CONFIDENTIAL.

Revenue (1894) Department.

G.O., No. 1097
Confidential No. 638
DATED 13 June 94

[Despatch Abstract.]

Referring to Board's former early remarks
Memorial from Mr Dumergue appealing a
G.O. B 19th Dec 1893 No 739.

BACK PAPERS.

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

FURTHER PAPERS.

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

APPENDIX A.

CONFIDENTIAL.

REVENUE DEPARTMENT.

Proceedings of the Madras Government.

Read again G. O. No. 369 dated 30th January 1893.

Read also Proceedings of the Board of Revenue, Land Revenue, dated 3rd August 1893, No. *4516 Mis.

(*Copy attached)

Order thereon No. 739 dated 19th August 1893.

The foregoing papers relate to certain charges preferred by Mr. A. E. Castle-Stuart Stuart, at that time Special Settlement Officer Malabar and S. Canara, in his letter dated 30th April 1892, No. 161 against the Tahsildar of Walavanad, M. R. Ry. S. Ananta Pattar, of obstruction to settlement operations and gross impertinence and of inattention on the part of Mr. Dumergue, then Collector of Malabar, to complaints made to him on several occasions against the said Tahsildar. The facts of the case are fully set forth in the first paper read above and it is unnecessary to recapitulate them. Orders were deferred with a view to obtain the explanations of Messrs. Batten and Dumergue; these have been submitted with the second paper read above and H. E. the Governor in Council will now proceed to deal with the conduct of the several officers concerned.

2. Taking the case of the Tahsildar first, there is ample evidence in the papers before Government of obstruction to settlement operations on his part. His circular of the 9th November 1891 regarding the attendance of Menons on Settlement Officers is sufficient proof of this, and other instances of an antagonistic attitude towards the subordinates of that Department are adduced. The communications from the Tahsildar to Mr. Stuart fully establish the charge of insolence whilst his demi-official communication addressed to the Collector on the 4th December 1891 and printed in the margin of paragraph 24 of the Board's first Proceedings is evidence of a most reprehensible endeavour on the Tahsildar's part to entrap Mr. Stuart. The first 16 paragraphs of Mr. Dumergue's explanation are devoted to a defence of the Tahsildar's conduct; he argues that the Tahsildar was not subordinate to Mr. Stuart, who, as Special Settlement Officer, had no jurisdiction over him, yet the latter issued orders to the former and reprimanded him in terms which were calculated to

cause the most intense irritation ; that the provocation which the Tahsildar received was sufficient justification for the tone of his communications to Mr. Stuart and that he cannot be condemned for defending himself against unmerited and unauthorized censure.

3. The Board considers that Mr. Dumergue has succeeded in showing that *some* of the apparent impertinences of the Tahsildar were not so bad as they look at first sight, but that he fails to relieve the Tahsildar from such blame as warrants severe punishment.

H. E. the Governor in Council is of opinion that making all due allowance for the dictatorial and exasperating style of Mr. Stuart's Proceedings addressed to the Tahsildar, the latter cannot be acquitted of gross misconduct. Although the Tahsildar was not directly subordinate to the Special Settlement Officer, the latter's position in relation to an officer of the grade of Tahsildar was such that he was entitled to be addressed with the same respect as a Divisional Officer and the tone of Mr. Stuart's letters, though undoubtedly irritating, does not justify such studied insolence as is apparent in many of the Tahsildar's communications. If the Tahsildar felt aggrieved by the manner in which he was addressed, he should have complained to the Collector or his Divisional Officer with a view to obtain redress. In the interests of discipline substantial punishment must be awarded though the penalty will be mitigated in consideration of the provocation which the Tahsildar received. H. E. the Governor in Council considers that reduction to the post of Deputy Tahsildar, as recommended by the Board, would be too severe a punishment taking all the circumstances into consideration and resolves to direct that Ananta Pattar be suspended for a period of nine months.

4. As regards Mr. Batten the Government concurs with the Board in considering that his explanation is satisfactory.

5. Mr. Dumergue's explanation of his failure to take any notice of Mr. Stuart's complaints is merely a reproduction of the statements made in paras 63 *et seq* of his memorial to the Secretary of State. He shelters himself behind the Board's orders dated 12th February and 6th April 1892 recalling the letter from Mr. Stuart dated 3rd December 1891 and recording it and argues that as the Board had virtually declined to investigate the charge of obstructing the settlement brought against him by Mr. Stuart by its action in recording his (Mr. Dumergue's) letter of the 2nd February 1892 and taking no notice of his further letter of the 10th April 1892, he was precluded from taking any action himself in respect of Mr. Stuart's accusations against the Tahsildar as his own conduct was involved. The Board's action in this matter has, however, no bearing whatever on Mr. Dumergue's failure to take notice of the complaints made by Mr. Stuart direct to himself and to Mr. Batten. On the 12th October 1891 Mr. Stuart preferred a complaint against the Tahsildar of Walavanad to Mr. Dumergue direct of which no notice was taken, the explanation for this omission contained in para 64 of Mr. Dumergue's memorial to the Secretary of State being that the village officers had already been punished by the Divisional Officer and that Mr. Dumergue considered that the Tahsildar's impertinence was justified by the tone of Mr. Stuart's reprimand.

6. On the 3rd December 1891 Mr. Stuart's letters of the 7th and 12th November 1891 addressed to Mr. Batten, forwarded by him on 22nd November 1891 and containing complaints against the Tahsildar of Walavanad, reached Mr. Dumergue. It now appears from Mr. Batten's explanation that these letters were forwarded to the Collector in consequence of a memorandum from the Collector's Office dated 20th November 1891 directing the Special Assistant Collector " to forward a copy of a letter lately addressed to him by the Special Settlement Officer Malabar and South Canara regarding the Tahsildar of Walavanad and a copy of any instructions issued thereon ". This memorandum is significant as indicating that Mr. Dumergue had received intimation of the fact that complaints had been made to the Divisional Officer and that he was well aware of what was going on in the Taluk. Thus Mr. Dumergue had before him on the 3rd December 1891 specific complaints of which he took no notice whatever. Yet on the 2nd February 1892 be demanded that specific complaints of obstruction should be formulated and full enquiry made. Ten other communications from Mr. Stuart to Mr. Batten complaining of obstruction were forwarded to Mr. Dumergue on the 11th March 1892, in accordance with his verbal instructions that all such communications should be sent to him for disposal, and one more on the 21st May 1892. Mr. Dumergue's excuse for not noticing any of these complaints, namely, that he regarded the Board's action in recalling and recording Mr. Stuart's letter of the 3rd December 1891 as indicating a desire that no investigation should be held and that the matter should be allowed to drop, cannot be accepted and at any rate will not avail him in respect of the letters of October and November 1891 which reached him long before he demanded specific accusations and before the occurrence, which he pleads as his justification for inaction, took place. In the opinion of H. E. the Governor in Council Mr. Dumergue has entirely failed to show that he is not obnoxious to the charge of having neglected to take proper notice of Mr. Stuart's complaints.

7. Mr. Dumergue had not only to explain his inaction in respect of Mr. Stuart's complaints but his conduct in having permitted the Tahsildar of Walavanad without prompt reprimand and repudiation to address to him such a letter as that of the 4th December 1891, which suggests a conspiracy or intrigue between him and Mr. Dumergue, to place Mr. Stuart " in an awkward position". Mr. Dumergue professes not to be able to see the impropriety of such a communication and argues that if there had been a conspiracy the letter would not have been written nor left openly on record. He also asserts that the Tahsildar's object was to give Mr. Stuart the opportunity of refraining from making the official report he threatened. The letter will not, however, bear such a construction. Mr. Dumergue admits that " the real trap would have been to allow Mr. Stuart to make the official report he threatened " but this is exactly what the Tahsildar intended and suggested as is plain from the passage marginally quoted. Mr. Dumergue tacitly acquiesced and must be regarded as having approved such tactics. H. E. the Governer in Council is of opi-

> " If I am now to make an official report to you through Divisional officer refuting Mr. Stuart's allegations made against the Menon in the letter above quoted, it is more than like-

nion that a Collector who, when he receives such a suggestion as that made by the Tahsildar of Walavanad, does not at once repudiate it and rebuke the maker but actually adopts it, though he does not reply to the letter, is fully guilty of conspiracy. The Governor in Council can only conjecture that the letter was inadvertently left on record. Mr. Dumergue is indignant that he should be thought capable of conspiring with the Tahsildar and rightly characterizes conduct of the sort as "utterly unworthy of an officer and a gentleman". This charge was not distinctly formulated, as the Board points out, but it was implied in the call for explanation, and it is clear that Mr. Dumergue himself is conscious that he has laid himself open to such an imputation. His Excellency the Governor in Council regrets to have to record his opinion that the facts are such as to warrant an inference that it was well founded.

ly that Mr. Stuart will come to know of the existence of this crushing evidence and may therefore wisely refrain from reporting to the Board of Revenue as he has threatened to do and thus save placing himself in an awkward position."

8. Pending the decision of this matter promotions have been deferred in respect of the four vacancies marginally noted, Mr. Dumergue being in the ordinary course entitled by his position on the list to the first step. H. E. the Governor in Council has now decided after mature consideration to mark his sense of the grave impropriety of which Mr. Dumergue has been guilty by confirming him as Judge in the last of the four vacancies instead of in the first.

1. District Judgeship, Chingleput, vacant from 4th February 93.

2. District Judgeship, Madura, vacant from 15th February 93.

3. Collectorate, S. Canara, vacant from 21st March 93.

4. District Judgeship, Kurnool, vacant from 12th August 93.

(True extract)

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

CONFIDENTIAL.

Proceedings of the Board of Revenue.
(Land Revenue.)

Dated 3rd August 1893, No. 4516 Miscellaneous.

Read letter from H. Bradley Esquire, Acting Collector of Malabar, to the Acting Secretary to the Commissioners of Land Revenue, dated 1st May 1893, Reference on C. No. $\frac{1696}{P.\ 93}$, also endorsement of Government, Revenue Department, dated 14th July 1893, No. 2605 on letter from the Acting District Judge, Madura, dated 11th July 1893, No. 360.

Resolution :—

*Settlement Department

On May 5th, 1892, the Board* received from Mr. Castle-Stuart Stuart his letter dated April 30th, 1892, No. 161, of which the first sentence runs as follows :—"During the last Christmas Holidays I had the honor of representing in person to His Excellency the Right Honorable the Governor and to some members of the Board certain facts showing the hostile attitude that had been adopted towards me and the Settlement Party in this District and the grave obstruction that was being placed in the way of settlement operations in the ~~way of~~ Walavanad Taluk." The Board had been expecting this communication for some-time past, and Mr. Stuart apologized for the delay in sending it in. This letter was sent to the Collector of Malabar for the Tahsildar's explanation with the Board's Reference dated 9th June 1892 and reached Mr. Dumergue shortly before he left the district under the orders of Government conveyed in G. O. dated 17th June 1892, No. 624. Mr. Bradley succeeded Mr. Dumergue as Collector of Malabar and submitted Tahsildar Ananta Pattar's explanation with his letter dated * 23rd August 1892 which reached the Board on the 29th and was sent to Mr. Dumergue, who was then Acting Collector of Cuddapah, with the Board's Reference dated 2nd September 1892. His reply is dated * 20th October 1892 and is written from Trichinopoly, where he was then Acting Judge. Mr. Dumergue's contention in this letter was that the matter upon which an explanation was called for from him, was already *res judicata*, and without refusing absolutely to submit an explanation, he demurred to doing so. In these circumstances the * Board dealt with the case of the Tahsildar alone, leaving to Government the consideration of Mr. Dumergue's conduct. Upon receipt of the Board's Proceedings, the Government * directed Mr. Dumergue to submit his explanation—which having been sent in—has been * forwarded to the Board "for remarks with the least possible delay". Mr. Dumergue accounts satisfactorily for the time taken by him to answer the Government Order dated 30th January 1893. The delay in communicating the Government Order to him was due to a mistake in the Board's Office and a misapprehension on the part of the Collector of Malabar.

*B's Pros. 14—12—92, No. 717, P.51.

*I. O. Pages. 90-91.

*B. P. 14—12—92 No.717, Pages 98 & 99.

*G. O. No.369 30—1—93.

*G. O. 2605 14—7—93.

2. Mr. Batten's explanation called for in the same Government Order is forwarded with the Malabar Collector's letter read above, which also furnishes the information called for in para 2 of the Government Order.

3. Mr. Dumergue's explanation may be divided into two parts :—

I. His defence of the Tahsildar S. Ananta Pattar and

II. His defence of himself.

4. In regard to the Tahsildar, Mr. Dumergue takes exception to the statement of Mr. Bradley that Ananta Pattar began to take part in the dispute between Mr. Dumergue and Mr. Stuart; and he argues that owing to this erroneous assumption, the Tahsildar has been held to have been impertinent, when he was not really so. Here Mr. Dumergue refers to the Collector's *Proceedings, dated 18th July 1892. This Proceedings was not specifically noticed by the Board and the matter thereof was not alluded to by Mr. Stuart. As to Mr. Dumergue's contention that there was no "dispute" between himself and Mr. Stuart, it seems to the Board that it is unnecessary to discuss the point. It was known to the Board and it was known throughout Malabar that, at all events from June 1891, when Mr. Dumergue first reported Government about the alleged fraud in the settlement of the Wynaad Escheats, he and Mr. Stuart were not on good terms, and to say that there was no "dispute" is to cavil about words.

*B. P. 717 14—12—92. P. 90.

5. At para 8 of his letter, Mr. Dumergue objects to the Board finding fault with the Tahsildar for reporting to his Divisional Officer instead of to Mr. Stuart, and it is urged that the matter referred to had already been disposed of in Board's Proceedings Mis. No. 5497 dated 4th August 1891. The answer to this objection is that the procedure of the Tahsildar was not discussed at that time. In any case, taken alone, the Tahsildar's fault in this matter was not a serious one.

6. Mr. Dumergue further *expresses the opinion that, if all the facts had been before the Board, the Tahsildar's conduct in regard to the issue of his circular dated 9th November 1891, referred to in para 9 of Board's Proceedings dated 14th December 1892, No. 717, would not have been condemned. The only fact, which was not before the Board, when its * Resolution of December 14th, 1892, was formulated, is that Mr. Dumergue "personally directed the Tahsildar to make some arrangement by which the Settlement and Revenue work could be carried on with the least inconvenience." It may be admitted that the Collector's instructions were given with the sole object of facilitating administration, and the Board has moreover recorded its opinion that Mr. Stuart's manner of addressing the Tahsildar was not calculated to enlist his willing services. Nevertheless these considerations do not affect the conclusions arrived at by the Board at para 9 of its Resolution above referred to.

*Para 9 of his letter.

*Paras 9 & 13

7. With reference to para 10 of Mr. Dumergue's letter, it is observed that the Tahsildar wanted all summonses to go through his office—an impossible requirement if the settlement was to go on at all—and that he further, before consulting the Divisional officer and obtaining his sanction, ordered a Menon not to obey a summons of a classifier to appear at a place 18 miles from his amsam (the Tahsildar states that he *asked* the Menon not to go to the classifier) ; again, when consulted by a Menon as to whether he should obey the summons of the Supervisor to a place 11 miles from his amsam, he presumably gave the same order (or made the same request) to the Menon, for the summons was not obeyed and the fact that it had been issued was reported to the Divisional officer with the following remarks:

"True copy submitted to the Special Assistant Collector in continuation of this office report, Reference on C. No. 10103 Mis. dated 14th instant. Summonses to village officials issued even by Courts have to be sent through Tahsildar and not direct. The Settlement Supervisor's procedure in issuing direct instead of through me notices to amsam Menon's compelling them to appear at distant places from their amsams, so as to suit the convenience of Settlement subordinates, is irregular and inconvenient, I think". Mr. Dumergue's objections (para 11) do not touch the Board's only finding on charges 19, 20 and 21 that the Tahsildar used expressions, which addressed to a superior, are not to be excused. The expressions referred to are those in appendix IV (b) of Mr Stuart's letter dated 30th April 1892 in which the Tahsildar writing in March 1892 endeavours to justify his neglect in having done nothing towards preparing the desamwar accounts ordered by Mr. Stuart in *March 1891 in the following words:—

*App. III to Mr. Stuart's letter of 7—4—92 at page. 46 of B. P. 717 dated 14—12—92.

"Had clear instructions been conveyed in your Proceedings No. 1961 dated 17th March 1891" "as to what account you desired to be prepared desamwar instead of leaving the Tah-" "sildar to guess it, some little progress could have been made by this time". That one account wanted by Mr. Stuart to be written desamwar was the Land Register, the Tahsildar could have had no possible doubt whatever. That much labor would have been imposed on the village officials by requiring them to re-write their amsam accounts desamwar, the Board has admitted, and it has *observed that Mr. Stuart was not justified in requiring the Tahsildar to carry out the work without first obtaining the full consent of the Collector or obtaining the orders of the Board.

*Para 20 of B. P. 717 14—12—92.

Mr. Dumergue's assumption in the latter part of para 12 of his letter that desamwar accounts are not necessary for settlement purposes and that therefore the neglect to prepare them by the Tahsildar could not have obstructed settlement, is based on a misapprehension.

The preparation of desamwar accounts is necessary in all taluks whether classified or unclassified, but where they have not in the first instance been prepared by the Menon they have to be prepared at the time of classification by the classifiers who are absolutely dependent for their correct preparation on the information afforded by the Menon, and great delay is caused to classification and the preparation of the desam classified account by the absence of a desam revenue account.

8. The remark about the stationery in the Tahsildar's letter referred to in Mr. Dumergue's para 11 would have mattered little by *itself*. The Board knew nothing of it at the time of Board's Proceedings dated 11th September 1891, No. 6547 L. R. and could not

have noticed the matter. In this and in other parts of his letter Mr. Dumergue, whether designedly or not, obscures the true question at issue. In regard to the concluding portion of para 13 it may be observed that the Board has never attempted to palliate Mr. Stuart's fault, but the Tahsildar's replies to him quoted at para 11 of the Board's Resolution speak for themselves.

9. Mr. Dumergue does not quote the paragraph of the Board's Proceedings to which he refers when, in his 14th para, he says that objection is apparently taken to the Tahsildar addressing Mr. Stuart by letter instead of by arzi, but the reference is apparently to para 6 of Board's Proceedings dated 14th December 1892, No. 717 where the fact that the Tahsildar had addressed *Mr. Batten* in this way was alluded to for the purpose of shewing that the communication was one for which the Tahsildar must be individually responsible. At the close of para 15 Mr. Dumergue obscures the issue again. It is not Mr. Stuarts position but the Tahsildar's conduct which is at stake. The Tahsildar would have been to blame if he had addressed improper letters to an officer of the Public Works Department or Revenue Survey. Mr. Dumergue's defence of the Tahsildar at the end of para 16 cannot be admitted either. The Tahsildar's proper course when his actions were impugned was to appeal to his Collector.

10. With these remarks the Board leaves the case of Tahsildar Ananta Pattar as it was presented to Government in Board's Proceedings dated 14th December 1892, No. 717. Mr. Dumergue succeeds perhaps in showing that *some* of the apparent impertinences of the Tahsildar were not so bad as they look at first sight, but this fact has already been taken into consideration by the Board. Mr. Dumergue fails, the Board holds, to relieve the Tahsildar from such blame as warrants severe punishment.

11. Turning to Mr. Dumergue's own defence — the first point upon which he touches is the Tahsildar's demi-official letter quoted at para 24 of the Board's Proceedings of 14th December 1892. Para 18 of Mr. Dumergue's letter deals with this matter. The Board had said the letter of the Tahsildar was evidence of the fact that the Collector was thoroughly cognizant of all that was going on in Walavanad and this, as paraphrased by Mr. Dumergue, implies that the latter was conspiring with the Tahsildar to lay a trap for Mr. Stuart. That the Tahsildar intended to do this is abundantly clear from the wording of his letter. Dumergue's argument *per contra* seems to the Board to be quite worthless— though it is of course willing to beleive that, so for as *he* was concerned, there was no conspiracy. Nevertheless the Board thinks he was greatly to blame for allowing one of his Tahsildars to write to him in such a strain without incurring a prompt and severe reprimand.

12. Mr. Dumergue's reasons (his paras 19 and 20) for not disposing of this communication and of the official letters enumerated at para *35 of Mr. Bradley's letter appear to the Board altogether inadequate. It is true, of course, that Mr. Stuart made general allegations of obstruction against the Collector and his subordinates, and also that Mr. Dumergue asked for a full enquiry into these charges—but he qualified this demand by saying * that " Mr. Stuart's allegations in their present form are far too indefinite to admit of such inquiry or to

*B. P. 717 14—12—92 P. 62.

*Para 4 of Mr. Dumergue's letter of 2—2—92 in B. P. 6-4-92 Mis. No. 3358

enable me to submit remarks on Mr. Stuart's report as directed by the Board. I must therefore ask that Mr. Stuart may be required to furnish specific instances, supported by records, of the obstruction of which he complains". This letter was received at a time when, as stated above, the Board knew that Mr. Stuart was formulating specific charges and these were submitted in Mr. Stuart's letter dated 30th April 1892. There was thus no occasion to call upon him, as desired by Mr. Dumergue, " to furnish specific instances, supported by records, of the obstruction of which he complains " and Mr. Dumergue's further letter of 10th April 1892 was finally recorded (Board's Proceedings dated 20th December 1892, No. 9605, Settlement) with reference to Board's Proceedings dated 14th December 1892, No. 717, Land Revenue. Had Mr. Dumergue been anxious to show that Mr. Stuart's complaints were groundless, it might have been expected that he would have dealt promptly with allegations of obstruction laid against his subordinates instead of allowing them to accumalate and give color to the charges of like character against himself. He may not have intended to delay the Settlement, but he should certainly have known that this would be the natural result of his inaction. The Board still holds that it said rightly that these complaints needed prompt attention. The Board would add that Board's Proceedings dated 6th April 1892 Mis. No. 3358 (Settlement) recorded the papers with the express object of inducing the two officers Messrs. Dumergue and Stuart to proceed with their duties by ignoring their mutual recrimination.

13. It is much to be regretted that Mr. Dumergue should have allowed himself to make use of the very unbecoming language contained in para 18 of his letter. No such charge as Mr. Dumergue suggests has been preferred against him.

14. In regard to Mr. Batten, the Board considers that his explanation may, under the circumstances, be accepted as satisfactory.

(True extract)

(Signed) W. S. MEYER.
Acting Secretary.

(True copy)

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

APPENDIX B.

No. $\frac{360}{1893}$

MADURA DISTRICT COURT,
11*th July* 1893.

FROM,

J. W. F. DUMERGUE ESQUIRE,

ACTING DISTRICT JUDGE,

MADURA.

TO,

C. A. GALTON ESQUIRE,

REVENUE SECRETARY

TO GOVERNMENT,

MADRAS.

Sir,

In obedience to G. O. dated 30th January 1893 No. 369 Mis., I have the honor to submit to Government the explanation of my conduct with regard to the Revenue Settlement of Malabar.

2. Before entering into the case, I trust I may be permitted to express the hope that the delay which has occurred in submitting the explanation will in no wise prejudice me in the eyes of Government. Although the G. O. was passed on the 30th January 1893, I knew nothing of it until the 8th April 1893 when it was communicated with the Board's Proceedings of the 5th idem. The Board then remarked that the papers were forwarded in case they had not been sent by the Collector of Malabar " as was the Board's intention ". The Government is aware of the nature of the work in the Madura Court, and in order to study the papers I was compelled to take five days leave on the first opportunity. I applied to the Board and the Collector of Malabar for records on the 29th April and my requisition has not yet been fully complied with. In view, however, of the fact that the Madura Court will shortly be reopened, I have determined to submit my explanation at once.

3. The charges which I am now called on to answer were summarized in para 47 of G. O. dated 17th June 1892 No. 624 Revenue, when I was found guilty

of impeding and discrediting settlement, and the Board has now asserted in para 24 of its Proceedings dated 14th December 1892 No. 717, that by taking no notice of Mr. Stuart's complaints against the Tahsildar of Walluvanad, I condoned the Tahsildar's conduct which is said to have been insubordinate and obstructive.

4. Whether the Board is right in saying that I failed to take notice of Mr. Stuart's complaints is a point which I will, with permission, discuss hereafter and at present I would submit that there is a misconception in the very beginning of the case which must have influenced the Board.

5. This misconception is contained in the statement made by the Acting Collector of Malabar in para 2 of his letter dated 23rd August 1892 that the Tahsildar "began to take part in the unfortunate dispute between Mr. Dumergue and Mr. Castle-Stuart Stuart". Against this assertion I must beg leave to protest since it is inaccurate in every respect.

6. In the first place, as I have endeavoured to explain in paras 42 to 48 of my memorial to the Secretary of State, the word "dispute" is altogether inappropriate with regard to my conduct in carrying out, under the orders of the Board and the Government, an enquiry into the Wynaad Settlement. In the next place, the Tahsildar of Walluvanad had no concern with, and no interest in, that enquiry And lastly, the Government is aware that I did not raise the question of Mr. Stuart's personal conduct towards myself until the 5th March 1892 and that when I did, my own conduct and correspondence were found blameless in G. O. dated 5th April 1892 No. 1803 Revenue. As pointed out by the Board Mr. Stuart's complaints range from 7th November 1891 to the 10th March 1892 and relate therefore to events which occurred before I was compelled to report Mr. Stuart's conduct. Hence I submit, it is clear that the connection found to exist by the Acting Collector of Malabar is imaginary and that the remark with which he has prefaced his letter is incorrect and irrelevant.

7. It is, I would also submit, difficult to believe that, but for this error, the Tahsildar would have been held guilty of insubordination on occasions when, I venture to think, the accusations cannot be sustained. Thus in para 34 of his letter, the Acting Collector refers to what he considers impertinence on the part of the Tahsildar unparalleled except in the case of "some letters from an officer who proved to be mad". The Tahsildar, writing to his Divisional Officer and not to the Special Settlement Officer—a fact overlooked by the Acting Collector—

stated "I have myself asked the Special Settlement Officer to issue the necessary instructions to his subordinates on the sudject, but a letter from you will, I presume, have better effect". It is not easy to understand why a Tahsildar should be held guilty of impertinence for thinking and saying that his Divisional Officer's letter would receive more attention than his own.

8. Then in dealing with the third charge against the Tahsildar, the Board, in para 5 of its Proceedings, finds fault with him for making a report to the Divisional Officer instead of to the Special Settlement Officer, then known as the "Special Assistant Collector". But this very case was reported by me so far back as the 16th May 1891 and was disposed of by the Full Board in its Proceedings dated 4th August 1891 No. 5497 Mis. With all the facts before it, the Full Board found no fault with the Tahsildar's procedure.

9. In respect of the seventh and seventeenth charges, I cannot think that the Tahsildar would have been condemned if all the facts had been known. I had found that the Special Settlement Officer and his subordinates expected the village officers to devote their whole time to settlement work, and it will be seen that Mr. Stuart required their attendance from 7 to 12 and 3 to 6 daily, while in para 4 of appendix XII(3) page 26, it will be seen that Mr. Stuart maintained that "the rules clearly place the Menons at the disposal of Settlement Officers during the progress of settlement operations in their amsams." This arrangement was obviously impracticable in the public interests. It would have resulted in complete paralysis of the ordinary revenue work of the district and the Board and Government would not have accepted as an excuse from me the fact that the village officers were monopolized by the settlement party. Hence I personally directed the Tahsildar to make some arrangement by which Settlement and Revenue work could be carried on with the least inconvenience. In his letter dated 10th November 1891 (appendix XI(b), the Tahsildar informed Mr. Stuart that he had selected the time "least inconvenient to settlement work." As a matter of fact, the village officials took advantage of the demands made on them by the settlement party to neglect their ordinary work and the only intelligible solution was to fix separate hours. Hence the Tahsildar was, I submit, fully justified in issuing his circular which was in accordance with my instructions and those instructions were given with the sole object of facilitating administration. It is, I further submit, straining matters to hold the Tahsildar guilty of disingenuousness, because having made a tomporary arrangement, he reported the subject for the orders of the Divisional Officer. That the arrangement was temporary and subject to sanction

and that the Tahsildar had no disingenuous motive are proved by the fact that in his circular (appendix XIII (2) page 28) he expressly said "he had reported the matter to the higher authorities for orders to the above effect".

10. The eleventh charge against the Tahsildar is that he prevented the Supervisor from summoning Menons except through himself and encouraged the Menons to disobey the orders of the Supervisor. This I submit does not set forth the facts correctly. The papers which are referred to in para 20 of the Acting Collector's report show that the Menons had been summoned to attend the Supervisor at considerable distances (18 miles in one case) beyond the limits of their amsams. For this procedure there is no authority in the Settlement Manual and the Supervisor was therefore not competent to issue the summons. It was exclusively to this procedure that the Tahsildar objected and not generally to the power of a Supervisor to summon Menons as stated in the charge and I submit that he was right. Otherwise his Taluq would have been disorganized.

11 Again with regard to the 19th, 20th and 21st charges, delay in the revision of accounts and in the preparation of desamwar accounts several records and facts have been overlooked. As to the revision of accounts, complaint was made to the Board in the Settlement Department by Mr. Stuart and was withdrawn by the Board in its proceedings dated 12th February 1892 and recorded on the 6th April 1892. As to the desamwar accounts, the Acting Collector is of opinion in para 3 of his letter that the Tahsildar's " demand for stationery appears to have been an intentional piece of impertinence". But the records of the Malabar Collector's Office would have shown that the matter was formally referred by me to the Board with reference to its proceedings of the 20th June 1890 No. 4067, 12th February and 12th March 1891 Nos. 92 and 160 and that the Board in the Settlement Department passed formal orders in its proceedings dated 11th September 1891 No. 6547 Mis. Had there been anything impertinent in the reference, the Board would assuredly have noticed it, and as it is, the Tahsildar's action was clearly not impertinent but necessary.

12. Further with regard to the charge of obstruction by delay in the preparation of desamwar accounts, the Acting Collector observes in para 30 of his letter that "the Board is aware that Mr. Stuart found the Palghat accounts very defective and it was with a view to remedy the defects that he called for desamwar accounts in the Walluvanad Taluq," while the Board in para 20 of its proceedings states that "the object sought by the Settlement Officer was a very desirable one." I was myself of the same opinion since the desam was to be taken

as the unit, and in a letter I addressed to the Superintendent of Madras Survey on the 14th April 1892, I urged the necessity for an accurate desamwar survey. Now, however, it will be observed from para 20 of the Board's proceedings that desamwar accounts are to be prepared only for those Taluqs "in which classification is not complete." But when the Tahsildar was charged with neglecting to prepare desamwar accounts, the classification of Walluvanad was complete and in a letter dated 23rd June 1893, the Acting Collector of Malabar has informed me that desamwar accounts for Walluvanad (as well as Palghat) "will have to be prepared before the settlement is introduced and orders have now issued for their preparation, but they are not required for settlement purposes in those two Taluqs." Obviously therefore, I submit, the complaint that settlement was obstructed because accounts, now declared to be unnecessary for settlement purposes, were delayed is groundless.

13. In the tenth case, the correspondence arose solely from Mr. Stuart's own mistake in thinking that fines inflicted on village officers could be levied directly instead of being deducted from their pay. On other charges, such as that of impertinence to a Supervisor, I submit that the facts stated by the Tahsildar in his explanation deserve more consideration than they have received. My proceedings of the 8th May 1891, referred to by Mr. Stuart, show that the conduct of Settlement subordinates was a longstanding source of complaint and the question was whether the Settlement subordinates were to have independent control or whether the Tahsildar was to maintain his authority in the Taluq for which he was responsible.

14. With regard to the other correspondence in respect of which the Tahsildar has been found guilty of insubordination, I submit that one objection apparently taken by the Board that the Tahsildar wrote letters instead of arzis, is opposed to the rule in its own standing orders by which the letter form in English is expressly sanctioned.

15. Next, I would submit that before the Tahsildar can be convicted of insubordination, it has to be proved that he was the Special Settlement Officer's subordinate. The Board now declares that he was, but if there had been no doubt on the point, there would have been no necessity for gazetting Mr. Stuart's successor as Special Assistant Collector as well as Special Settlement Officer. The fact is that from the moment Mr. Stuart was gazetted as Special Settlement Officer, the Government having declined to gazette him as "Special Collector", he re-

garded himself as independent of the Collector and once drew my attention to the fact that he was no longer Special Assistant, although it now appears that this was not the intention of Government. As dual control in a district is impossible, an officer who is independent of the Collector cannot be the superior of the Collector's subordinates. Under these circumstances, I venture to submit that, as stated in para 64 of my memorial to the Secretary of State, Mr. Stuart had no more authority to reprimand the Tahsildar than a Revenue Officer has to reprimand a Supervisor in the Settlement Department. Nevertheless Mr. Stuart assumed this authority even in respect of the Tahsildar's action in his Magisterial capacity as shown in the correspondence relating to the eighth charge and to the extent of finding fault when the Tahsildar acted in obedience to my instructions as shown in the fourth charge.

16. All the proceedings issued by Mr. Stuart to the Tahsildar have not been printed, but a reference to them will show that they were not only "far from calculated to enlist the Tahsildar's willing services" as found by the Board, but also calculated to cause the most intense irritation. As an instance I would cite the fourth question put by Mr. Stuart in the ninth case (para 11 of the Tahsildar's explanation page 73). The Tahsildar's answer has been considered insolent, but the question would have condoned far greater exasperation than the Tahsildar displayed. I will not venture to offer any opinion of my own regarding the Tahsildar, but the opinion recorded of him by other officers under whom he has served show that he won the esteem and confidence of all and that none ever found him guilty of insubordination. It was, I submit, impossible for an officer in his position, entitled to respect and consideration, not to feel deeply injured by the taunts and insults he constantly received and unless a Tahsildar is to sacrifice the self-respect and independence he is expected by Government to maintain, he cannot be condemned for defending himself and his actions against unmerited and unauthorized censure.

17. With regard to the general question of obstruction to settlement, the charge is, I submit, refuted by the rapidity with which settlement progressed in Walluvanad. As to my having abetted obstruction, I must quote from Mr. Stuart's letter to the Board dated 7th July 1891 No. 641. In para 3 of this letter Mr. Stuart complained of obstruction in consequence of certain proceedings which I had issued and on which orders were passed by the Full Board on the 4th August 1891 No. 5497 Mis. But in para 2 of the same letter, Mr. Stuart, after referring to obstruction in Palghat, makes the following statement * * "it became necessary

for Mr. Greene and myself to report the facts to the Collector. The result has been that there has been a marked improvement in the disposal of complaints". Since I carried a "marked improvement" in one Taluq, it is, I submit, for my accusers to prove by definite facts that I obstructed it or had any motive for obstructing it in any other part of the district. No attempt has been made to prove such a motive on my part and the only facts adduced are that I did not dispose of Mr. Stuart's complaints against the Tahsildar of Walluvanad.

18. In this connection, the Acting Collector of Malabar has forwarded a demi-official letter addressed to me by the Tahsildar of Walluvanad and it is printed in the Margin of para 24 of the Board's proceedings. The impression created by this letter apparently is that I conspired with the Tahsildar to lay a trap for Mr. Stuart. It was to be expected that I should be held capable of such conduct utterly unworthy of an officer and a gentleman, but I submit that the facts should first have been examined. I do not understand what objection there can be to a Tahsildar being allowed to address a Collector demi-officially and direct, but if there had been any conspiracy there would have been no letter, much less a demi-official letter. Still less would that letter have been left openly on record as it was ; nor would the Tahsildar have refered to its enclosures as he has in para 9 of his explanation. More than all, it seems to have been overlooked that the real trap would have been to allow Mr. Stuart to make the official report he threatened. Yet, to give Mr. Stuart the opportunity of refraining was the object of the Tahsildar's demi-official letter.

19. When this letter was received I was in Wynaad engaged with my reports of the 14th December 1891 and 14th January 1892. Before I could take any steps I received, for explanation, with the Board's Proceedings of the 5th January 1892, Mr. Stuart's letter of 3rd December 1891, in the concluding paragraph of which Mr. Stuart made the following statements. "The Jamabandy Officer had actually been duped by the taluq officials (of Walluvanad) into signing an account for fusly 1300, which had no reference to that year. The Acting Collector's reply shows how lightly those irregularities were apparently regarded and indicates the nature of the support I receive at his hands and the records in my office prove that valid complaints made by myself or my subordinates are not attended to at all, or in the most perfunctory manner indicated in this particular case. The subordinate revenue officials have learnt to rely upon the Acting Collector for support against complaints preferred by the Settlement Officers, who have in Malabar, under the present regime, to do their work as best they can in spite of

opposition from quarters where, in other districts, they might safely rely on cordical co-operation and support. I am not aware how long the Board and Government will tolerate this state of things which is most prejudicial to the public interest".

20. It cannot, I venture to think, he disputed that this was a serious indictment against a Collector, that the whole case was taken out of my hands and that my only course was to demand a full enquiry. But, as stated in paras 65 and 66 of my memorial to the Secretary of State, the Board in the Settlement Department, on receipt of my letter dated 2nd February 1892 (appendix Z to my memorial) recalled the papers and has never taken any notice of my request for a full enquiry, which I repeated in my letter dated 10th April 1892 (appendix ZZ to my memorial). Expecting that the Board would grant my request, I directed Mr. Batten to send me all Mr. Stuart's complaints, but as I have pointed out in my memorial, the Board took no action itself and prevented me from taking any action as I could not dispose of accusations in which I was myself involved. Now the Board in para 23 of its proceedings observes that the complaints needed "prompt attention". The passage I have quoted from Mr. Stuart's letter of the 3rd December 1891 embraced all his complaints and the correspondence proves that I did my utmost to secure the fullest and most prompt investigation and that my requests were totally disregarded. Hence I submit that the statement now made by the Board that I took no notice of Mr. Stuart's complaints is due to a mistake and that it was the Board in the Settlement Department which decided that no action was necessary on the complaints although they had been made to it direct by Mr. Stuart and urged on its attention by myself.

I have the honor to be

Sir,

Your Most Obedient Servant,

(Signed) W. DUMERGUE,

Acting District Judge.

APPENDIX C.

Precis of correspondence connected with the Settlement operations in Walluvanad Taluk.

I.	*	*	*
II.	*	*	*
III.	*	*	*
IV.	*	*	*
V.	*	*	*
VI.	*	*	*

VII. In his letter dated 12th November 1891, No. 1546, to the Special Assistant Collector, Mr. Stuart reported that the Walluvanad Tahsildar removed the Arakkaparamba Amsam Menon from the Classifier between the hours of 6 and 10 A. M. from the 1st September 1891 for the preparation of Jamabandy accounts, that the Menon failed to obtain from the Classifier a memorandum prescribed in Rule V (3) Section 7 Chapter VI of the Settlement Manual permitting him to be absent from Settlement work, that the classification of the Arakkaparamba Amsam was commenced on the 1st August and completed on the 30th September 1891, that during this period the Menon worked with the Classifier for 22 days in August and 19 days in September, that the Amsam Menon "did no Settlement work"

on the 6th August—as he was engaged with the Revenue Inspector
„ 13th „ —on account of stomach ache
„ 2nd, 9th, 16th, 23rd and 30th—being Sundays
„ 22nd—being last Saturday but one
„ 19th—being a holiday

9 days.

On the 6th, 13th, 20th and 27th September—being Sundays
„ 14th, 15th and 16th „ „ Onam holidays
„ 19th „ „ Last Saturday but one
„ 1st—half a day
„ 2nd Do.
„ 8th and 9th
} on account of attendance on the Tahsildar and in the Taluk Cutcherry

11 days.

With regard to the above, copy of a report dated 13th August 1891 of the Arakkaparamba Menon to the Classifier is on record stating that he was unable to attend to business that day as he was suffering from stomach ache. Again, on the 7th September, this Menon reported to the Classifier that, in accordance with the Tahsildar's order, he had to attend the Taluk Cutcherry on the 8th, that he would return for Settlement work on the 9th and requested permission to do so. A further report of this Menon dated 14th September 1891 to the Classifier shows that his attendance for only half a day on the 1st and 2nd September was due to the Tahsildar's visit, that he attended the Taluk Cutcherry on the 8th, that he was not able to return that very day and that he could not therefore attend to Settlement work on the 9th. The Menon was further absent on the 13th September (Sunday) and on the 14th, 15th and 16th September (Onam holidays).

The total number of days the Menon was absent is therefore

August 13th	=1	day
September 1st and 2nd (half a day each) ...	=1	,,
,, 8th and 9th	=2	,,
,, 13th to 16th	=4	,,
Total ...	8	days

and the number of days he attended to Settlement work during August and September 1891 is 61—8 or 53 days and not 41 days as represented by Mr. Stuart.

The Menon's diary, which is initialled by the Classifier, shows that the Menon attended on the Classifier *throughout* the month of August 1891 without any interruption whatsoever and inclusive of Sundays and holidays, *i. e.* for 31 days, and again for half a day each on 1st and 2nd September and for 23 other days, *viz.*, from 3rd to 8th, 10th, 11th and 12th, 17th and 18th and from 19th to 30th September 1891, but unfortunately the diary relating to the period between the 19th and 30th September has not been initialled by the Classifier. Across the entries relating to this period however, the Classifier has made the following remark and has signed the diary :—

"The Amsam Menon worked with me on the days when there is classification duty. He is relieved on the 30th October 1891."

The Menon's diary does not appear to me to have been correctly kept, because on the 13th August, when leave was applied for on account of stomach-

ache, and on the 8th September, when the Menon reported he had to attend the Taluk Cutcherry, the Menon is shown to have attended to Settlement work and the entries against these days have been initialled by the Classifier. As *copies* of the reports submitted by the Menon have alone been furnished, originals may, if necessary, be obtained.

The Tahsildar in his explanation stated that he instructed the Arakkaparamba Amsam Menon to attend to his Amsam work from 6 to 10 A. M. from 1st September as the Jamabandy accounts, for which he is responsible, were not ready and as the ordinary Amsam work was not attended to.

On the 21st November 1891, the Tahsildar was directed by the Special Assistant Collector to inform the Amsam officials that Settlement in the Taluk would not be accepted as an excuse for neglect of Amsam work, that the rules of the Settlement Manual must be strictly adhered to and that the hours fixed by the Tahsildar, *viz.*, 6 to 10 A. M., seemed to clash with the hours most conveniently devoted to Settlement work.

VIII. * * *

APPENDIX D.

Supplemental Memorial humbly submitted by John Willoughby Francis Dumergue, Madras Civil Service, to the Right Honorable the Earl of Kimberley, K. G., Secretary of State for India in Council.

In continuation of his Memorial dated 30th October 1892 and ordered by the Madras Government to be forwarded on the 2nd March 1893, Petitioner craves leave to present for consideration certain facts which have only now come to his knowledge and which, if further proof is required, will prove conclusively that his condemnation by the Madras Government was altogether mistaken and unmerited.

2. Stated in brief, these facts are that the Madras Government, agreeing with the Board of Revenue, has, in its order dated 27th April 1893, No. 346 Revenue, not only directed the revision of survey in all taluqs of Malabar already surveyed, but has also directed the revision of survey and settlement in Wynaad and that this revision has been found necessary expressly in consequence of the defects and errors pointed out by Petitioner.

The Government Order and the papers on which it was passed are enclosed.

3. The concluding words of Petitioner's report dated 14th December 1891, disposed of in G. O., dated 17th June 1892, No. 624 Revenue (Appendix A to Petitioner's Memorial) were that " the re-settlement of Wynaad, so far at least as the disposal of escheat lands is concerned, is absolutely necessary unless Government is to be deprived in perpetuity of lands to which it is lawfully entitled ".

4. Petitioner was subsequently ordered to prepare a draft proclamation regarding the settlement of the Malabar District and in paragraph 8 of his letter dated 4th February 1892 (page 10 of enclosure) stated, for reasons given, that " a revision of the survey of Wynaad is indispensable as a preliminary to any proper and satisfactory revision of settlement".

5. Then, in paragraphs 6 to 15 of his letter dated 4th March 1892 (pages 20 to 22 of enclosure) Petitioner, referring, among other papers, to his report of the 14th December 1891, pointed out that, as virtually admitted by Mr. Stuart with regard both to private and to escheat lands, a revision not only of settlement but also of survey in Wynaad was necessary.

6. Lastly, in paragraph 12 of his letter dated 16th March 1892 (page 16 of enclosure) Petitioner wrote as follows—" Mr. Stuart has already shown that, in his settlement of Wynaad, the orders of the Board and Government were deliberately neglected and now shows that this disregard of express instructions has been studiously maintained in every other taluq hitherto dealt with for purposes of survey and settlement * * *. The result of disobedience of orders actually issued with regard to Wynaad and of constituting that disobedience into a rule for the rest of the district is that a revision of survey and a revision of settlement, with all their attendant expense and delay, are necessary in every taluq of Malabar which, to use Mr. Stuart's own phrase, is 'supposed' to have been surveyed or both surveyed and settled ".

7. On the correspondence referred to in the three preceding paragraphs, the Board of Revenue (R. S. L. R. & A.) observed, in paragraph 8 of its Proceedings dated 31st May 1892, (page 26 of enclosure) that the precaution of not mixing up lands belonging to more than one Janmi (and of course Government stands in the position of a Janmi with regard to escheat lands) " has not been taken in respect of the survey work already done in the district, though, as pointed out by Mr. Dumergue, it had been expressly enjoined in the case of Wynaad and the consequence is that, to meet the requirements of the present settlement, the survey of those taluqs will have to be revised ".

8. Finally, the Madras Government has not merely agreed, in para 3 of its order dated 27th April 1893, No. 346 (page 33 of enclosure) with the remarks made by the Board, but has expressly declared by the terms of the proclamation it has ordered to be issued in the case of Wynaad (page 36 of enclosure) that revision both of survey and of settlement is expedient or necessary.

9. It is true that the Board finds revision of survey necessary for " the requirements of the present settlement " and that the proclamation in the Order of Government is issued, according to its preamble, in consequence of a decision of the High Court that only a Janmi or his representative can be dealt with as the land-holder. But, in the first place, the Board distinctly intimates that revision of survey is necessary in consequence of the disobedience of orders brought to notice by Petitioner and the Madras Government agrees with the Board. In the next place, if revision of settlement in the Wynaad were necessitated only by the High Court's decision, nothing would be required beyond a " revision of registration of private Janmam lands", as, in fact, proposed by Mr. Stuart (pages 11 & 12 of enclosure). But this proposal has not been accepted, obviously, as it seems to Petitioner, because the revisional survey and revisional settlement prescribed in the concluding words of the proclamation are necessitated on grounds other than the High Court's decision.

10. From the correspondence already quoted, it will be seen that Petitioner has consistently maintained throughout his reports the same opinion regarding the necessity for revision of survey and settlement in Malabar and it will also be observed that when the Madrasa Government censured Petitioner on the 17th June 1892 for, among other things,

"disingenuousness", for preferring an indictment against the Settlement Department with "little or no justification" and for "impeding and discrediting settlement", it must have been in possession of the Board's Proceedings dated 31st May 1892. Thus with regard to the same facts and on records inseparably and by express reference connected with each other, two contradictory orders have been passed, and the Madras Government first condemned Petitioner in terms of the utmost severity for expressing the same opinion which it has, after the lapse of nearly a year, adopted and enforced.

11. If, as stated by the Madras Government in para 47 of its order dated 17th June 1892, Petitioner had had little or no justification for his report regarding settlement, it is, Petitioner submits, certain that no revision of survey and settlement, even in "portions" of taluqs already settled, would have been ordered by proclamation. By accepting Petitioner's conclusions as it now has, the Madras Government has practically admitted that Petitioner had full justification for them and has further proved that Petitioner's real and only object was not to impede and discredit settlement, but to prevent settlement from being carried out in a manner which would have placed the Revenue administration of the district, for which he was responsible, on an entirely false basis.

12 It is not for Petitioner to point out the necessity for the utmost accuracy in survey and settlement, in the interests both of the people and of the Government. In his report of the 14th December 1891, Petitioner gave only instances to support his conclusions that the survey and settlement were inaccurate, and although the Madras Government at first found those instances insufficient, it has now found them sufficiently corroborated to render the course advocated by Petitioner expedient and necessary. Petitioner's condemnation by the Madras Government proceeded on the ground that he had been actuated by personal animosity and sinister motives. Now that his judgment is found to have been right, it follows, he would humbly submit, that he cannot have been influenced by any private considerations whatsoever. To resist malpractices in settlement is a very different thing from impeding and discrediting settlement, and Petitioner submits that the present order of the Madras Government itself is the most complete refutation of the charges on which he was summarily convicted and punished.

13. It is incumbent on Petitioner to explain in conclusion how the records, of which he now begs a consideration, came into his possession. In the postscript to his Memorial, Petitioner showed that the Board of Revenue in the Settlement Department, called upon him on the 2nd September 1892 for an explanation of his conduct with regard to alleged obstruction to settlement and that although the question had been already disposed of by the Madras Government, Petitioner expressed his readiness to submit an explanation on being supplied with the necessary records. Thereupon the Board in the Settlement Department recalled the papers it had forwarded and, on the 14th December 1892, in the Land Revenue Department, reported to the Madras Government that Petitioner had declined the opportunity it had given him of explaining his conduct.

14. Then, on the 30th January 1893, the Madras Government passed an order directing Petitioner to submit to itself the explanation called for and at the same time directed that Petitioner should be furnished by the Board and the Collector of Malabar with any records he required.

15. But Petitioner remained in absolute ignorance of this order until the 8th April 1893, when he received it with the proceedings of the Board in the Land Revenue Department of the 5th idem, the Board remarking that the order was forwarded "in case it has not been already sent to him by the Collector of Malabar as was the Board's intention".

16. Petitioner studied the voluminous papers at the earliest opportunity afforded by his onerous duties in the District & Sessions Court of Madura and, in obedience to the order of Government, applied to the Board and the Collector of Malabar for records on the 29th April. He has not yet received all the records for which he applied, but among such as he has received are those which he now submits with the earnest prayer that they may be considered in connection with his Memorial.

17. Petitioner deeply regrets the inconvenience which he feels must be caused by this supplement to his Memorial and craves indulgence in view of the circumstance that the facts which have now come to his knowledge for the first time are of vital importance in showing that the Madras Government has finally accepted and acted upon the opinion for which it orginally condemned Petitioner.

Madura,
29th June 1893.

APPENDIX E.

REVENUE DEPARTMENT.

Proceedings of the Madras Government.

Read letter from J. W. F. Dumergue Esquire, I. C. S., Acting District Judge of Madura, dated 29th June 1893, submitting a Supplemental Memorial to the Right Honorable the Secretary of State for India.

Order thereon, 26th July 1893, No. 2755.

The transmission of the Supplementary Memorial received with the letter read above will be withheld under Rule XII (3) of the Memorial Rules.

XII. Governments and Administrations in India are vested with discretionary power to withhold the transmission of Memorials addressed to Her Majesty or to the Secretary of State in the following case.

"(3). When a second Memorial is presented after a decision has already been given by the authority to which it is addressed and when no new facts or circumstances are adduced which afford grounds for a reconsideration of the case. A Memorial addressed to Her Majesty by a person whose appeal to the Secretary of State has already been rejected, shall be held to be a second Memorial to the same authority and shall not be transmitted".

(True Extract)

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

GOVERNMENT OF MADRAS
17 MAR 94

To

The Right Honorable the Earl of Kimberley, K. C.
Secretary of State for India
in Council.

The humble Memorial submitted by John Willoughby Francis Dumergue, District Judge of Madura.

MOST RESPECTFULLY SHEWETH THAT—

Petitioner has now been condemned again by the Madras Government in its Order, dated 19th August 1893 No. 739 Revenue, (Appendix A) in connection with some of the matters disposed of by your Lordship's Despatch No. 10 Revenue, dated 22nd June 1893, of which the first and second paragraphs were communicated to him with G. O. No. 2747 Misc., dated 26th July 1893, and humbly begs leave to prefer this appeal and prayer for justice and redress.

2. The charges on which Petitioner has now been condemned are those to which he referred in paragraph 60 *et seq.* of his first memorial and in the postscript thereto. Three months after Petitioner had submitted that memorial, the Madras Government, in its Order No. 369, dated 30th January 1893, directed Petitioner to submit to itself the explanation which had been called for in September 1892 by the Board of Revenue in the Settlement Department, but this order was not communicated to Petitioner until the 8th April 1893, his memorial having meanwhile been despatched to your Lordship by the Madras Government on the 7th March 1893. After obtaining some records, Petitioner submitted his explanation (Appendix B) to Government on the 11th July 1893 and the Madras Government, stating that Petitioner has been guilty of grave impropriety, has granted him promotion only from the 12th August 1893, instead of from the 4th February 1893, the date on which he was entitled to the same.

Petitioner has thus suffered substantial injury in loss of rank, since he has been superseded by three junior officers. He has also suffered loss of salary amounting in round figures to Rs. 2,500. With the utmost submission, he hopes to convince your Lordship that he is innocent of the shameful conduct which, as will be seen hereafter, the Madras Government has imputed to him on no better ground than "conjecture."

3. Petitioner has now been condemned on two charges. Obstruction to the Revenue Settlement of the Walluvanad taluk in Malabar is the substance of the first charge and the

second charge is that Petitioner conspired with the Tahsildar of Walluvanad to entrap Mr. Stuart, the Settlement Officer.

But obstruction to Settlement in the Walluvanad taluk was the identical charge brought against Petitioner by Mr. Stuart in his letter of the 30th April 1892 and, as the Revenue Secretary to Government informed Petitioner not only personally on the 6th July 1892 but in writing on the 2nd July 1892, Mr. Stuart's "complaints were forwarded to Government and circulated to His Excellency the Governor and Members of Government" before Petitioner was condemned on the 17th June 1892. On that occasion the Madras Government stated that his conduct in "allowing his district to be kept in a ferment and split into factions and the Settlement to be impeded and discredited was unpardonable." Petitioner was punished by transfer from his district and the Board was directed to "lose no time in dealing with the subordinate officers concerned after such further enquiry as it may deem necessary." Hence the Madras Government clearly intended at the time that the judgment it passed on Petitioner should be the final judgment.

In paragraph 60 *et seq.* of his first Memorial, Petitioner showed that the accusations of impeding Settlement could have reference to the Settlement of Walluvanad taluk only. On this accusation the Madras Government condemned and punished Petitioner unheard. Thus the Madras Government, having prejudged Petitioner long before it called upon him for an explanation on the 30th January 1893 and condemned him, has now condemned him again.

But it cannot be believed that the Madras Government, having already punished Petitioner, has now punished him a second time for the same offence. Therefore, unless this statement is wrong, the punishment now inflicted on Petitioner has been inflicted solely with regard to the conspiracy of which he is "conjectured" to be guilty.

Hence if Petitioner can prove, as he undertakes to prove, that the "conjecture", on the strength of which he has been condemned and punished, is not only groundless but actually opposed to facts, then he submits he is entitled to a full and honorable acquittal, to redress, and reinstatement.

4. As regards the first charge, the Madras Government states, in paragraph 6 of its Order, that Petitioner "has entirely failed to show that he is not obnoxious to the charge of having neglected to take proper notice of Mr. Stuart's complaints." This, Petitioner respectfully submits, is only a repetition of one of the charges on which he was condemned in paragraph 47 of the Madras Government Order dated 17th June 1892. In paragraph 62 of his first memorial he showed, on the authority of the Revenue Secretary to Government, that he was believed to have left Mr. Stuart's complaints "intentionally unnoticed" for months and now in paragraph 5 of its present order, the Madras Government itself observes that Petitioner's "explanation of his failure to take notice of Mr. Stuart's complaints is only a reproduction of the statements made in paragraph 63 *et seq.* of his memorial to the Secretary of State." This observation, Petitioner submits, is an admission that the charge was directly and substantially in issue when your Lordship disposed of his memorial. Hence, Petitioner would further

submit that, inasmuch as your Lordship has passed final orders on the case, the Madras Government was precluded from reopening it. Since, however, the Madras Government has revived the charge, Petitioner is compelled to crave your Lordship's attention to the following facts.

5. The complaints to which the Madras Government refers were in reality two different sets of complaints, and the Madras Government, failing to keep this distinction in view, has misunderstood and misapplied the explanations Petitioner gave regarding each.

The first set consists of complaints dated 22nd September, 12th October and 7th and 12th November 1891. Of these only the first and second were addressed to Petitioner direct, and the manner in which he dealt with them is explained in paragraphs 63 and 64 of his first memorial which are reprinted in the margin*.

The complaints of the 7th and 12th November were addressed to the Special Assistant Collector, Mr. Batten, and when Petitioner was informed of them, he called for them. His reason for doing so was precisely the same reason as is stated in the second of the marginally printed paragraphs of his first memorial with regard to the complaints addressed to himself.

In respect of these four complaints, the Madras Government omits to notice the facts set forth in the same paragraphs of his first memorial, that he had himself brought the existence of complaints to the knowledge of the First Member of the Board of Revenue and had, after thus consulting his official superior, decided to postpone action on side-issues which could not be disposed of without the orders of the Board. Hence, with regard to these four complaints, the course adopted by Petitioner had the sanction of higher authority.

* 63. It has been assumed that Petitioner took no notice for months of Mr. Stuart's complaints. The truth is that Mr. Stuart addressed only two complaints to Petitioner regarding the Walluvanad Tahsildar; one, dated 22nd September 1891, related to the state of certain village accounts and contained sweeping charges of incapacity, but not impertinence, against the Tahsildar and other officials. Petitioner enquired into this at once and found that the permanent Menon (Kurnam) had been already suspended by the Divisional Officer for negligence of duty, but that the complaint regarding the state of the accounts was exaggerated, and Petitioner informed Mr. Stuart of the latter result of his enquiry. Mr. Stuart subsequently complained to the Board of Petitioner's "apathy"—Petitioner thinks this was the word used. This was one of the complaints (*Vide* para. 65 *infra*) first entertained and then withdrawn by the Board.

64. The second complaint was contained in Mr. Stuart's letter, dated 12th October 1891. In it Mr. Stuart complained against the Tahsildar of having, on complaint being made against some village officials, reported them for punishment to the Divisional Officer and not to himself. Mr. Stuart also charged the Tahsildar with having written him an impertinent letter. On enquiry Petitioner found that the village officials had been punished by the Divisional Officer, and no further action was necessary. The letter complained of by Mr. Stuart was a reply to a peremptory letter from Mr. Stuart, reprimanding the Tahsildar for his procedure. The Tahsildar maintained that his procedure was correct; and he was right, whereas Mr. Stuart was wrong in finding fault. Apart from the merits of the case, Mr. Stuart, as a Deputy Commissioner in the Settlement Department—this is what Mr. Stuart calls himself in one of his letters to the Board—had no authority to reprimand a Tahsildar in the Revenue Department any more than a Revenue Officer would have authority to reprimand a Supervisor in the Settlement Department. No one has maintained discipline more strongly than Petitioner, but discipline cannot mean that a Tahsildar, who is, in the words of Government, "a native gentleman of consideration", is precluded from defending himself from taunts, threats and accusations emanating from an officer who is not placed in authority over him. Shortly after the receipt of Mr. Stuart's letter, and while the matter was pending, Petitioner personally informed the Hon'ble Mr. Grose, First Member of the Board, of Mr. Stuart's complaints, of Mr. Stuart's persistent attempts to discredit the Tahsildar (whom the Revenue Secretary to Government had suggested to petitioner as a fit and proper officer for the post of Huzur Sheristadar) and destroy his influence in the taluk and of the consequences. Petitioner represented that the matter required the orders of the Board, but it would be better to exclude any side-issues and to wait till the question of Wynaad Escheat Settlement was disposed of, when he would report on the whole subject. Petitioner adopted this policy solely with the view of avoiding irrelevant matter for irritation and prejudice, and he could not suspect that Mr. Stuart would systematically undermine it. One of the cases now referred to was, as stated above, reported by Mr. Stuart to the Board in the Settlement Department, and it will be seen immediately that the Board not only took no action itself but also prevented Petitioner from taking any action.

6. The second set of complaints, of which there were eleven, was addressed by Mr. Stuart to Mr. Batten on the dates shewn in the margin*.

* No. 2356	... ...	25th Feb. 1892	
,, 2366	... ...	26th	Do.
,, 2368	... ...		
,, 2370	... ...		
,, 2384	... ...	27th	Do.
,, 2391	... ...		
,, 2410	... ...	29th	Do.
,, 2423	... ...		
,, 2444	... ...	1st Mar.	Do.
,, 2455	... ...	3rd	Do
,, 2506	... ...	10th	Do.

Not one of these eleven complaints was made by Mr. Stuart until after he had been directed by His Excellency the Governor to "represent whatever he had to complain of" to the Board in the Settlement Department. The opening paragraph of Mr. Stuart's letter to the Board dated 30th April 1892 No. 161, of which the first sentence has been quoted in paragraph 1 of the Board's Proceedings (Appendix A), runs as follows :—

"During the last Christmas holidays I had the honour of representing in person to His Excellency the Right Honorable the Governor and to some Members of the Board certain facts, showing the hostile attitude that had been adopted towards me and the Settlement Party in this district and the grave obstruction that was being placed in the way of Settlement operations in the Walluvanad taluk. On the 7th January 1892, I received, through the Private Secretary to the Governor, His Excellency's command to represent whatever I had to complain of 'to the Member of the Board in charge of the Settlement Department, stating that I had taken this course under instructions received from His Excellency'."

Before carrying out His Excellency's orders and making a representation, as directed, to the Board, but after having seen Petitioner's report of the 14th December 1891, in which Petitioner adversely criticised the Escheat Settlement of Wynaad as conducted by Mr. Stuart and which had been forwarded to Mr. Stuart with the Board's Proceedings of the 15th January 1892, Mr. Stuart sent these eleven complaints in fourteen days to Mr. Batten and then repeated them in his letter to the Board of the 30th April 1892, quoting them as instances of Petitioner's alleged neglect.

7. Before these eleven complaints were made and brought to Petitioner's notice, Mr. Stuart had written a letter to the Board in the Settlement Department on the 3rd December 1891 accusing the Tahsildar of Walluvanad of insubordination and impertinence, making vague charges against Petitioner of connivance in the alleged offence and of obstruction to Settlement and at the same time suggesting Petitioner's removal from the District.

This letter was forwarded to Petitioner with the Board's Proceedings, dated 5th January 1892, and on 17th January 1892 Petitioner called on the Tahsildar for explanation. On 2nd February 1892 Petitioner asked the Board in the Settlement Department to call on Mr. Stuart to specify his complaints against Petitioner. (Paragraph 65 of Petitioner's first Memorial).

With reference to his letter of the 2nd February 1892, which is printed in the margin* the Board in the Settlement Department in its Proceedings dated 12th February 1892 directed Petitioner to return Mr. Stuart's letter of 3rd December 1891 and its enclosures. The only conclusion Petitioner could draw from this order was that the Board intended to make the enquiry Petitioner had demanded.

SIR,

I have the honor to acknowledge receipt of the copy of Board's Proceedings, No. 6264 Mis., dated 29th October 1891, with which I have been furnished in reply to my letter, Reference $\frac{186}{R}$ of 1892, dated 22nd instant, on the Board's Proceedings, No. 76 Mis., dated 5th idem.

2. In paragraph 4 of the former Proceedings, Mr. A. E. C. Stuart was ordered to report on the nature of the inaccuracies in certain Revenue accounts, and in paragraph 11 of his letter, No. 1666, dated 3rd December 1891, Mr. Stuart has, as an integral portion of his report, deliberately brought against me the charge of obstructing and of teaching my subordinates to obstruct the progress of Revenue Settlement in the district.

3. The charge is a serious one because, if it were true, Mr. Stuart would be justified in asking the Board and Government, as he has asked them, not to tolerate my administration of the district, but the records of my office show that, when Mr. Stuart has deserved my support, he has invariably received it. Mr. Stuart, however, asserts that the contrary can be proved by his records, and I am sure that the Board will consider the matter to be one which requires, and in which I am entitled to, the fullest enquiry.

4. It will at the same time be obvious that Mr. Stuart's allegations in their present form are far too indefinite to admit of such enquiry or to enable me to submit remarks on Mr. Stuart's reports as directed by the Board. I must, therefore ask that Mr. Stuart may be required to furnish specific instances, supported by records, of the obstruction of which he complains. This is not the first time that Mr. Stuart has indulged in a general accusation, uncorroborated by evidence, for which I applied in my letter to the Board, No. $\frac{683\ P.}{G1.,}$ dated 4th July 1891, but which I have never received. Now, however, Mr. Stuart states that records are available, and he ought, therefore, to find no difficulty in producing his proofs.

While he was waiting for this enquiry he was informed by the Special Assistant Collector, Mr. Batten, that Mr. Stuart had sent a series of complaints (*i. e.* the complaints now in question) alleging obstruction to Settlement in the Walluvanad Taluk. Petitioner instructed the Special Assistant Collector to send him the complaints, as the matter was pending with the Board, and to inform Mr. Stuart of his action.

In support of this statement Petitioner would invite attention to the account given by Mr. Batten himself, as follows :—

"I was in Calicut, my then Head Quarters, from the 29th February to the 3rd March 1892. I mentioned to Mr. Dumergue that I had received the above eight letters saying generally that they concerned the conduct of the Walluvanad Tahsildar. Mr. Dumergue then ordered me to forward the letters to him and to do the same with any letters I might subsequently receive regarding the Walluvanad Settlement or the Walluvanad Tahsildar, and said that the whole question was pending before the Board of Revenue. That the question was pending with the Board was, to the best of my recollection, previously mentioned to me by Mr. Dumergue in December or January." (Extract from para 9 of Mr. Batten's letter to Collector of Malabar, dated 5th April 1893.)

Mr. Batten accordingly forwarded ten complaints to Petitioner with his letter of the 9th March and at the same time "furnished a note showing that where mistakes had been committed they had been rectified and that the complaints were groundless and frivolous." (Paragraph 66 of Petitioner's first Memorial). The eleventh complaint was forwarded to Petitioner subsequently.

"Many of these complaints were similar in nature, if not in substance, to the complaints which had already been made to the Board in the Settlement Department and which, as Petitioner has already pointed out, had been recalled by the Settlement Department on the 12th February 1892." (Paragraph 66 of Petitioner's first Memorial).

The Madras Government in stating that these eleven complaints were forwarded to Petitioner "in accordance with his verbal instructions" has entirely omitted to notice the reason why Petitioner called for them, although it was expressly stated by Petitioner and by Mr. Batten. But the reason is obviously a material fact and cannot be excluded from consideration.

8. After recalling Mr. Stuart's letter of the 3rd December 1891 on the 12th February 1892, the Board in the Settlement Department recorded it on the 6th April 1892 without complying with Petitioner's demand for a full enquiry. On the 10th April 1892 Petitioner, in the letter which is now printed in the margin,* protested against the order recording the papers and asked that they might be laid before the Full Board. Petitioner received no answer and it was impossible for him to pass orders on matters pending with the Board and on complaints in which he himself was practically accused.

N.c.

SIR,

With reference to the Board's Proceedings dated 6th instant, No. 3358 Mis., I have the honor to submit that justice to myself and my subordinates demands something more than an order which merely places on record, without comment, the charges Mr. Stuart has thought fit to bring, and which at the same time implies that so far as the Board has been able to make up its mind on the subject, there is some ground for those charges.

2. Mr. Stuart deliberately accused me of practising and of inculcating on my subordinates a policy of obstruction to the work of Settlement, and stated that he could make good his accusations by records; he accused the Tahsildar of Walluvanad of insubordination and impertinence; he accused the same officer of duping the Special Assistant Collector, and accused the Special Assistant Collector of being duped.

3. The Board in the Settlement Department entertained these accusations, and called on me for an explanation. Having done this, the Board was, I respectfully venture to think, bound to decide the case on its merits. In response to my request that Mr. Stuart might be compelled to define and substantiate his accusations, if he could, the Board recalled the papers, and I hoped that this step was taken in order that my request, which was surely not unreasonable, might be complied with. But the order which the Board has now vouchsafed simply records the papers, and directs me to instruct the Tahsildar of Walluvanad to comply with Mr. Stuart's requisitions without delay. The latter part of the order creates the impression that, in the Board's opinion, there is some truth in Mr. Stuart's assertions.

4. Granting that Mr. Stuart is entitled to the utmost consideration, there is, I submit, no reason why I should be denied such consideration as is required by justice. I have not the slightest wish to prejudice Mr. Stuart with regard to certain other matters which are pending with the Board and the present subject has no connection with them. Mr. Stuart alone is responsible for bringing the subject into discussion, and, with the greatest respect for the Board, I must decline to allow broadcast accusations to be made against myself and my subordinates with impunity for the accuser and without redress for the accused. Under these circumstances, I am compelled to request that this letter and the connected papers may be laid before the Full Board.

9 No action on his part, Petitioner submits, could have prevented this accumulation of complaints, which followed each other in rapid succession while Mr. Stuart's letter of the 30th April 1892 was in contemplation and which were used in that letter as a ground for accusation against Petitioner.

Petitioner would now earnestly ask that the accusations, which he was called upon by the Board of Revenue in the Settlement Department* to answer and which are set forth in paragraph 19 of his letter to Government dated 11th July 1893 (Appendix B), may be read when, as Petitioner ventures to think, it will be seen that he could not, consistently with honor and the responsibilities of his position, have adopted any other course than that of demanding a full enquiry in just expectation that his demand would be complied with.

* B. P. of the 5th Jan. 1892.

10 Petitioner would next invite attention to a very important fact, namely, that the Board of Revenue has now given two distinct explanations for leaving his demand for a full

enquiry unnoticed. Both these explanations are contained in paragraph 12 of the Board's Proceedings attached to Appendix A. One is that the Board "recorded the papers with the express object of inducing the two officers, Messrs. Dumergue and Stuart, to proceed with their duties by ignoring their mutual recrimination." The other is that, because Petitioner's demand was made at a time when the Board knew that Mr. Stuart was "formulating specific charges" under the orders of His Excellency the Governor, there was "no occasion" to comply with Petitioner's request.

11. Petitioner would submit that these two explanations are altogether inconsistent and that whichever explanation is accepted, it will show that his conduct was blameless.

If the Board ignored Petitioner's request because it wished to prevent recrimination, it approved by its own conduct of the policy he had already adopted with regard to Mr. Stuart's earlier complaints.

But if the Board ignored Petitioner's request because it knew that further accusations were being formulated against him, this in itself is ample justification for the course taken by Petitioner with regard to Mr. Stuart's later complaints. These later complaints were made only after Petitioner had demanded the fullest enquiry; they would have formed the subject of that enquiry; they were, as a matter of fact, to a great extent the basis of the accusations which the Board was "expecting" and they were finally embodied in Mr. Stuart's letter of the 30th April 1892.

In paragraph 8 of its present order the Madras Government states that "the Board's action in the matter had no bearing whatever on Mr. Dumergue's failure to take notice of the complaints made by Mr. Stuart direct to himself and Mr. Batten." If Petitioner had been independent of the Board, this statement would be correct. But Petitioner was subordinate to the Board, and the facts set forth above prove that his whole conduct was regulated by, and was in submission to, the action of the Board. Hence the view taken by the Madras Government seems erroneous.

12. When the Board deliberately entertained accusations against Petitioner and called on him for a reply, he was bound to attend to its call. It will now be seen on the one hand that the Board states that it wished to prevent recrimination and on the other that it gave Petitioner the opportunity for recrimination by requiring him to meet vague accusations. At the same time the facts prove that Petitioner, so far from making use of the opportunity, frankly and loyally asked his superiors to make the fullest enquiry.

13. The theory that Petitioner desired an opportunity for recrimination gains colour from the representation which has apparently been made that he alone is responsible for Mr. Stuart's exclusion from the enquiry entrusted to Petitioner. But a recent communication addressed to him by the Board shows that Mr. Stuart wrote three letters direct to the Madras Government on that point, as Petitioner believes, on the 15th, 22nd and 29th June 1891.

Petitioner referred in para 36 of his first Memorial to one of these letters and thought it was addressed to the Board. On the 29th April 1893, he applied, under the G. O. of the 30th January 1893 mentioned in para 2 *supra*, to the Board for a copy "of a letter addressed by Mr. A. E. C. Stuart to the Board (R. S. L. R. & A.) in June 1891 regarding the enquiry into Wynaad Escheat Settlement." On the 5th June 1893 the Board stated that no such letter could be traced, but on the 28th June 1893 stated that three letters had been found and instructed Petitioner to apply for copies to Government, because the Board itself had merely copies. Later on Petitioner applied to the Madras Government, which declined to give him the copies. He then repeated his request, stating that he required them for the purposes of this appeal. The Madras Government again declined to give copies on the ground that the letters in question contain applications from Mr. A. E. Castlestuart Stuart for permission to prosecute the Malabar and Travancore Spectator for libelling him and that they would not help Petitioner in his appeal. The reason why Petitioner asked for the papers was that, as stated in para 36 of his first Memorial, the Settlement Commissioner had informed him that Mr. Stuart had written, regarding the enquiry Petitioner had been ordered to make, a violent letter which could not be shown to Petitioner as it would not fail to irritate him. Petitioner certainly understood at the time that the letter contained a protest against the enquiry being entrusted to him, to the exclusion of Mr. Stuart, because the Settlement Commissioner asked Petitioner to show him the order under which he was making the enquiry and on seeing it remarked that Petitioner was justified in his action. Petitioner submits that a request for permission to prosecute a local newspaper could not have irritated him and he must most respectfully ask the Madras Government to forward the letters in question for your Lordship's consideration. In paragraph 4 of a letter addressed to the Board of Revenue in the Settlement Department on the 16th June 1891, forwarding a copy of his letter to Government of the 15th idem—one of the letters now in question—Mr. Stuart wrote as follows :—

"I respectfully submit that if that petition" (*i. e.* the Ex-Revenue Inspector's petition referred to in paras 5 and 11 to 14 of Petitioner's first Memorial) "had reference to the Wynaad Escheat or other operations conducted by me or to any of my subordinates, I consider I am entitled to be furnished with a copy and with any orders that may have been passed upon it. If the Board concurs in this view, I request that the necessary orders may be issued at a very early date."

Whatever orders may have been passed by the Board or by the Government, the Government left the enquiry to be conducted by Petitioner alone and he could only obey orders as he did.

14. To sum up, Petitioner would submit—

(1) That the matter is *Res judicata*;

(2) That Petitioner was originally condemned unheard and his case was prejudged;

(3) That Petitioner deferred action on Mr. Stuart's earlier complaints with the knowledge and approval of the First Member of the Board, with the declared object of avoiding controversy, and that this course is now shown by the Board to have been in accordance with its own intentions;

(4) That Mr. Stuart's later complaints were not made

(i) until after Mr. Stuart had been ordered by His Excellency the Governor to represent them to the Board, and

(ii) until after Petitioner, though ignorant of the order given to Mr. Stuart, had demanded the fullest enquiry on 2nd February 1892;

(5) That the first of these later complaints is dated the 25th February 1892 and the last the 10th March 1892; that they were repeated to the Board on the 30th April 1892 and that they have also been cited as instances of Petitioner's wilful neglect to take notice of Mr. Stuart's complaints;

(6) That Petitioner expressly reserved these complaints for disposal in the enquiry he had demanded at the hands of the Board, as they had been made subsequently to his demand;

(7) That until 6th April 1892 Petitioner was awaiting the Board's orders in the Settlement Department on his request of the 2nd February 1892; and

(8) That when that request was ignored, he repeated it on the 10th April 1892 and again awaited orders which he never received.

It will thus be seen that throughout the original disposal and revival of this charge, no injustice could be greater than the injustice Petitioner has suffered.

15. The second charge on which Petitioner has now been condemned—that he conspired with the Tahsildar to entrap Mr. Stuart—has reference to a demi-official letter addressed to Petitioner by the Tahsildar on the 4th December 1891. That letter was placed by Petitioner in the official records and was found there by Mr. Bradley, his successor in Malabar.

16. The Madras Government has quoted only one passage from that letter as a proof that the Tahsildar suggested a conspiracy. Assuming for this reason that the letter did actually suggest a conspiracy, the Madras Government finds Petitioner "fully guilty of conspiracy" because he did not at once repudiate the suggestion but, as it is said, "actually adopted it." Having first arrived at this decision, the Madras Government in the next place "can only conjecture" that Petitioner left the letter on record "inadvertently." Then distinctly stating that the charge of conspiracy was "implied in the call for explanation" the Madras Government at the same time finds it "clear that Petitioner himself was conscious that he had laid himself open to such an imputation." In the end, the Madras Government is of opinion that "the facts are such as to warrant an inference that the imputation was well-founded."

17. Petitioner confidently hopes to be able to convince your Lordship that there is nothing to justify the imputation of the Madras Government that he adopted any suggestion of conspiracy, that he was guilty of entering into any conspiracy, or that he left the Tahsildar's demi-official letter on record "inadvertently." The facts that Petitioner, as observed by the Board, initialled the letter with date of receipt, caused the letter to remain in the Collector's Office, and caused part of it to be extracted for a precis prepared by the Head Clerk of the Collector's Office disprove these suggestions.

18. Petitioner submits with the greatest deference that the Madras Government, by assuming—on the strength of one passage in the Tahsildar's demi-official letter separated from its context—that a conspiracy was suggested, has begged the question and has overlooked the circumstances and records connected with the letter.

19. In the first place, it never occurred to Petitioner for an instant that a Tahsildar, writing to his Collector demi-officially, would suggest a conspiracy. In the next place, the theory of a conspiracy is based on an assumption that a report was required from the Tahsildar and that the Tahsildar suggested the withholding of that report in order to entrap Mr. Stuart. Petitioner now entreats your Lordship to note the following facts which, he ventures to think, will prove the reverse of this assumption.

20. The Tahsildar's demi-official letter was written expressly with reference to an official letter No. 1546 dated 12th November 1891 from Mr. Stuart to the Special Assistant Collector. In paragraph 2 of his letter Mr. Stuart said that the Tahsildar "in the plenitude of his ignorance" had made inconvenient arrangements regarding the hours when village officials were to attend the Settlement Party. Then, after stating that a village accountant (Menon) had absented himself for a certain number of days, Mr. Stuart, referring to an explanation given by the Tahsildar on the 10th November 1891, wrote that the Tahsildar would find it "difficult to adduce good reason for his gaseous asseverations." Later on in the letter, Mr. Stuart deliberately charged the Tahsildar with falsehood and finally expressed his intention of reporting the matter to the Board.

21. A reference to paragraph 9 of Petitioner's letter to Government (Appendix B) will show that the Tahsildar had made provisional arrangements for the conduct of Settlement and Revenue work in accordance with instructions given him by Petitioner with the "sole object," as now admitted by the Board, "of facilitating administration." Mr. Stuart's official letter was the result. It had been endorsed by the Divisional Officer to the Tahsildar for report, but Petitioner was informed of it and still adhering to the policy of avoiding controversy he had adopted with the knowledge and sanction of superior authority, determined that no report should be made and no action taken until the matter of the Wynaad Escheat Settlement was disposed of. Therefore he called the letter in on the 20th November 1891 and in consequence, as *shown

*Extract from Mr. Bradley's letter to the Board, dated 23rd August 1892, para 35;—"Mr. Stuart's letter appears to have been endorsed to the Tahsildar for full and early report by Mr. Batten in his own handwriting, but this endorsement was not issued from the office as the letter was called for by the Collector."

by Mr. Bradley, it was not sent to the Tahsildar for report. It is therefore clear that before Petitioner received the Tahsildar's demi-official letter of the 4th December 1891 which, according to the Madras Government, suggests the conspiracy that no report should be made, Petitioner had decided that no report was to be made.

22. The whole of the Tahsildar's demi-official letter is now printed in the margin.* Whatever may be thought of the language used by the Tahsildar who, as stated by the Madras Government in paragraph 3 of its order, "was not directly subordinate to the Special Settlement Officer," who was dealing with accusations against himself which, if proved, would have entailed severe punishment and who had long been addressed by Mr. Stuart in language which the Madras Government finds was "dictatorial and exasperating," Petitioner submits that the letter could not, under the circumstances, have suggested that a report should not be made, because Petitioner had already decided that a report was not to be made. That the Tahsildar knew of Petitioner's decision and knew that Mr. Stuart's official letter had been called for by Petitioner and was in Petitioner's possession, is proved by the concluding words of the Tahsildar's demi-official letter, as well as by the previous statement in the same letter, that Mr. Stuart's official letter "is with the Collector." Petitioner again submits that the Tahsildar's demi-official letter could not, under the circumstances, have suggested that a report should not be made, because in the concluding words of his demi-official letter the Tahsildar requests that Mr. Stuart's letter may be sent to him if he is required to make an official report on the subject. Moreover in the same passage the Tahsildar requests that the menon's diary, on which he relied as evidence of the mistake Mr. Stuart had made, may also be returned to him for the purpose of the same report. This shows that he had no intention of keeping back any facts from Mr. Stuart's knowledge. The preceding sentence contains a statement that, if Mr. Stuart came to know of the evidence he would refrain from placing himself in an awkward position. If the Tahsildar had intended that no report should be made, so that Mr. Stuart might be placed in an awkward position, the letter, if ever written, would have ended there and the last sentence, which the Madras Government has *not* quoted in its order, would not have been added. As Petitioner read the demi-official letter at the time and reads it now, it meant that if a report were made, the evidence adduced would show Mr. Stuart his

*RESPECTED SIR,

Herewith I beg to submit in original for your information a diary kept by the menon of Arakaparamba Amsam, who was lately fined by the Special Settlement Officer for alleged neglect of duty, showing the dates on which he (the menon) was engaged with the classifier on Settlement work. The entries in the diary were initialled by the classifier and he could not therefore now repudiate their correctness. This diary will, I trust, completely demolish Mr. Stuart's statements made in his letter (is now with the Collector) to Mr. Batten, dated 12th November 1891 No 1546, that the menon worked only 41 out of 61 days in August and September last. Further, the diary will conclusively prove the very contrary to Mr. Stuart's assertion that the menon did no Settlement work on Sundys and other authorized holidays. Except for three days in September, the menon worked with the classifier on all holidays. If I am now to make an official report to you, through Divisional Officer, refuting Mr. Stuart's allegations made against the menon in the letter above quoted, it is more than likely that Mr. Stuart will come to know of the existence of this crushing evidence and may therefore wisely refrain from reporting to the Board of Revenue as he has threatened to do and thus save placing himself in an awkward position. If I am required to make an official report on the subject, I request that the diary may be returned with Mr. Stuart's letter and its enclosure.

I beg to remain
Respected Sir,
Your Most Obedient Servant,
(Signed) ANANTA PATTAR,
Tahsildar.

Peruntalmanna,
4th December 1891.

mistake and prevent him from committing a further mistake. If the Tahsildar had wished to entrap Mr. Stuart, then as Petitioner had already decided that no report was to be made, the Tahsildar would have gained his object by remaining silent. Clearly therefore the only possible purpose the letter could serve was to suggest that a report should be made and the matter thereby ended.

23. In addition to these facts, the Tahsildar's letter was a demi-official letter which no sane man would use as a vehicle for conspiracy ; the Tahsildar himself first drew attention, in his official explanation, to the fact that he had submitted the menon's diary to the Collector and Mr. Bradley states that the diary was the enclosure to the Tahsildar's demi-official letter. If there had been any idea of conspiracy in the Tahsildar's demi-official letter, he would not have prominently drawn attention to the fact that he had submitted it directly to the Collector. All these circumstances, Petitioner submits, prove that there is no reasonable ground for imputing to the Tahsildar a suggestion of conspiracy. On the other hand, they support the assurance Petitioner gives that he did not perceive in the demi-official letter any suggestion of conspiracy. If he had perceived any and if, as stated by the Madras Government, he adopted it and were fully guilty of conspiracy, every instinct of self-preservation, as well as the astuteness necessary for a conspiracy, would have impelled him to destroy the letter and not to place it on record as he did. That he did leave it on record is an undoubted fact and the question is whether he did so designedly or, as "conjectured" by the Madras Government, "inadvertently." Without this "conjecture," Petitioner submits that the whole charge is without foundation.

Petitioner would add that the Tahsildar has never been called on, either by Mr. Bradley the Collector of Malabar, or by the Board of Revenue, or by the Madras Government, to furnish an explanation on the point.

24. When this letter was received, Petitioner was engaged with his reports of the 14th December 1891 and 14th January 1892 on the Wynaad Escheat Settlement (Appendices A and B to his first memorial). The draft of the second letter was not finished until the end of the Christmas holidays. Then Petitioner was obliged to proceed at once to the Collengode forests in the Palghat taluk in connection with a boundary dispute between the British Government and the Cochin State. He was occupied with this duty until nearly the end of January and on the 11th January received the Board's Proceedings (Settlement Department) calling on him to answer Mr. Stuart's accusations of the 3rd December 1891. As already stated, Petitioner then considered that the matter had been taken out of his hands and, on the 2nd February 1892, a few days after his return to Calicut, he submitted his request for a full enquiry. Never doubting that a full enquiry would be made, he had a precis prepared of the papers then in his office and connected with the subject. Among these papers were Mr. Stuart's official letter of the 12th November 1891 and the Tahsildar's demi-official letter of the 4th December 1891 with its enclosure.

25. Mr. Bradley, who succeeded Petitioner as Acting Collector of Malabar, expressly

informed the Board that he found Mr. Stuart's letter of the 12th November 1891 "placed in the records with a confidential demi-official letter from the Tahsildar, dated 4th December 1891." Since Petitioner had asked for a full enquiry, the only straightforward course he could take was to place on record every paper connected with it. He did so, with the result that the Madras Government "can only conjecture" that he did so "inadvertently."

26. Petitioner submits with the greatest respect that the Madras Government was bound to accept his word that he had openly and purposely left the Tahsildar's demi-official letter on record, and he solemnly declares that he did so intentionally. Without a particle of evidence, and expressly on no better ground than mere "conjecture," the Madras Government has not incidentally, but deliberately and directly, cast the most injurious doubt on the good faith and honor of an officer whom, at the same time, it has selected to administer justice in one of the most responsible courts in the Presidency.

27. Petitioner, however, is able to adduce proof as against "conjecture." Not only in this Memorial but also in paragraph 66 of his first Memorial, Petitioner has alluded to the precis of papers he had prepared on the 11th February 1892, and he now prays that the extract from that precis, which forms Appendix C to this Memorial, may be read.

28. In that precis the Tahsildar's demi-official letter is not expressly quoted, but Mr. Stuart's official letter of the 12th November 1891, with which Mr. Bradley found the demi-official letter placed on record, is quoted and the diary which was enclosed in the Tahsildar's demi-official letter is discussed in detail; the statements made by Mr. Stuart in his official letter and by the Tahsildar in his demi-official letter as to the number of days a village accountant worked with the Settlement Party in August and September are also fully discussed and the evidence afforded by the diary on which the Tahsildar relied is criticised. Unless Petitioner had intentionally placed the Tahsildar's demi-official letter on record, where it was found by Mr. Bradley, the statements contained in it could not possibly have been noticed in a precis prepared by the Head Clerk of the Collector's Office.

29. Petitioner humbly urges a consideration of these facts as conclusive proof that the "conjecture" of the Madras Government, that he left the Tahsildar's demi-official letter on record "inadvertently", is unfounded and that he left it on record, as he declares, intentionally. That he did thus leave it on record, and had it thoroughly examined in the Collector's Office, is again, Petitioner submits, conclusive proof that he was absolutely innocent of any conspiracy.

30. As to the allegation made by the Madras Government, that Petitioner showed he was conscious of having laid himself open to the charge of conspiracy, Petitioner submits that it is inconsistent with the preceding statement in the same sentence that "the charge was implied in the call for explanation." If, as stated by the Board, differing from the Madras Government, in para 13 of its Proceedings dated 3rd August 1893, no such charge had been preferred against Petitioner, there might have been room for the theory that he showed a guilty conscience in repudiating such a charge. But in the first place, Petitioner

was aware that Mr. Bradley, Petitioner's successor in the Malabar Collectorate, had not concealed his opinion that the Tahildar's demi-official letter, upon which Mr. Bradley 'made no comments, as it was, he thought, necessary that it should be sent to Mr. Dumergue for explanation,' was evidence of a conspiracy between Petitioner and the Tahsildar. In the next place, the Board of Revenue itself, before it had seen Petitioner's explanation, was evidently of the same opinion, because in para 24 of its Proceedings dated 14th December 1892, it quoted the Tahsildar's demi-official letter and stated that Petitioner's "failure to notice the Tahsildar's conduct was, in these circumstances, to condone it and lent color to any supposition the Tahsildar may have entertained that the Collector would support him in his misdoings." In the same paragraph of the same proceedings the Board further states that its object in calling on Petitioner for an explanation, as mentioned in the postscript to his first Memorial, was to afford him "an opportunity to explain his conduct as it appeared from Mr. Bradley's report." Hence Petitioner submits that, as acknowledged by the Madras Government, the charge was most undoubtedly implied and that he was bound to meet it openly and directly, or it would assuredly have been said that he attempted to evade it and therefore admitted it.

31. Petitioner relies with the confidence of innocence on the facts now set forth as proof that the imputation cast on him by the Madras Government is unfounded. Whatever errors of judgment he may have committed in the policy he adopted with the knowledge and, as he understood, with the sanction of superior authority, he submits that his conduct throughout has been upright and honorable. The high public character which, the Madras Government will admit, he sustained until he was so suddenly condemned in June 1892 on charges which were not set forth and against which he had no opportunity to defend himself, surely entitled him to consideration. But instead of showing him the slightest consideration, the Madras Government has now, as before, taken the worst possible view of his actions, has reversed the established principles of justice, which require that innocence and not guilt shall be presumed and that no man shall be convicted without proof of guilt, and has admittedly condemned Petitioner on "conjecture."

32. The first intimation given to Petitioner that he had again incurred the displeasure of Government was conveyed in a demi-official letter addressed to him by the Revenue Secretary to Government on the 7th July 1893, wherein Petitioner was threatened with supersession if he failed to submit his explanation regarding the Walluvanad Tahsildar's case within ten days. On the 6th July 1893, the preceding day, the Revenue Secretary to Government had sent Petitioner an Official Memorandum enquiring when his explanation would be ready. Both these documents are printed in the *margin and it will be noticed

No. 104. Revenue Department.

Official Memorandum.

The undersigned is directed to enquire when the explanation in connection with the Walluvanad Tahsildar's case, called for in G. O. No. 369, dated 30th January 1893, will be submitted.

A very early reply is requested.

Ootacamund 6th July 1893. (Signed) C. A. GALTON, Secretary to Government.

No. 12. Revenue Secretariat. 7th July 1893.

Dear Mr. Dumergue,

I am directed to inform you that grave inconvenience is experienced in consequence of the delay in furnishing your explanation regarding the Walluvanad Tahsildar's case, called for in G. O. dated 30th January 1893 No. 369, Mis., as, until your explanation has been received and considered, His Excellency the Governor is unable to decide whether you should be promoted in filling up existing vacancies on the Civil List. I am accordingly to intimate that unless your explanation is forwarded to the Board of Revenue, through whom it should be submitted to Government, within ten days from the receipt of this letter, His Excellency will proceed to fill up the vacancies irrespective of your claim to promotion.

Yours truly, (Signed) C. A. GALTON.

that when the Official Memorandum of the 6th July was written, no necessity for a threat had been found to exist.

33. Petitioner must now invite your Lordship's attention to a memorial he addressed to your Lordship in continuation of his first memorial. In that supplemental memorial, which was dated the 29th June 1893, Petitioner submitted for your Lordship's consideration, the fact, among others, that the Madras Government had, on the 27th April 1893, concurred in the opinion expressed by the Board of Revenue on the 31st May 1892, that in consequence of the disobedience of orders brought to light by Petitioner, revision of survey in all taluks in which the survey was supposed to have been completed was necessary. Hence the Madras Government had adopted the very course for recommending which it had so severely censured Petitioner. Petitioner's supplemental memorial, which now forms Appendix D, was returned to Petitioner by the Madras Government on the 26th July 1893 on the grounds that it contained no new facts or circumstances and that Petitioner's first memorial had been rejected. (Vide Appendix E).

34. Petitioner submits with the utmost deference that the recent adoption by the Madras Government of the recommendation which it censured Petitioner for making was a new and very material fact, because it came into existence not only nearly a year after Petitioner had been condemned, but also more than a month after the Madras Government had submitted Petitioner's first memorial to your Lordship. Petitioner's object was to show that the Madras Government, by ultimately accepting the conclusions for which it had condemned him, practically admitted that he had full justification for them and had not been actuated by personal and sinister motives as alleged. With the same object, and as his present condemnation by the Madras Government is a sequel to its former order, Petitioner now respectfully asks the Madras Government to inform your Lordship whether, as is currently reported, the present Special Settlement Officer has not stated that there was fraud or negligence amounting to fraud in a branch of the Wynaad Settlement, relating to coffee estates, which was separately dealt with by Petitioner, and whether the present Acting Collector of Malabar has not found it impossible to conduct the Revenue administration of Wynaad satisfactorily on the basis of the present Settlement. Whatever may be the terms of any reports which have been submitted to Government by the present Special Settlement Officer and Acting Collector of Malabar, there is no doubt that by its order dated 11th October

1893 No. 893, the Madras Government has directed the refund, to planters holding estates under private janmis in Wynaad, of the "janmabhogam" or landlords' dues wrongly collected by Government and of the costs of litigation in which they have been involved with their landlords owing to errors in the Settlement, and has also directed refund of assessment on certain lands levied, as stated by Petitioner in his report on the subject, erroneously. There is also no doubt that in the Fort Saint George Gazette of the 12th December 1893, an Officer of the Survey Department was appointed, in addition to the Special Settlement Officer already appointed, "to have charge of Survey and Settlement revision in Wynaad." These are eloquent facts.

35. To sum up this part of the case, Petitioner would submit—

(1) That the theory of a conspiracy is based on the assumption that a report had been required from the Tahsildar and that he suggested the withholding of that report;

(2) That this assumption is opposed to the facts, because Petitioner had already decided that no report should be made and had withdrawn the papers, as the Tahsildar knew;

(3) That in mentioning a report and stating what the result would be, the Tahsildar's only possible object was to suggest that a report should be made, not that a report, which had already been countermanded, should not be made;

(4) That the demi-official letter was admittedly left by Petitioner with the official records and the Madras Government is not justified in "conjecturing" that Petitioner left it there "inadvertently;"

(5) That the Madras Government was bound to accept Petitioner's word that he left the letter on record intentionally;

(6) That as against "conjecture" Petitioner produces proof in a precis which he caused to be prepared in the Collector's Office and in which the arguments advanced by the Tahsildar are fully discussed;

(7) That since Petitioner left the letter on record intentionally, it is clear he did not perceive, adopt, or enter into any conspiracy or suggestion of conspiracy;

(8) That the Madras Government itself admits that a charge of conspiracy was implied in the call for explanation. Hence Petitioner was bound to meet it and the insinuation that he showed a guilty conscience in doing so is inconsistent and incorrect;

(9) That the Madras Government has taken the worst possible view of Petitioner's conduct, "conjecturing" guilt where it was bound to presume innocence;

(10) That the Madras Government threatened Petitioner with supersession in consequence of the delay for which, as shown by the Board, he was not responsible, in submitting his explanation and carried out its threat after receiving his explanation;

(11) That Petitioner had submitted a supplemental memorial in connection with his first memorial, pointing out that the Madras Government had adopted the conclusion for which it had condemned Petitioner;

(12) That the Madras Government refused to forward the supplemental memorial; and

(13) That the Madras Government, by expressly undertaking revision of Survey and Settlement in Wynaad, has adopted Petitioner's conclusions and has thereby proved that his first condemnation, of which the present condemnation is merely the sequel, was wholly unmerited and unjust.

38. Petitioner submits that whatever errors of judgment he may have committed in what your Lordship has declared to be a position of great difficulty and embarrassment, he is entitled to be acquitted on the charges of dishonorable conduct brought against him by the Madras Government, to be freed from the imputations cast on him and to be restored to the position and rank in the service from which he has been unjustly degraded.

39. In praying for reinstatement, after acquittal, Petitioner disclaims all intention of causing pecuniary loss to the officers who have been benefited by the injustice done to himself. His object is to claim the precedence which is his due and the loss of which will most seriously interfere with his prospects of promotion hereafter. He further ventures humbly to claim restoration to the Collectorate of Malabar, since he has been justified by events and since this restoration alone will reinstate him in the eyes of his service and of the public.

Your Lordship's humble Memorialist craves justice and protection at your Lordship's hands and shall as in duty bound ever pray.

Abstract of Memorial submitted by J. W. F. Dumergue, I.C.S., Madras, against the order of the Madras Government, dated 19th August, 1893, No. 739 Revenue.

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1. Petitioner has been superseded by three junior officers. He has also suffered loss of salary to the extent of Rs. 2,500.

2. Two charges have been made against Petitioner.

3. The first charge is obstruction to Revenue Settlement in Malabar by inattention to Mr. A. E. C. Stuart's complaints against the Tahsildar of Walluvanad.

4. But this was one of the charges on which Petitioner was condemned and punished on 17th June, 1892.

5. Therefore the punishment now inflicted on him cannot have reference to this charge.

6. The second charge is that Petitioner conspired with the Tahsildar to entrap Mr. Stuart.

7. Petitioner has been found guilty on "conjecture."

8. Against "conjecture" Petitioner adduces positive proof of innocence.

9. The present proceedings are the sequel to the proceedings of the 17th June, 1892, disposed of in the Secretary of State's Despatch No. 10, Revenue, dated 22nd June, 1893, on Petitioner's appeal.

10. After the order of the 17th June, 1892, was passed, the Madras Government adopted the course which it had condemned and punished Petitioner for recommending.

11. The Madras Government then refused to forward a Supplemental Memorial dated 29th June 1893, in which Petitioner submitted the above fact for consideration.

12. Petitioner was threatened with supersession on the 7th July, 1893, and the threat has been carried out.

13. Petitioner now prays for acquittal and reinstatement.

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