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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

G.O. No. / B.P. No. 839 M Press. / Mis.

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GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

27th May 1881, No. 839.

READ THE FOLLOWING PAPER :—

No. 426. Proceedings of the Board of Revenue, dated 23rd March 1881, No. 478.

Read the following letter from H. J. STOKES, Esq., Collector of Madura, to C. A. GALTON, Esq., Secretary to the Board of Revenue, dated 18th November 1880, No. 397 :—

WITH reference to Board's Proceedings, Miscellaneous No. 6,476, dated the 15th June 1880, I have the honor to address the Board on the subject of the Yerasakkanáyakkanúr Boundary dispute.

2. The matter is of great importance as a tract of country is involved which exceeds seven square miles in extent, and which contains a large area of dense forest, whence streams take their rise which irrigate Government cultivation. The forest is a continuation of that which clothes the High Waving Mountain shown at the head of the Kambam valley in Sheet 62 of the Ordnance Survey Map.

3. Yerrachickanaikenoor (as it is spelt in the map) will be found lat. 9·47, long. 77·27. Its boundaries are defined on all sides by a dotted line, except where it reaches the Suruli river in the south-west corner of the estate, at which point the boundary follows the Varattár, a tributary of the Suruli, until it meets the dotted line again along the course of one of the Varattár's affluents, flowing into it from the north-east, where it rises in the Pasheemullay (Pashumalai) mountain.

4. The dispute is as to which of these affluents is entitled to be called the Varattár; the one which has a *south-westerly* direction or that which flows *north-west.* The ryots of *Kámayagoundanpatti* are on one side and the *Yerasakkanáyakkanúr* Zemindarni on the other. Mr. Gass, the Deputy Conservator of Forests, and I support the ryots, and Major Clay, the Deputy Superintendent, Revenue Survey, the Zemindarni.

5. The dispute is of old standing, whence it results that no oral testimony, unless supported by indisputable documentary evidence, can be depended on. But the same cause, viz., the long existence of the dispute, has led to the disappearance or fabrication of documents, so that the materials that are available for forming a judgment are extremely scanty.

6. The earliest document which we possess is the Paimásh Goshvara account of the Yerasakkanáyakkanúr Palyapat, which is dated Fasli 1207 (1797). This states that the western boundary of the Zemindari extends to where the *Varattár* joins the Suruli river; and as to the southern boundary, the entry is only, "east of the said Varattár there is a great mountain; if you go from the foot of this mountain the south boundary extends as far as Pashumalai. This is to the north of the boundary of Kambam."

This description begins with the eastern boundary, starting from Pashumalai northwards, and ends with the southern boundary at Pashumalai. It is therefore quite clear that at that time the hill called Pashumalai was on the boundary, and a well-recognized and conspicuous portion of it, for the description begins and ends with it.

7. This fact, and the statement that the south boundary ran from the foot of the great mountain to the Pashumalai, are of considerable importance, because the southern boundary, as now marked by order of Major Clay, does not touch the Pashumalai but reaches the eastern boundary at the point *B* (see Head Surveyor O'Neill's map, to which I shall continue to refer), which is some miles south of the southernmost extremity of the Pashumalai (marked 1), and separated therefrom by the lofty

and precipitous line of hills which fall westward from the point *A*, and which I believe to be the "great mountain" of the Paimásh, along the foot of which the boundary runs. This point *A* the *Kámayagoundanpatti* ryots assert to be the *Periyakurukkumalai*, the southernmost limit of the Zemindari, and the river marked II to be the *Varattár*. The Board will observe that the *Pashumalai* mountain (I) abuts on the mountain marked *A*, and that the river II takes its rise from the southern extremity of it and from the mountain *A*. If, then, the Pashumalai is one of the landmarks of the southern boundary, it becomes very probable that the river marked II forms part of that boundary; and the Paimásh Goshvara says that this line is north of the boundary of Kambam.

8. This view receives confirmation from the documents next in date which we possess, and which can be relied on. I allude to Ward and Connor's Map and Topographical Description dated 1824. The map is followed exactly in the Ordnance Map, so that a reference to it will enable my remarks to be easily understood. The most conspicuous point of the Pashumalai [No. I on Head Surveyor O'Neill's map], a land-mark for miles round, is situated about where the P, the initial letter of the name on the Ordnance Map, lies; thence the hill runs south, in a long buttress, till it reaches the slopes of the mountain, to the north of which the point of trijunction is marked in dotted lines. This hill is the one which we claim to be the *Periyakurukkumalai*. It attains an altitude approaching 5,000 feet, and overtops the Pashumalai by (I should guess) 2,000 feet. Ward and Connor mark the boundary to the north of this mountain, where the Pashumalai meets it; and they thus agree with the Paimásh description. Major Clay has moved the boundary across our *Periyakurukkumalai* and four miles to the south of it, where it is nowhere near the Pashumalai. In fixing the point of trijunction marked in Ward and Connor's map, it is well to observe that it is between the hills and the head of a valley which drains northwards. This drainage is the river called *Pashumalaiyár*. The point of trijunction now fixed by the Survey Department is separated by lofty ranges from the *Pashumalaiyár* valley and is therefore unmistakably different from Ward and Connor's point.

9. In the Descriptive Memoir Ward unfortunately says little about *Yerasakkanáyakkanúr*. That little is, however, of much importance to the present inquiry. It contains two statements, viz., (1), that the superficial area of the Zemindari is 36½ square miles, and that on the south of it is *Pashumalai*. The boundary assigned agrees with the Paimásh account, on which I have just commented, and the area represents the area given in the map. If to this is added the further portion, which I contend has lately been added to the Zemindari, the area amounts up to 43·88 square miles, as has been computed in the Survey Office. It may well be asked when the Zemindari acquired this extension of 7·38 square miles, and whether Government ever granted it?

10. This excessive area nearly, or quite, equals the extent which the new boundary includes, and I contend that its unexplained existence is of itself sufficient to justify me in regarding the conclusion arrived at by the Deputy Superintendent with suspicion and in asking for a further investigation. It is not pretended that there have been new acquisitions in any other quarter; and if the Zemindari is larger than it was, it can only be on its southern boundary that the accretion has taken place. This was the point of least resistance, for it was unoccupied mountain and forest; so that it was in this direction that encroachment would naturally be pushed on.

11. I have now shown that the evidence to be gathered from the earliest documents is in favor of Government as against the *Zemindari*, inasmuch as it establishes that the *Pashumalai* is on the southern boundary; that this boundary runs north of the range marked *A*; and that the area is 36·50 square miles. Major Clay has excluded the *Pashumalai* from the southern boundary, which he has placed far south of the range *A*; and he has increased the area to 43·88 square miles. I now proceed to the next document available, which is the decision of a *Panchayyat* dated the 12th June 1835. This *Panchayyat* was appointed by the Collector to settle a dispute between the Government village of Kambam and Yerasakkanáyakkanúr. The Kambam ryots were the plaintiffs, and they claimed 16-12-3 gulies of land, which they had

cultivated in Fasli 1244 to the north of the Varattár. The Panchayyat decided against the plaintiffs, and recorded their finding as follows: "The lands lying to the west and south of the Varattár which is in the slope east of the third and last *Varattár Karadu* (Karadu = an isolated hill), in the east limit of Kambam in the Kambam limits belong to that village; and those lying to the east and north of the said Varattár belong to Yerasakkanáyakkanúr."

12. This decision leaves us pretty much where we were, as I do not think it possible from anything in the decision to determine which river the Panchayyat decided to be the Varattár. They record that when the Kambam ryots took them to the spot in dispute, it was found to be east of the Varattár and not north of the river which the Kambam ryots alleged to be the Varattár. I can only explain this by supposing that the Panchayyat allude to the river acknowledged by all to be the Varattár, and that the ryots intended, in describing the site of the land claimed as north of the Varattár, to indicate that it was north of the *Yélarasu-Odai*, which they alleged to be the *Varattár*. If this be so, the land claimed may have been north of the river marked II in the map and therefore outside the range of the present inquiry. It is very unlikely that the ryots of Kambam would have stated that the land they claimed was north of the Varattár unless it really was north of some river which they called the Varattár. This river, it would appear from the decision, the Panchayyat determined to be the Yélarasu Odai, and fixed the Varattár as the stream which was in the slope [Shárpil] to the east of the "third and last" (Kadáshiyána Múnrávadu) *Varattár Karadu* (or Varattár hill). It does not follow, I think, from anything in this decision that the river which was determined to be the *Varattár* was south of the point where river No. II flows into river No. IV. To this river No. II the Yerasakkanáyakkanúr people now give the name *Yélarasu Odai*, and it is probable that the Panchayyat of 1835 decided that this river was the *Yélarasu Odai*. But it by no means follows that they found that the river south of the confluence was the Varattár. It is more likely, I think, that they rested content with declaring that the river which all acknowledged to be the Varattár was that river, and that the stream to which the Government ryots give that name was not. The question before them did not require them to go any further, or to determine if any of the affluents, which reach the Varattár as it leaves the hills, was entitled to be called Varattár. For these reasons I think that the finding of the Panchayyat is no guide to us in the present dispute.

13. After I had arrived at this conclusion on the papers I learned that there was still one man alive who had been with the Panchayyat in 1835 and who knew the ground. This was Kámaya Gounden, the founder of the present village, a man of over eighty years. Recognizing the great importance of fixing the position of the land in dispute in 1835, I directed the Deputy Tahsildar of Chinnammanúr to go with the Forest Ranger to Kámayagoundanpatti and get the old man to take them to the spot. This has accordingly been done, and the result has been recorded in a statement [A] taken from Kámaya Gounden, and a map [B] on which the land then in dispute is indicated. Translations of these documents are forwarded for the information of the Board. It will be observed that the land (marked red) then claimed by the Kambam ryots lies north and east of the Varattár and is not north of the river No. II, which our ryots then asserted to be the Varattár, as they do now. Unfortunately no survey has been made any further down the river than Head Surveyor O'Neill's map goes, so that I cannot say if the bend of the river westwards shown on map B south of the land in dispute is accurate. It may be that the bend should have a slightly more northerly direction, in which case the declaration of the Panchayyat that the land was not north but east of the Varattár would be strictly accurate. What they really meant, however, as indeed appears from their own words, was that the land was not north of river No. II; it lay east of the general course of the Varattár.

14. Kámaya Gounden asserts that this river No. II is the Varattár; that one of its affluents is the Yélarasu or Déval Odai; that the third *Varattár Karadu* is the hill also called *Dhóni Karadu*, which stretches a good deal north of where it is shown on Head Surveyor O'Neill's map, and that the common *Marada* tree, the boundary mark mentioned by the Panchayyat, was at the point indicated in the map B.

15. Thus his evidence, if it can be accepted, and it is in accordance with the only documentary evidence on which we can rely, establishes that the land in dispute in 1835 was outside the scope of the present inquiry. The decision then come to only affects it inasmuch as it declared that what we allege to be the Varattár was not that river. Why it was necessary to decide this is not clear. I can only conjecture that the Kambam ryots wanted to get rid of the acknowledged northern boundary by establishing a right in themselves to cultivate north of it. Hence it became necessary to declare that the land claimed was not north of what they called Varattár. This river on the evidence of the Yerasakkanáyakkanúr witnesses they decided to be the *Yélarasu.* But seeing that they found that the Zemindar had colluded with the Kambam Curnam to tamper with the Kambam accounts, little weight can be attached to the evidence of his witnesses. It does not, however, matter to the Government case whether river No. II is the Varattár or not. It is sufficient if it is acknowledged as the boundary, whatever its name may be. Even if it is not the Varattár, it is not necessary that any other of the affluents is.

16. Besides all this, undue importance has been attached to the decision of the Panchayyat. It has no legal effect, inasmuch as the dispute was not between proprietors and their ryots, but between a proprietor and Government. Therefore Regulation XII of 1816 did not apply to the case, and a Panchayyat acting under that Regulation had no jurisdiction. Hence its decision can be looked on, not as concluding the question, but merely as evidence.

17. It is worth observing, however, that it establishes that there were three hills called *Varattár Karadu* in that locality, a circumstance which adds to the difficulty of ascertaining the points mentioned. At present there is a good deal of confusion as to which of the "Karadus" is the *Varattár Karadu.* I have been shown two, or, if I do not mistake, three, to which that name is applied as well as others. This circumstance affords a good example of the difficulty of settling these boundary disputes in remote and unfrequented places.

18. Another circumstance worth mentioning, which we learn from the Panchayyat decision, is that the Zemindar of Yerasakkanáyakkanúr had induced the Curnam of Kambam to tamper with the Kambam Olugu accounts so as to make it appear that the Zemindari boundary lay west of the hill called Sankili Karadu. This *Sankili Karadu* lies west of the boundary now assigned by the Survey Department to the Zemindari.

19. The next document, with which I have to deal, is the report of Muttusámi Ayyar, Tahsildar of Periyakulam, forwarded with his Arzi to the Collector dated the 4th November 1874. In this he says that he was obliged by the decision of the Panchayyat just mentioned, and on inquiry which he made, to come to the conclusion that the river marked IV on the map was the *Varattár.* The dispute which he had to settle was as to some lands ($14\frac{3}{8}$ gulies) east of river No. IV and north and south of river No. II. His reasons for deciding as he did were the oral evidence and the decision of the Panchayyat. He also considered that it was absurd to suppose that the river No. IV took one name (Ambuchanayár) up to the point where river No. II, its own tributary, joined it, and another name, Varattár, north of that point.

20. As to the oral evidence, I have already pointed out that it is worthless unless supported by documents; and as to Muttusámi Ayyar's appreciation of it, I should not attach any value to it, considering the character which that official bore at the time, which is known to the Board. I may, however, point out that, although Kámaya Gounden was the only man alive who had been with the Panchayyat in 1835, Muttusámi Ayyar did not take his evidence as to the site of the disputed land. This was the best oral evidence then available, and it should certainly have been recorded. I have endeavored to show that the Panchayyat decision does not help us to settle the present question as there is no reason to believe that river IV was then dealt with by the Panchayyat. Muttusámi Ayyar says "he thinks that the lands in dispute in 1835 were about the same spots" which were under question before him. But he does not say why he thinks so; and he did not take the only means available to him to ascertain their whereabouts, viz., an examination of Kámaya Gounden. He says the decision "indicates" the river No. IV from its source northward as the Varattár. The decision says nothing about the source, and I do not understand how it gives the indication alleged.

21. In his Arzi, Muttusámi Ayyar speaks of the Faisal Olugu of Kambam and the boundaries assigned therein. But he does not mention that the Panchayyat had declared that this Faisal Olugu had been tampered with by the Zemindar and the Curnam of Kambam. His omission to mention this is, I think, suspicious.

22. As to his third ground of decision, viz., the absurdity of supposing that the river had one name up to the point where it is joined by its tributary (No. II) and another south of that point, I can only say that I fail to see the absurdity. It is true that it looks absurd on Muttusámi Ayyar's map; but this is because the map itself looks as if it had been made to support a foregone conclusion. The stream which Muttusámi Ayyar finds to be the Varattár is represented to be twice as long and twice as broad as the stream to which the Kámayagoundanpatti people give that name. As a matter of fact, it is no longer, and little, if at all, broader. Indeed, Mr. Gass, in his letter, No. 211, dated the 4th July 1879, says that the stream A [No. IV] is the smallest and, to his mind, the least likely of all the feeders to be associated with the name of the main river in the plain. Thus the absurdity pointed out by Muttusámi Ayyar does not really exist.

23. The next stage in the case is the decision of Mr. Gompertz, Deputy Superintendent, Revenue Survey. This was passed on the 11th February 1875 under Section 25 of Act XXVIII of 1860. Mr. Gompertz never was on the ground, and decided after Muttusámi Ayyar, as "there was no doubt in his mind" that Muttusámi Ayyar was correct in believing that the dispute then raised was the same as that raised in 1835. This is a great deal stronger than anything that Muttusámi Ayyar said. He (as I have shown above) merely "thinks that the lands in dispute in 1835 were about the same spots," which is very different from believing that they were the same. Mr. Gompertz concludes that the river marked No. IV was the Varatár for four reasons—

First.—"Because in 1835, as now, the Government ryots claimed that B (of Tahsildar's sketch) was the Varattár; the Panchayyat decided there was no evidence to prove this; that it really was Yélarasu Odai, and that the river A (of Tahsildar's sketch) claimed to be the Varattár by Yerasakkanáyakkanúr was proved to be that river both by evidence and accounts."

There is no fault to find with the first part of this reason; but I deny that there is anything in the Panchayyat's decision to show that they found the river A to be the Varattár. I need not state my reasons for this denial, as they have been given fully above. I maintain that there is nothing about the river A in the decision.

Second.—"Because the Panchayyat found that the lands of Kambam lay, according to the accounts, west of Varattár Karadu and Sankili Karadu, both which hills are themselves to the west of river A."

There are two accounts referred to by the Panchayyat; the cadjan Olugu account which the Curnam had, and in which the eastern boundary of Kambam was said to lie west of Sankili Karadu; and the Marátha or Hinduvi account, which makes the eastern boundary of Kambam to the west of Varattár Karadu. The fact that these accounts proved too much should have been enough to put Mr. Gompertz on his guard; but that this circumstance was overlooked is less surprising when we actually find that no notice is taken of the statement recorded by the Panchayyat in their decision that this cadjan Olugu had been tampered with by the Curnam in collusion with the Zemindar; and no attention is paid to the fact that the Marátha account was produced by the party who had got the forgery committed, viz., the Zemindar.

Third.—"Because to the east of the river A the only Government cultivation is of small extent and recent date, while the Zemindari cultivation is of much larger extent and of far longer standing."

As to this reason I am inclined to think that the Government cultivation was not of recent date, although Muttusámi Ayyar records that it was brought to account as newly cultivated. There is reason to think that the Curnam of Kambam has been on the Zemindar's side throughout. There is a small temple adjacent to the lands then in dispute, if I remember right, where the Kámayagoundan ryots still resort for worship, and which would not have been built out of the village limits, and is not a recent structure. As to the long standing of the Yerasakkanáyakkanúr cultivation, most of it is quite recent.

Fourth.—" Because the evidence (see depositions taken by Tahsildar) is decidedly in favor of the Zemindar."

As to this, I can only say that oral evidence, unsupported by undoubted documents, is quite worthless in this question.

24. For the reasons given above I maintain that Mr. Gompertz's decision is wrong. It rests entirely on Muttusámi Ayyar's finding, which itself rested on the Panchayyatnama. The latter did not touch the question now at issue, and the former cannot be depended on.

25. Mr. Gompertz's decision gave the stream marked IV as the western boundary of the Zemindari. In demarcating it, however, the stones were placed close to the Kuttanachyar (V), so that another step was taken in encroachment. This, I believe, has recently been corrected; but the Board will see that the new boundary, although withdrawn from the Kuttanachyar at the point where the figure V stands, has to cross this stream near the figure XI, in order to reach Major Clay's Periyakurukkumalai, the point *B*. Thus quite another water-shed than that of the Varattár has been entered on.

26. I have now arrived at the latest stage in the dispute. Mr. Gompertz having fixed the western boundary of the estate, it became necessary to fix the southern and eastern limits. In Major Clay's letter, No. 1,685-498, dated the 3rd November 1879, that officer writes that the eastern boundary between Yerasakkanáyakkanúr and Gandamanáyakanúr was decided by Mr. Tomlinson, Assistant Superintendent, on the 26th February 1879; and that the junction of Yerasakkanáyakkanúr, Gandamanáyakanúr, and Government had been then fixed by him at Periyakurukkumalai, beyond which he was informed by the Yerasakkanáyakkanúr people that they had no claim. He adds that Mr. Tomlinson admitted that Periyakurukkumalai was in the position assigned to it by Mr. Gass in his sketch (that is, at the point A in Head Surveyor O'Neill's map); and that all the evidence before him (Major Clay) confirmed the same, viz., that it was situated on the eastern extremity of what is shown in Ward and Connor's map as the southern boundary of the Yerasakkanáyakkanúr Estate. Major Clay further added that he had no power to alter in any way either Mr. Gompertz's or Mr. Tomlinson's decision. Here, then, we have a clear admission by Major Clay on the 3rd November that Mr. Tomlinson had fixed the point *A* as the Periyakurukkumalai. How he has moved this mountain to the point *B* without altering Mr. Tomlinson's decision, I am unable to comprehend.

27. On receipt of this letter I pointed out that if the southern boundary was as stated, viz., from the point A along the stream II, a line drawn south from the western extremity of this southern boundary would be " absurd." The use of this expression seems to have given umbrage, as Major Clay says[*] it led him to refuse to let me see his memorandum (he gives quite other reasons for his refusal in his letter to me of the 8th February); but it is plain that nothing offensive could have been intended. The word " absurd " is used in its geometrical sense, and does not imply any reflection on Mr. Gompertz's judicial decision, of which he cannot have then contemplated the results. It is obvious that if you have a line granted as southern boundary, another line drawn due south of this as western boundary is " absurd." The task Major Clay had to perform (I wished to urge) was to settle the southern boundary. If this was settled already, as I held to be admitted, all that could be done was to treat Mr. Gompertz's decision as a nullity, since it could not be upset, and could not be followed.

28. However, my letter seems to have had the unfortunate result of unsettling Major Clay's opinions as expressed in his letter of the 3rd November; for on the 19th of the same month he writes that I was mistaken in saying that the line of the

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[*] Letter of 15th May 1880.

southern boundary was where I alleged, or that it was admitted to be so. Major Clay was still inclined to think that it may have been so before Mr. Gompertz's decision.

29. The next I heard of the matter was in a letter from Major Clay, No. 1,863-554, dated the 2nd December 1879, in which he stated that he was not satisfied in his own mind as to the correctness of the position assigned to Periyakurukkumalai in the sketches furnished by Messrs. Tomlinson and Gass, and that he therefore had determined to send Head Surveyor O'Neill to make a careful examination on the ground. He asked me to depute an officer to attend on behalf of Government. I accordingly deputed the Tahsildar of Periyakulam, and Mr. Gass sent his Ranger, Subbayyar.

30. We then awaited with some interest the result of the Head Surveyor's inquiries. It was a great pity, I think, that a Head Surveyor was sent in a matter of such importance. Mr. Tomlinson, who knew the ground, or Mr. Baber might have gone, if it was impossible for the Acting Deputy Superintendent himself to go to the place.

31. On the 21st January 1880 Major Clay wrote to inform me that the result of the inquiries he had instituted was to prove conclusively that Periyakurukkumalai was not in the position assigned to it by Mr. Gass, and that the tract claimed by him clearly belonged to the Zemindarni according to the Faisal account of the estate, and had been for years in her possession. He forwarded for my information extracts from a memorandum which he had drawn up on the subject. I then asked for a copy of the memorandum, which was refused for reasons which I could not understand, and which were not the reasons for the same refusal given by Major Clay to the Superintendent of the Survey Department. The Board ultimately obtained the memorandum for me, and it only now remains for me to criticise it and the evidence on which it is founded.

32. After what has been written above, no remarks are necessary on the first eight paragraphs. In the ninth paragraph Major Clay says that the *Periyakurukkumalai* is *not* entered in Ward and Connor's or the Ordnance Map. It is true that the name is not given, but the mountain south of the point of trijunction is given in both. It is admitted by Yerasakkanáyakkanúr that the point of trijunction is the Periyakurukkumalai; therefore they cannot deny that the point of trijunction marked by Ward and Connor is the Periyakurukkumalai. I have already shown that this point, marked as it is on the southern extremity of the Pashumalai and at the head of the valley of the Pashumalaiyár, is in the position now assigned by Mr. Gass and the Kámayagoundan ryots to the Periyakurukkumalai, and is divided from the position to which the mountain has been moved by Major Clay by a series of intervening ranges.

33. Major Clay says that Mr. Tomlinson's decision did not determine the position of the Periyakurukkumalai. He seems to have forgotten that he wrote in his letter of the 3rd November to me that Mr. Tomlinson admitted that the Periyakurukkumalai was in the position assigned to it by Mr. Gass in his sketch. If there was any doubt on the point, the obvious way to solve it was to send Mr. Tomlinson to see what mountain had been pointed out to him as the Periyakurukkumalai. But how there can be any doubt about it in the face of Mr. Tomlinson's admission, of his decisions, and of the two maps accompanying them, I cannot imagine. On the 27th February 1879 he decided the dispute as to the limits of the western boundary of Gandamanáyakanúr, and attached to his decision a transcript of the Ordnance Map in which he calls the point of trijunction Periyakurukkumalai. At this point is what we claim to be the mountain of that name, and it will be observed that it overhangs the valley of the Pashumalaiyár, whereas Major Clay's mountain is at the head of the waters of the Kuttanachyar, on a wholly different water-shed.

34. The day before Mr. Tomlinson gave this decision he passed another on a dispute as to the right to a tract of forest land with a cardamom plantation north of, and close to, the Periyakurukkumalai. To this decision also he attached a sketch, on which the mountain is given. It cannot be supposed that this mountain is not the

same as the one which he marked Periyakurukku next day. Nor is it possible that in describing his boundary, in which he mentions the prominent peaks, he could have skipped over such a point as our Periyakurukku, which is the highest and most conspicuous hill in that locality, to light on the new Periyakurukku, which was then undiscovered. Neither is it likely that his sketch is so rough as to make the distance from Tulukambódu to Periyakurukkumalai so out of all proportion to the other distances as it would be were this point where Major Clay wishes to put it. Besides, the land then in dispute is in a defined area which is watered by the Pashumalaiyár, and if Mr. Tomlinson was in any part of it he must have had our Periyakurukkumalai constantly before his eyes. He also describes the ground as follows: "The tract in dispute is the western slopes of the Pashumalai hills, consisting of valuable forest and grazing land and a cardamom plantation extending from the junction of Odaputty (Gandamanáyakanúr Zemindari), Yerasakkanáyakkanúr, and Pashumalai hills on the north to Periyakurukkumalai on the south." Hence the tract indicated in the rough sketch is on the slopes of the Pashumalai hills. Now, it is not pretended that the Pashumalai is anywhere near the new Periyakurukku, and it cannot be denied that it abuts on our Periyakurukku. Therefore the conclusion is that Mr. Tomlinson's Periyakurukku is our Periyakurukku. In addition to this, Mr. Gass, in his letter dated the 12th August 1880, informed me that Mr. Tomlinson verbally assured him that the hill shown to him as Periyakurukkumalai lay north-east from Attumottai, the point where Mr. Gass and he had camped, which is to the south-west of our Periyakurukkumalai. For these reasons I think it is quite clear that Mr. Tomlinson did fix the point A (see Surveyor O'Neill's map), our Periyakurukkumalai, as the southern extremity of the Yerasakkanáyakkanúr Estate, and that, in moving it to B, Major Clay has altered Mr. Tomlinson's decision. Major Clay says that Mr. Tomlinson had not been to Periyakurukkumalai. He may not have been actually on our Periyakurukkumalai, but I believe I am right in asserting that he was close to it, and must have seen it a dozen times.

35. Major Clay says that the statement that the coffee cultivation is of recent date is opposed to fact. He has never seen it. I have, and can testify that much of it at least is quite recent. The greater part is subsequent to Mr. Gompertz's decision. I have not seen the decree of the Civil Court of Madura spoken of, and doubt if Major Clay has. I do not know who were the parties to the suit nor what was decided.

36. Paragraph 10 of the memorandum does not call for any remark. In paragraph 11 Major Clay lays much stress on the alleged fact that the Curnam of Kambam said that he knew the mountain to be Periyakurukkumalai because the Forest Officers called it so when he visited it with them. Head Surveyor O'Neill's "Opinion" (paragraph 2) evidently led Major Clay into making this mistake. Had he looked at the evidence recorded by the Head Surveyor he would have found that the Curnam did not call the mountain Periyakurukku because the Forest people called it so, but that he made two independent statements, one that the mountain was the Periyakurukku, the other that the Forest people called it so when he accompanied them. This is a very different thing from that which Major Clay lays so much stress on.

37. Paragraph 12 needs no remark. I sent for the Nattamgar of Odaipatti, and was informed by him that he knew nothing about the Periyakurukkumalai. In paragraph 14 Major Clay speaks of the evidence of the Curnam of Yerasakkanáyakkanúr. He gave the name of Pashumalaiyár to river No. II, which the Panchayyat in 1855 thought was Yélarasu Odai, and to which no one else has ever given the name assigned by the Curnam. Mr. Tomlinson has given the true Pashumalaiyár in his sketch. This circumstance shows how little the oral evidence is worth. After this Curnam had stated that he did not know where the junction was, he subsequently, a few days after, announced that B was the Kurukkumalai and the junction. In the meantime he had consulted his accounts. I can hardly think that Major Clay can expect this evidence to be seriously considered. He might have mentioned, however, that the so-called Faisal accounts are unauthenticated, and if strictly followed do not

bring you to the point B at all but well to the south of it somewhere in the Varshanad valley.

38. The evidence mentioned in paragraphs 15 and 16 is that of cultivators of coffee and cardamoms, who are interested witnesses. Indeed, one of the reasons why it is impossible to get true evidence from the men who know the ground is that they believe that if the forest were admitted to belong to Government they would be prevented clearing for cultivation. It is therefore their interest to support the claim of the Zemindari.

39. In paragraph 17 Major Clay says that it is clear from the evidence that the Zemindarni is in admitted possession of the tract of country which we claim for Government. I deny that this is the just conclusion from the evidence. All it proves is that certain small pieces of land have been occupied for various terms by the Zemindarni, or by ryots who have paid her rent. Even if the legitimate possession of these small tracts is admitted (I hold that it is the possession of trespassers), it does not follow that the whole tract is part of the Zemindari or in possession of the Zemindarni; and this is the question which had to be decided.

40. Major Clay goes on to say that all the proprietors of the estates in the tracts claimed by the Forest Department unhesitatingly assert that B is the Periyakurukkumalai. The simple answer to this is that not one single proprietor of the aforesaid estates makes this assertion. Their evidence was recorded by Head Surveyor O'Neill in the Statements Nos. 7, 8, 9, 10, 11, and 12. These statements were before Major Clay, and if he had read them he would have found that the witnesses stated (whether unhesitatingly or not, I do not know) that B was the Kurukkumalai, not the Periyakurukkumalai. Indeed, Witness No. 7 says he does not know which is the Periyakurukkumalai. This surprising mistake seems to me to show that Major Clay's mind was strongly prepossessed.

41. Major Clay goes on to refer again, apparently seriously, to the evidence of the Yerasakkanáyakkanúr Curnam, and then concludes that "on the whole" the weight of verbal evidence is in favor of B being the Periyakurukkumalai. When a Judge comes to a conclusion "on the whole" it may generally be presumed that the evidence will not bear examination in the parts. The present case is no exception to this rule, for the real fact is that not one of the Yerasakkanáyakkanúr witnesses gave any such evidence as is stated.

42. Major Clay next states that the Faisal ayacut of 1802, accepted as evidence by Mr. Tomlinson, conclusively proves that B is the Periyakurukkumalai. He then quotes the western and southern boundaries and naively remarks at the end that "it would seem as if south-east of Kavaraimalai to Periyakurukkumalai was a mistake for north-east." This "conclusive" evidence has not been duly respected in the demarcation. For not only had the line been taken north-east from Kavaraimalai instead of south-east, which would have put Periyakurukku into the Varshanad valley, but Kavaraimalai (XV) has been altogether left out of the boundary.

43. But the ayacut account of 1802 has never been proved. It has been produced by Yerasakkanáyakkanúr, and I think it highly probable that it is a forgery throughout. The only account which we have on our record is the Paimásh Goshvara, which I have quoted in paragraph 6. The ayacut account put forward by Yerasakkanáyakkanúr is inconsistent with this, inasmuch as the Pashumalai is not even mentioned in it. It appears to have first been filed before Mr. Tomlinson, who says that the original of it is not to be found in the Collector's office, and that it is not authenticated (see his decision dated 26th February 1879, paragraph 2). Mr. Tomlinson observed the fact that the Pashumalai hills are not mentioned in the accounts, but accounts for it by saying that it describes the several peaks on these hills. But here I think that Mr. Tomlinson made a mistake, or that he uses the words "Pashumalai mountains" to include all the hills about the Pashumalai generally, as the peaks of which he speaks are not on the Pashumalai, which is a well-defined and well-known hill to the west of the Pashumalaiyár (No. I on map), whereas the Chengalteri and Kalikiparai peaks, which he marks on his sketch, lie on the east of that river and are separated by its valley from the Pashumalai.

44. Not only is this ayacut account spurious, but the identification of the points mentioned in it by Head Surveyor O'Neill on information given him by the Yerasakkanáyakkanúr people only is worth nothing. Most of the points entered were pointed out to me by the Kámayagoundanpatti people in other positions. For instance, Kavaraimalai (XV on map) is said to be the hill next south of our Periyakurukkumalai, or between C and D. Kulipatti cattle-stand was pointed out on the river marked XVII, and not at VII. But, as I said before, these statements are worth nothing. The point marked XI, Punnunguly, affords a curious example of how evidence has been fabricated to support the Yerasakkanáyakkanúr claim. The Kámayagoundan people allege that there really was formerly a genuine Pannánguli (fourteen holes cut in the rock), which formed a point on the boundary; but that it was situated far away from the present one, and was destroyed by burning the face of the rock. The present Pannánguli was made in 1874, as appears from a report of the Kambam Forest Sub-Overseer dated the 16th March 1874. When he saw it, it looked as if it was a week old. I also visited the place this year and found that the holes had by no means an ancient appearance, and that, as the Overseer reported, there were eighteen holes (sixteen small and two large) instead of sixteen. The game called Pannánguli (pannángu-guli = fourteen holes) is played by removing stones from fourteen small holes. Two large holes are added, into which each player drops the stones removed. The man who made the spurious Pannánguli could not have known the game, and this goes far to prove that it was not really made for playing, but for some other purpose.

45. I need say little about the Head Surveyor's opinion, as what I have written already is applicable also to it. However, I may point out that in paragraph 3 he complains that the Tahsildar and Ranger did not accompany him to the point *B*. They did not do so because Head Surveyor O'Neill dismissed them, telling them that their presence was no longer necessary.

He concludes that B (in map) is Periyakurukkumali, "notwithstanding it has been unanimously called Kurukkumalai by the Yerasakkanáyakkanúr people." The only reason, then, why he concludes that the mountain called by his witnesses Kurukkumalai is Periyakurukkumalai, is because that name occurs in the ayacut account, which is unsubstantiated and probably a forgery. If it is not a forgery, and is to be followed, then Periyakurukkumalai is not at B, but far to the south-east of that point, unless the word south-east of the account is to be understood to mean north-east.

46. I think that I have now said enough to show that the inquiry which has been made is not satisfactory and that a further and more searching investigation is necessary. I have shown that there is no good reason to believe that the Panchayyatnama of 1835 dealt with the ground now in dispute, and that it is only valuable as evidence and is not binding as a judicial decision. All it proves with respect to the present case is that then, as now, some of the Kambam ryots alleged that river No. II was the Varattár and some of the Yerasakkanáyakkanúr people denied it. Muttusámi Ayyar's decision based on the Panchayyatnama falls with it, and Mr. Gompertz's decision goes with Muttusámi Ayyar's. Major Clay's new Periyakurukkumalai became necessary as it was impossible to join the southern extremity of Mr. Gompertz's line to our and Mr. Tomlinson's Periyakurukku. Whether, however, this mountain exists at all, or whether it is where Major Clay has placed it, or where we prefer to have it, really matters little; for the true south boundary according to Ward and Connor and the Paimásh Goshvara is the Pashumalai. Nevertheless, I may point out that even Head Surveyor O'Neill hesitates, in the face of the evidence before him, to enter B in his map as the Periyakurukku, and that Major Clay, who has never been near the place, is the only man living who calls the mountain by that name.

P.S.—Since writing the above I have learned from Major Clay that the original Panchayyatnama and some original papers connected with the Aghamalais, which were deposited in the Survey Office, have been destroyed by white-ants. This is doubly unfortunate, as it is now impossible to check the accuracy (of which I have some doubt) of the copy of the Panchayyatnama by comparison with the original, and as there is reason to fear that a suit will ere long be instituted against Government with respect to the demarcation of the Aghamalais.

ENCLOSURE No. 1.—Translation of Paimash Goshvara Account of Yerasakkanáyakkanúr Poliput for Fasli 1207.

ENCLOSURE No. 2.—Translation of Panchayat decision of 1835.

ENCLOSURE No. 3.—Translation of Deposition of Kámaya Goundan.

ENCLOSURE No. 4.—Copy of rough Sketch of Kámaya Goundan.

ENCLOSURE No. 5.—Copy of decision of Mr. Tomlinson, with a Sketch.

ENCLOSURE No. 6.—Translation of Report of Forest Overseer Alagiri Row.

ENCLOSURE No. 7.—Letter from Deputy Superintendent of Revenue Survey, dated 15th May 1880, No. 502-214, with 22 enclosures.

ENCLOSURE No. 8.—Copy of Sketch of Tahsildar Muttusami Aiyar regarding Varattár Dispute.

ENCLOSURE No. 9.—List of Records.

THE above letter, which relates to a boundary dispute between the Yerasakkanáyakkanúr Zemindari and Kámayya Goundanpatti, a ryotwari village in the Madura District, will be submitted for the orders of Government.

2. The tract in dispute, which is more than seven square miles in extent and contains a large area of dense forest, has been adjudged to belong to the Zemindari. The western boundary of the estate was fixed by Mr. Gompertz, Deputy Superintendent of Revenue Survey by a decision passed under the Act and the eastern boundary by Mr. Tomlinson, Assistant Superintendent. The southern boundary was settled by Major Clay, Deputy Superintendent, but no decision was passed by him under the Act. The Collector and the Officers of the Forest Department assert that the disputed tract belongs to Government, while Major Clay maintains that the claim of Government is groundless and that his decision is correct.

3. The Collector has subjected the available evidence on both sides of the question to a careful scrutiny and unhesitatingly arrives at the conclusion that the disputed tract belongs to the Government village of Kámayya Goundanpatti and has recently been encroached upon by the Zemindarni. The dispute hinges upon the identification of the course of the river "Varattár" and of the site of "Periyakurukkumalai," which are admittedly on the boundary; on the part of the Zemindarni it is contended that the river marked IV in the plan is the "Varattár" and that the mountain marked B is the "Periyakurukkumalai," while the ryots of Kámayya Goundanpatti assert that the river marked II is the Varattár and the mountain marked A is the Periyakurukkumalai. The claim of Government is supported by the Paimash Goshvara account of the Zemindari produced from the Collector's official custody and by Ward and Connor's map, which show A to have been on the southern boundary of the Zemindari; further, in their descriptive memoir Messrs. Ward and Connor give the area of the Zemindari as 36$\frac{1}{4}$ square miles, which exactly corresponds with the actual area of the Zemindari not taking into account the disputed tract. It is contended that the claim on behalf of the Zemindarni supported chiefly by, first, the decision of a Panchayet appointed to inquire into a boundary dispute in 1835; second, by the opinion expressed by the late Tahsildar of Pereacolum, Muttusami Aiyar; third, by the Faisal Ayacut of the Zemindari produced by the Zemindarni; and, fourth, by the Zemindarni's long possession of the disputed tract. Mr. Stokes shows by the evidence

of one of the arbitrators composing the Panchayet of 1835, who is still alive and who has recently been examined that the point decided by them has been misunderstood by the Survey Department, that the locality then in dispute lay quite outside the tract now in question, and that the decision of the Panchayet in no way assists the solution of the present question. The decision, however, states that river II was known by the name of "Elarasu Odai" and not "Varattár" as contended by the Government ryots; it is not clear what object the Panchayet had in making the statement, and as this point was not necessary for the question before them the statement does not appear to be entitled to any great weight. The opinion of the Tahsildar Muttusami Aiyar would seem to have been based on the same view of the decision of the Panchayet as that adopted by the Survey Officers and does not appear to possess any independent value. The ayacut account produced by the Zemindarni is tainted with suspicion in that an attempt was made to falsify the accounts of boundaries in connection with the dispute of 1835 by the then Zemindar, and further, the present account, if true, proves too much, for it places the southern limit of the Zemindari not at the point B as has been done by the Survey Department, but somewhere still further south in the Warshanad Valley. There appears also reason to believe that permanent land-marks have been tampered with by the Zemindarni, *e.g.*, the "Pannanguli" holes cut in the rock referred to in paragraph 44 of the Collector's letter. As regards possession of the disputed tracts by the Zemindar Mr. Stokes states that much of the encroachment is quite recent and all within the statutory period. Mr. Stokes shows also that the Survey Department originally intended to fix A as the Periyakurukkumalai, being the point of trijunction and that it was subsequently shifted on insufficient grounds to B.

4. The Board are of opinion that Mr. Stokes has shown sufficient grounds for questioning the correctness of the decision arrived at by the Survey Department and that steps should be taken to set it aside and have the question of the disputed boundary investigated and decided afresh by a Civil Court, and they accordingly recommend that the Collector be authorized to file a suit against the Zemindarni in the District Court of Madura for the recovery of the disputed tract. As a portion of the boundary has been settled by the Survey Department under Section 25 of Act XXVIII of 1860 a formal order extending the time for appeal will be necessary under the above section to enable the Courts to take up the case.

(A true Copy and Extract.)

(Signed) E. GIBSON,
Acting Secretary.

No. 427. From Colonel H. T. ROGERS, R.E., Superintendent, Madras Survey, to the Secretary to Government, Revenue Department, dated Madras, 5th May 1881, No. 71-G.

I HAVE the honor to forward, for submission to Government, a letter, dated 1st instant, No. 121, from Lieutenant-Colonel A. O. H. Clay, in which he submits certain explanations regarding his proceedings in the boundary dispute of Yerasakkanáyakkanúr Zemindari in the Madura District as commented on by Mr. Stokes, the Collector.

ENCLOSURE.

Letter from Lieutenant-Colonel A. O. H. CLAY, First Assistant Superintendent, No. I Revenue Survey, to C. G. MASTER, Esq., Secretary to Government, Revenue Department, dated Palmanér, 1st May 1881, No. 121.

IN the Proceedings of the Board of Revenue, No. 478 of 23rd March 1881, on the Yerasakkanáyakkanúr Boundary Dispute, submitted for orders of Government, there is a report from Mr. H. J. Stokes, Collector of Madura, on the subject, in which he casts certain reflections on the part I and other officials of the Survey Department have taken in the case, which I cannot permit to go before Government uncontroverted. I, therefore, have the honor to request that you will place this letter before Government in conjunction with the documents already submitted by the Board.

2. In paragraphs 26, 27, and 28 Mr. Stokes asserts that I "first of all admitted that Mr. Tomlinson had fixed the point 'A' as Periyakurukkumalai," and "subsequently, being unsettled by his letter, removed that mountain four miles to the south." To this I reply that Mr. Tomlinson never fixed the position of Periyakurukkumalai; it was not until that officer had verbally informed me that, after consideration, he had doubts as to whether the hill pointed out to him as Periyakurukkumalai could be the one so designated by Mr. Gass that I determined on sending a Head Surveyor to make a sketch of the country and identify the points given in Faisal Olugu; I have already, as Mr. Stokes is aware, explained to the Board of Revenue the circumstances which led to my change of views; nevertheless Mr. Stokes reiterates the charge and draws the same erroneous conclusions.

3. In paragraph 40, to which I shall have occasion to refer again, Mr. Stokes states "this seems to show that Major Clay's mind was strongly prepossessed." What possible interest could I have in the matter? I had been but a few months in the district with which I had no previous acquaintance. Knowing as I do from experience how common encroachments by Zemindars on forest lands are, if I had any bias at all, it would be against the Zemindarni, and surely Mr. Stokes might credit me with as anxious a regard for the interest of Government as he himself possesses. I had officially, seeing the interest he took in the matter, proposed to him either that he should inquire into and dispose of the case himself, or that the settlement should wait until the return of Mr. Gompertz, the Deputy Superintendent of the Party, for whom I was only acting, and who had already been concerned in the settlement of a portion of the boundary. Does this look as if I was prepossessed or anxious to see my own views carried into effect?

4. In paragraph 45 Mr. Stokes says that Head Surveyor O'Neill "dismissed them," *i.e.*, the Tahsildar and Forest Ranger, &c.; Mr. O'Neill emphatically denied this and assured me that, when he asked the Forest Ranger and Tahsildar to accompany and assist him in tracing the boundary, they declined to do so on the plea that their duty ended with pointing out Periyakurukkumalai. These officers were not under Mr. O'Neill's orders to be dismissed or retained at his pleasure; they were the appointed representatives of the Revenue and Forest Departments, and it was their duty to have accompanied Mr. O'Neill during his identification of the boundary. Mr. O'Neill was unacquainted with the locality and so I believe was the Tahsildar, whilst Subaya, the Forest Ranger, was presumably well acquainted with it, and Mr. O'Neill would have been only too glad to have availed himself of his assistance. Instead of being dismissed it is more probable that Subaya, knowing that the identification of the boundary would result in invalidating the claims of the Forest Department, left the Surveyor to find it out for himself as best he could.

5. In paragraph 30 Mr. Stokes expresses his regret that a Head Surveyor was sent on a matter of such importance. Mr Stokes forgets that Mr. O'Neill was simply sent to make a sketch of the tract in dispute, to trace out the points on the boundary given in the Faisal Olugu, and to obtain such information as was available on the ground; in fact to carry out what is known in the department as a preliminary inquiry. Had it appeared to me necessary to pass a decision under the Boundary Act, then a fuller inquiry would have been conducted by an officer, who, however, is only required to base his decision on the *primâ facie* evidence produced before him. In this case no evidence was produced that the present Curnam of "Kambam had been on the Zemindarni's side throughout," that the Government representative Muthusawmy Iyer was untrustworthy, or of the existence of Kamaya Goundan, the founder of the village; but the result of Mr. O'Neill's report fully confirmed the evidence given when Mr. Gompertz inquired into the Varatar dispute, viz., that the Zemindarni was in possession, and the rules of the department enjoin us to maintain the same. Admitting, of which I have no evidence, that the ayacut accounts are spurious and that Periyakurukkumalai is in the position claimed for it by Mr. Stokes, it is an acknowledged fact that for years (some of the coffee was in full bearing in 1874) certain ryots have cleared and cultivated land in the disputed tract and paid rent to the Zemindarni; consequently no decision under the Act passed by a Survey Officer would have had any legal value. The Zemindarni could only be evicted by a decree of the Civil Court. I therefore purposely refrained from passing any decision in the matter and drew up a memorandum declaring her to be in possession and fixing the boundary marks as far as they had, in my opinion, been ascertained.

6. In paragraph 40 Mr. Stokes states as follows:—"Major Clay goes on to say that all the proprietors * * * assert that B is Periyakurukkumalai. The simple answer to this is that not one single proprietor makes this assertion * * *. The witnesses stated that B was Kurukkumalai, not Periyakurukkumalai." Mr. Stokes evidently means to infer that I have been either grossly careless in reading the depositions or have wilfully distorted the evidence to suit my own views. I beg to draw the attention of Government to Statements Nos. 7, 8, and 9. It will be observed that the witnesses, after stating "that hill is Kurukkumalai," added "it is called so because it is the tri-junction of Gandamanáyakanúr, Yerasakkanáyakanúr, and Government village, and there is no other Kurukkumalai." Now does Mr. Stokes really mean to contend that when these witnesses spoke of Kurukkumalai, the tri-junction of those estates,

they did not mean the hill called in the accounts Periyakurukkumalai, which, wherever its position may be, is admitted to be the tri-junction described above. I assert that they did and that whether they called the hill Kurukkumalai or Periakurukkumali is of no importance; they meant one and the same hill—"the tri-junction of those estates."

7. In paragraph 31 Mr. Stokes says that, in refusing to furnish him with a copy of a departmental memorandum, I gave him a different reason to what I gave the Superintendent. I am not aware that I am under any obligation to furnish Mr. Stokes with all my reasons for the performance or non-performance of an official act of that nature. The reasons I gave him were substantial and sufficient. I objected strongly to the tone of his letter regarding Mr. Gompertz's decision and to the *sic volo sic jubeo* attitude he assumed in this case from the commencement, but I did not consider that any good purpose would be served by my telling him so and thereby creating an actual breach in the official relations between the Revenue and the Survey Departments, which for some time previous to my joining the district and subsequently were on a very unsatisfactory footing.

8. Besides the reasons given to Mr. Stokes and to the Superintendent, there is yet another worthy of consideration. Had the Zemindarni applied for a copy of the memorandum and the Head Surveyor's report, her application would have been refused unless she produced an order from the Civil Court; on what grounds are they to be furnished to the Collector, the other party to the suit, without such authority?

9. Into the merits of Mr Stokes's case as regards the claims of Government it is not my province to enter. His arguments are chiefly based on Ward and Connor's map and the Paimaish Goshvara; they may be correct, but do not affect the present position of the Zemindarni so far as, whether by right or by trespass, she is in possession of the disputed tract. The simple faith with which Mr. Stokes accepts the opportune discovery of the octogenarian founder of the village in unimpaired possession of all his faculties is in amusing contrast with his mental attitude when reviewing the evidence on behalf of the Zemindarni. Then Mr. Stokes is nothing if not sceptical. "The Kambam Faisal Olugu has been tampered with;" the Yerasakkanáyakkanúr Faisal Olugu is "probably a forgery; the real boundary marks have been destroyed and spurious ones substituted." Tahsildar Muttusawmy Iyer, the appointed representative of Government in 1874, is now considered *untrustworthy*; the Kambam Curnam has sided throughout with the Zemindarni, whilst I am strongly prepossessed and by implication have failed to make myself acquainted with the evidence given or have distorted it to suit my own views. In other words, all the villains in the play are on the side of the Zemindarni, while the cause of Government and truth is supported by Mr. Stokes and Subaya, the Forest Ranger.

10. *The inference naturally drawn from Mr. Stokes' report is that I have been strongly* prejudiced, have been negligent in inquiring into the dispute, careless or worse in recording the evidence, and have not shown due regard for the interests of Government. I hold different views from Mr. Stokes, but this fact I submit does not justify the tone of his letter, and I trust that Government will accept the explanations I have afforded and acquit me of the reflections cast by Mr. Stokes on the manner I have discharged my duties in this matter.

No. 428. ORDER THEREON, 27th May 1881, No. 839.

Miscellaneous.

As recommended by the Board, the Governor in Council authorizes the Collector to file a suit in the District Court of Madura against the Zemindarni for the recovery of the disputed tract.

2. Sanction is also accorded for extending the appeal period provided for under the provisions of Section 25, Act XXVIII of 1860, to such time as may be necessary to allow of the institution of the suit.

(True Extract.)

(Signed) C. G. MASTER,
Officiating Chief Secretary.

To the Board of Revenue, with fifteen enclosures.
,, the Superintendent of Revenue Survey.

Exd. J. W. Fischer.

60 Copies.

Further C. No 6357/81
Further C. No 5270/82

(35)

Original

Govt. of (1881) Madras.

REVENUE.

To

The BOARD of REVENUE,

&c., &c., &c.

Dated May 27th.

Printed June 10th.

Read. End.

G.O., 27th May 1881, No. 839.

MAY.
Nos. 426—428.

SUBJECT.

Boundary dispute between Yerrasokkandyokka-nür Zemindarni and Kāmayya Goundanpatti, a ryotwari village in the Madura District.—Authorizing the Collector to file a suit against the Zemindarni for the recovery of the disputed tract, and according sanction also for extending the appeal period provided for under the provisions of the Act to such time as may be necessary to allow of the institution of the suit.

Revenue Department

Mis: No 2,358

Proceedings of the Board of Revenue
Dated 27th February 1880.

Read the following:—

No 57

~~From~~

H. J. Stokes Esquire
Collector of Madura.

To

C. A. Galton Esquire
Ag. Secretary to the Board
of Revenue, Madras.

Sir,

I have the honor to submit herewith copies of marginally noted correspondence between myself and Deputy Superintendent Revenue Survey

Letter from the Deputy Superintendent Revenue Survey to the Collector No 61/45 dated 21st January 1880
Do to Do from Do No 285/29-1-80
Do from Do to Do No 143/91/8-2-80

and request that the Board will be kind enough to procure me copies of the documents which Major Clay declines to furnish me with. These are necessary in order that I may be able to determine whether there are grounds to ask for the interference of the Board with respect to the demarcation in question. A large tract of forest land is concerned and there is reason to think that the decision of the Deputy Superintendent is open to valid objection.

Madura Collr's Office
Camp Tiruvadanai
17th February 1880

I have &c.
(Signed) H. J. Stokes
Collector of Madura

The Deputy Superintendent Revenue Survey appears to have furnished the Collector with copy of his decision and extracts from a memorandum setting forth the grounds thereof; the Board do not conside

consider that the Collector is entitled to demand a copy of an office note recorded by the Deputy Superintendent or of a report by one of his subordinates.

(True Copy & Extract)
(Signed) C. A. Galton
Ag. Secretary

To
The Collector of Madura.

(True Copy)
G. Gibson
Ag. Secretary

15/2

Rv 24/1960

Revenue Department

Mis: No 4,768

Proceedings of the Board of Revenue,
Dated 4th May 1880.
Read the following:—

No 117

From
H. J. Stokes Esquire
Collector of Madura.

To
C. A. Galton Esquire
Secretary to the Board
of Revenue, Madras

Sir,

With reference to the Proceedings of the Board Mis: No 2,358 of 24th February 1880, stating that I am not entitled to demand a copy of an office note recorded by the Deputy Superintendent or of a report of one of his subordinates, I have the honor to observe that

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I never demanded copies but asked for them as a favour, and on refusal moved the Board to ask for them in a similar manner. Whatever reasons Major Clay may have for refusing copies can hardly avail to prevent the head of his Department granting them.

2. The question is whether I am to acquiesce in Government being deprived of a valuable piece of forest and hill tract, which at present I have reasons for thinking belongs to them, because the Deputy Superintendent does not wish to give me copies of the evidence on which he has ordered the demarcation to be made. This evidence must be very cogent, because whatever evidence

I

I have hitherto had access to points the other way.

3. Up to this time the point x on the Survey x map enclosed has always been the Periyakurukkumalai the point of trijunction of the Estates of Yerasakkanayakanur, Gandanayakkanur and Government land. Mr Tomlinson of the Revenue Survey fixed this point and Mr Gass of the Forest Department. But Major Clay has now ma without ever having been near the place, actually moved the Periyakurukku Malai three miles to the South (see the end of para 20 of the extract from his Memorandum). The

x to be returned

evidence

evidence on which he thus set aside Mr Tomlinson's previous decision must have been very strong; and the only evidence is Mr Oneill's report. But Mr Oneill calls B Kurukkumalai and not Periya-Kurukkumalai (see his map).

I am unable to recommend the Board to ask Government to sue the zemindari for the land until I see the evidence which was before Major Clay. I cannot examine the whole case, and give a full account of it without it. It would be waste of time to attempt it. But if I can get the documents I shall make a careful study of the whole case, and report fully to the Board.

5. I do not know what Major Clay means by privileged communications. In the extract from his memo he

he refuses to recognize that there is any dispute requiring a decision, but in para 4 of his letter dated 8th February 1880 No. $\frac{148}{91}$ refusing to give copies he seems to regard me as a party. I do not quite understand him.

6. I enclose copies of the extract and letter referred to.

7. I also enclose a copy of a letter written by Major Clay on the 3d November. I beg the Board's attention to paras 3 and 4 of this letter from which it appears that at that time Major Clay agreed with Mr Tomlinson and Mr Gass about the Periyakurukkumalai.

Madura Collr's office
9th April 1880

I have &c
(Signed) H. J. Stokes.
Collector

Communicated to the Superintendent Revenue Survey who is requested to

furnish a full report on the Case.
It seems from Major Clay's letter of
the 3rd November 1879 that he was
satisfied of the correctness of the
point fixed by Mr. Tomlinson &
the Board do not understand his
action in moving it without any
enquiry on the spot.

(True Copy of Extract)

(Signed) C. A. Galton
Secretary

To The Superintendent, Revenue Survey &c

(True Copy)

C. Gibson
A/Secretary

vd. At

Rev 25/1960

Revenue Department

Mis: No 6476

Proceedings of the Board of Revenue.
Dated 15th June 1880.

Read the following:—

No. 82/80

~~From~~

The Superintendent, Madras Survey

To

The Secretary to the Board of Revenue
Chepauk.

Sir,

With reference to Board's Proceedings No. Mis: 4780 of 4th instant: I have the honor to submit the explanation of the officer in charge Madura Survey, regarding his refusal to furnish the Collector with certain papers in the case of a Boundary dispute between Periakolam Taluk and the Ersakanaikanur Zemindari.

The papers in question are+ forwarded herewith.

+ originals (11) to be returned

2/ Major Clay seems to have been deterred from furnishing anything more than he thought absolutely necessary by the disparaging remarks of the Collector upon a decision of his predecessor Mr Gompertz.

3/ Major Clay has exercised his power of ignoring the dispute and demarcating according to actual possession under Rule 11 of the Demarcation Code and his decision is clear and practical. It may be thought that in consideration of the interests involved and the fact that the Revenue and Forest Authorities were of a different opinion to Major Clay, it would have been better to recognise the dispute and treat it under the Boundary Act: in which case an Officer, instead of a Surveyor would probably have visited the spot. But I do not think, from a perusal of the Papers, that any other decision would have been arrived at.

4/ Major Clay's Memorandum is so complete that I need not enter into particulars of the case

*7 in number

5/ The enclosures* to the Board's Proceedings under reference are returned.

Survey Office
Madras,
26th May 1880

I have &c
(Sd) F. C. Puckle
Dy Supdt Madras Survey
In charge

The papers will be sen to the Collector of Madura to enable him to decide whether he he should move further in the matter; he will be requested to return the original enclosures at an early date.

(True Copy of Extract)

(Signed) C. A. Galton
Secretary

To
The Collector of Madura &c

(True Copy)

C. Gibson
Ag Secretary

Rev 26/1960

VI/

No. 478.

Proceedings of the Board of Revenue, dated 23rd March 188[illegible].

Read the following letter from H. J. STOKES, Esq., Collector of Madura, to C. A. GALTON, Esq., Secretary to the Board of Revenue, dated 18th November 1880, No. 397:—

With reference to Board's Proceedings, Miscellaneous No. 6,476, dated the 15th June 1880, I have the honor to address the Board on the subject of the Yerasakkanáyakkanúr Boundary dispute.

2. The matter is of great importance as a tract of country is involved which exceeds seven square miles in extent, and which contains a large area of dense forest, whence streams take their rise which irrigate Government cultivation. The forest is a continuation of that which clothes the High Waving Mountain shown at the head of the Kambam valley in Sheet 62 of the Ordnance Survey Map.

3. Yerrachickanaikenoor (as it is spelt in the map) will be found lat. 9·47, long. 77·27. Its boundaries are defined on all sides by a dotted line, except where it reaches the Suruli river in the south-west corner of the estate, at which point the boundary follows the Varattár, a tributary of the Suruli, until it meets the dotted line again along the course of one of the Varattár's affluents, flowing into it from the north-east, where it rises in the Pasheemullay (Pashumalai) mountain.

4. The dispute is as to which of these affluents is entitled to be called the Varattár; the one which has a *south-westerly* direction or that which flows *north-west*. The ryots of *Kámayagoundanpatti* are on one side and the *Yerasakkanáyakkanúr* Zemindarni on the other. Mr. Gass, the Deputy Conservator of Forests, and I support the ryots, and Major Clay, the Deputy Superintendent, Revenue Survey, the Zemindarni.

5. The dispute is of old standing, whence it results that no oral testimony, unless supported by indisputable documentary evidence, can be depended on. But the same cause, viz., the long existence of the dispute, has led to the disappearance or fabrication of documents, so that the materials that are available for forming a judgment are extremely scanty.

6. The earliest document which we possess is the Paimásh Goshvara account of the Yerasakkanáyakkanúr Palyapat, which is dated Fasli 1207 (1797). This states that the western boundary of the Zemindari extends to where the *Varattár* joins the Suruli river; and as to the southern boundary, the entry is only, "east of the said Varattár there is a great mountain; if you go from the foot of this mountain the south boundary extends as far as Pashumalai. This is to the north of the boundary of Kambam."

This description begins with the eastern boundary, starting from Pashumalai northwards, and ends with the southern boundary at Pashumalai. It is therefore quite clear that at that time the hill called Pashumalai was on the boundary, and a well-recognized and conspicuous portion of it, for the description begins and ends with it.

7. This fact, and the statement that the south boundary ran from the foot of the great mountain to the Pashumalai, are of considerable importance, because the southern boundary, as now marked by order of Major Clay, does not touch the Pashumalai but reaches the eastern boundary at the point *B* (see Head Surveyor O'Neill's map, to which I shall continue to refer), which is some miles south of the southernmost extremity of the Pashumalai (marked I), and separated therefrom by the lofty and precipitous line of hills which fall westward from the point *A*, and which I believe to be the "great mountain" of the Paimásh, along the foot of which the

boundary runs. This point *A* the *Kámayagoundanpatti* ryots assert to be the *Periyakurukkumalai*, the southernmost limit of the Zemindari, and the river marked II to be the *Varattár*. The Board will observe that the *Pashumalai* mountain (I) abuts on the mountain marked *A*, and that the river II takes its rise from the southern extremity of it and from the mountain *A*. If, then, the Pashumalai is one of the landmarks of the southern boundary, it becomes very probable that the river marked II forms part of that boundary; and the Paimásh Goshvara says that this line is north of the boundary of Kambam.

8. This view receives confirmation from the documents next in date which we possess, and which can be relied on. I allude to Ward and Connor's Map and Topographical Description dated 1824. The map is followed exactly in the Ordnance Map, so that a reference to it will enable my remarks to be easily understood. The most conspicuous point of the Pashumalai [No. 1 on Head Surveyor O'Neill's map], a land-mark for miles round, is situated about where the P, the initial letter of the name on the Ordnance Map, lies; thence the hill runs south, in a long buttress, till it reaches the slopes of the mountain, to the north of which the point of trijunction is marked in dotted lines. This hill is the one which we claim to be the *Periyakurukkumalai*. It attains an altitude approaching 5,000 feet, and overtops the Pashumalai by (I should guess) 2,000 feet. Ward and Connor mark the boundary to the north of this mountain, where the Pashumalai meets it; and they thus agree with the Paimásh description. Major Clay has moved the boundary across our *Periyakurukkumalai* and four miles to the south of it, where it is nowhere near the Pashumalai. In fixing the point of trijunction marked in Ward and Connor's map, it is well to observe that it is between the hills and the head of a valley which drains northwards. This drainage is the river called *Pashumalaiyár*. The point of trijunction now fixed by the Survey Department is separated by lofty ranges from the *Pashumalaiyár* valley and is therefore unmistakably different from Ward and Connor's point.

9. In the Descriptive Memoir Ward unfortunately says little about *Yerasakkanáyakkanúr*. That little is, however, of much importance to the present inquiry. It contains two statements, viz., (1), that the superficial area of the Zemindari is 36½ square miles, and that on the south of it is *Pashumalai*. The boundary assigned agrees with the Paimásh account, on which I have just commented, and the area represents the area given in the map. If to this is added the further portion, which I contend has lately been added to the Zemindari, the area amounts up to 43·88 square miles, as has been computed in the Survey Office. It may well be asked when the Zemindari acquired this extension of 7·38 square miles, and whether Government ever granted it?

10. This excessive area nearly, or quite, equals the extent which the new boundary includes, and I contend that its unexplained existence is of itself sufficient to justify me in regarding the conclusion arrived at by the Deputy Superintendent with suspicion and in asking for a further investigation. It is not pretended that there have been new acquisitions in any other quarter; and if the Zemindari is larger than it was, it can only be on its southern boundary that the accretion has taken place. This was the point of least resistance, for it was unoccupied mountain and forest; so that it was in this direction that encroachment would naturally be pushed on.

11. I have now shown that the evidence to be gathered from the earliest documents is in favor of Government as against the *Zemindari*, inasmuch as it establishes that the *Pashumalai* is on the southern boundary; that this boundary runs north of the range marked *A*; and that the area is 36·50 square miles. Major Clay has excluded the *Pashumalai* from the southern boundary, which he has placed far south of the range *A*; and he has increased the area to 43·88 square miles. I now proceed to the next document available, which is the decision of a *Panchayyat* dated the 12th June 1835. This *Panchayyat* was appointed by the Collector to settle a dispute between the Government village of Kambam and Yerasakkanáyakkanúr. The Kambam ryots were the plaintiffs, and they claimed 16-12-3 gulies of land, which they had cultivated in Fasli 1244 to the north of the Varattár. The Panchayyat decided against

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the plaintiffs, and recorded their finding as follows: "The lands lying to the west and south of the Varattár which is in the slope east of the third and last *Varattár Karadu* (Karadu = an isolated hill), in the east limit of Kambam in the Kambam limits belong to that village; and those lying to the east and north of the said Varattár belong to Yerasakkanáyakkanúr."

12. This decision leaves us pretty much where we were, as I do not think it possible from anything in the decision to determine which river the Panchayyat decided to be the Varattár. They record that when the Kambam ryots took them to the spot in dispute, it was found to be east of the Varattár and not north of the river which the Kambam ryots alleged to be the Varattár. I can only explain this by supposing that the Panchayyat allude to the river acknowledged by all to be the Varattár, and that the ryots intended, in describing the site of the land claimed as north of the Varattár, to indicate that it was north of the *Yélarasu Odai*, which they alleged to be the *Varattár*. If this be so, the land claimed may have been north of the river marked II in the map and therefore outside the range of the present inquiry. It is very unlikely that the ryots of Kambam would have stated that the land they claimed was north of the Varattár unless it really was north of some river which they called the Varattár. This river, it would appear from the decision, the Panchayyat determined to be the Yélarasu Odai, and fixed the Varattár as the stream which was in the slope [Shárpil] to the east of the "third and last" (Kadáshiyána Múnrávadu) *Varattár Káradu* (or Varattár hill). It does not follow, I think, from anything in this decision that the river which was determined to be the *Varattár* was south of the point where river No. II flows into river No. IV. To this river No. II the Yerasakkanáyakkanúr people now give the name *Yélarasu Odai*, and it is probable that the Panchayyat of 1835 decided that this river was the *Yélarasu Odai*. But it by no means follows that they found that the river south of the confluence was the Varattár. It is more likely, I think, that they rested content with declaring that the river which all acknowledged to be the Varattár was that river, and that the stream to which the Government ryots give that name was not. The question before them did not require them to go any further, or to determine if any of the affluents, which reach the Varattár as it leaves the hills, was entitled to be called Varattár. For these reasons I think that the finding of the Panchayyat is no guide to us in the present dispute.

13. After I had arrived at this conclusion on the papers I learned that there was still one man alive who had been with the Panchayyat in 1835 and who knew the ground. This was Kámaya Gounden, the founder of the present village, a man of over eighty years. Recognizing the great importance of fixing the position of the land in dispute in 1835, I directed the Deputy Tahsildar of Chinnamanúr to go with the Forest Ranger to Kámayagoundanpatti and get the old man to take them to the spot. This has accordingly been done, and the result has been recorded in a statement [A] taken from Kámaya Gounden, and a map [B] on which the land then in dispute is indicated. Translations of these documents are forwarded for the information of the Board. It will be observed that the land (marked red) then claimed by the Kambam ryots lies north and east of the Varattár and is not north of the river No. II, which our ryots then asserted to be the Varattár, as they do now. Unfortunately no survey has been made any further down the river than Head Surveyor O'Neill's map goes, so that I cannot say if the bend of the river westwards shown on map B south of the land in dispute is accurate. It may be that the bend should have a slightly more northerly direction, in which case the declaration of the Panchayyat that the land was not north but east of the Varattár would be strictly accurate. What they really meant, however, as indeed appears from their own words, was that the land was not north of river No. II; it lay east of the general course of the Varattár.

14. Kámaya Gounden asserts that this river No. II is the Varattár; that one of its affluents is the Yélarasu or Déval Odai; that the third *Varattár Karadu* is the hill also called *Dhóni Karadu*, which stretches a good deal north of where it is shown on Head Surveyor O'Neill's map, and that the common *Marada* tree, the boundary mark mentioned by the Panchayyat, was at the point indicated in the map B.

15. Thus his evidence, if it can be accepted, and it is in accordance with the only documentary evidence on which we can rely, establishes that the land in dispute in 1835 was outside the scope of the present inquiry. The decision then come to only affects it inasmuch as it declared that what we allege to be the Varattár was not that river. Why it was necessary to decide this is not clear. I can only conjecture that the Kambam ryots wanted to get rid of the acknowledged northern boundary by establishing a right in themselves to cultivate north of it. Hence it became necessary to declare that the land claimed was not north of what they called Varattár. This river on the evidence of the Yerasakkanáyakkanúr witnesses they decided to be the *Yélarasu*. But seeing that they found that the Zemindar had colluded with the Kambam Curnam to tamper with the Kambam accounts, little weight can be attached to the evidence of his witnesses. It does not, however, matter to the Government case whether river No. II is the Varattár or not. It is sufficient if it is acknowledged as the boundary, whatever its name may be. Even if it is not the Varattár, it is not necessary that any other of the affluents is.

16. Besides all this, undue importance has been attached to the decision of the Panchayyat. It has no legal effect, inasmuch as the dispute was not between proprietors and their ryots, but between a proprietor and Government. Therefore Regulation XII of 1816 did not apply to the case, and a Panchayyat acting under that Regulation had no jurisdiction. Hence its decision can be looked on, not as concluding the question, but merely as evidence.

17. It is worth observing, however, that it establishes that there were three hills called *Varattár Karadu* in that locality, a circumstance which adds to the difficulty of ascertaining the points mentioned. At present there is a good deal of confusion as to which of the "Karadus" is the *Varattár Karadu.* I have been shown two, or, if I do not mistake, three, to which that name is applied as well as others. This circumstance affords a good example of the difficulty of settling these boundary disputes in remote and unfrequented places.

18. Another circumstance worth mentioning, which we learn from the Panchayyat decision, is that the Zemindar of Yerasakkanáyakkanúr had induced the Curnam of Kambam to tamper with the Kambam Olugu accounts so as to make it appear that the Zemindari boundary lay west of the hill called Sankili Karadu. This *Sankili Karadu* lies west of the boundary now assigned by the Survey Department to the Zemindari.

19. The next document, with which I have to deal, is the report of Muttusámi Ayyar, Tahsildar of Periyakulam, forwarded with his Arzi to the Collector dated the 4th November 1874. In this he says that he was obliged by the decision of the Panchayyat just mentioned, and on inquiry which he made, to come to the conclusion that the river marked IV on the map was the *Varattár*. The dispute which he had to settle was as to some lands (14¾ gulies) east of river No. IV and north and south of river No. II. His reasons for deciding as he did were the oral evidence and the decision of the Panchayyat. He also considered that it was absurd to suppose that the river No. IV took one name (Ambuchanayár) up to the point where river No. II, its own tributary, joined it, and another name, Varattár, north of that point.

20. As to the oral evidence, I have already pointed out that it is worthless unless supported by documents; and as to Muttusámi Ayyar's appreciation of it, I should not attach any value to it, considering the character which that official bore at the time, which is known to the Board. I may, however, point out that, although Kámaya Gounden was the only man alive who had been with the Panchayyat in 1835, Muttusámi Ayyar did not take his evidence as to the site of the disputed land. This was the best oral evidence then available, and it should certainly have been recorded. I have endeavored to show that the Panchayyat decision does not help us to settle the present question as there is no reason to believe that river IV was then dealt with by the Panchayyat. Muttusámi Ayyar says "he thinks that the lands in dispute in 1835 were about the same spots" which were under question before him. But he does not say why he thinks so; and he did not take the only means available to him to ascertain their whereabouts, viz., an examination of Kámaya Gounden. He says the decision "indicates" the river No. IV from its source northward as the Varattár. The decision says nothing about the source, and I do not understand how it gives the indication alleged.

21. In his Arzi, Muttusámi Ayyar speaks of the Faisal Olugu of Kambam and the boundaries assigned therein. But he does not mention that the Panchayyat had declared that this Faisal Olugu had been tampered with by the Zemindar and the Curnam of Kambam. His omission to mention this is, I think, suspicious.

22. As to his third ground of decision, viz., the absurdity of supposing that the river had one name up to the point where it is joined by its tributary (No. II) and another south of that point, I can only say that I fail to see the absurdity. It is true that it looks absurd on Muttusámi Ayyar's map; but this is because the map itself looks as if it had been made to support a foregone conclusion. The stream which Muttusámi Ayyar finds to be the Varattár is represented to be twice as long and twice as broad as the stream to which the Kámayagoundanpatti people give that name. As a matter of fact, it is no longer, and little, if at all, broader. Indeed, Mr. Gass, in his letter, No. 211, dated the 4th July 1879, says that the stream A [No. IV] is the smallest and, to his mind, the least likely of all the feeders to be associated with the name of the main river in the plain. Thus the absurdity pointed out by Muttusámi Ayyar does not really exist.

23. The next stage in the case is the decision of Mr. Gompertz, Deputy Superintendent, Revenue Survey. This was passed on the 11th February 1875 under Section 25 of Act XXVIII of 1860. Mr. Gompertz never was on the ground, and decided after Muttusámi Ayyar, as "there was no doubt in his mind" that Muttusámi Ayyar was correct in believing that the dispute then raised was the same as that raised in 1835. This is a great deal stronger than anything that Muttusámi Ayyar said. He (as I have shown above) merely "thinks that the lands in dispute in 1835 were about the same spots," which is very different from believing that they were the same. Mr. Gompertz concludes that the river marked No. IV was the Varatár for four reasons—

First.—"Because in 1835, as now, the Government ryots claimed that B (of Tahsildar's sketch) was the Varattár; the Panchayyat decided there was no evidence to prove this; that it really was Yélarasu Odai, and that the river A (of Tahsildar's sketch) claimed to be the Varattár by Yerasakkanáyakkanúr was proved to be that river both by evidence and accounts."

There is no fault to find with the first part of this reason; but I deny that there is anything in the Panchayyat's decision to show that they found the river A to be the Varattár. I need not state my reasons for this denial, as they have been given fully above. I maintain that there is nothing about the river A in the decision.

Second.—"Because the Panchayyat found that the lands of Kambam lay, according to the accounts, west of Varattár Karadu and Sankili Karadu, both which hills are themselves to the west of river A."

There are two accounts referred to by the Panchayyat; the cadjan Olugu account which the Curnam had, and in which the eastern boundary of Kambam was said to lie west of Sankili Karadu; and the Marátha or Hinduvi account, which makes the eastern boundary of Kambam to the west of Varattár Karadu. The fact that these accounts proved too much should have been enough to put Mr. Gompertz on his guard; but that this circumstance was overlooked is less surprising when we actually find that no notice is taken of the statement recorded by the Panchayyat in their decision that this cadjan Olugu had been tampered with by the Curnam in collusion with the Zemindar; and no attention is paid to the fact that the Marátha account was produced by the party who had got the forgery committed, viz., the Zemindar.

Third.—" Because to the east of the river A the only Government cultivation is of small extent and recent date, while the Zemindari cultivation is of much larger extent and of far longer standing."

As to this reason I am inclined to think that the Government cultivation was not of recent date, although Muttusámi Ayyar records that it was brought to account as newly cultivated. There is reason to think that the Curnam of Kambam has been on the Zemindar's side throughout. There is a small temple adjacent to the lands then in dispute, if I remember right, where the Kámayagoundan ryots still resort for worship, and which would not have been built out of the village limits, and is not a recent structure. As to the long standing of the Yerasakkanáyakkanúr cultivation, most of it is quite recent.

Fourth.—" Because the evidence (see depositions taken by Tahsildar) is decidedly in favor of the Zemindar."

As to this, I can only say that oral evidence, unsupported by undoubted documents, is quite worthless in this question.

24. For the reasons given above I maintain that Mr. Gompertz's decision is wrong. It rests entirely on Muttusámi Ayyar's finding, which itself rested on the Panchayyatnama. The latter did not touch the question now at issue, and the former cannot be depended on.

25. Mr. Gompertz's decision gave the stream marked IV as the western boundary of the Zemindari. In demarcating it, however, the stones were placed close to the Kuttanachyar (V), so that another step was taken in encroachment. This, I believe, has recently been corrected; but the Board will see that the new boundary, although withdrawn from the Kuttanachyar at the point where the figure V stands, has to cross this stream near the figure XI, in order to reach Major Clay's Periyakurukkumalai, the point *B*. Thus quite another water-shed than that of the Varattár has been entered on.

26. I have now arrived at the latest stage in the dispute. Mr. Gompertz having fixed the western boundary of the estate, it became necessary to fix the southern and eastern limits. In Major Clay's letter, No. 1,685-498, dated the 3rd November 1879, that officer writes that the eastern boundary between Yerasakkanáyakkanúr and Gandamanáyakanúr was decided by Mr. Tomlinson, Assistant Superintendent, on the 26th February 1879; and that the junction of Yerasakkanáyakkanúr, Gandamanáyakanúr, and Government had been then fixed by him at Periyakurukkumalai, beyond which he was informed by the Yerasakkanáyakkanúr people that they had no claim. He adds that Mr. Tomlinson admitted that Periyakurukkumalai was in the position assigned to it by Mr. Gass in his sketch (that is, at the point A in Head Surveyor O'Neill's map); and that all the evidence before him (Major Clay) confirmed the same, viz., that it was situated on the eastern extremity of what is shown in Ward and Connor's map as the southern boundary of the Yerasakkanáyakkanúr Estate. Major Clay further added that he had no power to alter in any way either Mr. Gompertz's or Mr. Tomlinson's decision. Here, then, we have a clear admission by Major Clay on the 3rd November that Mr. Tomlinson had fixed the point *A* as the Periyakurukkumalai. How he has moved this mountain to the point *B* without altering Mr. Tomlinson's decision, I am unable to comprehend.

27. On receipt of this letter I pointed out that if the southern boundary was as stated, viz., from the point A along the stream II, a line drawn south from the western extremity of this southern boundary would be "absurd." The use of this expression seems to have given umbrage, as Major Clay says[*] it led him to refuse to let me see his memorandum (he gives quite other reasons for his refusal in his letter to me of the 8th February); but it is plain that nothing offensive could have been intended. The word "absurd" is used in its geometrical sense, and does not imply any reflection on Mr. Gompertz's judicial decision, of which he cannot have then contemplated the results. It is obvious that if you have a line granted as southern boundary, another line drawn due south of this as western boundary is "absurd." The task Major Clay had to perform (I wished to urge) was to settle the southern boundary. If this was settled already, as I held to be admitted, all that could be done was to treat Mr. Gompertz's decision as a nullity, since it could not be upset, and could not be followed.

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[*] Letter of 15th May 1880.

28. However, my letter seems to have had the unfortunate result of unsettling Major Clay's opinions as expressed in his letter of the 3rd November; for on the 19th of the same month he writes that I was mistaken in saying that the line of the southern boundary was where I alleged, or that it was admitted to be so. Major Clay was still inclined to think that it may have been so before Mr. Gompertz's decision.

29. The next I heard of the matter was in a letter from Major Clay, No. 1,863-554, dated the 2nd December 1879, in which he stated that he was not satisfied in his own mind as to the correctness of the position assigned to Periyakurukkumalai in the sketches furnished by Messrs. Tomlinson and Gass, and that he therefore had determined to send Head Surveyor O'Neill to make a careful examination on the ground. He asked me to depute an officer to attend on behalf of Government. I accordingly deputed the Tahsildar of Periyakulam, and Mr. Gass sent his Ranger, Subbayyar.

30. We then awaited with some interest the result of the Head Surveyor's inquiries. It was a great pity, I think, that a Head Surveyor was sent in a matter of such importance. Mr. Tomlinson, who knew the ground, or Mr. Baber might have gone, if it was impossible for the Acting Deputy Superintendent himself to go to the place.

31. On the 21st January 1880 Major Clay wrote to inform me that the result of the inquiries he had instituted was to prove conclusively that Periyakurukkumalai was not in the position assigned to it by Mr. Gass, and that the tract claimed by him clearly belonged to the Zemindarni according to the Faisal account of the estate, and had been for years in her possession. He forwarded for my information extracts from a memorandum which he had drawn up on the subject. I then asked for a copy of the memorandum, which was refused for reasons which I could not understand, and which were not the reasons for the same refusal given by Major Clay to the Superintendent of the Survey Department. The Board ultimately obtained the memorandum for me, and it only now remains for me to criticise it and the evidence on which it is founded.

32. After what has been written above, no remarks are necessary on the first eight paragraphs. In the ninth paragraph Major Clay says that the *Periyakurukkumalai* is *not* entered in Ward and Connor's or the Ordnance Map. It is true that the name is not given, but the mountain south of the point of trijunction is given in both. It is admitted by Yerasakkanáyakkanúr that the point of trijunction is the Periyakurukkumalai; therefore they cannot deny that the point of trijunction marked by Ward and Connor is the Periyakurukkumalai. I have already shown that this point, marked as it is on the southern extremity of the Pashumalai and at the head of the valley of the Pashumalaiyár, is in the position now assigned by Mr. Gass and the Kámayagoundan ryots to the Periyakurukkumalai, and is divided from the position to which the mountain has been moved by Major Clay by a series of intervening ranges.

33. Major Clay says that Mr. Tomlinson's decision did not determine the position of the Periyakurukkumalai. He seems to have forgotten that he wrote in his letter of the 3rd November to me that Mr. Tomlinson admitted that the Periyakurukkumalai was in the position assigned to it by Mr. Gass in his sketch. If there was any doubt on the point, the obvious way to solve it was to send Mr. Tomlinson to see what mountain had been pointed out to him as the Periyakurukkumalai. But how there can be any doubt about it in the face of Mr. Tomlinson's admission, of his decisions, and of the two maps accompanying them, I cannot imagine. On the 27th February 1879 he decided the dispute as to the limits of the western boundary of Gandamanáyakanúr, and attached to his decision a transcript of the Ordnance Map

in which he calls the point of trijunction Periyakurukkumalai. At this point is what we claim to be the mountain of that name, and it will be observed that it overhangs the valley of the Pashumalaiyár, whereas Major Clay's mountain is at the head of the waters of the Kuttanachyar, on a wholly different water-shed.

34. The day before Mr. Tomlinson gave this decision he passed another on a dispute as to the right to a tract of forest land with a cardamom plantation north of, and close to, the Periyakurukkumalai. To this decision also he attached a sketch, on which the mountain is given. It cannot be supposed that this mountain is not the same as the one which he marked Periyakurukku next day. Nor is it possible that in describing his boundary, in which he mentions the prominent peaks, he could have skipped over such a point as our Periyakurukku, which is the highest and most conspicuous hill in that locality, to light on the new Periyakurukku, which was then undiscovered. Neither is it likely that his sketch is so rough as to make the distance from Tulukambódu to Periyakurukkumalai so out of all proportion to the other distances as it would be were this point where Major Clay wishes to put it. Besides, the land then in dispute is in a defined area which is watered by the Pashumalaiyár, and if Mr. Tomlinson was in any part of it he must have had our Periyakurukkumalai constantly before his eyes. He also describes the ground as follows: "The tract in dispute is the western slopes of the Pashumalai hills, consisting of valuable forest and grazing land and a cardamom plantation extending from the junction of Odaputty (Gandamanáyakanúr Zemindari), Yerasakkanáyakkanúr, and Pashumalai hills on the north to Periyakurukkumalai on the south." Hence the tract indicated in the rough sketch is on the slopes of the Pashumalai hills. Now, it is not pretended that the Pashumalai is anywhere near the new Periyakurukku, and it cannot be denied that it abuts on our Periyakurukku. Therefore the conclusion is that Mr. Tomlinson's Periyakurukku is our Periyakurukku. In addition to this, Mr. Gass, in his letter dated the 12th August 1880, informed me that Mr. Tomlinson verbally assured him that the hill shown to him as Periyakurukkumalai lay north-east from Attumottai, the point where Mr. Gass and he had camped, which is to the south-west of our Periyakurukkumalai. For these reasons I think it is quite clear that Mr. Tomlinson did fix the point A (see Surveyor O'Neill's map), our Periyakurukkumalai, as the southern extremity of the Yerasakkanáyakkanúr Estate, and that, in moving it to B, Major Clay has altered Mr. Tomlinson's decision. Major Clay says that Mr. Tomlinson had not been to Periyakurukkumalai. He may not have been actually on our Periyakurukkumalai, but I believe I am right in asserting that he was close to it, and must have seen it a dozen times.

35. Major Clay says that the statement that the coffee cultivation is of recent date is opposed to fact. He has never seen it. I have, and can testify that much of it at least is quite recent. The greater part is subsequent to Mr. Gompertz's decision. I have not seen the decree of the Civil Court of Madura spoken of, and doubt if Major Clay has. I do not know who were the parties to the suit nor what was decided.

36. Paragraph 10 of the memorandum does not call for any remark. In paragraph 11 Major Clay lays much stress on the alleged fact that the Curnam of Kambam said that he knew the mountain to be Periyakurukkumalai because the Forest Officers called it so when he visited it with them. Head Surveyor O'Neill's "Opinion" (paragraph 2) evidently led Major Clay into making this mistake. Had he looked at the evidence recorded by the Head Surveyor he would have found that the Curnam did not call the mountain Periyakurukku because the Forest people called it so, but that he made two independent statements, one that the mountain was the Periyakurukku, the other that the Forest people called it so when he accompanied them. This is a very different thing from that which Major Clay lays so much stress on.

37. Paragraph 12 needs no remark. I sent for the Nattamgar of Odaipatti, and was informed by him that he knew nothing about the Periyakurukkumalai. In paragraph 14 Major Clay speaks of the evidence of the Curnam of Yerasakkanáyakkanúr. He gave the name of Pashumalaiyár to river No. II, which the Panchayyat in 1835 thought was Yélarasu Odai, and to which no one else has ever given the name assigned by the Curnam. Mr. Tomlinson has given the true Pashumalaiyár in his sketch This circumstance shows how little the oral evidence is worth. After this Curnam had stated that he did not know where the junction was, he subsequently, a few days after, announced that B was the Kurukkumalai and the junction. In the meantime he had consulted his accounts. I can hardly think that Major Clay can expect this evidence to be seriously considered. He might have mentioned, however, that the so-called Faisal accounts are unauthenticated, and if strictly followed do not bring you to the point B at all but well to the south of it somewhere in the Varshanad valley.

38. The evidence mentioned in paragraphs 15 and 16 is that of cultivators of coffee and cardamoms, who are interested witnesses. Indeed, one of the reasons why it is impossible to get true evidence from the men who know the ground is that they believe that if the forest were admitted to belong to Government they would be prevented clearing for cultivation. It is therefore their interest to support the claim of the Zemindari.

39. In paragraph 17 Major Clay says that it is clear from the evidence that the Zemindarni is in admitted possession of the tract of country which we claim for Government. I deny that this is the just conclusion from the evidence. All it proves is that certain small pieces of land have been occupied for various terms by the Zemindarni, or by ryots who have paid her rent. Even if the legitimate possession of these small tracts is admitted (I hold that it is the possession of trespassers), it does not follow that the whole tract is part of the Zemindari or in possession of the Zemindarni; and this is the question which had to be decided.

40. Major Clay goes on to say that all the proprietors of the estates in the tracts claimed by the Forest Department unhesitatingly assert that B is the Periyakurukkumalai. The simple answer to this is that not one single proprietor of the aforesaid estates makes this assertion. Their evidence was recorded by Head Surveyor O'Neill in the Statements Nos. 7, 8, 9, 10, 11, and 12. These statements were before Major Clay, and if he had read them he would have found that the witnesses stated (whether unhesitatingly or not, I do not know) that B was the Kurukkumalai, not the Periyakurukkumalai. Indeed, Witness No. 7 says he does not know which is the Periyakurukkumalai. This surprising mistake seems to me to show that Major Clay's mind was strongly prepossessed.

41. Major Clay goes on to refer again, apparently seriously, to the evidence of the Yerasakkanáyakkanúr Curnam, and then concludes that "on the whole" the weight of verbal evidence is in favor of B being the Periyakurukkumalai. When a Judge comes to a conclusion "on the whole" it may generally be presumed that the evidence will not bear examination in the parts. The present case is no exception to this rule, for the real fact is that not one of the Yerasakkanáyakkanúr witnesses gave any such evidence as is stated.

42. Major Clay next states that the Faisal ayacut of 1802, accepted as evidence by Mr. Tomlinson, conclusively proves that B is the Periyakurukkumalai. He then quotes the western and southern boundaries and naively remarks at the end that "it would seem as if south-east of Kavaraimalai to Periyakurukkumalai was a mistake for north-east." This "conclusive" evidence has not been duly respected in the demarcation. For not only had the line been taken north-east from Kavaraimalai instead of south-east, which would have put Periyakurukku into the Varshanad valley, but Kavaraimalai (XV) has been altogether left out of the boundary.

43. But the ayacut account of 1802 has never been proved. It has been produced by Yerasakkanáyakkanúr, and I think it highly probable that it is a forgery throughout. The only account which we have on our record is the Paimásh Goshvara, which I have quoted in paragraph 6. The ayacut account put forward by Yerasakkanáyakkanúr is inconsistent with this, inasmuch as the Pashumalai is not even mentioned in it. It appears to have first been filed before Mr. Tomlinson, who says that the original of it is not to be found in the Collector's office, and that it is not

authenticated (see his decision dated 26th February 1879, paragraph 2). Mr. Tomlinson observed the fact that the Pashumalai hills are not mentioned in the accounts, but accounts for it by saying that it describes the several peaks on these hills. But here I think that Mr. Tomlinson made a mistake, or that he uses the words "Pashumalai mountains" to include all the hills about the Pashumalai generally, as the peaks of which he speaks are not on the Pashumalai, which is a well-defined and well-known hill to the west of the Pashumalaiyár (No. I on map), whereas the Chengalteri and Kalikiparai peaks, which he marks on his sketch, lie on the east of that river and are separated by its valley from the Pashumalai.

44. Not only is this ayacut account spurious, but the identification of the points mentioned in it by Head Surveyor O'Neill on information given him by the Yerasakkanáyakkanúr people only is worth nothing. Most of the points entered were pointed out to me by the Kámayagoundanpatti people in other positions. For instance, Kavaraimalai (XV on map) is said to be the hill next south of our Periyakurukkumalai, or between C and D. Kulipatti cattle-stand was pointed out on the river marked XVII, and not at VII. But, as I said before, these statements are worth nothing. The point marked XI, Punnunguly, affords a curious example of how evidence has been fabricated to support the Yerasakkanáyakkanúr claim. The Kámayagoundan people allege that there really was formerly a genuine Pannánguli (fourteen holes cut in the rock), which formed a point on the boundary; but that it was situated far away from the present one, and was destroyed by burning the face of the rock. The present Pannánguli was made in 1874, as appears from a report of the Kambam Forest Sub-Overseer dated the 16th March 1874. When he saw it, it looked as if it was a week old. I also visited the place this year and found that the holes had by no means an ancient appearance, and that, as the Overseer reported, there were eighteen holes (sixteen small and two large) instead of sixteen. The game called Pannánguli (pannángu-guli = fourteen holes) is played by removing stones from fourteen small holes. Two large holes are added, into which each player drops the stones removed. The man who made the spurious Pannánguli could not have known the game, and this goes far to prove that it was not really made for playing, but for some other purpose.

45. I need say little about the Head Surveyor's opinion, as what I have written already is applicable also to it. However, I may point out that in paragraph 3 he complains that the Tahsildar and Ranger did not accompany him to the point *B*. They did not do so because Head Surveyor O'Neill dismissed them, telling them that their presence was no longer necessary.

He concludes that B (in map) is Periyakurukkumali, "notwithstanding it has been unanimously called Kurukkumalai by the Yerasakkanáyakkanúr people." The only reason, then, why he concludes that the mountain called by his witnesses Kurukkumalai is Periyakurukkumalai, is because that name occurs in the ayacut account, which is unsubstantiated and probably a forgery. If it is not a forgery, and is to be followed, then Periyakurukkumalai is not at B, but far to the south-east of that point, unless the word south-east of the account is to be understood to mean north-east.

46. I think that I have now said enough to show that the inquiry which has been made is not satisfactory and that a further and more searching investigation is necessary. I have shown that there is no good reason to believe that the Panchayyatnama of 1835 dealt with the ground now in dispute, and that it is only valuable as evidence and is not binding as a judicial decision. All it proves with respect to the present case is that then, as now, some of the Kambam ryots alleged that river No. II was the Varattár and some of the Yerasakkanáyakkanúr people denied it. Muttusámi Ayyar's decision based on the Panchayyatnama falls with it, and Mr. Gompertz's decision goes with Muttusámi Ayyar's. Major Clay's new Periyakurukkumalai became necessary as it was impossible to join the southern extremity of Mr. Gompertz's line to our and Mr. Tomlinson's Periyakurukku. Whether, however, this mountain exists at all, or whether it is where Major Clay has placed it, or where we prefer to have it, really matters little; for the true south boundary according to Ward and Connor and the Paimásh Goshvara is the Pashumalai. Nevertheless, I may point out that even Head Surveyor O'Neill hesitates, in the face of the evidence before him, to enter B in his map as the Periyakurukku, and that Major Clay, who has never been near the place, is the only man living who calls the mountain by that name.

P.S.—Since writing the above I have learned from Major Clay that the original Panchayyatnama and some original papers connected with the Aghamalais, which were deposited in the Survey Office, have been destroyed by white-ants. This is doubly unfortunate, as it is now impossible to check the accuracy (of which I have some doubt) of the copy of the Panchayyatnama by comparison with the original, and as there is reason to fear that a suit will ere long be instituted against Government with respect to the demarcation of the Aghamalais.

ENCLOSURE No. 1.—Translation of Paimash Goshvara Account of Yerasakkanáyakkanúr Poliput for Fasli 1207.

ENCLOSURE No. 2.—Translation of Panchayat decision of 1835.

ENCLOSURE No. 3.—Translation of Deposition of Kámaya Goundan.

ENCLOSURE No. 4.—Copy of rough Sketch of Kámaya Goundan.

ENCLOSURE No. 5.—Copy of decision of Mr. Tomlinson, with a Sketch.

ENCLOSURE No. 6.—Translation of Report of Forest Overseer Alagiri Row.

ENCLOSURE No. 7.—Letter from Deputy Superintendent of Revenue Survey, dated 15th May 1880, No. 502-214, with 22 enclosures.

ENCLOSURE No 8.—Copy of Sketch of Tahsildar Muttusami Aiyar regarding Varattár Dispute.

ENCLOSURE No. 9.—List of Records.

THE above letter, which relates to a boundary dispute between the Yerasakkanáyakkanúr Zemindari and Kámayya Goundanpatti, a ryotwari village in the Madura District, will be submitted for the orders of Government.

2. The tract in dispute, which is more than seven square miles in extent and contains a large area of dense forest, has been adjudged to belong to the Zemindari. The western boundary of the estate was fixed by Mr. Gompertz, Deputy Superintendent of Revenue Survey by a decision passed under the Act and the eastern boundary by Mr. Tomlinson, Assistant Superintendent. The southern boundary was settled by Major Clay, Deputy Superintendent, but no decision was passed by him under the Act. The Collector and the Officers of the Forest Department assert that the disputed tract belongs to Government, while Major Clay maintains that the claim of Government is groundless and that his decision is correct.

3. The Collector has subjected the available evidence on both sides of the question to a careful scrutiny and unhesitatingly arrives at the conclusion that the disputed tract belongs to the Government village of Kámayya Goundanpatti and has recently been encroached upon by the Zemindarni. The dispute hinges upon the identification of the course of the river "Varattár" and of the site of "Periyakurukkumalai," which are admittedly on the boundary; on the part of the Zemindarni it is contended that the river marked IV in the plan is the "Varattár" and that the mountain marked B is the "Periyakurukkumalai," while the ryots of Kámayya Goundanpatti assert that the river marked II is the Varattár and the mountain marked A is the Periyakurukkumalai. The claim of Government is supported by the Paimash Goshvara account of the Zemindari produced from the Collector's official

custody and by Ward and Connor's map, which show A to have been on the southern boundary of the Zemindari; further, in their descriptive memoir Messrs. Ward and Conner give the area of the Zemindari as 36½ square miles, which exactly corresponds with the actual area of the Zemindari not taking into account the disputed tract. It is contended that the claim on behalf of the Zemindarni supported chiefly by, first, the decision of a Panchayet appointed to inquire into a boundary dispute in 1835; second, by the opinion expressed by the late Tahsildar of Pereacolum, Muttusami Aiyar; third, by the Faisal Ayacut of the Zemindari produced by the Zemindarni; and, fourth, by the Zemindarni's long possession of the disputed tract. Mr. Stokes shows by the evidence of one of the arbitrators composing the Panchayet of 1835, who is still alive and who has recently been examined that the point decided by them has been misunderstood by the Survey Department, that the locality then in dispute lay quite outside the tract now in question, and that the decision of the Panchayet in no way assists the solution of the present question. The decision, however, states that river II was known by the name of "Elarasu Odai" and not "Varattár" as contended by the Government ryots; it is not clear what object the Panchayet had in making the statement, and as this point was not necessary for the question before them the statement does not appear to be entitled to any great weight. The opinion of the Tahsildar Muttusami Aiyar would seem to have been based on the same view of the decision of the Panchayet as that adopted by the Survey Officers and does not appear to possess any independent value. The ayacut account produced by the Zemindarni is tainted with suspicion in that an attempt was made to falsify the accounts of boundaries in connection with the dispute of 1835 by the then Zemindar, and further, the present account, if true, proves too much, for it places the southern limit of the Zemindari not at the point B as has been done by the Survey Department, but somewhere still further south in the Warshanad Valley. There appears also reason to believe that permanent land-marks have been tampered with by the Zemindarni, *e.g.*, the "Pannanguli" holes cut in the rock referred to in paragraph 44 of the Collector's letter. As regards possession of the disputed tracts by the Zemindar Mr. Stokes states that much of the encroachment is quite recent and all within the statutory period. Mr. Stokes shows also that the Survey Department originally intended to fix A as the Periyakurukkumalai, being the point of trijunction and that it was subsequently shifted on insufficient grounds to B.

4. The Board are of opinion that Mr. Stokes has shown sufficient grounds for questioning the correctness of the decision arrived at by the Survey Department and that steps should be taken to set it aside and have the question of the disputed boundary investigated and decided afresh by a Civil Court, and they accordingly recommend that the Collector be authorized to file a suit against the Zemindarni in the District Court of Madura for the recovery of the disputed tract. As a portion of the boundary has been settled by the Survey Department under Section 25 of Act XXVIII of 1860 a formal order extending the time for appeal will be necessary under the above section to enable the Courts to take up the case.

(A true Copy and Extract.)

Secretary.

5

To the Secretary to Government, Revenue Department, - 20
with three enclosures in G.R. No. 1,300 of 1880, three in
G.R. No. 2,560 of 1880, and eight in G.R. No. 9,664 of
1880 as per separate list (No. 7 in the list containing 22
enclosures), to be returned, and copies of Board's Proceedings,
27th February 1880, Mis. No. 2,358, 4th May 1880, Mis.
No. 4,768, and 15th June 1880, Mis. No. 6,476.

Copy to the Collector of Madura.
" to the Superintendent of Revenue Survey.
" to the Conservator of Forests.

Exd. A. S. Rodgers and J. Tulloch,

75 Copies struck off

Revenue 1881. Dept.

Board of Revenue,

MADRAS.

No. 1960.

To

THE SECRETARY TO GOVT.,
REVENUE DEPARTMENT.

Dated March 23rd.

Printed 7th April.

Received 9th April 1881.

PROCEEDINGS, 23RD MARCH 1881, No. 478.

Days 8/4/81 Cw 18

MARCH.

No. 478.

Boundary Dispute — between Yerasakkanáyakkanúr Zemindari and Kámayya Goundanpatti, a ryotwari village in the Madura District.— Submitting, for orders of Government, with remarks, report on —.

14-5-81
20-5-81

Palamanair
1st May 1881

From
Lieut Colonel A. A. H. Clay
1st Asst Superintendent
No. I Revenue Survey

No. 121

To
C. G. Master Esquire
Secretary to Government
Revenue Department

Sir

[illegible]
1881

In the Proceedings of the Board of Revenue No. 478 of 23 March 1881 on the Erisikanaikenur Boundary Dispute, submitted for orders of Government, there is a report from Mr. J. H. St[illegible] Collector of Madura on the subject in which he casts certain reflections on the part I, and other officials of the Survey Department have taken in the case, which I cannot permit to go before Government uncontroverted. I therefore have the honor to request that you will place this letter before Government in conjunction with the documents already submitted by the Board.

2/ In Para 26, 27 and 28 Mr Stokes asserts that I "first of all admitted that Mr Tomlinson had fixed the points "A" as Periakurunkumalai" and "subsequently being unsettled by his letter removed that mountain 4 miles to the south". To this I reply that Mr Tomlinson never fixed the position of Periakurunkumalai, it was not until that officer had verbally informed me that, after consideration, he had doubts as to whether the hill pointed out to him as Periakurunkumalai could be the one so designated by Mr Gass, that I determined on sending a Head Surveyor to make a sketch of the country, and identify the points given in Saidology; I have already, as Mr Stokes is aware, explained to the Board of Revenue the circumstances which led to my change of views, nevertheless, Mr Stokes reiterates the charge and draws the same erroneous conclusions.

3/ In Para 40 to which I shall have

have occasion to refer again, Mr Stokes states "this seems to show that Major Clay's mind was strongly prepossessed" What possible interest could I have in the matter? I had been but a few months in the district with which I had no previous acquaintance. Knowing as I do from experience, how common encroachments by Zemindars on Forest lands are, if I had any bias at all, it would be against the Zemindari; and surely Mr Stokes might credit me with as anxious a regard for the interest of Government as he himself possesses. I had officially seeing the interest he took in the matter, proposed to him either that he should enquire into, and dispose of the case himself, or that the settlement should wait until the return of Mr Gompertz, the Deputy Superintendent of the Party for whom I was only acting, and who had already been concerned in the settlement of a portion of the Boundary,

by

Does this look as if I was prepossessed or anxious to see my own views carried into effect?

4/ In Para 45 Mr Stokes says that Head Surveyor O'Neill "dismissed them" i.e. the Tahsildar and Forest Ranger &c &c; Mr O'Neill emphatically denied this, and assured me that when he asked the Forest Ranger and Tahsildar to accompany and assist him in tracing the boundary, they declined to do so, on the plea that their duty ended with pointing out Periakurinkumalai. These Officers were not under Mr O'Neill's orders to be dismissed or retained at his pleasure; they were the appointed representatives of the Revenue and Forest Departments and it was their duty to have accompanied Mr O'Neill during his identification of the Boundary. Mr O'Neill was unacquainted with the locality and so, I believe, was the Tahsildar, whilst Subaya, the Forest Ranger, was presumably well acquainted with it, and Mr O'Neill would have been only too glad to have availed himself of his assistance. Instead of being dismissed it is more probable that Subaya knowing that the identification of the boundary would result in invalidating the claims of the Forest Department left the surveyor to find it out for himself as best he could.

5/ In Para 30 Mr Stokes expresses his regret that a Head Surveyor was sent on a matter of such importance. Mr Stokes forgets that Mr O'Neill was simply sent to make a sketch of the tract in dispute, to trace out the points on the boundary given in the Faisal olugu and to obtain such information as was available on the ground; in fact to carry out what is known in the Department as a Preliminary Enquiry. Had it appeared to me necessary to pass a decision under the Boundary Act then a fuller enquiry would have been

been conducted by an officer, who, however, is only required to base his decision on the prima facie evidence produced before him. In this case no evidence was produced that the present Karnam of "Kambam had been on the Zemindarni's side throughout", that the Government representative Muttusawmy Iyer was untrustworthy, or of the existence of Kamaya Gounden the founder of the village; but the result of Mr O'Neill's report fully confirmed the evidence given when Mr Gompertz enquired into the Varatam Dispute viz that the Zemindarni was in possession, and the rules of the Department enjoin us to maintain the same. Admitting, of which I have no evidence, that the Ayacut accounts are spurious, and that Periakurukumalai is in the position claimed for it by Mr Stokes, it is an acknowledged fact that for years (some of the coffee was in full bearing in /74) Certain ryots have cleared and cultivated land in the disputed tract and paid rent to the Zemindarni,

Consequently no decision under the act passed by a Survey Officer would have had any legal value. The Zemindarni could only be evicted by a decree of the Civil court. I therefore purposely refrained from passing any decision in the matter and drew up a memorandum declaring her to be in possession and fixing the boundary marks as far as they had, in my opinion, been ascertained.

6/ In Para 40 Mr Stokes states as follows "Major Clay goes on to say that all the proprietors xxx assert that B is Periakuru~~ku~~kumalai. The simple answer to this is that not one single proprietor makes this assertion xxx. The witnesses stated that B was Kurukumalai not Periakurukumalai" Mr Stokes evidently means to infer that I have been either grossly careless in reading the depositions or have wilfully distorted the Evidence to suit my own views. I beg to draw the attention of Government to statements No 7, 8 & 9. It will be observed that the witness witnesses after stating "that hill is Kurukumalai", added "it is called so because it is the trijunction of Gantamanaikenur, Erisikanaikenur ~~and~~ and Government village, and, there is no other Kurukumalai." Now does Mr Stokes really mean to contend that when these witnesses spoke of Kurukumalai, the trijunction of those Estates, they did not mean the hill called in the accounts, Periakurukumalai, which, wherever its position may be, is admitted to be the trijunction described above. I assert that they did, and that whether they called the hill Kurukumalai or Periakurukumalai is of no importance, they meant one and the same hill "the trijunction of those Estates".

7/ In Para 31 Mr Stokes says that in refusing to furnish him with a copy of a departmental Memorandum, I gave him a different reason to what I gave the Superintendent. I am not aware that I am under any obligation to furnish Mr Stokes with all my reasons for the

performance

performance or non-performance of an Official act of that nature. The reasons I gave him were substantial and sufficient. I objected strongly to the tone of his letter regarding Mr Gompertz's decision and to the "sic volo sic jubeo" attitude he assumed in this case from the commencement, but I did not consider that any good purpose would be served by my telling him so, and thereby creating an actual breach in the Official relations between the Revenue and the Survey Departments which for some time previous to my joining the district and subsequently were on a very unsatisfactory footing.

8/ Besides the reasons given to Mr Stokes and to the Superintendent there is yet another worthy of consideration. Had the Zemindarni applied for a copy of the Memorandum and the Head Surveyor's report, her application would have been refused unless she produced an order from the Civil court, or

which

What grounds are they to be furnished to the Collector, the other party to the suit, without such authority?

9/ Into the merits of Mr Stokes' case as regards the claims of Government it is not my province to enter, his arguments are chiefly based on Wood and Connor's map, and the Paimaish Goshwara; they may be correct, but do not affect the present position of the Zemindarni, so far as, whether by right or by trespass, she is in possession of the disputed tract. The simple faith with which Mr Stokes accepts the opportune discovery of the octogenarian founder of the village in unimpaired possession of all his faculties, is in amusing contrast with his mental attitude when reviewing the evidence on behalf of the Zemindarni. Then Mr Stokes is nothing if not sceptical "The Kambam Faisal ologu has been tampered with", the Erisikanaikenur Faisal ologu is "probably a forgery" the real boundary marks have been destroyed and spurious ones substituted" Tahsildar Muttusawmy Iyer, the appointed representive of Government in /74, is now considered untrustworthy; the Kambam Karnam has sided throughout with the Zemindarni, whilst I am strongly prepossessed and by implication have failed to make myself acquainted with the evidence given or have distorted it to suit my own views. In other words all the villains in the play are on the side of the Zemindarni while the cause of Government and the truth is supported by Mr Stokes and Subaya, the Forest Ranger.

10/ The inference naturally drawn from Mr Stokes' report is that I have been strongly prejudiced, have been negligent in enquiring into the dispute, careless, or worse, in recording the evidence, and have not shewn due regard for the interests of Government. I hold different views from Mr Stokes, but this fact I submit does not justify the tone of his letter and I trust that Government will accept the explanations I have afforded and acquit me ~~for~~ of the reflections cast by Mr. Stokes on the manner I have discharged my duties in this matter.

I have the honor to be
Sir
Your most obedient servant
A O H Clay Lt Col
1st Asst Superintendent
No. I Revenue Survey

1881
9 - 5

Rev/2128/81

C. O. Form No. 57.

No. 71/G

SURVEY OFFICE, Madras,
5th May 1881.

FROM
Colonel H. S. Rogers R.E.
~~The~~ Superintendent, Madras Survey.

TO

The Secretary to Government,
Revenue Department.
Ootacamund

SIR,

I have the honor to forward for submission to Government a letter dated 1st Instant No. 121 from Lt. Colonel A. O. H. Clay in which he submits certain explanations regarding his proceedings in the boundary dispute of Yerasakkanayakkanur Zemindari in the Madura District, as commented on by Mr. Stokes the Collector.

I have the honor to be
Sir
Your most obedt. Servant
C. M. Pargent Major ~~Colonel~~ R.E.
for Superintendent Madras Survey

W.P.
5/5/81.

FORMER CASES

No. of 188

" "

" "

Revenue 1881 Depart^t.

No. 2428.

From Col. A. L. Rogers R.E.
~~The~~ Superintendent, Madras Survey,

To

The Secretary to Government,
Revenue Depatment.
Ootacamund

Dated 5th }
Despd. — } May
Recd. 6th }

Enclosure No. 1

General No. 71
Departmental No. 9

Print

RECEIPT No.

Dated

LATER CASES

No. of 188

" "

" "

SUBJECT.

Boundary dispute touching Gerasakkanayakkanur Zemindari Madura District —

Forwarding for submission to Govt. a letter from Lt. Colonel Clay explaining his proceedings in the settlement of the —

[illegible] 29-5-81

R.D. 39
No. 839 d/27 May 1881

Draft G.O. R[illegible]

REVENUE DEPARTMENT.

No. 1960 & 2428

From Board of Revenue & Supt. Rev. Survey

Dated 23rd March 1881 & 5th May 1881 —

FOR ORDERS

Sanction the Lieut. Hutchins the time so passed unnecessary & allow it. I can't make out what is unnecessary exactly. CB 29/5/81.

See the concluding paragraph of the Board's Proceedings. The facts of the Case are summarized by the Board:

It is not easy to follow the case without the aid of better maps than those from ished but there seems sufficient reason for contesting the Zemindar's claim to the area in question.

As in the letter which the Board forward the Collector Mr Stokes is somewhat emphatic in his remarks about the Dy Supdt of Revenue Survey so in the second current Major Clay is not slow to retaliate. There has apparently been some ill feeling between the Rev & Survey Depts in Madura for some time back.

FORMER CASES

No. of 188 .

Revenue 1881 Dep

C. No. 19

FOR ORDERS.

Boundary dispute — Madura district.

C. 11-5-81

R. 20-5-81

R.D.

G. 839 of 27 May 1881

Draft G.O. Board's Pro: 23 March 1881

C. No. 1960 }

C. No. 2428 } Letter from the Supdt. Rev. Survey, dt. 5th May 1881, No. 71/S.

As recommended by the Board, the Governor in Council authorizes the Collr. to file a suit in the District Court of Madura against the Zemindari for the recovery of the disputed tract.

2. Sanction is also accorded for extending the appeal period provided for under the provisions of the Act XXVIII of 1860 to such time as may be necessary to allow of the institution of the suit.

List for orders.

To the Board of Revenue with 15 copies

To the Supdt. of Rev. Survey

90

6 1 84

Boundary chart of the
Madison Dist.
Sent about —

Print
2715

1,26 C 400