

MISCELLANEOUS SERIES.

G.O., No. 2359

530.

DATED 12 May 1892

[Despatch Abstract.]

Recording Board's Pro. directing the collectors
of Madras & Tinnevely to make a careful
search for any records relating to the
origin & history of the Pearl Bank fishery.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

BOARD OF REVENUE (LAND REVENUE), 25TH MARCH 1892, No. 145.

CONFIDENTIAL.

PROCEEDINGS OF THE BOARD OF REVENUE (LAND REVENUE).

THE HON. MR. J. GROSE.

READ—the following G.O., dated 22nd January 1892, No. 430, Revenue:—

Read—the following Despatch from the Right Honourable VISCOUNT CROSS, Her Majesty's Secretary of State for India, to His Excellency the Right Honourable the Governor in Council, Fort St. George, dated India Office, London, 19th November 1891, No. 10:—

I forward, for the information of your Excellency's Government, copy of a letter* with enclosures, from the Colonial Office, concerning the Government rights in the pearl and chunk fisheries of the Tinnevely district. I have informed Lord Knutsford that your Government will render assistance to the Ceylon Government in any inquiries they may make into the matter. The correspondence should, for the present, be treated as confidential.

ENCLOSURES.

From JOHN BRAMSTON, Esq., to the Under Secretary of State for India, dated Downing Street, 27th October 1891.

I am directed by Lord Knutsford to transmit to you, to be laid before the Secretary of State for India in Council, the enclosed copy correspondence between the Government of Ceylon, this Department, and the Foreign Office, relative to the pearl fisheries on the eastern side of the gulf of Manaar.

It will be perceived that the present is regarded as a fitting opportunity for investigating and placing on record the legal and historical grounds on which Her Majesty's title to these fisheries is based, and Lord Cross may consider that a similar course should be taken as regards the Tuticorin fisheries, on the western side of the gulf, assuming, of course, that they extend beyond the three-mile limit from the Indian shore. As there seems some reason to suppose that the title to the Ceylon portion of the fisheries is rooted in some grant from or arrangement with a potentate on the mainland, it may become necessary for the Ceylon authorities to apply for information to the Government of Madras; and I am, therefore, to request that you will move Secretary Viscount Cross, if he sees no objection, to request the Government of Madras to render facilities to the Government of Ceylon, if applied to with that object.

ENCLOSURE No. 1 IN ABOVE.

From T. H. SANDERSON, Esq., to the Under Secretary of State, Colonial Office, dated Foreign Office, 21st October 1891.

I have laid before the Marquis of Salisbury your letters of the 25th and 30th ultimo, forwarding reports from the Governor of Ceylon with regard to the Chanks Ordinance issued last year by the Government of the Colony.

Lord Salisbury agrees with Lord Knutsford in thinking that, under all the circumstances of the case, the ordinance had better be left in force. As, however, it is likely to be quoted by the

United States Government as evidence against the views of Her Majesty's Government on the Behring Sea question, Lord Salisbury considers it very desirable that all available evidence should be thoroughly worked up to show the special grounds on which the claim of the Colony rests to jurisdiction over the waters referred to.

Lord Salisbury will be prepared to obtain permission from the Netherlands Government for any examination of the State archives at the Hague, which Lord Knutsford may decide upon instituting in regard to this subject.

Printed copies of the correspondence are enclosed herewith for confidential use, including a memorandum by the Librarian of this department.

The passage from Vattel's "Droits des Gens," though favourable to the claim of jurisdiction over the pearl fisheries, has a somewhat unfavourable bearing on the contention of Her Majesty's Government in regard to the Behring Sea seal fishery.

The volume enclosed in your letter of the 25th instant is returned herewith.

ENCLOSURE No. 2 IN ABOVE.

From Lord KNUTSFORD to Sir A. E. HAVELOCK, K.C.M.G., dated Downing Street, 27th October 1891.

With reference to your despatches noted in the margin,* I have the honour to transmit to

* No. 331, 26th August.
No. 347, 9th September.

† Foreign Office to Colonial Office, 21st October.
Colonial Office to India Office, 27th October.

‡ Colonial Office to Foreign Office, 25th September.
Colonial Office to Foreign Office, 30th September.

views on the subject. I also enclose a copy of a letter which I have caused to be addressed to the India Office. I do not propose to take any steps at present for instituting an investigation at the Hague among the Netherlands records, until I receive a further report from you as to the evidence which may be available in Ceylon or can be obtained from India. If any further investigation is needed in Europe, it occurs to me that it may be necessary to make search at Lisbon as well as at the Hague. If the appendices to Mr. George Lee's report are still on record in Ceylon, they will obviously be of much service in establishing the British title. Should it be the case that they were transmitted to London, I will cause them to be examined at the Record Office.

If it should appear that an examination of records is necessary in Europe, I should be obliged to you if you would name any Ceylon officers on leave, or retired on pension, to whom you think the work might be entrusted, assuming that the members of Her Majesty's diplomatic service on the spot are unable to undertake the duty.

Correspondence respecting the Ceylon Pearl Fisheries.

No. 1.

Colonial Office to Foreign Office.—(Received April 9.)

Downing Street, April 8, 1891.

SIR, I am directed by Lord Knutsford to inclose, for the consideration of the Marquis of Salisbury, a copy of an Ordinance lately passed by the Legislature of Ceylon, and entitled "An Ordinance relating to Chanks."

2. It will be seen that the Ordinance claims for the Government of Ceylon exclusive right of fishery within a distance of 6 miles from either of two promontories, as indicated on the map now inclosed (to be returned).

3. Lord Knutsford proposes to leave the Ordinance in operation, as he does not perceive that the negotiations, or the result of the probable arbitration in regard to the Behring's Sea, or the British relations with any foreign Power, will be in any way prejudiced thereby, because the area of sea within which the Ordinance is made operative exceeds by only a strip of 6 miles wide the space included between two headlands, and, also because the 9th section expressly provides for the reduction of that area, which course could at any time be taken if, in consequence of any objections from foreign Powers, or for any other reason, it should seem desirable.

4. His Lordship would, however, be glad to be favoured with Lord Salisbury's views upon the question.

I am, &c.,
(Signed) JOHN BRAMSTON.

ENCLOSURE IN No. 1.

Ordinance enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof.

No. 18. 1890.—An Ordinance relating to Chanks.

(Signed) A. E. HAVELOCK.

WHEREAS it is expedient to amend the Laws relating to chanks, and to prohibit the diving for and collecting of chanks, bêche-de-mer, coral, or shells, in the seas between Manaar and Chilaw:

Preamble.

Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited for all purposes as "The Chanks Ordinance, 1890," and it shall come into operation at such time as the Governor in Executive Council shall, by Proclamation in the "Government Gazette," appoint.

Short title and date of operation.

2. The Ordinance No. 4 of 1842, intituled "An Ordinance for the Protection of Her Majesty's Rights in the Digging for Dead Chanks," and the Ordinance No. 5 of 1842, intituled "An Ordinance for the Protection of Her Majesty's Chank Fishery," are hereby repealed, but such repeal shall not affect the past operation of either of the said enactments, or anything duly done or suffered, or any obligation, or liability, or penalty accrued or incurred under them, or either of them.

Where any unrepealed Ordinance incorporates or refers to any provision of any Ordinance hereby repealed, such unrepealed Ordinance shall be deemed to incorporate or refer to the corresponding provision of this Ordinance.

Definitions.

3. In this Ordinance, unless the context otherwise requires—

"Chanks" includes both live and dead chanks.

"Person" includes any company or association or body of persons, whether incorporated or not.

4.—(1) There shall be levied and paid on all chanks entered for exportation a royalty at such rates not exceeding 1 cent on each chank, as the Governor, with the advice of the Executive Council, shall from time to time, by notification in the "Government Gazette," appoint.

(2) No chanks shall be exported save and except from any port mentioned in the Schedule (A) hereto, or from any other port which the Governor in Executive Council may appoint by notification in the "Government Gazette."

Ports of entry.

5.—(1) The person entering outwards any chanks to be exported from any port shall deliver to the Collector a bill of entry thereof

Bill of entry.

master, and of the place to which the chanks are to be exported, and of the person in whose name the chanks are to be entered, together with the number and value thereof, anything in the Ordinance No. 17 of 1869 to the contrary notwithstanding, and shall at the same time pay to the Collector any sum which may be due as royalty upon the exportation of such chanks.

(2) Such person shall also deliver at the same time one or more copies of such entry,

Collector's warrant.

and the particulars to be contained in such entry shall be written and arranged in such form and manner, and the number of such copies shall be such as the Collector shall require, and such entry, being duly signed by the Collector, shall be the warrant for examination and shipment of such chanks.

6. Every person who shall export chanks from this island, except from any port mentioned in Schedule (A), or from any port appointed by the Governor in Executive Council under section 4, or contrary to the requirements of section 5, shall be guilty of an offence punishable with simple or rigorous imprisonment for a period not exceeding six months, or with a fine not exceeding 100 rupees, or with both.

7. If any chanks subject to the payment of any sums due as royalty in respect of exportation shall be laden, or water-borne to be laden, on board any ship before due entry shall have been made and warrant granted, or before such chanks shall have been duly cleared for shipment, or if such chanks shall not agree with the bill of entry, the same shall be liable to forfeiture, together with the package in which they are contained.

8. It shall not be lawful for any person to use any dredge or other apparatus of a like nature for the purpose of fishing for or collecting chanks, and every person using any dredge or other apparatus of a like nature for such purpose shall be guilty of an offence punishable with simple or rigorous imprisonment for a period not exceeding six months, or with fine not exceeding 100 rupees, or with both; and every dredge or apparatus of a like nature so used as aforesaid shall be forfeited.

9. It shall not be lawful for any person to fish for, dive for, or collect chanks, bêche-de-mer, coral, or shells in the seas within the limits defined in Schedule (B) hereto, and every person who shall fish for, dive for, or collect, or who shall use or employ any boat, canoe, raft, or vessel in the collection of chanks, bêche-de-mer, coral, or shells in the said seas, shall be guilty of an offence punishable with simple or rigorous imprisonment for a period not exceeding six months, or with fine not exceeding 100 rupees, or with both; and every boat, canoe, raft, or vessel so employed as aforesaid, together with all chanks, bêche-de-mer, coral, or shells unlawfully collected, shall be forfeited.

Provided that nothing in this section contained shall prevent any person from collecting coral or shells from any portion of the said seas in which the water is of the depth of 1 fathom, or less.

Provided also that it shall be lawful for the Governor in Executive Council from time to time, or at any time, by notification in the "Government Gazette," to alter the limits defined in Schedule (B) hereto, or exempt any portion or portions of the seas within the said limits from the operation of this Ordinance.

10.—(1) Any chank, bêche-de-mer, coral, shell, boat, canoe, raft, vessel, dredge, or apparatus liable to forfeiture under this Ordinance may be seized by any officer of the Customs or police, or by any Headman, or by any person appointed for that purpose in writing by the Government Agent of the province, or the Assistant Government Agent of the district within which such seizure is made, and when seized shall be conveyed to the Custom-house nearest to the place of seizure, and there detained until the Court having jurisdiction in the matter has determined whether the same shall or shall not be forfeited.

(2) If any such officer, Headman, or person shall neglect to have any chank, bêche-de-mer, coral, shell, boat, canoe, raft, vessel, dredge, or apparatus seized by him conveyed to such Custom-house within a reasonable time, he shall be guilty of an offence, and liable to a fine of 100 rupees.

11.—(1) Every prosecution under this Ordinance may be instituted in the Police Court of the division in which the offence was committed, or where the offender is found, and such Court may by its order declare and adjudge any chank, bêche-de-mer, coral, shell, boat, canoe, raft, vessel, dredge, or apparatus seized and detained under this Ordinance to be forfeited, and such forfeiture may be in addition to any other punishment hereinbefore prescribed, anything in the Criminal Procedure Code to the contrary notwithstanding.

(2) All forfeitures may be sold or otherwise disposed of in such manner as the Police Court may direct.

12. It shall be lawful for the Court imposing a fine under this Ordinance to award to the informer any share not exceeding a moiety of so much of the fine as is actually recovered and realized.

SCHEDULE (A).

Kankésanturai.
Kayts.

Jaffna.
Pésálai.

SCHEDULE (B).

Eastward of a straight line drawn from a point 6 miles westward of Talaimannár to a point 6 miles westward from the shore 2 miles south of Talaivilla.
Passed in Council on the 19th day of November 1890.

(Signed) H. L. CRAWFORD,
Ag. Clerk to the Council.

Assented to by His Excellency the Governor, the 25th day of November 1890.

(Signed) E. NOEL WALKER,
Colonial Secretary.

No. 2.

Foreign Office to Colonial Office.

FOREIGN OFFICE,
April 22, 1891.

SIR,

I have laid before the Marquis of Salisbury your letter of the 8th instant, asking His Lordship's views with regard to the operation of "An Ordinance relating to Chanks" which has recently been passed by the Legislature of Ceylon.

The effect of this Ordinance would appear to be that the Government of Ceylon would reserve the rights of fishing for chanks, bêche-de-mer, coral, or shells in the waters eastward of a straight line drawn 6 miles to the west of the two promontories marked in the map which you inclose.

It appears to Lord Salisbury that the Ceylon Government can properly claim an exclusive right of fishing within a distance of 3—not 6—miles around either of the two promontories in question, as well as within 3 miles of the shore along the whole line of coast.

But this would not give them a right to consider the waters inclosed between these two headlands, which are situated between 50 and 60 miles apart, as a "bay," and the waters inclosed within them as territorial waters.

The term "bay," as used in Fishery Conventions (as, for instance, in those between this country and France of 1839 and 1867), is applied to bays the mouths of which do not exceed 10 miles in width, measured by a straight line from headland to headland.

The Government of Ceylon would doubtless have a right to apply the regulations of this Ordinance against natives of Ceylon, but as they could not properly enforce them against foreigners, Lord Salisbury is disposed to think that it would be establishing a dangerous precedent to sanction in the present instance a departure from the recognized rules with regard to maritime jurisdiction.

The map which accompanied your letter is returned herewith.

I am, &c.,
(Signed) T. H. SANDERSON.

No. 3.

Colonial Office to Foreign Office.—(Received September 26th.)

DOWNING STREET,
September 25, 1891.

SIR,

With reference to your letter of the 22nd April last, I am directed by Lord Knutsford to transmit to you the inclosed copies of correspondence between His Lordship and the Governor of Ceylon, relative to the amendment of the Ceylon Chanks Ordinance of 1890, so as to avoid the appearance of claiming jurisdiction on the high seas beyond 3 miles from the shores of Ceylon. I am also to inclose a copy of the Regulation of 1811, and the volume containing the Report of Mr. George Lee on the claim of certain Indian temples to share in the fishing of the Ceylon pearl banks, pp. 99 to 103. A report by a Dutch official named S. A. Hemme, dated the 20th June, 1757, which will be found at pp. 37-41, may also be consulted. These reports by no means exhaust the information which might be made available as to the claim of this country to the productive reefs in the gulf of Manaar; and before any action is publicly taken which might seem to weaken the British claims on the subject, Lord Knutsford thinks that an exhaustive examination of such evidence should be made, and that the Indian Government should be consulted, as the question doubtless affects the interests of that Government in relation to the pearl banks at the Indian side of the gulf.

Lord Knutsford gathers that the claim of the Ceylon Government is not to an exceptional extent of water forming part of the high seas, as incidental to the territorial sovereignty of the Island of Ceylon, but that it is a claim to a proprietary right in the products of certain submerged portions of land which have been regarded from time immemorial by the native and European rulers of that part of the world as the subjects of property and jurisdiction. The Portuguese claimed and used the greater number of the productive banks of the Manaar Gulf by right of conquest over their former possessor, the Naick of Madura, on the mainland. The Dutch in turn claimed these banks as the conquerors of the Portuguese; and Great Britain claims them as the conquerors of the Dutch. It appears also from M. Hemme's report (p. 40) that the King

of the Highland Kingdom of Kandy claimed against the Dutch to fish certain of the banks known as the Banks of Chilaw, and whatever right he may have had must now be considered to be vested in Her Majesty the Queen by virtue of the British conquest of the Kandyan Kingdom. There is no general claim in the Ordinance to interfere with the navigation of the high seas beyond the 3-mile limit, or to exercise a general jurisdiction over vessels within a 6-mile limit. All that is sought to be prohibited is the taking of the products of these banks within certain limits, the right of property in such products having been always claimed by whoever was the paramount Power in that region, and Her Majesty is now that paramount Power by a title which is clearly deducible from historical facts. In view of these considerations, Lord Knutsford would propose, for the consideration of Lord Salisbury, that the proposal to amend the Ordinance of 1890 should be abandoned, and that the Ordinance itself should be left in operation.

I am to request that the volume inclosed herewith should be returned with your reply to this letter.

I am, &c.,
(Signed) JOHN BRAMSTON.

INCLOSURE 1 IN No. 3.

Lord Knutsford to Governor Sir A. Havelock.

DOWNING STREET,
May 5, 1891.

SIR,

I have the honour to acknowledge the receipt of your despatch of the 16th December last, submitting for consideration Ordinance No. 18 of 1890, entitled "An Ordinance relating to Chanks."

Her Majesty's Government consider it doubtful whether the right of exclusive fishing can be upheld within such wide limits as are assigned in Schedule (B) of the Ordinance; and I request you to cause the Ordinance to be re-enacted or amended so as not to specify particular limits, but simply to speak of fishing "on the coasts" of the Colony.

I have, &c.,
(Signed) KNUTSFORD.

INCLOSURE 2 IN No. 3.

Governor Sir A. Havelock to Lord Knutsford.

Queen's House, Colombo, Ceylon, August 26, 1891.

MY LORD,

I have had the honour to receive your Lordship's despatch of the 5th May, in which I am informed, with respect to the Ordinance relating to Chanks (No. 18 of 1890), that Her Majesty's Government consider it doubtful whether the right of exclusive fishing can be upheld within such wide limits as are assigned in Schedule (B) of the Ordinance; and I am requested to cause the Ordinance to be re-enacted or amended so as not to specify particular limits, but simply to speak of fishing "on the coasts" of the Colony.

2. I annex the copy of a draft Ordinance which has been prepared by the Attorney-General in compliance with these instructions. But in the following circumstances, which are of considerable importance to the Colony in a pecuniary point of view, and in consideration of the undisputed rights so long enjoyed by Ceylon under Portuguese, Dutch, and British Governments over the pearl fisheries carried on within the limits described in the Schedule to the Ordinance, I trust that Her Majesty's Government will be disposed to reconsider these instructions, and to leave the Ordinance to its operation in its present form.

3. It was some time ago reported in the local newspapers that an American statesman had publicly mooted the question of our absolute right to the pearl fisheries of these banks. The subject has been cursorily referred to in Indian and Ceylon papers, but has been dismissed as not affording any substantial grounds for apprehending any disturbance of our title. An amendment of the Ordinance in the direction now indicated would assuredly be regarded as an expression of doubt of their own position on the part of the Government. The horde of turbulent Arabs who threatened a descent on the pearl fishery this year, and whom this Government had some difficulty in keeping away, are not without their legal advisers in the island, and they or some other speculators may not be backward in testing our rights by forcibly fishing on the banks. It is possible that, by exercise of our undoubted legal rights on the shore, a fishery could not be conducted on the banks without such inconvenience to the promoters as to make it unprofitable;

but there would likely to be so much lawlessness which we should be powerless to check that the Government would not be able to conduct successfully a fishery on its own account.

4. From time immemorial the Dutch, Portuguese, and British Governments have exercised the exclusive rights and have enjoyed the entire profits of the fishery of these pearl oyster banks. From Mr. George Lee's Report of the 16th July, 1838, on the claims of certain Indian temples to employ boats without payment at the pearl fisheries of Ceylon, it will be seen that no records of the Portuguese Government exist to throw any light on this subject, or, indeed, on any other; but that in 1722 the Dutch Company's sovereignty over the banks from Cape Comorin to Negombo was asserted; and that the Government of that time entertained, made, and rejected, in its own interests, claims of different neighbouring authorities for concessions to participate in diving for the oysters. Mr. Lee's Report will be found at p. 99 of the Appendix to the "Account of the Pearl Fisheries in Ceylon," by James Stewart, Master Attendant of Colombo and Inspector of Pearl Banks, which was published in the Colony in 1843, and of which a copy is doubtless in the Library of the Colonial Office. I am informed that there are Proclamations of both the Portuguese and the Dutch Governments bearing on the subject, but I have not yet been able to obtain these records, for which search is being still made.

5. In the Regulation No. 3 of 1811, which will be found at p. 13 of the first volume of the printed Ordinances of this Colony, it was constituted an offence for a vessel to be found on or near the pearl banks or outside limits which were defined as being within 12 fathoms of water. When the Ordinance of last year was under consideration of the Select Committee of the Legislative Council, it was contemplated to have a somewhat similar definition of the prohibited area, but it was thought that it might in practice be difficult to determine the precise line of any specified depth of water. It will be observed from the Chart in your Lordship's possession that a 12-fathom line would probably just clear the western boundary of the banks, and the definition which was then proposed in the Committee and adopted in the Ordinance follows pretty much the same line, and is one which can be more easily determined.

6. At the present juncture the question is perhaps for a time not one of so much practical importance, inasmuch as the banks have been continuously and pretty thoroughly fished in the past five years, and there is little probability of there being material for a fishery for a few years to come. In any case, endeavour would be made to avoid the enforcement of any proceedings which could possibly raise the question of our jurisdiction over the banks.

7. In these circumstances I trust your Lordship may be induced on reconsideration to allow the Ordinance to be left unamended, and thus to avoid the reopening of the subject, which, I apprehend, would attract attention to the question of jurisdiction, to the injury of this Colony in this source of revenue so long enjoyed unchallenged.

I have, &c.,
(Signed) A. E. HAVELOCK.

INCLOSURE 3 IN No. 3.

An Ordinance to amend "The Chanks Ordinance, 1890."

WHEREAS it is expedient to amend "The Chanks Ordinance, 1890," hereinafter referred to as the principal Ordinance: Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:—

Preamble.

Short title.

Section 9.

1. This Ordinance may be cited as "The Chanks Amendment Ordinance, 1891," and shall be read as one with the principal Ordinance.

2. For section 9 of the principal Ordinance the following section shall be substituted, namely:—

It shall not be lawful for any person to fish for, dive for, or collect chanks, bêche-de-mer, coral, or shells in the seas on the coasts of this Colony between Manaar and Chilaw, and every person who shall fish for, dive for, or collect, or who shall use or employ any boat, canoe, raft, or vessel, in the collection of chanks, bêche-de-mer, coral, or shells in the said seas shall be guilty of an offence punishable with simple or rigorous imprisonment for a period not exceeding six months, or with fine not exceeding 100 rupees, or with both; and every boat, canoe, raft, or vessel so employed as aforesaid, together with all chanks, bêche-de-mer, coral, or shells unlawfully collected shall be forfeited.

Provided that nothing in this section contained shall prevent any person from collecting coral or shells from any portion of the said seas in which the water is of the depth of 1 fathom or less:

Proviso.

Provided also that it shall be lawful for the Governor in Executive Council from time to time or at any time, by notification in the "Government Gazette," to exempt any portion or portions of the said seas from the operation of this section, or to extend its operation to any portion or portions of the seas on the coasts of this Colony.

Proviso.

Repealing clause.

3. Schedule (B) of the principal Ordinance is hereby repealed.

INCLOSURE 4 IN No. 3.

Regulation No. 3 of 1811 for the Protection of His Majesty's Pearl Banks of Ceylon.

WHEREAS there is reason to suspect that depredations are committed in the pearl banks of this island by boats and other vessels frequenting those places in the calm season without any necessity or lawful cause for being in that situation:

If any boat or other vessel shall hereafter, between the 10th January and the end of April,

Penalty if vessels found within the limits of the pearl banks, or between the 1st October and the end of November, in any year, be found within the limits of the pearl banks, as described in the

Schedule hereunto annexed, anchoring or hovering, and not proceeding to her proper destination, or warrant from his Excellency the Governor, for the purposes of this Regulation, to enter and seize such boat or other vessel, and carry the same to some convenient port or place in this island for prosecution. And every such boat or other vessel is hereby declared liable to forfeiture by sentence of any Court having revenue jurisdiction of sufficient amount, and shall be condemned accordingly, two-thirds thereof to the use of His Majesty, and one-third to the persons seizing or prosecuting, unless such boat or other vessel shall have been forced into the situation aforesaid by accident, or other necessary cause, the proof whereof to be on the party alleging such defence.

Schedule referred to.

Vessels navigating the inner or along shore passage are not to hover or anchor in deeper than 4 fathoms water.

Vessels navigating the outer passage are not to hover or anchor within 12 fathoms of water.

March 9, 1811.

No. 4.

Colonial Office to Foreign Office.—(Received October 1.)

Downing Street, September 30, 1891.

SIR,
With reference to the letter from this Department of the 25th instant, relative to the title of Her Majesty to the Ceylon pearl fishery, I am directed by Lord Knutsford to transmit to you a copy of a further despatch from Sir Arthur Havelock, inclosing translations of two sets of proceedings in the Dutch Council of Ceylon, at the first of which (28th May, 1665) it was decided to legislate against the spoliation of the pearl banks, and at the second (15th November, 1745) against stealing oysters. Sir Arthur Havelock, it will be observed, states that he has not yet been able to trace the actual legislative Proclamations ("Placcaats") issued in consequence of these proceedings; but, if necessary, Lord Knutsford presumes that a search for them might be made, with the permission of the Netherlands Government, in the public archives of that country.

I am, &c.,
(Signed) EDWARD WINGFIELD.

INCLOSURE 1 IN No. 4.

Governor Sir A. Havelock to Lord Knutsford.

Queen's House, Colombo, Ceylon, September 9, 1891.

MY LORD,

In continuation of the concluding sentence of the fourth paragraph of my despatch of the 26th ultimo, I have the honour to transmit to your Lordship translations of the proceedings of the Council of Ceylon, on which the Proclamations of the 28th May, 1665, "interdicting the spoliation of pearl banks, on pain of being banished for life," and of the 15th November, 1745, "prohibiting approaching the pearl banks or stealing oysters, on pain of severe punishment," were respectively issued.

2. I also inclose six separate copies of the Regulation No. 3 of 1811 for the protection of Her Majesty's pearl banks of Ceylon.

3. I regret that I have not yet been able to trace the Proclamations of 1665 and 1745.

I have, &c.,
(Signed) A. E. HAVELOCK.

INCLOSURE 2 IN No. 4.

Notes of Proceedings in the Council of Ceylon, May 27, 1665

(Translation.)

It was made to appear by a letter dispatched under date the 20th instant by Captain Hendrik van Rheede and the merchant Laurens Pijl,* which was read aloud before the Council by the Admiral,† that certain Parrawa people had dared with a great number of Moormen publicly to dive for pearls both at the banks before Tutucoryn with thirty or forty dhoneyes and also at the Manaar banks under pretext of diving for chanks:

Whereof six dhoneyes had been overtaken at Tutucoryn, and their commanders were in custody, who pretended that they had been accustomed to have the fishery for some months, and especially that the same was the habit of the Moormen at the banks of Manaar under pretence of navigating to Calpentyn; also that 1,000 (oyster) shells from Manaar were estimated to be worth from 6 to 30 fanams, while the cost of the fishery is put at 5 (per 1,000):

Which (letter) being perused in the Council, especially how the Moormen who were the principal ringleaders in that work have served the Honourable Company by coming here to rob in this wise:

Further considering that they are enemies of our State, sprung from a pirate shell, and of the very same race which in January last on the Malabar coast murdered one sergeant and four soldiers when they were lying on the watch; consequently a wicked nation, which, on account of its being given up to wickedness, is very much feared of other Moormen, besides that they try to creep in everywhere and especially to put us at variance:

It was, after mature deliberation, deemed necessary to curb the Moormen aforesaid in the interest of the Honourable Company, their subjects and force or allies, and it was decided to forbid the same Moormen by public "Placcaat" to allow to come and fish on the pearl banks of Manaar where the Honourable Company hath sovereign jurisdiction, or even (to go) beyond the ordinary fishery under whatever pretext this might occur, under penalty for all that shall be found and caught thereon that they shall without any connivance be prosecuted, and if they resist when caught in the act, be put to death.

And it was also resolved to inflict upon the Parrawas of Tutucoryn who might be found guilty thereof at Tutucoryn by the Managers van Rheede and Pijl at Tutucoryn such pecuniary fine to the profit of the Honourable Company or other punishment as shall be adjudged to be becoming and equitable for the protection of the Company's right.

In respect of the Parrawas they are to pay a civil penalty if there be reason to presume that this needs must have been overlooked by the late Resident of the Company there, Jan Vijloff out of pure carelessness (and not for the purpose of participating of the profits); though it is difficult to believe that the Company's servants there should have had no knowledge of robbery of such a nature and so long committed.

INCLOSURE 3 IN No. 4.

Proclamation, dated November 15, 1745.

(Translation.)

Since it is apprehended, not without reason, that some covetous persons dive by night and at unseasonable times on the pearl and chank reefs, and plunder the same to the great prejudice of

* These two were in command for the East India Company at Tutucoryn.
† Rijelof van Goens, commanding in Ceylon.

the Company, and (whereas) it is not very possible to maintain a close watch thereon by cruising or other means:

It is resolved by the Council unanimously to forbid the same by "Placcaat," and for stealing from the pearl reefs to fix a penalty of whipping and brand-marking, in addition to life-long labour in chains in the Company's public works at the Cape (of Good Hope);

And for stealing from the chank reefs, to exact a penalty of whipping and brand-marking as well as ten years spent in chains here or at the Cape.

No. 5.

Memorandum by Sir E. Hertslet on the Ceylon Pearl Fishery.

[With a Map.]

The pearl fishery on the banks, or "submerged portions of land," lying off the west coast of Ceylon have been known from ancient times.

On Colonial Office letter of September 25, 1891.
Colonial Office, vol. 1713, p. 39.

They are claimed by this country as having been acquired from the Dutch by conquest, who claimed them as conquests from the Portuguese, and who, on their part, took them from the Naick of Madura.

The fishery is highly valued by the Colony of Ceylon.

The Ordinance which the authorities of Ceylon propose to issue relating to "chanks," &c., begins by repealing Ordinances Nos. 4 and 5 of 1842, and it then declares that "it shall not be lawful for any person to fish for, dive for, or collect chanks, bêche-demer, coral, or shells in the seas within certain limits" defined in a Schedule attached to the Ordinance, and which runs thus: "Eastward of a straight line drawn from a point 6 miles westward of Talaimanir to a point 6 miles westward from the shore, 2 miles south of Talaivilla."* (See annexed tracing.)

The Ordinance No. 4 of 1842, proposed to be repealed, made it a penal offence to dig for dead chanks in any land belonging to the Crown; and the Ordinance No. 5 of 1842 made it a penal offence for any boat, canoe, raft, or vessel whatsoever to fish for or collect chanks without the written licence for its being so employed by the Government Agent of the province on the coasts of which it should be so found.

No mention was made in either of these Ordinances of the fishery limits claimed by the Colony of Ceylon.

The question then arises, Is this a new departure? That is to say, are the Ceylon authorities putting forward an extended right, or are they merely defining what the limits are over which, from time immemorial, they have exercised fishing rights?

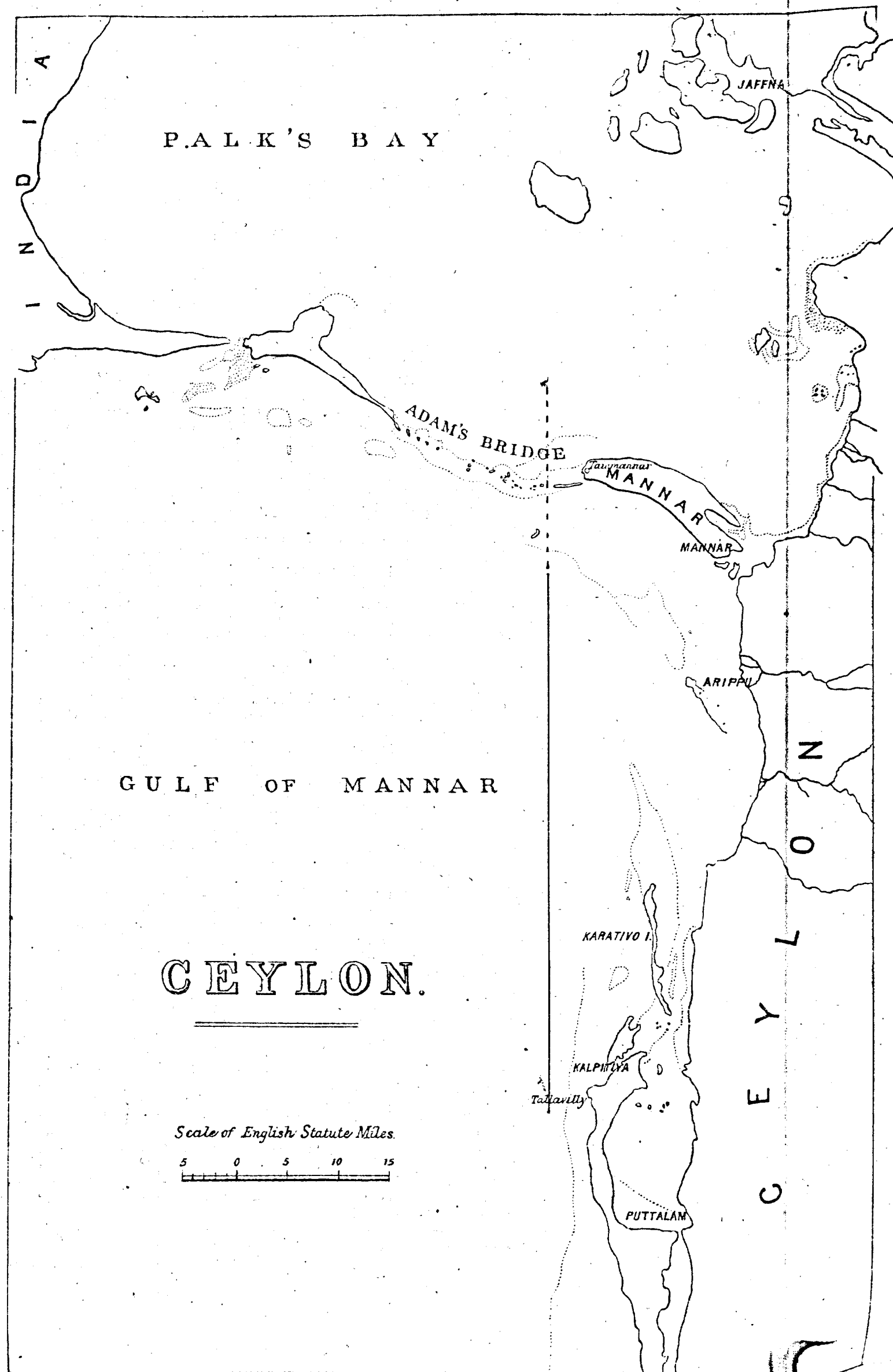
International law writers have a great deal to say on the rights of the sea; but it may be useful to quote what Vattel says on the subject of fishery rights, so far as applies to the present question. He says (§ 287, p. 127):—

"The various uses of the sea near the coast render it very susceptible of property. It furnishes fish, shells, pearls, amber, &c. Now, in all these respects, its use is not inexhaustible. Wherefore, the nation to whom the coasts belong may appropriate to themselves, and convert to their own profit, an advantage which Nature had so placed within their reach as to enable them conveniently to take possession of it, in the same manner as they possessed themselves of the dominion of the land they inhabit. Who can doubt that the pearl fisheries of Bahrein and Ceylon may lawfully become property? And though, where the catching of fish is the only object, the fishery appears less liable to be exhausted, yet, if a nation have on their coast a particular fishery of a profitable nature, and of which they may become masters, shall they not be permitted to appropriate to themselves that bounteous gift of Nature as an appendage to the country they possess, and to reserve to themselves the great advantages which their commerce may thence derive in case there be a sufficient abundance of fish to furnish the neighbouring nations? But if, so far from taking possession of it, the nation has once acknowledged the common right of other nations to come and fish there, it can no longer exclude them from it; it has left that fishery in its primitive freedom, at least with respect to those who have been accustomed to take advantage of it." He then adds:—

"The English not having originally taken exclusive possession of the herring fishery on their coasts, it is become common to them with other nations."

The Governor of Ceylon says the Dutch, Portuguese, and British Governments have, from time immemorial, exercised the "exclusive rights," and have enjoyed the entire profits of the fishing of these pearl-oyster banks. If so, the right of issuing such an Ordinance as is now proposed would seem to be clearly invested in the Ceylon Government; but the Governor admits that objections might be raised on the part of the Arab traders, and possibly that speculators might test the rights of Ceylon by forcibly fishing on the banks. He also states that an American statesman has publicly mooted the question of the absolute right of Ceylon to the pearl fisheries of these banks, although hitherto without success.

* Power, however, is reserved to the Governor in Council to alter these limits.



It is probable that this Ordinance will not pass unobserved, and that the United States' Government may quote it against us in connection with the Behring's Sea question.

Still it would appear from the facts which are now stated in the Colonial Office letter of the 25th September, but which were not alluded to in their previous letter of the 8th April last, that the Ceylon Government have right on their side, and that no valid objection could be raised against their defining by an Ordinance the extent of the pearl fishery over which they have for so long a period exercised and enjoyed an exclusive right.

(Signed) E. HERTSLET.

Foreign Office, October 1st, 1891.

No. 6.

Foreign Office to Colonial Office.

Foreign Office, October 21, 1891.

SIR,

I have laid before the Marquis of Salisbury your letters of the 25th and 30th ultimo, forwarding Reports from the Governor of Ceylon with regard to the Chanks Ordinance issued last year by the Government of the Colony.

Lord Salisbury agrees with Lord Knutsford in thinking that under all the circumstances of the case the Ordinance had better be left in force. As, however, it is likely to be quoted by the United States' Government as evidence against the views of Her Majesty's Government on the Behring's Sea question, Lord Salisbury considers it very desirable that all available evidence should be thoroughly worked up to show the special grounds on which the claim of the Colony rests to jurisdiction over the waters referred to.

Lord Salisbury will be prepared to obtain permission from the Netherlands Government for any examination of the State archives at the Hague which Lord Knutsford may decide upon instituting in regard to this subject.

Printed copies of the correspondence are inclosed herewith for confidential use, including a Memorandum by the Librarian of this department. The passage from Vattel's 'Droit des Gens,' though favourable to the claim of jurisdiction over the pearl fisheries, has a somewhat unfavourable bearing on the contention of Her Majesty's Government in regard to the Behring's Sea seal fishery.

The volume inclosed in your letter of the 25th instant is returned herewith.

I am, &c.,
(Signed) T. H. SANDERSON.

No. 7.

Colonial Office to Foreign Office.—(Received October 31st.)

Downing Street, October 27, 1891.

SIR,

I have laid before Lord Knutsford your letter of the 21st instant relative to the Ceylon Chanks Ordinance, 1890, and the title of Her Majesty to the Ceylon pearl fisheries, and I am to inclose, for the information of the Marquis of Salisbury, copies of two despatches which Lord Knutsford has addressed to the Governor of Ceylon on this subject, together with a copy of a letter which he has caused to be addressed to the India Office.

Lord Salisbury will perceive that Lord Knutsford does not propose to decide as to the necessity of instituting an examination of the archives at the Hague until he has received a further report from the Governor of Ceylon.

I am, &c.,
(Signed) JOHN BRAMSTON.

INCLOSURE 1 IN No. 7.

Lord Knutsford to Governor Sir A. Havelock.

Downing Street, October 27, 1891.

SIR,

I have the honour to acquaint you that Her Majesty will not be advised to disallow the Ordinance of the Ceylon Legislature of 1890 entitled "An Ordinance relating to Chanks," a transcript of which accompanied your despatch of the 16th December 1890.

I take this opportunity of acquainting you that it will not be necessary for you to take any steps at present for the introduction into the Legislature of the draft Ordinance amending the Ordinance in question, copies of which were submitted in your despatch of the 26th August.

I have, &c.,
(Signed) KNUTSFORD.

INCLOSURE 2 IN No. 7.

Lord Knutsford to Governor Sir A. Havelock.

Downing Street, October 27, 1891.

SIR,

With reference to your despatches noted in the margin I have the honour to transmit to you a copy of a letter from the Foreign Office on the subject of the title of Her Majesty to the

pearl fisheries of Ceylon and of the Chanks Ordinance of 1890.

In the printed correspondence inclosed in the Foreign Office letter you will find two letters from this office, of the 25th and 30th September, expressing my views on the subject.

I also inclose a copy of a letter which I have caused to be addressed to the India Office.

I do not propose to take any steps at present for instituting an investigation at the Hague among the Netherlands records until I receive a further report from you as to the evidence which may be available in Ceylon, or can be obtained from India. If any further investigation is needed in Europe, it occurs to me that it may be necessary to make search at Lisbon as well as at the Hague. If the appendices to Mr. George Lee's report are still on record in Ceylon, they will obviously be of much service in establishing the British title. Should it be the case that they were transmitted to London, I will cause them to be examined at the Record Office.

If it should appear that an examination of records is necessary in Europe, I should be obliged to you if you would name any Ceylon officers on leave or retired on pension to whom you think the work might be intrusted, assuming that the members of Her Majesty's Diplomatic Service on the spot are unable to undertake the duty.

I have, &c.,
(Signed) KNUTSFORD.

INCLOSURE 3 IN No. 7.

Colonial Office to India Office.

Downing Street, October 27, 1891.

SIR,

I am directed by Lord Knutsford to transmit to you, to be laid before the Secretary of State for India in Council, the inclosed copies of correspondence between the Government of Ceylon, this Department, and the Foreign Office relative to the pearl fisheries on the eastern side of the gulf of Mannar.

It will be perceived that the present is regarded as a fitting opportunity for investigating and placing on record the legal and historical grounds on which Her Majesty's title to these fisheries is based, and Lord Cross may consider that a similar course should be taken as regards the Tuticorin fisheries on the western side of the gulf, assuming, of course, that they extend beyond the 3-mile limit from the Indian shore.

As there seems some reason to suppose that the title to the Ceylon portion of the fisheries is rooted in some grant from or arrangement with a potentate on the mainland, it may become necessary for the Ceylon authorities to apply for information to the Government of Madras; and I am therefore to request that you will move Secretary Viscount Cross, if he sees no objection, to request the Government of Madras to render facilities to the Government of Ceylon if applied to with that object.

I am, &c.,
(Signed) JOHN BRAMSTON.

Order—dated 22nd January 1892, No. 430, Revenue.

Communicated to the Commissioners of Land Revenue.

2. His Excellency the Governor in Council considers that an investigation similar to that which is being undertaken by the Ceylon Government should be made regarding the legal and historical grounds on which the claims of this

Government to an exclusive right in the pearl and chank fisheries on the Madras coast are based.

3. The Commissioners of Land Revenue will accordingly make a careful inquiry into the question and submit a full report accompanied by a chart showing the position of all the pearl banks, the depth of water in which they lie, and their distance from the shore. A thorough search should be made among the records of the Board's Office for any information that may be forthcoming on the subject. A similar search will be made among the old records of the Government Office, and any information discovered will be communicated to the Board.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Commissioners of Land Revenue.

RESOLUTION—dated 25th March 1892, No. 145.

Communicated to the Collectors of Madura and Tinnevely.

2. They are requested to make a very careful and thorough search among their records and submit to the Board a full report together with all the papers throwing light on the legal and historical grounds on which the claims of Government to an exclusive right in the pearl and chank fisheries on the coasts are based.

3. The Board observes that the Naick of Madura originally exercised the right over such fisheries, and that by right of conquest or grant, the Portuguese, the Dutch, and the British continued to assert the same. The Collector of Madura will therefore make an exhaustive search also among the oldest vernacular records available in his district. The Collector of Tinnevely should also see that the records in the possession of the Superintendent of the Pearl Banks and of the Jati Thalavamore, Tuticorin, are carefully gone through. He is also requested to prepare and submit a chart showing the position of the various banks, their distance from the shore, &c., as required by Government in para. 3 of its order. The Board trusts that no efforts will be spared to make the search as thorough as possible.

4. The Collector of Tinnevely will be informed that the Director of Indian Marine, Bombay, has not yet forwarded the charts of the trigonometrical survey of the coasts of Tinnevely and Madura as requested in Board's Proceedings, dated 30th November 1891, No. 3543, and a reminder will now be issued. The Collector's attention will be drawn to Mr. Thomas' Report on the Pearl and Chank Fisheries (1884), page 62, which contains a list of all the pearl banks and the depth of water at which each lies.

5. The records of the Board's Office are being carefully examined, and any information traced here or received from the Government Office will be communicated to the Collectors in due course.

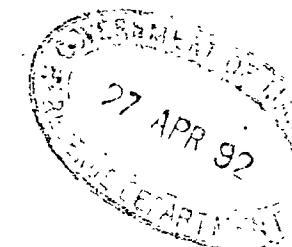
(True Extract.)

Acting Secretary.

To the Collectors of Tinnevely and Madura.

Copy to the Secretary to Government, Revenue Department.

Exd. E. Fernandez.



REVENUE DEPARTMENT.

1892.

Board of Revenue

(Land Revenue),

MADRAS.

Account Number 5857

CONFIDENTIAL number 47.

Seey
Printed April, 25th.
Recd 27th April

Inds Nil
Proceedings, dated 25th March 1892,
No. 145.



Requesting Collectors of Madura and Tinnevely to make a careful search for any records relating to the origin and history of the pearl and chank fisheries.

P. T. O

G.O. mis dated 12th May 1892 No 2059

*Recorded mth the
remark that certain
old Records relating
to the Pearl & Chank
fisheries found in the
last office have been
sent to the Board*

*Recd
11-5-92 16/5*

*The Board of Revenue LR
Desp 13th May*

When given for copying

When copied

When examined

When signed

189

READ AGAIN G.O., No.
189

DATED

G.D. NO.

ENCLOSURES TO G. NO.

ORDER OF GOVERNMENT

LETTERS OF GOVERNMENT

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

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H.B.—

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