

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 383

Press

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410.411

Dated

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
22nd February 1865.*

No. 410. Read the following Proceedings of the Board of Revenue, dated 15th December 1864, No. 8,038.

Read again letter from the Collector of Nellore, dated 16th September 1864, No. 305, in Board's Proceedings, 13th October 1864, No. 6,770.

Read also the following letter from the same Officer, dated 5th November 1864, No. 360 :—

1. I have the honor to acknowledge the receipt of the Board's Proceedings of the 13th ultimo, informing me, that the scale laid down in their Proceedings of the 30th August had reference only to the *service* of process, and regret I am obliged to trouble the Board for further orders in this matter.

2. "All expenses of distraint," the Board go on to observe, "must vary according to circumstances." I doubt if the Collector has the power to act under such general orders.

3. And until "distraint" is made, as regards the bulk of our work in recovering arrears, viz., the sale of moveable property, no further process can issue.

4. There appears to have been a mistake in the printing at Madras, of Madras Act II of 1864, to which I did not refer in my last letter, but to which I had better refer now. In Section 8 it is printed, "the person employed to distraint shall produce the writing, which, if the arrear together with the batta due to him, under Section 52, be not at once paid, shall be, &c." The "Section" thus quoted by the Act should, I presume, have been Section 53; and I so took it, in writing to the Board. Should I have been wrong, I beg I may be corrected.

5. And so taking it now, I have to call the attention of the Board to the wording of this Section, on which my doubts, as expressed in paragraph 2 of this letter, are based.

6. The Section is very distinct. It says, persons employed in serving notices or *in other process* under this Act, shall be entitled to batta at such rates as may from time to time be fixed by the Board of Revenue with the sanction of Government, and published in the District Gazette. And when these are the provisions of the Act, I doubt whether I should be justified in collecting for the expenses of distraint "according to circumstances."

7. The expenses of distraint will vary with reference to distances, and so far the responsibility must rest on this office; but the rates should, I think, be fixed by higher authority; and it seems to me that as the law stands three distinct steps are requisite, viz. :—

First.—The fixing of the rates of batta by the Board.

Second.—The sanctioning of those rates by Government.

Third.—Their publication in the District Gazette.

8. And as it does not appear that the rates fixed by the Board for the *serving* of process have as yet received the necessary sanction of Government, I would respectfully recommend that the rates be fixed, and the necessary sanction obtained, as soon as possible, for all process under Act II, for which batta is due.

9. There is a further point on which I also request the orders of the Board. As already stated, against personal or moveable property, the first step or process is by way of distraint, for which batta is due, under Section 52, as printed in the Act (Section 8, Clause 1st). Supposing the distrainer to find no personal property available, which has been happening several times lately in Kandukur, is the expense of distraint to be an item of charge under Section 25, when the demand is made against the land, supposing the Collector, according to the usual practice, to proceed against the moveable property first. Under the general provisions of Section 53 all process it would appear can be charged. But the language of Section 25 is specific, and it is a question whether general provisions under such circumstances can be upheld.

10. In giving the Tahsildars authority to act in to-day's Gazette as suggested by the Board in their Proceedings of the 30th August, I have arranged that the sale certificates for the Sub-Division should be sent to the Sub-Collector, acting on the general views of the Board and Government on this subject. But the language used by the Board in paragraph 15 of the Proceedings in question would otherwise bear a more limited construction; and in begging I may be

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informed whether I have rightly apprehended the intention of their orders, I would beg the Board further to inform me, in that case, whether I have gone far enough, or whether certificates of sale, like Puttahs, should be signed by the Head Assistant or any other Officer in immediate charge of a Talook, and if so, in what manner is the sale to be "confirmed by the Collector himself."

11. There is also another general point on which I must request orders. Does Section 52 apply to the village authorities in Inám and Zemindary villages?

12. Whilst, in conclusion, I beg to state that I can give the Board no precise information as to the remuneration hitherto paid in this District to persons employed in serving notices. The practice has been very irregular, and, the distances being unknown, the Arrears Book does not give much information. I shew in the margin* the rates of the Nellore and Guduru Talooks, and they may be taken as indicating the late rates generally.

* Two Annas per day in Nellore Talook.
One Anna ten Pice per day in Guduru Talook.

1. The Board observe that the error alluded to by Mr. Dykes, in paragraph 4 of his letter, in Section 8 of the Act, has been corrected in subsequent editions; for instance in the edition published in the "Fort Saint George Gazette, Supplement," dated 19th July 1864, and subsequent editions, Section 53, and not Section 52, is correctly entered in Section 8 of the Act.

2. In reference to Mr. Dykes's remarks in paragraph 6, &c., the Board observe that Section 53 of the Act provides for batta at rates sanctioned by Government being given to persons employed in any process under the Act, not merely (as from the wording is clear) in serving a process. But this provision will not prevent other costs being included in the charge against a defaulter. Section 5 of the Act empowers Collectors to recover arrears with interest and cost of process by sale of defaulter's moveable or immoveable property. Batta is part of the cost. The fact that batta is expressly mentioned in Clause 1st, Section 8, seem to point out that this is a charge at once demandable from the defaulter, and must be paid with the arrears to avoid the distress. If distress is made, the notice informs defaulter (Clause 2nd) that sale will ensue if interest, batta, and all expenses of distress be not previously discharged.

3. With reference to paragraphs 7 and 8, the Board are about to seek the sanction of Government to a scale of batta which may be revised.

4. On the point noticed in paragraph 9, on which the Collector requires instructions, the Board would observe that in such cases, the only charge will be the batta due to the persons sent to distrain, and that that charge would, the Board conceive, be legally debitable to the defaulter and chargeable upon the landed estate, as part of costs of process, which, under Section 5, may be recovered by sale of moveable and immoveable property. If to avoid sale of landed property the Collector proceeds first against the moveable property, and finds none, or not enough to satisfy the demand, that is no reason why the charges incurred in proceeding to distrain it should not be afterwards levied from the proceeds of the landed estate. The Board are confident it would never be held by any Court that this item could not be realized from the defaulter. It is a charge incurred in consequence of default, and is recoverable as an arrear under Section 54. In Section 25, the words used are the "amount due," and a specific charge for this item might be entered in the written demand to be served under this 25th Section. Sections 27, 37, 42, 48, 55, all go to shew that the demand alluded to by the Collector in paragraph 9 of his letter could be legally enforced.

5. With reference to paragraph 10, the Board observe that it was their intention, as expressed in paragraph 15 of the Board's Proceedings, dated 30th August 1864, No. 5,613, that the Collector should confirm every sale himself. This was specially enjoined, as it was deemed advisable for the present at least, that the Collector in this respect should take the place of the Board, in order that landed property might not, through haste or want of attention, be unnecessarily sold to the detriment of the owner. Mr. Dykes must therefore re-call his order, and require that every proposed sale of land be first confirmed by himself.

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6. In regard to paragraph 11, the Board do not see any reason why Section 52 of the Act should not apply to the village Officers in Zemindaries over which the Collector has authority.

7. In paragraph 12, the Collector shews that the batta usually payable for serving notices is two Annas or less per day. This is about the rate proposed by the Board; but Mr. Dykes now proposes eight Annas a day, which is an unnecessarily high charge for ordinary cases. The Board consider that the following rates of batta, to be paid to persons employed in serving notices, or in other process under Act II of 1864, will sufficiently remunerate the service and secure what is required:—

For the service of any notices or process, such as are alluded to in Sections 8, 22, 25, 27, 29, and 36, Clause 2nd.	Batta not exceeding two Annas per diem, if the distance to be travelled in serving the notice is not more than five miles, and not exceeding two Annas for every additional five miles or a fraction thereof.
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For making a distress, or conducting a sale of property, whether moveable or immoveable, such as are alluded to in Sections 8, 9, 10, 11, 12, 23, 24, 36, 47 and 55 of Act II of 1864.	Batta not exceeding eight Annas per day during the time the person employed to distrain or sell property for arrears is necessarily employed on such duty.
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For persons employed in the management of Estates under Section 28 of Act II of 1864.	Batta at such rate as the Collector may, according to the circumstances, deem reasonable.
For person or persons employed in arresting a defaulter under Sections 48 and 49 of Act II of 1864,	Batta at a rate not exceeding four Annas per diem to each person so employed, and for such period as the Collector may determine.

NOTE.—The batta herein proposed, to be in addition to any other costs that may be incurred in the recovery of arrears of revenue.

8. If this scale be adopted it will be necessary for Collectors to guard against the abuse of the law. If a *maximum* is fixed it will give them room to lower the rate; for instance it would not be necessary to allow two Annas for every village Peon serving a notice in the village, nor eight Annas to a Potal for distraining a few Rupees' or Annas' worth of pots in the village. The Act seems to contemplate more than mere batta for issuing a process, and Mr. Dykes is perhaps right in saying that every case should be provided for, which now has been done.

9. Ordered that copy of the foregoing Proceedings be submitted for the consideration and Orders of Government, with reference to Section 53 of Act II of 1864, and with the request that the maximum rates of batta, fixed by the Board in paragraph 7, for serving notices and other process under the Act may receive the early sanction of Government, for communication to Collectors.

No. 411.

ORDER THEREON, 22nd February 1865, No. 383.

Land Revenue

1. The Governor in Council sanctions the rates of batta proposed by the Board for the service of notices, making distraints, &c., but wishes the Board to consult the Collectors generally as to the rates proper for each District.

2. The Governor in Council sees no necessity for fixing rates of batta for the management of Estates or the apprehension of defaulters. The management of a property does not come within the scope of Section 53, and warrants for the arrest of defaulters will, the Government conclude, be executed by the Police. On this latter point the Inspector General of Police will be requested to report.

3. Referring to the Board's Standing Circular No. 624, the Governor in Council is of opinion that where a Zemindar holds a Sunnud couched in the terms quoted by the Board in paragraph 3, the Collector should first proceed by attaching the Zemindar's personal property,

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and if the Zemindar does not pay the arrear within the period allowed, attach and sell his landed Estate. The conditions of the Sunnud will thus be literally fulfilled.

4. The Governor in Council considers it desirable, with reference to paragraph 12 of the Circular, that Zemindaries should not be sold without the previous sanction of Government, to be applied for through the Board of Revenue. The preliminary measures for effecting the sale may of course be adopted pending the orders of Government.

(True Extract.)

(Signed) J. D. SIM,
Secretary to Government.

To the Board of Revenue.
the Inspector General of Madras Police.

Exd. S. T. Augustin.

No. 6,770.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 13th October 1864.

Read the following letter from J. W. B. DYKES, Esq., Collector of Nellore, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated 16th September 1864, No. 305 :—

1. In their Proceedings of the 30th ultimo, No. 5,613, the Board prescribe a scale of batt (paragraph 20) for the service of process, under the provisions of Section 53 of Act II of 1861, Madras; and as this scale is less than we pay coolies at present, I request permission to raise it for this District.

2. The rates prescribed for process are 1 Anna for five miles.

3 Annas up to twenty miles.

4 " above " "

Cooly hire is 3 Annas every ten miles: and as to go four miles with a process is a day's work, it is clear that for a large class of cases, a cooly will be three times better paid, and above ten miles the equality will speedily cease, and it is illicit gains that can alone secure us a supply of process servers in the present state of the labour market.

3. Under Section 8 of the said Act, the person employed to distrain is the process server; and under Sections 9, 10, 11, and 12, various acts are described to be performed by this man who is to get 1 Anna a day, and who is apparently referred to in Section 13 as an "Officer" from whom the amount of any loss shall be recovered by the person damaged, and in Section 17 as responsible for the full value of the property sold with interest, costs, and damages. The man who is likely to go twenty miles for 4 Annas, is, I fear, likely to make this provision of the law a dead letter.

4. Neither do I see any necessity for thus reducing the allowances to be given to men entrusted with such grave powers. It is not the poor who are usually defaulters in this District, but the rich, the relatives of the Cutcherry and the Court. The increased cost of refusing to pay a just claim in their cases, I should think would be a great recommendation; and, what is distasteful against rich or poor in either case, I think it is only right that the law should be administered by men on the footing of Revenue Inspectors.

5. And I beg to recommend that the rate for serving process and carrying out the distraint be fixed for this District at the rate of 8 Annas a day, and the day's journey be considered ten miles. I am aware that several processes may be served the same day, and thus a sum realized far in excess of the salaries I contemplate. But, on the other hand, the employment is uncertain and must be paid accordingly.

Mr. Dykes will be informed that the scale laid down refers only to remunerating persons for serving process only. All expenses of distraint must vary according to circumstances. Mr. Dykes will be so good as to inform the Board what remuneration has been heretofore paid in his District to persons employed in serving notices.

(A true Copy and Extract.)

(Signed) R. A. DALYELL,
Sub-Secretary.

To J. W. B. Dykes, Esq., Collector of Nellore.

Exd. J. Wright.

Revenue Department
No. 383.
Proceedings of the Madras Government
under date the 22^d. February 1865.

submitting letters
from the Council of Reli-
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Department
1864.

Dec-32-7/64

Dated 13th October 1864

No. 6,770

Informing that the scale laid down in Proceedings dated 30th August No. 5,613 refers only to persons *serving* process, and requesting to know the remuneration that has hitherto been paid to persons employed in serving notices.

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~~not pay the arrears within the~~
~~stated period all aged, attach~~
~~the land for the sale of~~
~~his personal property.~~
The conditions of the Sumd
may ~~more~~ ^{be} ~~than~~ of his
will then be literally fulfilled
~~immovable property.~~

The Governor in Council

The doubt on this
point was caused
by L. C. VI. Regt XXVII
of 1802 - and repeated
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11th Feb 1812 Board of Revenue No 217 Feb
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Proceedings of
 30 Aug 1864 No. 5613 or
 (Standing Circular No. 1864)

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