptur Zemindar, who lives on the Madura side and is in a position to exercise possession over the slopes on that side, and given to Wattrap which is far away and never likely to concern itself with the Madura slopes, of which his villages must be in enjoyment.

We have the Saptur Zemindar concocting an Ayacut of the Tinnevelly village of Wattrap, why not the Gandamanaik Zemindar or his villagers concocting Ayacuts intended to make the best of a bad bargain, and to support Wattrap against Saptur, as being the less evil of the two.

27. The documents themselves are, I think, inconclusive as to appearance, and may have been concocted, or may be genuine; but they support, it must be allowed, a very improbable story indeed, *viz.*, that in early times when communication was probably rare over the range, these Madura villagers recorded in their own Ayacut accounts the rights of Wattrap, a Tinnevelly village on the other side, to hills and slopes that they must themselves have enjoyed if any one did.

All this goes, I think, to support the course which I have above recommended. I have only to suggest that whatever is done be done quickly, otherwise the Limitation Act will bar the Government from attempting to dispute the Zemindar's possession under the Madura decree. Section 5 (*b*) of the Limitation Act will admit the application for review on the ground of the Zemindar's fraud having only lately been discovered, if there is no further delay, but ninety days only is ordinarily allowed from date of decree for an application for a review.

Enclosed are—

1. Deputy-Collector's report, No. 68, dated 26th April 1875.
2. Mr. Symond's report, No. 39, dated 19th February 1870.
3. Judgment of Madura Court in Original Suit No. 6 of 1868.
4. Map of the disputed range prepared by the Deputy-Collector.

1519/5

ENCLOSURE No. 1.

From H. SUBBARAYAR, Acting General Charge Deputy Collector, to A. J. STUART, Esq., Acting Collector of Tinnevelly, dated Sivakasi, 26th April 1875, No. 68.

WITH reference to the correspondence noted in the margin, I have the honor to submit a plan showing the different portions of the Wattrap hills and forests, as defined in the Government Ayacut accounts. Being myself a poor Draughtsman, I have had the plan drawn by a Surveyor. I think it may be accepted as fairly correct in detail, and do not profess it to be full in every respect; but for our present practical purposes, I may say it is full and accurate enough, the different peaks and the directions of the ranges of hills marked therein agreeing with those in the ordinance map.

1. Government Proceedings, dated 30th October 1874, No. 1,380.
2. Board's Proceedings, dated 28th December 1874, No 9,004.
3. Letter from the Collector, to the Deputy-Collector, dated 26th January 1875, No. 70
4. Letter from the Collector, to the Acting Deputy-Collector, dated 18th February 1875, No 148.
5. Board's Proceedings, dated 8th December 1874, No 3,551.
6. Letter from the Collector, to the Acting Deputy-Collector, dated 26th February 1875, No. 178.

2. Before entering into the question at issue referred for my investigation, I beg to be permitted to state, as briefly and concisely as I can, the general result of my inspection of the hills, as I consider it may be interesting.

3. Being put in possession of some documents relating to the hills by you and by the District Judge of Madura, and collecting all the papers in my office, I left Sivakasi on the evening of the 12th March last and reached Wattrap early on the morning of the 13th idem.

4. I examined on the 13th and 14th the accounts and papers relating to the hills produced by the Tahsildar and Deputy Tahsildar. On the morning of the 15th, I left the village for the hills, reached the foot of the ghauts at 10 A.M., and spent that day in the Vannapparaimunthal anicut. Here the Manager of the Saptur Zemindar met me at about 9 P.M. and promised to accompany me to the hills with the Zemin, Curnam, and Nothamaigars. Early on the morning of the 16th, about 5 A.M., I ascended the hills by the Mathupathai (a path frequented by cattle) accompanied by the Deputy Tahsildar, the Government Curnams, and Mirassidars and a number of wood-cutters and shikaries. On my way I inspected the Pechikalparai, the Vittathalliparai, Karuppasamiparai, Puliangaluthu, Suriakanthiparai, and Anaisathu, and reached the upper plateau, which is called by the natives the Melamalai Methavu, at about 11 A.M.

5. The Pechikalparai is almost an inaccessible rock, and on its slopes a considerable quantity of honey is produced every year. The ascent from Vittathalliparai to Karuppasamiparai is indeed very steep and precipitous, then there is a gentle rise for nearly two miles to Suriakanthiparai, and there is an abrupt rise to the beginning of the Methavu. Here the path divides into two, one leading to the Koraiar river on the south-west direction, and the other to Mavalkeni on the north-east direction.

6. We took the path leading to the Koraiar river and halted at about noon at Pungamarathukeni in the Koraisr valley for breakfast; for good drinking water is to be had there, and there are comfortable caves in which one can conveniently put up.

7. The greater part of the valley consists of a series of hills with sholas here and there.

8. Pungamarathukeni makes a very good camping ground, being sheltered and tolerably level. The view of the valley is very beautiful, the Tope Malai being situated to the south of it, the Bommakal hill to the north, and the Mullikidai hill to the north-west.

9. The hills from the foot to the plateau are all very rocky and steep, full of bushes, and a few jungle trees fit for fuel.

10. The plateau is wonderfully level, being surrounded on all sides by grassy hills and steep rocks, and contains a large number of Teak and Vengai sapplings, Vekkali, Nelli, and Akil (a kind of Sandlewood) trees, and many other jungle trees as well as extensive pasturage.

11. The Tope Malai contains the largest and most useful forests, consisting of all kinds of trees and producing honey and cinnamon considerably. It is also reported by wood-cutters and hill tribes that even pepper and cardamoms are grown there spontaneously.

12. In the Bommakal hill there are many Teak, Vengai, and Vekkali sapplings.

13. All these fine forests have been shamefully, and without remorse, destroyed both before and after the Razinamah was filed in favor of the Zemindar by the Collector of Madura in Suit No. 28 of 1870 on the file of the Madura District Court, and a large quantity of valuable wood was carried away from the forests. When I inspected some of the stumps of the trees, it appeared to me that they were all felled a few months ago, and not a single tree whose circumference was one foot and upwards was left in the forests; and the circumferences of most of the Teak and Vengai trees cut were nearly 2 or 2½ feet. Thus it is clear that these forests require rest, and should not be disturbed for some two or three years to come to make them valuable property.

14. There are extensive tracts of forest lands in these hills fit for cardamom and perhaps even for coffee cultivation. It is said to me by the jungle tribes and wood-cutters that the Zemindar is much afraid to approach the hills since Captain Walker inspected them last year.

15. In the afternoon of the 16th, a crowd of jungle tribes, consisting of males, females, and children (about thirty or forty in all), appeared before me and poured in several verbal complaints against the Zemindar's people, that they have oppressed them. They said further that they would not allow them to gather hill products and reside on the hills, which they and their ancestors inhabit for years and perhaps, I may say, for centuries. They also complained that their rights have thus been interfered with in spite of their long and uninterrupted enjoyment.

16. These jungle tribes are in the lowest state of physical and mental debasement and have not even a hut, but dwell in caves or hollow trees, their food being often insufficient and always scanty; and they cannot with safety leave their forests and hills for the plains. Such being their condition, the Zemindar appears to be determined upon driving them away from these hills under pretence that he had sole right thereto; and his men have been manifestly oppressing them and the Government villagers who resort there for firewood, &c.

17. The total ignorance of these miserable helpless class of people, their outcast condition, with their isolation, wholly preclude them from resorting to the authorities in the plains for redress when ill-treated by the Zemindar's men.

18. They all followed me on the evening to Thummakundu Kidai on the Vagay river, and here we slept the night. This kidai is about eight miles distant from the Pungarnanathukeni and is an excellent place for halting, the ground being open and well watered.

19. On the morning of the 17th, we set out early in search of the Mavalkeni Urani specified in the Wattrap Ayacut accounts, and, after a fatiguing march, discovered it at about 1. P. M. On our way we met some of the Zemindar's men but not his Manager, who did not accompany me according to his promise; but his men misled us, and consequently we were put to a great deal of inconvenience and trouble in finding out the Mavalkeni, although it is only about five miles distant from Thummakundu kidai.

20. It appears that there had been some boundary marks on a rock close by the Mavalkeni; but they were all destroyed, and the report goes to say that they were obliterated by the Zemindar at the time Mr. Symmonds investigated the forest dispute before the Razinamah in Suit No. 28 of 1870 was filed—*vide* Report AAAII of the Manager of the Gandamanaiken Estate.

21. On the evening we proceeded to Pubchathannikeni, where we saw a herd of thirty or forty elephants resorting to the keni to drink.

22. Early next morning we went to Varisanad, and, after obtaining some information from the Manager of the Kandamanaickanur Estate, returned to the Vannapparaimunthal anicut on the evening of the 19th by the Varisanad path.

23. The forest scenery on our way returning is really very beautiful and picturesque; and on the upper plateau the sholas are so thick that the sun is seldom seen there, even at midday. The descent is very precipitous.

24. Having so far endeavoured to state the result of my inspection of the principal valuable hills evidently, I think, the property of Government, but only recently usurped by the Zemindar under color of pretended rights of occupation, I may now be allowed to enter into the questions at issue, and to discuss upon the evidence adduced both by the Zemindar and on behalf of Government.

25. The Wattrap hills consist of three divisions and are commonly called the Sathuraghiri hill or Vadakumalai (northern hill), the Melamalai (western hill), and the Theckumalai (southern hill.) All these hills are included within the boundaries specified in the Government Ayacut accounts.

26. The Theckumalai is a rocky hill and the right of possession of it by Government is not questioned by anybody; and I do not, therefore, give the area of it, nor am I required to say anything of it.

27. The Vadakumalai consists of Vadakumalai proper and the southern slope of the Sathuraghiri hill, and is about sixteen square miles in area. The southern portion of the Sathuraghiri hill, I understand, was the subject of litigation in Suit No. 6 of 1868 on the file of the District Court at Madura, and was declared by that Court to be the property of the Zemindar. To this suit the Government was not a party, but it was instituted by the Zemindar against the Trustee of the Maholingam Temple, who contended that this hill was a manium granted to the temple by the once famous ruler Thirumalai Naiker in 1645, and relied upon a copper sasanam in support of his contention; but the Court found it to be a forged document. The Inam Commissioner considered the hill to be a manium, having been misled by the forged copper deed, and granted to the trustee an Inam Title-deed in 1865, and the trustee was paying road-cess of 21 and odd rupees per annum to Government until Fasli 1281, but afterwards it was remitted, as the hill was made over to the Zemindar by process of the Court.

28. Now the question is whether the decree will affect the Government while they were not a party to the suit, and while they were not allowed an opportunity of establishing the fact that the hill was the State property, although it was considered by the Inam Commissioner to be Inam, having been deceived by the forged copper deed.

29. The Zemindar states in his plaint that the hill consists of about 1,000 chains, and is situated within the limits of his Zemindari; but the Wattrap Ayacut accounts show that it is within Wattrap boundary limits. The next question is whether it is situated within the Wattrap or Saptur limits.

30. Melamalai is the block of forests referred to in Suit No. 28 of 1870 which was compromised in favor of the Zemindar. It is about eighteen square miles in area, but the Zemindar, stating it in his plaint to be situated within the limits of his Zemindari and to be about six square miles, sought to establish his title thereto and to recover Rupees 13,000 and odd as damages.

31. In this suit the Collector of Madura and certain Forest officers were made as defendants, and a decree was passed in June 1872 upon a Razinamah put in by the Collector and the Zemindar by which the title of the Zemindar to the hill specified in his plaint was established. Now the important question is, whether this hill is situated within the boundary limits of the Government village of Wattrap or within the boundary limits of the Saptur Zemindary; and, if this question is decided in favor of Government, then the next question would naturally be how far the Razinamah decree would affect Government.

32. All the evidence gathered, as far as I can, from different sources is stated below; and it consists of documents and oral testimony of many witnesses.

33. The documents filed on behalf of Government are as follows.

34. Exhibit A and its enclosures define the boundaries of Wattrap in which its hills are included.

35. Exhibit A which is the Ayacut of the Ayen village of Wattrap, and which was obtained from the Srivilliputtur Taluq record, is, I have no doubt, most important and trustworthy. It appears to have been prepared in A. D. 1802 (Fasli 1211) by the then Curnam Chitharam Pillai when the British Authorities took possession of this part of Southern India. The Curnam declared in it that it was prepared most carefully and accurately, and even affirmed that he would be ready to be mulcted if it was found at any time to be incorrect.

36. In this document, the right boundaries of the Ayen village of Wattrap are given; that is, the village of Wattrap (inclusive of its six hamlets) is stated therein to be bounded on the north by the slope of the hill situated to the north of Sathuraghiri Maholingam Temple and by the

southern boundary limit of the Saptur *alias* Kamayanaickanur village; on the east by the western boundary limit of Kottayur attached to Kunnoor Vanitham and by the western boundary limit of Sundrapandiem village of the Madura Province; on the south by Kanavai Pass, Kallar Puli, Thirthakadu, Alagar Kovil, Thirthathotti, and Strivilliputtur limits; on the west by the eastern limits of the Palayagar Thirumalai Gandamanaikur estate of the Dindigul Province, Varesanad limits, and by Mavalkeni Urani; on the north-west by the southern and eastern limits of the Kodikulam village attached to the Saptur *alias* Kamayanaickenur Zemindari; on the south-west by the Strivilliputtur and the Varesanad limits; on the south-east by Sundrapandiem limits; and on the north-east by the limits of Mavuthu.

37. These boundaries as well as the Melamalai, Theckumalai, Sathuraghirimalai, and Parpavathaaiyanarkovilmalai also appear in the Hinduvi Ayacut account of Fasli 1213, A.D. 1804, marked $A^1$ sent for from the Tinnevelly District record for the purpose of this inquiry. This document also appears to have been attested by the said Curnam and is undoubtedly a very true account.

38. These two exhibits further tend to show that certain lands belonging to the village of Wattrap had been granted to the Saptur Zemindar for Kaval service, and thus establish that the copy of the agreement marked $A^4$ produced by one Pandiem Pillai, who appears to be a descendant of the Ayacut Curnam Chitharam Pillai, is a genuine instrument.

39. Exhibit $A^4$ looks to be a very old document, and proves that the Kodikulam lands were given to the Zemindar by the Ayen villagers for Kaval service before the period of ayacut. In this agreement, the boundaries of the Kodikulam village are defined, from which it appears that the Kodikulam western limit does not extend beyond Thungala Udiarcoil shown in the accompanying plan. If it were accepted to be a true document (of course I have no doubt of its authenticity) it would certainly establish that the Melamalai has never been within the limits of the Kodikulam village.

40. Exhibits $A^5$ and $A^6$ are Jamabandi and Ayacut Hinduvi accounts of the village of Narasingapuram attached to the Gandamanaikanur Estate, from which it appears that the Wattrap limits, and not the Saptur limits as pretended by the Saptur Zemindar, form the southern and south-eastern boundaries of the Narasingapuram village.

41. Exhibit $A^7$ is a copy of the Ayacut account of Strivilliputtur Valaikulam village, from which it is apparent that the Wattrap limits and not the Saptur Kodikulam limits are its northern and north-western boundaries.

42. Exhibit $A^8$ is the A Register of the Wattrap village and $A^9$ is an extract from it. Of these documents I speak at large in paragraphs 64 to 68 while discussing on the authenticity of the Zemindar's Exhibit IV.

43. From Exhibit B, which is an extract from the Jamabandi accounts, and from C to L, it appears that all the Wattrap hills were leased out by Government from Fasli 1241 to 1263, and a list showing the amount of rent collected from the Government Contractors is appended* hereto.

* Appendix No. I.

44. Of these Exhibits, F, which is a lease granted by the Sub-Collector of Tinnevelly in Fasli 1258 to one Manariyan and which is indeed a very important document, was received from the Sub-Court of Tinnevelly in which it was filed by him in Suit No. 111 of 1850. In this document it is stated that the Wattrap hills, bounded on the south by Valikulam limits, on the north by Saptur limits, on the west by Varesanad limits, and on the east by Sundrapandiem limits, were leased out to the said Manariyan for Rupees 90 for a period of one year. These boundaries agree with those given in the Government Ayacut accounts.

45. The other leases granted to other contractors are said by them to have been lost, but the Deputy Tahsildar of Wattrap reports that his inquiry regarding them established to his belief that the Zemindar's agents had already obtained them from our contractors by using their best endeavours for obtainting them against the interest of Government—*vide* Report AAAE.

46. It is indeed a good thing that matters so favorably turned that I was able to secure F by applying to the Sub-Court of Tinnevelly against all the endeavours of the Zemindar's private agents to take possession of one and all the leases from our lessees.

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47. In Fasli 1264 (A. D. 1854) the hills were not leased out by Government, as the system of leasing was then abolished (*vide* Exhibit M), but afterwards the villagers enjoyed the produce thereof by renting them to their own contractors. The Appendix 2 will show the rents collected by the villagers during Faslis 1265 to 1267—*vide* Exhibit N produced by villagers.

48. From Exhibits O to AV which are orders issued by Revenue authorities to the village officials of Wattrap, and from Exhibits AW and AX, it appears most clearly that the three hills, *viz.*, Melamalai, Vadakumalai, and Theckumalai were in possession of the Government from the year 1860 to 1873, because seigniorage were collected by Revenue authorities on the products of these hills during those years. Appendix 3 will show the fees collected by them—*vide* Exhibits AY and AZ.

49. Exhibits AAA and AAB, which are extracts from the Jamabandi accounts, bear testimony to the fact that some of the Government ryots have been in the enjoyment of some tamarind trees on the Melamalai and Vadakumalai since Fasli 1246 to 1283. From these Jamabandi accounts and from the Exhibits AAC, AAD, and AAE it appears also that the Zemindar has been paying to the Government tax on some tamarind trees situated in the Vadakumalai since fasli 1281; and he thus stands in the position of a tenant to Government. Since the execution of the decree in Suit No. 6 of 1868, the Zemindar appears to have been paying the tax to Government on these tamarind trees which the Ayen villagers were paying until the decree was executed. I cannot make out his motive in paying the tax on these trees alleged by him to have been delivered over to him by process of the Court—*vide* Exhibit XLVIII.

50. Appendix 4 will show the amount of teerwa levied from the Government ryots (including the Zemindar) on the tamarind trees on the above two hills from Fasli 1246 up to Fasli 1283.

51. Exhibits AAF and AAG are extracts from cultivation accounts, and show that Government ryots cultivated forest lands on the Wattrap Vadakumalai from Faslis 1249 to 1270, and paid assessment to Government during those years.

52. Exhibits AAH to AAM are complaints made to the Collectors of Madura and Tinnevelly and to the Board of Revenue by Pandiem Pillai and others, accusing the Zemindar of Saptur with having tampered with the Ayacut accounts in the Tinnevelly District records for the purpose of gaining his Suits Nos. 6 of 1868 and 28 of 1870 in the Madura District Court.

53. Exhibits AAN to AAX are copies of correspondence between the Tahsildar of Strivilliputtur and the Collector and Sub-Collector of Tinnevelly regarding the Wattrap Melamalai and Vadakumalai. Of these Exhibits AAT, AAU, and AAV are very important documents in favor of Government; and from them it is most clear that the Zemindar, the Trustee of the Maholingam Temple, and the villagers of Wattrap on behalf of Government, claimed the southern portion of the Sathuraghiri hill in 1858, when, on a most careful investigation into the claims of each of these parties, the then Collector, Mr. Mayne, arrived at the conclusion that the disputed hill belonged to the Ayen village of Wattrap, and interdicting the Zemindar, the trustee and others from interference with it, decided that the hill tribes could enjoy the jungle products, and that seigniorages should be collected on timber felled from the hill. His decision was upheld on appeal by the Board of Revenue.

54. But unfortunately Mr. Silver, who was Collector in 1860, reversed Mr. Mayne's decision by declaring that the hill was an Inam property of the temple, and based his review decision upon the copper deed produced by the trustee, which was finally found by the District Court of Madura to be a forgery in May 1870, and referred the Zemindar and the Ayen villagers to a civil action to establish their respective claims (*vide* Exhibit AAW). I say unfortunately, because the Government lost a most valuable property in consequence of fraud having been practiced upon them by the trustee by making Mr. Silver believe his copper deed to be a genuine document.

55. Exhibits AAY, AAZ, AAAA, and AAAB are copies of correspondence between the Tahsildar of Strivilliputtur and the Collector of Tinnevelly regarding the granting of a copy to the Zemindar from the Ayacut cadjan olugu accounts of Wattrap.

56. Exhibit AAAC is the road-cess putta for 1869 granted to the Managar of the Maholingam Temple by Mr. T. Vencat Row, the late Deputy-Collector.

57. Then as to the oral testimony obtained in the case; some of the Government contractors are now alive and depose that they rented from the Government the three hills above named. They and many other old residents of the village, about forty-two in number, state that the Melamalai and the Vadakumalai had been in possession of Government for a series of years. They also urge that they have been in the habit of felling firewood and wood for agricultural purposes and using the pasturage on the hills.

58. It is thus clear that the above-mentioned documents, and the statements of the villagers, afford strong evidence in favor of possession by Government for a number of years.

59. The Zemindar's Vakil or his private agent Sundrem Pillai produced before me the documents marked I. to XLV.

60. Exhibit I. purports to be Punjah Ayacut cadjan accounts of the village of Thullikuttinaickanur for the year 1806, and shows that measurement of the hills and Poramboke lands in that village, as measured in that year, is 914½, 1/16, 3/4 kayar of lands, but not a word is mentioned in it about the Sathuraghiri hill or any other hills; and Exhibits II. and III. purport to be copies of the Ayacut measurement accounts and the Jamabandi accounts of Saptur and Thullikuttinaickanur. In whose custody the originals of these copies are it is not shown.

61. In Exhibit II., the measurement of the Sathuraghiri hill is shown to be 495 kayars of Poramboke waste. In Exhibit III., the measurement of the hills, *viz.*, Sathuraghirimalai, Ethilamalai, and Paraikutham are shown to be 914½, 1/16, 3/4 kayers of Poramboke waste.

62. These exhibits appear to have been filed by the Zemindar in Suit No. 6 of 1868 in May 1870, but not with the plaint, which was filed in November 1868.

63. Were these accounts considered reliable, I do not see why our Ayacut and Jamabandi accounts, which show that the Wattrap Vadakumalai extends over the whole of the southern slopes of the Sathuraghiri hill beyond the Maholingam Pagoda, should not be entitled to credit.

64. I shall now endeavour to show that the Zemindar's accounts are not true. In his Exhibit II. it is stated that the southern boundary of Saptur extends as far as Thaniparai marked in the accompanying plan. To show that this exhibit is a genuine document, he produces his Exhibit IV. purporting to be an extract from the Vadakadu Punjah measurement accounts of the Wattrap village. It seems that this extract was obtained by the Zemindar in 1870 for the purpose of filing it in Suit No. 6 of 1868. In this document it is stated that Sathuraghiri Thaniparai belongs to the Saptur cusbah village. In order to ascertain the truth of it, I sent for the original thereof from the Huzur records and compared it with the copy. In the Exhibits AAH to AAM, which are complaints made by Pandiem Pillai and 1st defendant in Suit No. 6 of 1868 to the Collectors of Madura and Tinnevelly and to the Board of Revenue, it is stated that the Vadakadu Punjah measurement Ayacut accounts of Wattrap village were tampered with by the Zemindar; that he obtained a false extract (Exhibit IV.) from the Tinnevelly District record; that he afterwards cooked up his own Zemin Ayacut, referring to the entries in IV. and filed them all in the District Court at Madura; and that he obtained a decree in his favor on the strength of these accounts. These complaints induced me to make a careful examination of Exhibit IV. with its original. Its original had been in the Strivilliputtur Taluq record for a series of years in the custody of the Tahsildar, but was only sent for in August 1869 by the then Collector Mr. Longley at the requisition of the then Huzur Acting Vernacular Record-keeper, who appears to have required it simply for the purpose of granting a copy of it to the Zemindar (*vide* Exhibit AAY). Then the Tahsildar sent the cadjan bundles which contained it to the Record-keeper carefully sealed up (*vide* Exhibit AAZ). I am really at a loss to understand what necessitated the Record-keeper to send for these old and worn out cadjan bundles from Strivilliputtur about seventy miles distant from Tinnevelly, simply for the purpose of granting to the Zemindar the copy IV. from them, while the rules clearly provide that the Tahsildar could give the copy with the Collector's permission (*vide* Standing Order No. 335, dated 16th April 1864). The cadjan account, from which Exhibit IV. was copied out, appears to me to be a concocted document; for the writing in it looks quite fresh, and does not resemble the writing in the leaves that precede and follow it.

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65. Again, Pandiam Pillai produced an extract (Exhibit) A (9) from the A register marked A (8) deposited in the Strivilliputtur Taluq, from which it is very clear that the words சாப்தூர் கூசபா சதுரகிரி (meaning Sathuraghiri belonging to Saptur cusbah) are interpolated in the original before the words தானிப்பாரைமுந்தல் (Thanipparai Munthal); for the words சாப்தூர் கூசபா சதுரகிரி do not appear either in A (8) or A (9), while the other entries therein quite tally with those in IV. A (8) is an exact copy of the punjah measurement accounts from which IV. was extracted, so far as the yessaks or fixed marks in A (8) are concerned, and was prepared in 1858 with reference to the forms of accounts prescribed in the village manual.

66. It appears also that Pandiam Pillai obtained A (9) from the Tahsildar on hearing that the Zemindar has tampered with cadjan accounts in the Huzur record.

67. It may therefore be inferred that the cadjan accounts might have been tampered with; and that a fresh part of the account (the alleged original of IV.) might have been rewritten and mixed with the other accounts in order to avoid any suspicion being attached to it; and it is beyond doubt that the present original of IV. is a corrupted document, having been got up to show that the Zemindar's claims to the southern portion of the Sathuraghiri Hill were true; because the Thanipparai Munthal which is said in IV. to belong to Saptur cusbah village is situated at the foot of the southern portion of the Sathuraghiri Hill. How, when, where, and through whose assistance the Government records were tampered with, is a matter for full and searching inquiry being instituted on behalf of Government's interest.

68. Again, if the Zemindar's Accounts II. and III. were actually true documents, he could have filed them in the Court with his plaint in Suit No. 6 of 1868; but he does not appear to have done so. The fact of his having filed them with the Exhibit IV. on the 12th May 1870, *i.e.*, only thirteen days previous to the judgment, dated 25th May 1870, and eighteen months after the plaint was filed, throws great discredit upon the authenticity of II. and III.

69. Exhibits V. to XIII. are copies of depositions of Zemindar's witnesses in Suit No. 6, and do not affect the Government as they were not a party to it.

70. Exhibits XIV. to XXV. are copies of depositions given in 1846 before the then Tahsildar of Strivilliputtur in favor of the Zemindar in a revenue inquiry. The effect of these depositions is that the Sathuraghiri Hill (it does not appear from them which portion of it, whether the northern portion in the Saptur Zemindari or the southern portion within the limits of the Government village of Wattrap) had been in his possession and enjoyment; but I presume that the dispute in 1846 might have related to the northern portion, because the decisions (AAU., AAV. and AAW.) passed subsequently in 1858 and 1860 by the then Collectors Messrs. Mayne and Silver establish that the southern portion had never been in his possession.

71. Exhibit XXVI., dated in 1831, is a copy of a lease of the revenue of the products of those parts that appertain to the Saptur Zemindari in eight hills, *viz.*:—

(1.) Sathuraghirimalai.
(2.) Theckumalai.
(3.) Kottaimalai of Krishnapuram.
(4.) Ethanamalai.
(5.) Theckumalai to the south of the Sathuraghiri.
(6.) Thoppumalai.
(7.) Uruttimalai.
(8.) Vadakumalai.

This does not affect the right of Government either to the Wattrap Mélamalai or Vadakumalai.

72. On a careful reading of this document, which is no doubt a very important paper, it is quite clear that the Zemindar has right of ownership only to certain portions of these eight hills and not to the whole of them. It may therefore be fairly presumed that only a portion of the Sathuraghiri Hill is the property of the Zemindar, and that portion must be the northern portion of it and certainly not the southern. This undoubted fact is confirmed by the Exhibits AAT. and AAU. which show that the southern portion is the property of Government, and by Exhibit F.

which is a lease granted by Government to their contractor leasing out the Wattrap Hills, in which it is stated that they are bounded on the north by the Saptur southern boundary limit. If the whole of the Sathuraghiri Hill were the property of the Zemindar as asserted by him, then there would be no hill to the south of Saptur limits belonging to the Ayen village of Wattrap; and the Government would not have leased out the southern portion of the Sathuraghiri Hill.

73. Further, it appears from the records of the inquiry instituted by the Deputy Tahsildar regarding the situations of the above eight hills, that four of them, *viz*, Ethanamalai, Thoppumalai, Vadakumalai and Theckumalai are situated near and around the Saptur Village; and that Kottaimalai and Uruttimalai are situated to the east of the Varasanad path and west of the Wattrap Palamalai (*Vide* Exhibit AAAF).

74. Of course, the northern side of the Sathuraghiri Hill and the little hill to the south of it are to the north and north-east of the Maholingam Temple.

75. The Exhibits XXVIII. to XLV. have no bearing upon the questions at issue now. I do not therefore think it worthwhile to say anything of them.

76. Exhibit XXVII. is a copy of a tabular statement prepared by a Zemin Manager showing the boundaries of the Saptur Zemin Hills. It does not appear from it, from what accounts the boundaries therein specified were copied out; nor has the Zemindar satisfactorily shown that they appear in any of his Ayacut or Jamabundy accounts. In the absence of evidence to show that these boundaries were embodied in it, from any authentic accounts, it would be, I think, unsafe to place any reliance upon it.

77. Having discussed on the evidence (both documentary and oral) adduced on behalf of Government and of the Zemindar of Saptur, I now proceed to show the rights of Government to the Wattrap northern and western hills, and to point out what communal rights the villagers possess.

78. With regard to the question whether the decree obtained by the Zemindar against the Trustee or Manager of the Maholingam Temple regarding the southern portion of the Sathuraghiri Hill which appears to be a portion of the Vadakumalai, will affect the Government and the villagers, I have no doubt in stating that it will not. There can be no plea of *res judicata* as they were admittedly not parties to the suit. I understand from the decree in that suit that it establishes that the copper deed upon the strength of which the Trustee claimed the hill as Inam was a forgery. The fact that the Inam Commissioner treated the hill as maniem, having been evidently misled by the forged copper Sasanam, cannot, I think, bind the Government so as to preclude their now asserting their rights to the property as against the Zemindar; even as against the Trustee the Government can take possession of the hill on their discovering that the copper Sasanam was a forgery; for no one could acquire right by his own fraud. While such is the nature of the case, and while there is ample and satisfactory evidence in support of Government title and right to the hill, what is there to prevent them from setting forth their rights thereto, and therefrom recovering it from the Zemindar? Should it be argued on behalf of the Zemindar that Government having asserted by their Inam title-deed that the hill was the maniem, would be estopped from saying now that it is not maniem but their own property, I must say that that argument will not hold good; for the principle of estoppel is now well laid down in Section 115 of the new Indian Evidence Act I. of 1872. Now, has the Zemindar been induced to act believing what the Government declared, was true? The reverse is the case here. The Government asserted that the property was Inam, but the Zemindar never believed it and never acted upon such assertion being true. Belief in the thing asserted to be true and change of position induced by such a belief are, I think, essential to a defence of estoppel; and they seem to me to be wanting in the case. Even supposing for the sake of argument that there is some doubt in the matter so far as the claim by Government is concerned, the village community is not, I believe, precluded by the assertion of Government that the hill was maniem; for they could not be deprived of it by granting to a third party, if they had a right to it; and such a grant would be void (see Broom's Legal Maxim, pages 54 to 58, Fifth Edition).

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79. Then it is to be ascertained when did the cause of action arise so far as the claim by Government is concerned; and what is the period of limitation allowed for instituting a suit to recover possession of the hill from the Zemindar. I think the cause of action must be considered to have accrued to Government at the time the Government were aware of the fact that the copper deed was a fraudulent document. It was declared by the Madura District Court to be a forgery on the 25th May 1870; but I am not now in a position to know whether the Government were aware of the decree. Even supposing they knew it at the time the decree was passed, they are not as yet barred by lapse of time; for the period of limitation allowed for bringing an action is six years.—(*Vide* Article 118, parts 7, 1st division, 2nd Schedule of the Limitation Act No. IX. of 1871); and even if the date of the decree were taken to be the date on which the cause of action has accrued to Government, the period of six years allowed by the law has not as yet elapsed. But, however, I would beg to observe that no time should be lost in taking timely action against the Zemindar, should you consider that the circumstances of the case stated by me are such as are, in your opinion, so favorable and strong as to permit you to advise the Board and Government to take steps to recover the property from him.

80. Now as to the question regarding the western hill, it is not only a matter of much regret but also of great surprise that all the most useful, important and satisfactory evidence strongly in favor of Government's long enjoyment thereof, now obtained on their behalf, was kept back from Mr. Symonds at the time he was deputed to inquire into the forest dispute between the Zemindar and Government. The inquiry instituted by him established to his satisfaction that the hill was once the property of Government; but he says in his first report "that no proof whatever of possession of the hill by Government, prior to the interference of the Forest Department, is forthcoming, although the Taluq Cutcherry has been thoroughly searched and ample time allowed for the production of the same from other sources. On the other hand, the Zemindar's enjoyment embraces a period of sixty-five years as is evident from several settlement accounts, a putta of 1831, and numerous orders issued while the estate was under the control of Court of Wards."

81. But on going through the records of his inquiry, which were obtained from the Collector of Madura, and which I have marked as XLVI. for the purpose of this inquiry, it does not appear from them how the search was made and who was the officer that searched the records of the Taluq Cutcherry, and I find also that the documents referred to by him in his report as showing the Zemindar's enjoyment were all produced by his Vakil.

82. Two accounts are forthcoming from these records. One of which purports to be an extract from the Saptur Zemin Jamabandy Cadjan Accounts in the custody of the Zemindar's Vakil Sundrem Pillay and shows the amount of rent derived from the Kodikulam Hill during the years 1801, 1802, 1803, 1804, 1806, and 1809. This document does not prove, or tends to prove, that the Wattrap Western Hill, which was the subject of litigation in Suit No. 28 of 1870, had been in the enjoyment of the Zemindar during those years; for it only relates, I understand, to the Kodikulam Hill marked in the accompanying plan.

83. The other account purports to be a copy of the Ayacut Olugu Account of the year Jeya of the village of Kodikulam and shows several yessaks or fixed marks as far as the Strivilliputtur, and Gundamanaickenur limits. This account appears to have been produced by Vadivelu Pillay an old Curnam of the Zemin village of Kodikulam *alias* Kummaputti.

84. This Curnam stated, so far back as 1848, before the Tahsildar of Strivilliputtur, that the Ayacut Olugu Accounts of his village were destroyed by fire (*Vide* Exhibits XXXVI). This statement of his, therefore, conclusively throws great discredit upon the account produced by him before Mr. Symonds.

85. Further, if the above two accounts were genuine instruments, they could have been filed in Suit No. 28 of 1870 by the Zemindar with his plaint, as required by Section 39 of the Code of Civil Procedure; but they were not so done. It is therefore nothing but reasonable to suppose that they are not even worth the papers on which they are written.

86. Again, in the concluding paragraph of his second report, Mr. Symonds observes that the Zemindar's agent (probably I believe the agent Sundrem Pillay who appeared before me for

the Zemindar) with the Zemindar's permission, has tried to advance his interest in the case by some underhand mode of dealings. This observation of Mr. Symonds goes to confirm the repeated complaints of the above named Pandiem Pillai and others accusing the Zemindar and his agent with having tampered with the ayacut account in the Huzur record. I have already stated that the two accounts produced by the Zemindar's agent before Mr. Symonds appear to be fraudulent.

87. Now with regard to the putta referred to by Mr. Symonds, I should only observe that it does not relate to the western hill in question (*Vide* paragraphs 71 to 74).

88. Two of the orders quoted by Mr. Symonds are dated in 1856, and the others are dated in 1864, 1865 and 1866. These orders only show that certain parties felled timber from the Kodikulam Hill to the west of Kodikulam Village, commonly called, I understand on inquiry, the Kodikulam Mélamalai, without permission, and that the timber so felled was ordered to be confiscated, and the proceeds of sale credited to Zemin account. They are not, therefore I think applicable to the Wattrap Western Hill in question.

89. And Mr. Symonds was, I think, led to attach weight to the Zemin accounts, as no proof of possession by Government was adduced then. In fact, nobody appears to have been authorized to conduct the inquiry on behalf of Government before him.

90. Further, in his plaint in Suit No. 28 of 1870 most ambiguously framed, the Zemindar sought to establish his title to the western hill in question; to restrain the defendants from interfering with it; and to adjudge them to pay him Rupees 13,500 as damages for 1866, 1867 and 1868 for trespass; but he never mentioned a word in it about his alleged long enjoyment thereof.

91. The area of the hill specified in the plaint is far more than six square miles; and can be approximately said to be about eighteen square miles, and it appears, also, that a portion of Gundamanaicknur Forest lands is included in it.

92. Before the first hearing of the suit, the Zemindar proposed to withdraw it in the event of Government admitting his title to the hill, and to accept any amount for damages which Government considered fair. On this proposal being submitted to Government for their orders, they were necessitated to admit his title and to put in a razinamah accordingly (*Vide* G.O., dated 21st May 1872, No. 810, Revenue Department). Then the Collector of Madura, who was the 6th defendant, and the Zemindar, the plaintiff, filed a razinamah the terms of which are as follows:—

"That 6th defendant, with the sanction of Government, hereby admits the plaintiff's title to the disputed hills and lands situated within the boundaries in the plaint mentioned; the plaintiff hereby surrenders all claims to the mesne profits in the plaint mentioned, and agrees to accept in full satisfaction of his claim whatever sum the Government may determine to pay him. The plaintiff and 6th defendant are each to bear their own costs. The plaintiff and 6th defendant pray that the Court will be pleased to pass a decree in accordance with this razinamah."

93. Upon this razinamah being put in, the Court passed a decree which runs thus:—

"The Court doth, in accordance with the razinamah filed by plaintiff through his Vakil Mr. T. M. Scott and by 6th defendant through the Government Pleader Ramasami Iyer, order and decree that the 6th defendant be restrained from interfering with the property specified in the plaint belonging to the plaintiff; that his (plaintiff's) claim to mesne profits be dismissed, and that the defendants 1 to 5 be relieved from all liability to the suit. This Court doth further order and decree that the plaintiff and 6th defendant do bear their respective costs."

94. From the above it will be clearly seen that the decree was not passed quite in accordance with the terms of the razinamah. While the razinamah does not pray for a decree restraining 6th defendant from interfering with the hills in dispute, it is decreed that he be restrained from interfering; and I doubt whether such a decree would be valid against Government. Although that part of the decree is on record, it may be rectified by the Court that passed it, if the Court be moved under Section 376 of the Code of Civil Procedure which empowers parties aggrieved by a decree of a Court to apply to that Court for a review of its decree.

95. As the Zemindar has not mentioned a word of his alleged enjoyment of the hill in question in his plaint, and as the question of enjoyment was not at issue in the suit, the fact of

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Government having admitted only his title by a compromise would in no way alter their position so far as their right of possession, which they were not aware of before, is concerned. I am therefore inclined to think that the decree relating to the Government western hill does not affect them. On the other hand, if the Zemindar thinks that he possesses right of enjoyment, it will be his business to establish it as against Government in another suit.

96. I may be permitted to observe that if the Collector of Tinnevelly were made a defendant to the suit instead of the Collector of Madura who, as he alleged to Board (Proceedings of the Board of Revenue, dated 28th December 1874, No. 9,004), was not aware of anything about the Tinnevelly Forests, then the suit could have been defended most successfully. But, however, I do not think the Government have lost the property. When the dispute of forest boundaries are taken up under the Boundary Act, the claims of Government to the whole of the western hill can be set forth to a successful end.

97. Then as to the question whether the above named two hills are within the boundary limits of the Government village of Wattrap, I have no hesitation in finding it in the affirmative (*Vide* the Government Ayacut Accounts and Exhibit F). The Zemindar has not hitherto produced any documents that may rebut or may tend to rebut that piece of strong and most trustworthy documentary evidence in favor of Government; and I think it would very difficult for him to repudiate it, unless he finds public document in his favor of the nature similar to those in possession of Government.

98. I may observe here that if the boundaries given in the Zemindar's plaints in Suits Nos. 6 of 1868 and 28 of 1870 were considered with those specified in the ayacut accounts of the villages of Strivilliputtur, Valakulam, Rajapalayem, Wattrap, Kattayur, Sundrapandiem and Narasingapuram in the Gundamanaickenur Estate, it would clearly appear that his boundaries are all incorrect; but all these should be carefully examined and considered in the inquiry under the Boundary Act.

99. As to the communal rights of Government villagers, there are on record the statements of a number of people of all classes, from which it would appear that they have been in the habit of cutting firewood and felling wood for agricultural implements from the Government hills and of using pasturage free of charge; and such rights appear to have been recognized by Mr. Mayne, the Collector, in 1858 (*Vide* Exhibit AAU). Beyond these, they have not adduced any documents showing their communal rights, and I imagine it would be hardly possible for them to have any such documents.

100. Further, the village barbers assert that they have right of shaving pilgrims that resort to the Maholingam Temple on the Sathuraghiri Hill on festival occasions; and that the Zemindar prevents them from doing so now.

101. The village totties and chucklers assert that they possess the right of taking possession of the skins, horns, &c., of animals dying on the hills which the Zemindar would not now allow them to enjoy.

102. Before concluding this report, I beg to be permitted to point out that these hills are useful to many of our irrigation works in the village of Wattrap and in many of its adjacent villages, as a few jungle streams take their rise from these hills and supply water to a considerable extent of wet cultivation.

103. Again, I am informed by one of the Railway Engineers at Virdaputti, that the question of opening a feeder from Virdaputti to the foot of these hills is now before Government under their consideration; and if that question is settled in favor of opening the proposed feeder, then these forests will not only supply a large quantity of fuel to the Railway, but also timber of superior kinds fit for building purposes in course of time, if the forests are carefully and properly conserved. No time should be lost in marking out the boundaries of the hills in question under the Boundary Act and settling the other questions regarding them. The sooner this is done the better. The Zemindar's Vakil informs me that he has no objection to the matter being taken up under the Act.

104. Under these circumstances I would suggest that

105. The records connected with my inquiry are herewith submitted for your perusal and consideration.

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APPENDIX No. I.

*Statement showing the Amount of Rent levied by Government on Hill Products during Faslis 1241 to 1263, vide Exhibits B and K.*

| Faslis. | Name of the Contractors. | Amount. Rs. | A. | P. | Remarks. |
|---|---|---|---|---|---|
| 1241 ... ... | Kuppachariar ... ... ... ... ... ... ... | 12 | 0 | 0 | |
| 1242 ... ... | Muthappa Iyengar ... ... ... ... ... ... | 15 | 0 | 0 | |
| 1243 ... ... | Do. ... ... ... ... ... ... | 18 | 0 | 0 | |
| 1244 ... ... | Do. ... ... ... ... ... ... | ... | ... | ... | |
| 1245 ... ... | Do. ... ... ... ... ... ... | 7 | 8 | 0 | |
| 1246 ... ... | Thirali Suba Royer ... ... ... ... ... ... | 10 | 0 | 0 | |
| 1247 ... ... | Appaniengar ... ... ... ... ... ... ... | 16 | 0 | 0 | |
| 1248 ... ... | Puranam Appaniengar ... ... ... ... ... | 18 | 0 | 0 | |
| 1249 ... ... | Nallakannu Pillai ... ... ... ... ... ... | 20 | 8 | 0 | |
| 1250 ... ... | Ramasamy Pillai ... ... ... ... ... ... | 23 | 8 | 0 | |
| 1251 ... ... | Muthirulandy ... ... ... ... ... ... | 25 | 0 | 0 | |
| 1252 ... ... | Senia Pillai and Sheik Abdul Kadar ... ... | 28 | 0 | 0 | |
| 1253 ... ... | Sheik Abdul Kadar ... ... ... ... ... ... | 28 | 8 | 0 | |
| 1254 ... ... | Rengapalayem Ramasami Pillai ... ... ... | 32 | 0 | 0 | |
| 1255 ... ... | Kusthuri Venkataraj Nirathalingam ... ... | 35 | 0 | 0 | |
| 1256 ... ... | Puthuputty Sinna Naick ... ... ... ... ... | 65 | 0 | 0 | |
| 1257 ... ... | Maya Pillai and Tiruvangadem ... ... ... | 37 | 0 | 0 | |
| 1258 ... ... | Manaraiyan ... ... ... ... ... ... ... | 90 | 0 | 0 | *Vide* Exhibit F. |
| 1259 ... ... | Sinivasa Iyengar ... ... ... ... ... ... | 150 | 0 | 0 | |
| 1260 ... ... | Vemba Iyen ... ... ... ... ... ... ... | 151 | 0 | 0 | |
| 1261 ... ... | Athinarayana Pillai ... ... ... ... ... ... | 151 | 0 | 0 | |
| 1262 ... ... | Do. ... ... ... ... ... ... | 222 | 0 | 0 | |
| 1263 ... ... | Manaraiyan ... ... ... ... ... ... ... | 304 | 0 | 0 | |

(Signed) H. SUBBARAYAR,
Acting Deputy Collector.

APPENDIX No. II.

*Statement showing the Amount of Rent collected by Villagers from Faslis 1265 to 1267, vide Exhibit N.*

| Years. | From whom collected. | Amount. Rs. | A. | P. | Remarks. |
|---|---|---|---|---|---|
| 28th Thy Nala. | Suppakothan, Renter of Melamalai ... ... ... ... | 11 | 0 | 0 | |
| 1st Panguny Ananda. | Perumaltevan of Archavapuram, Renter of Theckumalai | 3 | 0 | 0 | |
| 7th Panguni Punzala. | Ammamuthu Sunkaralingatevan, Renter of Melamalai and Theckumalai... ... ... ... ... ... ... ... | 19 | 8 | 0 | |
| | Neerathalingam on account of Malaipattam Rent ... | 55 | 0 | 0 | |

(Signed) H. SUBBARAYAR,
Acting Deputy Collector.

APPENDIX No. III.

*Statement showing the Amount of Seigniorage levied by Revenue Authorities, vide Exhibits AY and AZ on the Products of the Hills.*

| Year. | Amount. Rs. | A. | P. | Remarks. |
|---|---|---|---|---|
| 1865 ... ... | 30 | 1 | 4 | It is reported by the Tahsildar of Strivilliputtur that the Chittahs of the years 1861 to 1864 show the collections of seigniorages. |
| 1866 ... ... | 67 | 0 | 2 | |
| 1867 ... ... | 722 | 13 | 0 | |
| 1868 ... ... | 627 | 7 | 0 | |
| 1869 ... ... | 831 | 4 | 0 | |
| 1870 ... ... | 1,487 | 8 | 0 | |
| 1871 ... ... | 386 | 15 | 10 | |

(Signed) H. SUBBARAYAR,
Acting Deputy Collector.

APPENDIX No. IV.

*Statement showing the Amount of Teruvu levied from the Government Ryots including the Zemindar on the Tamarind Trees, vide Exhibits AAA to AAE on the two Hills, Faslis 1246 to 1283.*

| Place. | Fasli. | Tirwa. Rs. | A. | P. | Number of Trees. | Remarks. |
|---|---|---|---|---|---|---|
| Melamalai. | 1252 | 21 | 11 | 1 | 169 | Paid by Villagers of Wattrap. |
| | 1253 | ... | ... | ... | ..... | |
| | 1254 | ... | ... | ... | ..... | |
| | 1255 | ... | ... | ... | ..... | |
| | 1256 | 25 | 9 | 10 | 161 | |
| | 1257 | 25 | 9 | 10 | 161 | |
| | 1258 | ... | ... | ... | ..... | |
| | 1259 | 20 | 10 | 11 | 130 | |
| | 1260 | ... | ... | ... | ..... | |
| | 1261 | ... | ... | ... | ..... | |
| | 1262 | ... | ... | ... | ..... | |
| | 1263 | ... | ... | ... | ..... | |
| | 1264 | 22 | 4 | 4 | 140 | |
| | 1265 | 22 | 4 | 4 | 140 | |
| | 1266 | ... | ... | ... | ..... | |
| | 1267 | ... | ... | ... | ..... | |
| | 1268 | ... | ... | ... | ..... | |
| | 1269 | ... | ... | ... | ..... | |
| | 1270 | 25 | 12 | 4 | 162 | |
| | 1271 | ... | ... | ... | ..... | |
| | 1272 | 25 | 12 | 4 | 162 | |
| | 1273 | ... | ... | ... | ..... | |
| | 1274 | ... | ... | ... | ..... | |
| | 1275 | 27 | 0 | 8 | 170 | |
| | 1276 | 27 | 0 | 8 | 170 | |
| | 1277 | ... | ... | ... | ..... | |
| | 1278 | 28 | 0 | 0 | 176 | |
| | 1279 | 28 | 0 | 0 | 176 | |
| | 1280 | 28 | 0 | 0 | 176 | |
| | 1281 | 28 | 0 | 0 | 176 | Collected by Forest Officers. |
| | 1282 | 28 | 0 | 0 | 176 | |
| | 1283 | 28 | 0 | 0 | 176 | |
| | 1246 | 1 | 9 | 5 | 10 | Paid by the Government Villagers of Wattrap. |
| | 1247 | ... | ... | ... | ..... | |
| | 1248 | ... | ... | ... | ..... | |
| | 1249 | 1 | 14 | 6 | 12 | |
| | 1250 | 1 | 14 | 6 | 12 | |
| | 1251 | ... | ... | ... | ..... | |
| | 1252 | ... | ... | ... | ..... | |
| | 1253 | 1 | 14 | 6 | 12 | |
| | 1254 | ... | ... | ... | ..... | |
| | 1255 | 2 | 3 | 8 | 14 | |
| | 1256 | 2 | 3 | 8 | 14 | |
| | 1257 | ... | ... | ... | ..... | |
| | 1258 | 1 | 9 | 5 | 10 | |
| | 1259 | 1 | 9 | 5 | 10 | |
| | 1260 | ... | ... | ... | ..... | |
| | 1261 | ... | ... | ... | ..... | |
| | 1262 | ... | ... | ... | ..... | |
| | 1263 | 2 | 1 | 1 | 13 | |
| | 1264 | ... | ... | ... | ..... | |
| | 1265 | ... | ... | ... | ..... | |
| | 1266 | 2 | 3 | 8 | 14 | |
| | 1267 | ... | ... | ... | ..... | |
| | 1268 | ... | ... | ... | ..... | |

| Place. | Fasli. | Tirwa. Rs. | A. | P. | Number of Trees. | Remarks. |
|---|---|---|---|---|---|---|
| Melamalai.—(Continued.) | 1269 | ... | ... | ... | ..... | |
| | 1270 | ... | ... | ... | 15 | |
| | 1271 | 2 | 6 | 2 | 15 | |
| | 1272 | 2 | 6 | 2 | ..... | |
| | 1273 | ... | ... | ... | ..... | |
| | 1274 | 1 | 6 | 11 | 9 | |
| | 1275 | 1 | 9 | 5 | 10 | |
| | 1276 | ... | ... | ... | ..... | |
| | 1277 | ... | ... | ... | ..... | |
| | 1278 | ... | ... | ... | 12 | |
| | 1279 | 1 | 14 | 6 | 19 | |
| | 1280 | 1 | 9 | 5 | 14 | Collected by Forest Officers. |
| | 1281 | 2 | 3 | 8 | 16 | |
| | 1282 | 2 | 3 | 8 | 18 | |
| | 1283 | 2 | 13 | 10 | | |
| | 1246 | 0 | 13 | 9 | 5 | Paid by the Government Villagers of Wattrap. |
| | 1247 | ... | ... | ... | ..... | |
| | 1248 | 0 | 13 | 9 | 5 | |
| | 1249 | 0 | 15 | 3 | 6 | |
| | 1250 | ... | ... | ... | ..... | |
| | 1251 | ... | ... | ... | 5 | |
| | 1252 | 0 | 15 | 3 | ..... | |
| | 1253 | ... | ... | ... | 6 | |
| | 1254 | 0 | 15 | 3 | 6 | |
| | 1255 | 0 | 15 | 3 | ..... | |
| | 1256 | ... | ... | ... | 5 | |
| | 1257 | 0 | 12 | 9 | 5 | |
| | 1258 | 0 | 12 | 9 | ..... | |
| | 1259 | ... | ... | ... | ..... | |
| | 1260 | ... | ... | ... | ..... | |
| | 1261 | ... | ... | ... | 6 | |
| | 1262 | 0 | 15 | 3 | ..... | |
| | 1263 | ... | ... | ... | ..... | |
| | 1264 | ... | ... | ... | ..... | |
| | 1265 | ... | ... | ... | 6 | |
| | 1266 | 0 | 15 | 3 | ..... | |
| | 1267 | ... | ... | ... | ..... | |
| | 1268 | ... | ... | ... | ..... | |
| | 1269 | ... | ... | ... | ..... | |
| | 1270 | ... | ... | ... | 7 | |
| | 1271 | 1 | 1 | 10 | 7 | |
| | 1272 | 1 | 1 | 10 | ..... | |
| | 1273 | ... | ... | ... | 6 | |
| | 1274 | 0 | 15 | 3 | 6 | |
| | 1275 | 0 | 15 | 3 | ..... | |
| | 1276 | ... | ... | ... | ..... | |
| | 1277 | ... | ... | ... | ..... | |
| | 1278 | ... | ... | ... | 7 | |
| | 1279 | 1 | 1 | 10 | 5 | |
| | 1280 | 0 | 12 | 9 | 6 | Levied from the Zemindar through Forest Officers. |
| | 1281 | 0 | 15 | 3 | 8 | |
| | 1282 | 1 | 4 | 5 | 10 | |
| | 1283 | 1 | 9 | 5 | | |

(Signed) H. SUBBARAYAR,
Acting Deputy Collector.

ENCLOSURE No. 2.

From W. A. SYMONDS, Esq., First Uncovenanted Assistant for Settlement, to C. T. LONGLEY, Esq., Acting Collector, Tinnevelly, dated Strivilliputtur, 19th February 1870, No. 39.

I HAVE the honor to submit, herewith, my report on the forest dispute between Ayen Wattrap, Tinnevelly District, and Kodikulam, Saptur Zemindari, Madura District, and to annex a plan of the place.

2. In September 1866, the Forest Department assumed the conservancy of the western half of certain hills claimed by the Zemindar, and extended their operations to the eastern half of the same in the year 1868. These hills are indicated by a red line, and I roughly estimate them to comprise an extent of above six square miles.

3. Neither of the above villages has any Takvari Ayacut or detailed measurement of the disputed area, but Wattrap possesses two octagonal boundary accounts for 1803 and 1804, respectively, which appear to me to include it, though not so clearly as could be desired. Thus, the former mentions a Manalkeni and an Urani, the latter the first alone, as marking the western boundary of Wattrap. That both these yessaks or fixed marks really exist, and are well known to the different classes who frequent the hills, I have satisfied myself beyond the shadow of a doubt by personal inspection and local inquiry. The Manalkeni is a sandy break in the rocky bed of a mountain river, and the Urani a small rain-fed pond. But the pool and pond (especially the former) mark the north-western, not western boundary of Wattrap. Considering, however, that the hills in dispute are not exhibited in the Ordinance Map, this inaccuracy can hardly be held to impugn the testimony of such old accounts to two unmistakeable boundary marks.

4. Here the case for Government closes. No proof whatever of possession, prior to the interference of the Forest Department, is forthcoming, although the Taluq Cutcherry has been thoroughly searched, and ample time allowed for the production of the same from other sources. On the other hand, the Zemindar's enjoyment embraces a period of sixty-five years, as is evident from several settlement accounts, a putta of 1831, and numerous orders issued while the estate was under the control of the Court of Wards.

5. I conclude with an expression of my opinion that the Government once owned this forest, but that they have slept upon their rights so long as to have forfeited them.

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ENCLOSURE No. 3.—Judgment of Madura Court in Original Suit No. 6 of 1868.

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ENCLOSURE No. 4.—List of Documents.

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ENCLOSURE No. 5.—Plan.

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ENCLOSURE No. 6.—Map.

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ABOUT seven years ago, a boundary dispute arose in consequence of the Forest Department having assumed the conservancy of certain hills which were claimed on the one hand as included in the Government village of Wattrap in the Tinnevelly District, and on the other, by the Zemindar of Saptur as belonging to Kodikulam, a village of his Zemindari which was formerly included in the Tinnevelly District, but was many years ago transferred to the Madura District. Mr. Symonds of the Settlement Department who was first deputed to investigate the matter came to the conclusion on the evidence of the boundary account (1803-4) of Wattrap that the hills were included in that village, but he found no proof whatever of possession on the part of Government prior to the interference of the Forest Department in 1865, while he considered there was abundant evidence to prove that the Zemindar had been in possession for at least sixty-five years. The Deputy Collector Devasikamony Pillay, who also inquired into the matter, was decidedly of opinion that the hills were included in the Zemindari.

2. In 1871, the Zemindar filed a Suit* No. 28 of 1870 to establish his right to the hills, alleging trespass on the part of the Forest Officers and claiming a considerable amount, Rupees 13,500, as mesne profits. The matter was referred for the advice of the Government Pleader. Adverting to the admission of sixty-

* Board's Proceedings, 5th April 1871, No. 1,507.
G.O., 12th April 1871, No. 660.
G.O., 6th May 1871, No. 795.
Board's Proceedings, 13th February 1872, No. 394.
G.O., 8th March 1872, No. 411.
G.O., 16th March 1872, No. 467.

five years' possession on the part of the Zemindar supported by boundary accounts, and there being nothing in support of the claim of Government except an old boundary account regarding which opinions were conflicting as to whether it included the hills, Mr. Symonds thinking that it did and Devasikamony Pillay holding the contrary, the Government Pleader expressed the opinion* that the suit was not defensible except as regards the amount of damages claimed.

* Letter dated 1st March 1872, No. 30, recorded in G.O., 16th March 1872, No. 467.

3. After some further correspondence, the matter was compromised by the Zemindar withdrawing the suit and Government recognizing his title to the disputed tract and paying Rupees 2,500. A razinamah was filed in Court and a decree passed thereon.

G.O., 21st May 1872, No. 810.
Board's Proceedings, 10th August 1872, No. 1,553.
G.O., 16th June 1873, No. 614.
G.O., 27th October 1873, No. 1,187.

4. In a report† on the forests of Tinnevelly, the Officiating Inspector of Forests brought to notice that in reference to this settlement of the Zemindar's claim, the ryots of the Government village of Wattrap complained bitterly of interference on the part of the Zemindar with their communal rights. Captain Walker at the same time remarked that the settlement of the dispute existed only on paper, as the boundaries had not been marked out. Upon this Government observed that the determination of the boundaries was a matter which should engage the early attention of the Board. The Board called on the Collector for a report, and the letter above recorded is his reply. With it he submits a very full report from the Deputy Collector who was recently deputed to visit the hills and investigate the claims to them. This range of hills, about twenty-two square miles in extent, is for convenient reference divided into three blocks, marked A. B. and C. (*vide* Map). The portion marked D. admittedly belongs to Wattrap, a Government village, and regarding this there is no dispute.

† Recorded in G.O., 30th October 1874, No. 1,330.

5. The hill A. which is of little value was held under the Inam Commissioner's Title-deed as a Pagoda Inam. In 1868, the Zemindar of Saptur filed a Suit No 6 of 1868 against the Pagoda Trustee, claiming the hill as belonging to his Zemindari. The Trustee instead of relying on the Inam Commissioner's Title-deed produced a Copper Sasanam in support of the claim of the Pagoda. The Court considering this document a forgery, decided the suit in favor of plaintiff, the Zemindar.

6. In the suit brought against Government above referred to, the Saptur Zemindar claimed the hill A. and a part of B. not defined, but on the whole estimated in the plaint as six square miles. He now appears to claim the whole of A. B. and C., comprising twenty-two square miles.

7. The careful and searching enquiry recently made by the Deputy Collector has elicited a considerable amount of strong evidence, written and oral, both as to title and possession in support of the claim of Government to the greater portion of these hills, and there are good grounds for believing that the evidence relied on by the Zemindar in the two suits referred to was obtained from the record of the Tinnevelly District by fraud and was forged.

8. The Board consider that there is little doubt that had the facts now brought to light been known when Suit No. 28 of 1870 was pending, instead of compromising the matter the plaintiff's claim would have been contested with every prospect of success.

9. The Collector suggests an application to the Madura District Court for a review of judgment under Section 376, Civil Procedure Code, failing which he proposes certain other courses. The Board doubt whether in the circumstances such an application is admissible. They accordingly resolve to refer the matter for the opinion of the Government Pleader, who is requested to advise as to whether any, and, if so, what course is open for the re-assertion of the claim of Government to the hills involved in Suit No. 28 of 1870, and to have the Razinamah decree in that case set aside.

10. They also desire to know whether Government can now contest the Saptur Zemindar's claim to the hill decreed to him in Suit No. 6 of 1868, against the Pagoda Trustee who held it as an Inam. Government was no party to this suit.

(True Copies and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

To the Government Pleader, with copies of G.Os., dated 21st May 1872, No. 810; 16th June 1873, No. 614; 27th October 1873, No. 1,187; and of Board's Proceedings, dated 10th August 1872, No. 1,553, and four original enclosures, to be returned.

Copy to the Collector of Madura.
,, to the Collector of Tinnevelly.
,, to the Conservator of Forests.

Exd. W. H. French.

Rev 1/3811/78.

1876.
Board of Revenue,
MADRAS.

PROCEEDINGS, 29TH MAY 1876, No. 1,405.

Received.

Exd.

M A Y.
Forest No. 50.

*Boundary Dispute*—between Saptur Zemindari and Government village of Wattrap in Tinnevelly District.—Requesting Government Pleader to state whether any course is open for reassertion of claim of Government to certain hills involved in Suit No. 28 of 1870 on file of Madura Civil Court, and to have reinstated decree in that case set aside, and whether Government can now contest Zemindar's claim to the hill decreed to him in Suit No. 6 of 1868.

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No. 2,326.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 19th August 1878.

Read the following letters:—

From J. W. HANDLEY, Esq., Government Pleader, Madras, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 9th August 1876, No. 96.

WITH reference to the Board's Proceedings noted in the margin, I have the honor to submit the following opinion.

29th May 1876, No. 1,405.

2. I am of opinion that there is no course open now for the reassertion of the claim of Government to the hills involved in Suit No. 28 of 1870 in the District Court of Madura, or for setting aside the Razinamah decree in that suit. The grounds suggested by the Collector for an application for review of judgment would not, I think, be any grounds for review even of an ordinary judgment, still less of a judgment passed by agreement of the parties, which can only be set aside on proof of direct fraud in inducing either party to enter into the compromise. The grounds suggested are, 1st, that important evidence in support of the claim of Government has been discovered since the Razi decree was passed; 2ndly, that the Zemindar filed his suit in Madura, and not in Tinnevelly where the Government village concerned is situated; and, 3rdly, that he produced false documents in support of his case. The first of these would be no ground for review in any case unless it were shown that the evidence could not possibly have been produced or discovered before which can hardly be said. It certainly is no ground for impeaching a Razi decree. As to the second ground, the Zemindar could hardly have done otherwise than file the suit in the Madura Court, as it was his case that the hill was in his Zemindari, and therefore in the Madura District and within the jurisdiction of the Madura Courts alone. No objection to the jurisdiction of the Madura Court appears to have been taken either by Government or the Court, and it seems to me that the allegation of fraud in this matter is quite unfounded. Then as to the alleged production by the Zemindar of false documents to support his case. The Court cannot assure the falsity of the documents merely on the statement of one party, but must go into evidence on the point, and even if satisfied that the documents are false must go into the whole evidence in the case and pass judgment thereon, *i.e.*, do what by the Razi both parties agreed should not be done, for the case for the Zemindar might still be strong enough to succeed without the false documents. Altogether I can see no ground on which an application for review could be founded with any prospect of success.

3. The Collector further proposes to ignore the Razi decree and to re-open the whole question in the form of a proceeding under the Boundary Marks Act. This would be as it appears to me a defiance of the District Court, and I could not advise any such course being adopted. It is quite true of course that the Wattrap villagers and the hill tribes not having been parties to the suit are not bound by the decree, and if any of their legal rights are affected by that decree they can obtain redress in due course of law, but Government and its officers are bound by the decree, and any proceeding taken by them to settle the boundaries must take the decree as its basis. I think, therefore, that any demarcation of boundaries must be in accordance with the decree. Of course if the Zemindar now claims lands not strictly included in the decree that matter may be disposed of under the Boundary Marks Act. I do not quite understand the meaning of the statement at the end of paragraph 5 of the Collector's letter. If the boundaries given in the plant, and which are adopted by the decree are too vague for the lands to be ascertained, there might be some ground for applying to the Court to reform the decree.

4. With regard to the question whether Government can now contest the Saptur Zemindar's claim to the hill (A) decreed to him in Suit No. 6 of 1868 against the Pagoda Trustee, I do not quite understand how it can be of any importance, as this

same hill appears to have been also included in the Suit No. 28 of 1870 against Government. If this were not so, no doubt the decree in No. 6 of 1868 would be no bar to the assertion of any claim of Government to the hill in question. I gather, however, from the papers that the right to this hill appears to have been always treated by the Revenue officials as if it lay between the Zemindar and the Pandaram, and the title of Government appears to have never been set up. If, however, this hill is not included in the Suit No. 28 of 1870, I should like to be furnished with further information as to the nature of the title of Government to it, and how it has been dealt with in past times, before advising definitely as to a suit to recover it from the Zemindar. It must be remembered that in such a suit, the Zemindar being in possession, Government must succeed on the strength of their own title and not on the weakness of his.

5. I return all the original enclosures to the above Proceedings.

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From the Collector of Tinnevelly, to the Secretary to the Board of Revenue, dated 20th November 1877, No. 844.

With reference to Board's Proceedings, No. 1,405, dated 29th May 1876, requests to be informed what opinion, if any, has been pronounced by the Government Pleader in the matter of the boundary dispute referred to.

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The Board regret that this matter should have remained so long undisposed of owing to an oversight. The Board's Proceedings, dated 29th May 1876, No. 1,405, with Mr. Handley's reply thereto will now be submitted for the orders of Government with reference to G.O., dated 30th October 1874, No. 1,380, and previous correspondence.

2. A brief history of the case being given in the Proceedings just quoted it is unnecessary to recapitulate. Mr. Handley's opinion was requested as to whether the additional facts brought to light regarding the boundary dispute between the Government village of Wattrap and the Zemindar of Saptur afforded any grounds on which an application for review of the Razinamah decree passed by the District Court of Madura in Original Suit No. 28 of 1870 could be sustained, or whether the whole question could be reopened in the form of proceedings under the Boundary Act as proposed by Mr. Stuart. Mr. Handley expresses a very decided opinion that there is no course open now for the reassertion of the claim of Government to the hills involved in the suit in question. It is much to be regretted that further enquiry was not made at the time with a view to procuring all the evidence available in support of the Government claim before a compromise was determined upon, but this mistake does not now admit of remedy, and the only thing which can be done is to determine the extent of country to which the Zemindar is entitled under the agreement and mark the boundaries so as to obviate further encroachment and dispute. It seems that whereas the area specified in the original claim was only 6 square miles, a range of hills comprising about 22 square miles is now in dispute. The Board have not got a copy of the plaint in the suit, but it will no doubt be possible to identify on the spot the tract to which the Zemindar's title has been conceded, and the rest of the hills should be declared to be the property of Government, the Zemindar being left to prosecute his claim in the Courts, if not satisfied with the decision. The rights of the villagers of Wattrap who were not parties to the agreement are not affected; if the Zemindar interferes with their privileges, they can sue him in the Civil Courts, but in the interests of the jungle tribes inhabiting these hills who appear from the Deputy Collector's account to be in a debased and helpless condition and to be oppressed by the Zemindar's servants it is desirable that steps should be taken to ascertain the area over which the Zemindar can exercise authority in order to restrain him from interference beyond those limits.

3. The Board recommend that the Deputy Superintendent of the Madura Survey Party be deputed to investigate the matter on the spot under the Boundary Act, and to carry out the demarcation in accordance with the Razinamah decree; the range of hills in question forms a portion of the boundary between Madura and Tinnevelly, and the dispute must be settled before the line can be fixed; further complication may be



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avoided by taking up this portion as soon as Mr. Gompertz can be spared: he will have to meet Mr. Munro in November for the settlement of the Travancore frontier, and if the interval is insufficient to admit of his settling this dispute he might proceed to the spot immediately after the completion of the Travancore boundary operations.

G.O., dated 12th July 1878, No. 1,061.

(True Copies and Extract.)

Acting Secretary.

To the Secretary to Government, Revenue Department, with four original enclosures in No. 432, of 1875, to be returned, and copy of Board's Proceedings, dated 20th May 1876, No. 1,405.

Copy to the Collector of Madura, with copy of G.O., dated 12th July 1878, No. 1,061.
" " " of Tinnevelly, with do.
" " " of Superintendent, Revenue Survey.
" " " of Conservator of Forests.
" " Government Pleader.

Exd. A. Grubert

Revenue Department.

No. 3811.

1878.

# Board of Revenue,

## MADRAS.

To

THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT.

*Dated* August 19th.

*Printed* 22nd.

*Read.* 29:

PROCEEDINGS, 19TH AUGUST 1878, No. 2,326.

AUGUST.

No. 2,326.

*Boundary Dispute*— between Saptur Zemindari and Government village of Wattrap in Tinnevelly District. — Submitting to Government papers regarding —, and recommending that the Deputy Superintendent of Madura Survey Party be deputed to investigate the matter on the spot under the Boundary Act and to carry out the demarcation in accordance with the Razinamah decree.