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Revenue Department

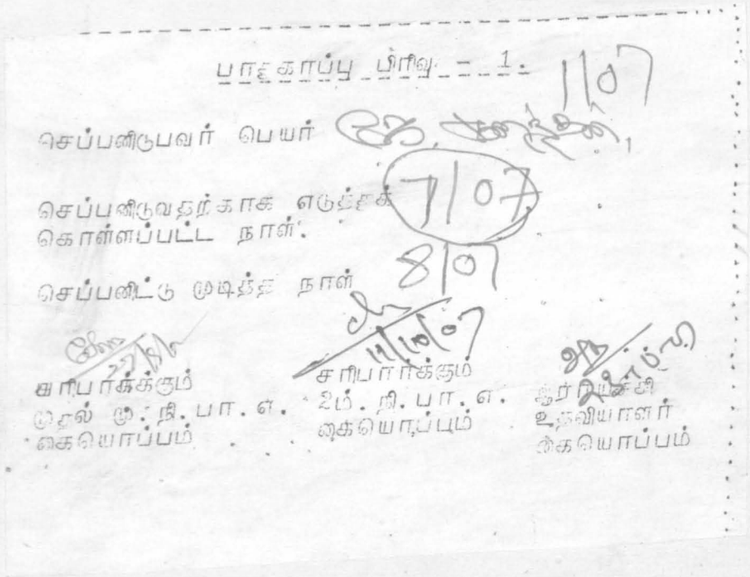
Minutes of Consultations

1st Dec 1857

Pack No 41242

Ger No 1235 of 28th Nov 1857

(23) Sirdar



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Fort Saint George, Revenue Consultation of 1st *December* 1857.

No. 41. Read the following letter from J. D. SIM, Esq., Acting Secretary to the Board of Revenue; to H. FORBES, Esq., Acting Secretary to Government Revenue Department; dated Fort St. George, 26th November 1857, No. 4164.

SIR,

With reference to Extract Minutes Consultation dated 3d August 1857, No. 775, R. D., I am directed to submit for the consideration of Government the accompanying draft of an Act for the recovery of Ryotwary arrears of revenue.

2. The Board have thought it best to make as few alterations in the present law as possible in order to prevent difficulties and delay in the disposal of the question.

3. Arrears due to Government can now be recovered by the sale both of real and personal property though in an exceedingly embarrassing way. The Draft Act merely proposes to give the Collector the power of realizing an arrear by the sale of the personal or real property of the defaulter according as he may deem most advisable for the prompt recovery of the just dues of Government. Ultimately the whole property of a defaulter is liable, and imprisonment may he resorted to when the property is insufficient to meet the arrear as under the present law.

4. Personal property will still be sold according to Regulation XXVIII. of 1802, and real property according to Regulation XXVI. of 1802, and imprisonment can be effected only through the agency of the Courts.

5. The only alteration therefore consist in the *option* allowed to the Collector as to the property he shall distrain and sell in the first instance.

6. Interest is in all cases to be charged from the 30th day succeeding that on which the arrear accrues.

7. The other provisions of the Act do not appear to call for any particular remark. The Board sent three recent references regarding the difficulties caused by the existing Law, to show the necessity of its being modified without delay.

AN ACT TO AMEND ACT 23 OF 1856.

Whereas doubts still exist regarding the process to be taken against defaulters in Ryotwary Districts, notwithstanding Act XXIII. of 1856, and whereas difficulties occur under the provisions of Regulation XXVII. and XXVIII. in recovering Ryotwary arrears of Public Revenue it is hereby enacted as follows:

I. Where rent or revenue may be withheld beyond the day on which they fall due according to the Kistbundy or other engagement, or (where no written agreement may exist) beyond the time when such rent or revenue become payable agreeably to local usage, the Collector shall have authority to proceed for its recovery by the distraint and sale of the personal or real property of the defaulter.

II. In the distraint and sale of personal property for arrears of rent or revenue, the Collector shall proceed according to Regulation XXVIII. of 1802.

III. When the personal property of a defaulter is first distrained and sold if the arrear due with interest and all expenses of distraint and sale be not liquidated by the proceeds of such sale, the Collector shall have authority to proceed against the real property of the defaulter for the recovery of the balance remaining due with interest and all expenses, &c., attending such further sale.

IV. When the landed or other real property of a defaulter is first attached and sold if the arrear due with interest, expenses of attachment and sale, management and all other just charges be not liquidated by the sale, the Collector may of his own authority distrain and sell the personal property of the defaulter for the recovery of such balance with interest, and all expenses of distraint and sale.

V. All sales of landed and other real property shall be conducted in accordance with Sections XI. XII. XIII. Regulation XXVI. of 1802, but a Persian translation of the sale advertisement shall not be necessary.

VI. The Collector shall have authority to attach at his discretion the whole or any portion of a defaulter's landed or other real property immediately on the occurrence of an arrear, or at any subsequent period; but the previous sanction of the Board of Revenue shall be necessary for the sale of landed and other real property.

VII. The provisions of Section XV. XVI. XVII. XVIII. XX. and XXI. Regulation XXVI. of 1802 with Sections XI. XII. and XIII. as aforesaid shall be applicable to sales of landed and other real property under this Act, but the rest of that Regulation shall not apply to such sales.

VIII. Clause 1. Where arrears of rent or revenue with interest and other charges as aforesaid may not be liquidated by the sale of the personal and real property of the defaulter, the Collector shall have authority to cause the arrest of the defaulter in the manner following:

2. The Collector shall cause a motion to be made to the Judge, praying that the defaulter may be arrested unless the amount due by him as set forth in the said motion be paid.

3. The Judge shall thereupon issue an order for the arrest of such party and for his production before the Court, unless he pay the arrear demanded with all expenses of process within 48 hours after the said order shall be served upon him, provided that with the consent of the Collector a longer period may be allowed for such payment. In the event of the arrear not being paid as above provided, the officer charged with the execution of the order shall convey the defaulter to the Court without unnecessary or unreasonable delay.

4. On the arrival of the defaulter at the Court, the Judge shall call upon him to answer the demand: where the demand or any portion of it may be denied, the Judge shall enter into a summary enquiry into the merits of the case.

5. Where after such enquiry it shall appear that the arrear demanded is not justly due, the Judge shall discharge the defendant with full costs and damages, but where it may appear that the demand wholly or in part is justly due, the Judge shall direct the defendant to be kept in custody until the amount shown to be due and interest thereon at one per cent. per mensem with costs of suit may be discharged, or until the Collector make application to the Court for the release of the Defendant. The Collector shall pay the defendant whilst in confinement the same allowance for subsistence as is fixed for other prisoners in the Jail wherein he may be confined.

IX. Interest at one per cent. per mensem shall be charged on all arrears of rent or revenue under this Act from and after 30 days after the arrear has accrued.

X. Sections III. and XXXIV. Reg. XXVIII. of 1802, shall not be applicable to process taken under this Act.

XI. Reg. V. of 1822 shall not be applicable to sales of property under this Act.

XII. This Act shall apply only to Ryotwary collections made under settlements direct with the ryots and shall not apply to Zemindars, Mootahdars or others holding lands on permanent tenures, or to their sub-tenants.

XIII. Arrears of Revenue due to Government other than land revenue hitherto recoverable under Reg. I. of 1826, and V. of 1832, shall be recoverable under the provisions of this Act.

(Signed) J. D. SIM, *Acting Secretary.*

From C. J. SHUBRICK, Esq., Collector of Chingleput; to J. D. SIM, Esq., Acting Secretary to the Board of Revenue, Fort Saint George; dated Sydapet, 2d June 1857.

Sir,

I have the honor to enclose a Statement of lands attached for arrears of revenue, and request the Board's permission to put them up for sale under Regulation XXVII. of 1802.

2. The lands in question are not Ryotwary lands settled annually at the Jummabundy, but lands that have been enclosed with walls or hedges and charged with assessments that do not vary with the abundance or otherwise of the crop or the nature of the season.

3. Such lands may in reality be considered to be permanently settled, as much as if a Government grant had been issued for them, or a quit rent bill made out, and as such I believe

may be held to be liable to sale under the Regulation I have quoted, and not amenable only to Regulation XXVIII. of 1802 and Act XXIII. of 1856 for the recovery of the arrears that may be due from their occupants.

4. Many of these lands lie near Madras and have been taken on speculation, in anticipation of their turning out profitable as building or garden lands in the course of a few years, and enclosed for the purpose of securing them against new comers. Some of them are cultivated and some not, but the fact of their being enclosed renders that an unnecessary matter for consideration; the impossibility of realizing the Government demand except by the attachment and sale of the land is what I would wish to lay before the Board, arising chiefly from there being no produce to attach, and the moveable property of the owner being in Madras where it cannot be got at.

5. From there being no produce or moveable property forthcoming, the owners are able to treat the Tahsildar's demands for payment with contempt, and I see no way of realizing the Government assessment except by the sale of the land itself.

6. I trust the Board will give the matter their serious consideration; the lands are valuable from their anticipated future remuneration, and the fact of their enclosure while it fixed the assessment and converts it from the ordinary Ryotwary settlement, deprives it at the same time from being given over for cultivation to parties who might wish to take it on Durkhast.

7. Unless these lands are declared liable to sale, they will be enjoyed rent free until built on or cultivated with produce that can be attached.

(True Copy.)

(Signed) J. D. SIM, *Acting Secretary.*

From C. J. SHUBRICK, Esq., Collector of Chingleput; to J. D. SIM, Esq., Acting Secretary to the Board of Revenue, Fort Saint George; dated Sydapet 23d October 1857.

Sir,

1. In reply to Extract from the Board's Proceedings, No. 3482 of the 17th Instant, I have the honor to state that the lands therein adverted to are Ryotwary lands, and were proposed to be advertised for sale under a misconception of their orders* circulating a form in which information of their sale was to be furnished, and the correspondence† which followed it. Now, that it is declared that the sale of Ryotwary lands, except through the medium of the Civil Courts, is debarred by Act No. 23 of 1856. I have the honor to request instructions as to whether I am to file regular suits against each defaulting ryot, as no other means but the sale of his lands remain for the recovery of the Government dues in the instances in question. I need scarcely say that this mode of proceeding must be attended with considerable inconvenience, delay, and expense, and is altogether unfitted for the cases of hand to mouth ryots, while at the same time if it is not followed, nothing remains but to strike off the balances to profit and loss, the personal goods of the ryots having been exhausted.

* 19*th June* 1857, *No.* 2099.
† *To the Board* 10*th July* 1857.
From do. 29*th do.*
To do. 1*st August do.*
From do. 28*th do.*

2. The inconvenience complained of may not have been much felt formerly, but now that the sale of land, except by regular Suit; is debarred by Act XXIII. of 1856 and the construction put upon Regulation XXVIII. of 1802, by the Sudr Udalut in their letter to Government dated 17th April 1828, published at page 78 of the Board's Circular Orders Vol. I., the final collection of the Government revenues is seriously impeded, and a remedy proved to be urgently required. This is more particularly the case in a Merassy District where the landed tenures are not merely those of occupancy only, and whence the ryots could be summarily ousted and their holdings transferred to others under Clause VII. Section XXXIV. Regulation XXVIII. of 1802, but are based on actual proprietorship in the soil, and by "established usage" if not by title deeds acquirable only by purchase or hereditary descent. The lands of such parties cannot be taken from them, and made over to others likely to pay better; and if they cannot be sold except through the medium of the Courts, the parties may be able to remove their crops, conceal their moveable goods, and defy the liquidation of their balances.

3. Under these circumstances, I would venture to request that the matter may be laid before Government afresh, and the opinion of the Government Pleader taken relative to the mode to be pursued in the sale of the lands of defaulting ryots both as to whether a regular suit will be necessary under Regulation XXVIII. Section XXXIV. Clause VII., and whether recourse to Regulation XXVII. is debarred by Act XXIII. of 1856.

(True Copy.)

(Signed) J. D. SIM, *Acting Secretary.*

From H. D. PHILLIPS, Esq., Acting Collector of Tanjore; to J. D. SIM, Esq., Acting Secretary to the Board of Revenue, Fort Saint George; dated Vellum 31st October 1857, No. 155.

SIR,

To Board 30th June 1857. *From do. 23d July* 1857.

1. With reference to the correspondence noted in the margin; I have the honor to forward herewith copy of an Extract from the Proceedings of the Subordinate Court of Combaconum on an application made to it for permission to sell the lands of a Revenue defaulter under Clause 7, Section XXXIV. Regulation XXVIII. of 1802.

2. If the view taken by the Sub-Judge were correct and Ryotwar arrears could be realized under both the Regulations XXVII. and XXVIII. of 1802, nothing more would be necessary for ensuring the punctual collection of the revenue; but I am unable to coincide with the Court, and indeed the Government have already declared* their opinion, though of course that opinion is not binding in the Courts, that Act XXIII. of 1856, limits Collectors, in the recovery of Ryotwary arrears, to Regulation XXVIII. of 1802, to the exclusion of XXVII. of the same year.

* *Vide Ex. Board's Pro. 6th Feb.* 1857, *No.* 430.

3. Under these circumstances, I beg to be informed what further steps the Board desire me to take in the matter.

4. The course which in their view is the correct one, is not held to be such by the authority to whom my application must be submitted before I can proceed to sell.

Miscellaneous Petition No. 400 *of* 1857.

The Collector in this Petition applies (in repetition of his application to the Court in M. P. No. 342 of 1857) for the interference of this Court under Clause 7, Section XXXIV., Regulation XXVIII. of 1802, Act XXIII. of 1856 and Circular Order of Board of Revenue No. 45 of 1857, to sell the land of one Ramyen Merassdar of Raraudy Mungalum in Nunnilum talook.

The Clause of the Section in Regulation XXVIII. of 1802 referred to, authorizes farmers or proprietors of land in satisfaction of arrears due to them to bring to sale by application to the Courts of Udawlut such tenures of defaulters under them, as by the title deeds or the established usage of the country are transferable by sale or otherwise.

Section XXXVIII. of Regulation XXVIII. of 1802 declared this and the other Sections preceding Section XXXVIII. applicable to Collectors making a *Khas* collection on the part of Government where no settlement may have been made with proprietor or farmer.

Regulation XXVII. of 1802 prescribes the mode for recovery of arrears of public revenue from proprietors or farmers of land holding immediately from Government, and in its 6th Section enunciates that the landed estate shall be regarded as the security for the public revenue, but allows the debtor the option of yielding up his personal property in preference to having his land sold.

Of late years, this has been construed to mean that under this Regulation, personal property could not be distrained except at the option of the debtor, and Collectors found themselves frequently driven to the difficulty of endeavouring to realize an arrear of revenue by putting up to sale land for which combination among the persons most interested prevented a fair value being given, and it not seldom happened that such combinations succeeded in preventing altogether the purchase of the land.

It then became an important question whether arrears of public revenue could not be recovered under Section XXXVIII. Regulation XXVIII. of 1802, as that Regulation especially provides for realization of arrears from the *personal* property of defaulters.

To clear the doubt, Act XXIII. of 1856 was passed which provides in Section I. that the collection of the Government revenue due on account of lands under settlement, direct with the ryots shall be deemed a Khas collection on the part of Government within the meaning of Section XXXVIII. Regulation XXVIII. of 1802, and in Section II. that all past arrears of such revenue *shall* be collected according to the provisions of this Act, &c. Circular Order No. 45 of the Board of Revenue directs the Collectors to proceed to realize arrears of revenue under Regulation XXVIII. of 1802 and Act XXIII. of 1856, in [illegible] cases in which coercive process is deemed necessary.

Clause 7th Section XXXIV. of Regulation XXVIII. of 1802 makes provision as above said for the sale of transferable tenures, and this is one of the provisions of this Regulation, which by Section XXXVIII. as explained by Act XXIII. of 1856, Collectors are now empowered to act under.

Now it appears to the Sub-Judge that the Collector is under the error of supposing that Act XXIII. of 1856, supersedes Regulation XXVII. of 1802; otherwise it would doubtless have occurred to him that a resort to the Courts was a more cumbrous and tedious method of realizing arrears than the usual mode of selling land under Regulation XXVII. of 1802, the more so since the Court of Suddr Udalut in their letter to Government of 17th April 1828, para. 2 (as shown in page 78 of volume I. of Circular Orders of the Board of Revenue) have declared that there is only one summary proceeding contemplated under Regulation XXVIII. of 1802, and that is in Clause 4th Section XXXIV. and that all the rest are regular suits.

Act XXIII. of 1856, however does not supersede, or in any way interfere with the operation of Regulation XXVII. of 1802. It is true it declares that all past arrears of such revenue shall be collected under the provisions of this Act, but the provisions of the Act are nothing more than an explanation that Section XXXVIII. of Regulation XXVIII. of 1802, applies to Ryotwar settlements, and therefore the correct meaning of Section II. of Act XXIII. of 1856, is nothing more than "in realizing all past arrears of such revenue it is to be understood that Section XXXVIII. of Regulation XXVIII. of 1802, is applicable," or in other words "may be applied."

Whether the C. O. No. 45 of the Board of Revenue means that Collectors cannot now proceed under Regulation XXVII. of 1802, or whether it is simply intended to direct that as by the new Act personal property of defaulters can now be distrained for arrears of public revenue, and distraint of personal property is found by experience to be the most effective means of realizing such arrears, Collectors shall consider as cancelled all sanctions for sale of land and proceed at once under the new Act; the Sub-Judge cannot undertake to say, but if the former be their intention, he is of opinion that it is formed upon a misunderstanding of the purport of Act XXIII. of 1856.

Being of opinion that Collectors have still the power of putting up land to sale under Regulation XXVII. of 1802, and judging that it could never have been the intention of the Legislative to impede the collection of their revenue, and swamp their Courts by bringing *regular* or even *summary* suits for the recovery of arrears, the Sub-Judge declines to accede to the application.

Ordered that Extract from these Proceedings be at once given to the Government Vakeel for transmission without delay to the Collector.

(Signed) L. C. INNES.

(True Copy.)

(Signed) J. D. SIM, *Acting Secretary.*

No. 42. ORDER THEREON, No. 1235; dated 28th November 1857.

Resolved that the foregoing letter and its enclosures be forwarded to the Government Pleader, with a request that he will be good enough to state his opinion on the Draft Act prepared by the Board, and return the papers to Government in time for transmission to Calcutta by the Steamer of the 10th December next.

(Signed) H. FORBES,

Acting Secretary to Government.

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An Act to Amend Act 23 of 1856.

Whereas doubts still exist regarding the process to be taken against defaulters in Royalwary Districts, notwithstanding Act XXIII of 1856 and whereas difficulties occur under the provisions of Regulation XXVII and XXVIII in recovering Royalwary arrears of Public Revenue it is hereby enacted as follows.

I. Where Rent or Revenue may be withheld beyond the day on which they fall due according to the Kistbundy or other engagement or (where no written agreement may exist) beyond the time when such rent or revenue become payable agreeably to

to local usage the Collector shall have authority to proceed for its recovery by the distraint and sale of the personal or real property of the defaulter

II In the distraint and sale of personal property for arrears of rent or revenue the Collector shall proceed according to Regulation XXVIII of 1802.

III When the personal property of a defaulter is first distrained and sold if the arrear due with interest and all expenses of distraint and sale be not liquidated by the process of such sale the Collector shall have authority to proceed against the real property of the defaulter for the recovery of the balance remaining due with interest and all expenses attending such further sale.

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IV. When the landed or other real property of a defaulter is first attached and sold — if the arrear due with interest, expenses of attachment and sale, management and all other charges be not liquidated by the sale the Collector may of his own authority distrain and sell the personal property of the defaulter for the recovery of such balance with interest, and all expenses of distraint and &c.

V. All sales of landed and other real property shall be conducted in accordance with sections XI. XII. XIII Regulation XXVI of 1802 but a

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Persian translation of
the Sale advertisement
shall not be necessary.
t ~~and~~ The Collector shall
have authority to attach
this discretion the whole or
any portion of a defaulter's
Lands or other real property
immediately on the oc-
currence of an arrear
or at any subsequent
time of the Bond
execution of the Bond
of Routine shall be ne-
cessary for the sale of
lands and other real
property.

VII. The provisions of Sect XV.
XVI. XVII. XVIII. XX and XXI Regs
XXII. XXIII. XXIV. XXV. XXVI. XXVII. XXVIII
XXXI of 1802 with Sects XI. XII. & XIII
as respects shall be ap-
plicable to sales of landed
and other real property
under this ~~Regulation~~ but.

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the rest of that Regulation
shall not apply to such sales.
VIII. Clause 1. Where arrears
of Rent or Revenue with the
Interest and other Charges
as aforesaid may not be
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the personal and real
property of the defaulter,
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authority to cause the
arrest of the Defaulter
in the manner following.
2. The Collector shall
cause a Motion to be made
to the Judge praying that
the defaulter may be ar-
rested unless the amount
due by him as set forth
in the said Motion be paid.
3. The Judge shall there-
upon issue an order for the
arrest of such party and
for his production before
the Court unless he pay
the arrear demanded with
all expenses of process
within

within 48 hours after the said order shall be served upon him, provided that with the consent of the Collector a longer period may be allowed for such payment. In the event of the arrear not being paid as aforesaid, the officer charged with the execution of the order shall convey the defaulter to the Court without unnecessary or unreasonable delay.

X. On the arrival of the defaulter at the Court the Judge shall call upon him to answer the demand: where the demand or any portion of it may be denied, the Judge shall enter into a summary enquiry into the merits of the case.

XI. Where after such enquiry it shall appear that the arrear demanded is not justly

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justly due, the Judge shall discharge the defendant with full costs and damages. but where it may appear that the demand wholly or in part is justly due the Judge shall direct the defendant to be kept in custody until the amount shall be due and interest thereon at one per Cent per mensem with costs of suit may be discharged or until the Collector make application to the Court for the release of the defendant. The Collector shall pay the defendant whilst in confinement the same allowance for subsistence as is paid for other prisoners in the Jail wherein he may be confined.

IX. Interest at 1 p Cent per mensem shall be

charged

charged in all arrears of
Rent or Revenue under
this act from and after
30 days after the arrear
has accrued.

X. Sects. III and XXXIV Reg.
XXVIII of 1802 shall not
be applicable to
process taken under
this act.

XI. Reg. V of 1822 shall
not be applicable to sales
of property under this
act.

XII. This act shall apply
only to Ryotwary Collections
made under Settlements
direct with the Ryots
and shall not apply to
Zemindars, Proprietors and
other holding Lands
on Permanent Tenure or to
their Sub Tenants.

XIII. Arrears of Revenue due
to Government other than Land
Revenue hitherto recoverable
under Reg. I of 1821 & 5 of 1832
shall be recovable under the
provisions of this Act.

J. D. Sim
Secretary

Secretary's Office
Fort St. George
the 26th Nov. 1834

Sir,

I have the honor to transmit herewith a Printed Copy of Act No. 1 of 1834 passed by the Governor in Council of Fort St. George on the 26th November 1834.

I have &c.
(Signed) J. D. Sim
Secretary to Government

To the Secretary to the Board of Revenue

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Act No. 1 of 1834.

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From

C. J. Shubrick Esqr.

Collector of Chingleput

To

J. D. Sim Esqr.

Acting Secretary to the

Board of Revenue

Fort St. George

Sir

I have the honor to enclose a Statement of Lands attached for arrears of Revenue and request the Board's permission to put them up for sale under Regulation XXVII of 1802.—

2. The lands in question are not Ryotwary lands settled annually at the Summahbundy but lands that have been enclosed with walls or hedges and charged with assessments that do not vary with the abundance or otherwise of the Crop or the nature

nature of the season.—

3 Such lands may in re=
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for them or a Quit Rent Bill made
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of 1802 and act XXIII of 1850 for
recovery of the arrears that may be
due from their occupants.—

4 Many of these lands lie
near Madras and have been taken
on speculation in anticipation of their
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11/1235 fact of their being enclosed renders re
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be got at.—

5 From there being no produce
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Tahsildar's demands for payment
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of realizing the Government re
assessment except by the sale re
of the land itself.—

6. I trust the Board re
will

will give the matter their serious consideration, the lands are valuable from their anticipated future remuneration and the fact of their enclosure while it fixes the assessment and converts it from the ordinary Ryotwary settlement, deprives it at the same time from being given for cultivation to parties who might wish to take

7. Unless these lands are declared liable to sale they will be enjoyed rent free until built on or cultivated with produce that can be attached.—

Chinglepet District Collector's Cutchery Sydapet 2d June 1857.—

I have &c
(signed) C. J. Shubrick
Collector
(Trl'd) J. D. Sim
Asst

No 2

Enclosure in a letter from the Acting Secretary to the Board of Revenue to the Acting Secretary to Government. Revenue Department dated 20th November 1857.—

Rec'd 14th Dec 1857.

From
The Collector of Chinglepet
No 221 June 1857.

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Chinglepute District,
Collector's Cutcherry,
Septr 23rd October 1857.

From,

C. J. Shubrick Esq.
Collector of
Chinglepute.

To,

J. D. Sim Esq.
Actg Secretary to the Board of Revenue
Fort St George.

Sir,

In reply to Extract from the Board's Proceedings No. 3482 of the 17th Instant, I have the honor to state that the Lands therein adverted to are Pyetoway Lands, and were proposed to be advertised for Sale under a misconception of their Orders circulating a form in which information of their Sale was to be furnished and the correspondence which followed it. Now that it is declared that the Sale of Pyetoway Lands, except through the medium of the Civil Courts, is debarred by Act No. 23 of 1856. I have the honor to request instructions as to whether I am to file regular Suits against each defaulting Ryot

19th June 1857 No 3044

To the Board 18th July 1857.
From 24th Do
To 17th August Do
From 28th Do

Ryot, as no other means but the sale of his Lands remain for the recovery of the Government dues in the instances in question. I need scarcely say that this mode of Proceeding must be attended with considerable inconvenience, delay and expense, and is altogether unfitted for the cases of hand to mouth Ryots, while at the same time if it is not followed, nothing remains but to strike off the balances to profit and loss, the personal goods of the Ryots having been exhausted.

2. The inconveniences complained of many of which have been much felt formerly, but more that the sale of Land except by regular Suit, is debarred by Act XXIII of 1856 and the construction put upon Regulation XXVIII of 1802 by the Sudr Udalut in their letter to Government dated 17th April 1828 published at Page 78 of the Board's Circular Orders Vol. I, the final collection of the Government Revenues is seriously impeded and a remedy proved to be urgently required. This is more particularly the case in a Mirasy District where the landed tenures are not merely those of occupancy only, and whence the Ryots could be summarily ousted and their holdings transferred to others under clause VII Section XXXIV Regulation XXVIII of 1802, but are based on actual proprietorship in the Soil, and by "Established usage" if not by title Deeds acquirable only by purchase or hereditary Descent. The lands of such parties cannot be taken from them, and made over to others likely to pay better, and if they cannot be sold except through the medium of the Courts, the parties may be able to remove their Crops, conceal their moveable goods, and defy the liquidation of their balances.

3. Under these circumstances, I would venture to request that the matter may be laid before Pleader taken relative to the mode to be pursued in the sale of the Lands of defaulting Ryots both as to whether a regular Suit will be necessary under Regulation XXXVIII Section XXXIV Clause VII, and whether recourse to Regulation XXVII is debarred by Act XXIII of 1856.

I have the honor to be &c
Signed C. J. Shubrick
Collector

To
J. D. Sim Esq
Acting Asst to the Bd of Revenue
Fort St George.

True Copy
J. Sim
Asst Secy

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No 153

From W. D. Phillips Esq
Ag Collector of Tanjore.

To J. D. Sim Esq
Ag Secretary to the Board of Revenue.
Fort St George

Sir,

With reference to the correspond-
To Board of 38 June/57
Mem do 73 July 1/57
-ence noted in the margin; I have the honor to
forward herewith Copy of an Extract from the
Proceedings of the Subordinate Court of Combe-
-conum on an application made to it for
permission to sell the lands of a Renter
Defaulter under clause 3 Sec. XXXIV Regula-
-tion XXVIII of 1802.

2. If the view taken by the Sub Judge
were correct and Pycotwar arrears could be
realized under both the Regulations, XXVIII &
XXVIII of 1802, nothing more would be ne-
-cessary for ensuring the punctual collection
of the Revenue; but I am unable to coincide
with the Court and indeed the Government

have

No 3

Enclosure in a Letter
from the Acting Secretary
to the Board of Revenue
to the Secretary to
Government C. Rev. Depart.
Dated 20th Novr 1857 No 1144

Rec'd 25/11/57

From
The Collector of Chingleput
Dated 23rd October 1857.

Miscellaneous Petition No 400 of 1857

16/1235

The Collector in this Petition applies (in reference to his application to the Court in M. P. No 342 of 1857) for the interference of this Court under Clause 4 Section XXXIV Regulation XXVIII of 1802, Act XXIII of 1836 and Circular Order of Board of Revenue No 45 of 1857 to sell the land of one Ramyen Moraseer of Ravandy mungee Odoo in Nunjelum Talooke

The Clause of the Section in Regulation XXVIII of 1802 referred to, authorizes Farmers or Proprietors of Land in default of Section of arrears due to them to bring to sale by application to the Courts of Dawlut such Tenures of Defaulters under them as by the Deeds or the established usage of the Country are transferable by sale or otherwise

Section XXXVIII of Regulation XXVIII of 1802 declared this need the

after

have already declared their opinion, though of course that opinion is not binding in the Courts, that Act XXIII of 1836 limits Collectors in the recovery of Nijotawary arrears, to Regulation XXVIII of 1802, to the exclusion of XXVII of the same year.

* Vide Ct. Court's Progs 6th May 1857 No 430.

3 Under these circumstances, I beg to be informed what further steps the Board desire me to take in the matter.

4 The course which in their view is the correct one, is not held to be such by the authority to whom my application must be submitted before I can proceed to sell.

I have &c &c

Sd/ H. S. Phillipps

Ag Collr.

Tanjore,
Collector's Office,
Vellum,
31st October 1857.

Miscellaneous

other Sections preceding Section XXXVIII
applicable to Collectors making a Kliss
Collection on the part of Government
where no settlement may have been
made with Proprietor or Farmer.

Regulation XXVII of 1802 prescribes
the mode for recovery of Arrears of Pub-
-lic Revenue from Proprietors or Farmers
of land holding immediately from
Government and in its 6th Section
enunciates that the landed Estate
shall be regarded as the security for
the public Revenue, but allows the
Debtor the option of yielding up
his personal property in preference
to having his lands sold.

Of late years this has been
construed to mean that under this Re
-gulation personal property could
not be distrained except at the op
-tion of the Debtor, and Collectors
found themselves frequently driven
to the difficulty of endeavouring

to

17
1235 to realize an arrear of Revenue by
putting up to sale land for which
combination among the persons most
interested prevented a fair value be
-ing given, and it not seldom happen
-ed that such combinations succeed
-ed in preventing altogether the pur
-chase of the land.

It then became an im
-portant question whether ar
-rears of public Revenue could
not be recovered under Section
XXXVIII Regulation XXVIII of 1802
as that Regulation especially
provides for realization of Arrears
from the personal property of
Defaulters.

To clear the doubt Act
XXIII of 1836 was passed which
provides in Section I that the
collection of the Government
Revenue due on account of lands
in a Settlement, shall

with

with the Ryots shall be
deemed a Khas Collection
on the part of Government
within the meaning of Sec-
tion XXXVIII Regulation XXVIII
of 1802 and in Section II
that all just arears of
such Revenue shall be
collected according to the
provisions of this Act. Vide
Circular Order No 45 of the
Board of Revenue directs
the Collectors to proceed to
realize arrears of Revenue
under Regulation XXVIII of
1802 and Act XXIII of 1856 in
all cases in which coercive
process is deemed necessary.
Clause 4th Section XXXIV
of Regulation XXVIII of 1802
makes provision as above said
for the sale of bare forable Tenures
and this is one of the provisions
of this Regulation which
by

Section XXXVIII as explained by act XXIII
of 1856 Collectors are now empowered to
act under.

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Now it appears to the Sub
Judge that the Collector is under the error
of supposing that act XXIII of 1856 super-
cedes Regulation XXVII of 1802, otherwise
it would doubtless have occurred to him
that a resort to the Courts was a more
cumbrous and tedious method of realizing
arrears than the usual mode of selling
land under Regulation XXVII of 1802 the
Court of Sudder Adawlut
in their letter to Government of 17th April
1828 Para 2 (as shown in Page 78 of Volume
I of Circular orders of the Board of Revenue)
have declared that there is only one
summary proceeding contemplated under
Regulation XXVIII of 1802 and that is in
clause 4th Section XXXIV and that all the
rest are regular suits.

Act XXIII of 1856 however does
not supersede or in any way interfere with
the operation of Regulation XXVII of 1802.

It

It is true it declares that all past arrears of such revenue shall be collected under the provisions of this Act but the provisions of the Act are nothing more than an explanation that section XXXVIII of Regulation XXVIII of 1802 applies to ryotwar settlements and therefore the correct meaning of section II of Act XXIII of 1856 is nothing more than "In realizing all past arrears of such revenue it is to be understood that section XXXVIII of Regulation XXVIII of 1802 is applicable" or in other words" may be applied."—

Whether the C.O № 45 of the Board of Revenue means that Collectors cannot now proceed under Regulation XXVII of 1802 or whether it is simply intended to direct that as by the new Act personal property of defaulters can now be distrained for arrears of public revenue and distraint of personal property is found by experience to be the most effective means of realizing such

19/1235

such arrears Collectors shall consider as cancelled all sanctions for sale of land and proceed at once under the new Act; the Sub Judge cannot undertake to say; but if the former be their intention he is of opinion that it is formed upon a misunderstanding of the purport of Act XXIII of 1856.—

Being of opinion that Collectors have still the power of putting up land to sale under Regulation XXVII of 1802 and judging that it could never have been the intention of the Legislature to impede the Collection of their Revenue and Swamp their Courts by bringing regular or even summary Suits for the recovery of arrears the Sub Judge declines to accede to the application.

Ordered that Extract from these Proceedings be at once given to the Government Vakeel for transmission without delay to the Collector.

(Signed) L. C. Innes.

(True Copy)
(Signed) W. D. Phillips
Acting Collector

(True Copy)

Acting Secretary

Encl. —

Enclosure in a letter from the Secretary of the Board of Revenue to the Secretary to Government, Fort St. George, dated 26th November 1857.

Copy.

Fort St. George, 26th November 1857.

Sir,

I am directed by the Board of Revenue to forward herewith, for the information of Government, a copy of a letter from the Collector of Tanjore, dated 21st instant, No. 1235, and to request that you will lay the same before the Right Honorable the Governor in Council.

I have the honor to be,
Sir,
Your most obedient humble servant,
(Signed) J. Hill
Secretary.

To
The Secretary to Government,
Fort St. George.

Dept

Revenue Board Off

Revenue 20/1235

I have the honor to transmit herewith a memorandum of the Revenue Receipts of this District, from the 1st January to the 31st ultimo, inclusive, and to state that the Draft Abstract of Receipts by the Steamer, due in Madras to-day, will be forwarded on the receipt of the Government Records upon which it was framed.

I have

21/
1235

Recd 11th August
& 11th Sa: Insn. Augt 9/67

"In pursuance of the
Communication with
the Govt. Pleader". I have
had an interview with
her counsel - which has
resulted in employing
the Govt Pleader Law
Officer - I think it

The Govt. will be pleased
to [illegible] if it shall
seek an opportunity
to be informed for
Fr. Date Decision.

27-11-57.

Has not the opinion
of the Govt. Pleader been
already taken?

Dept [illegible]

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Revenue Board Office,
Fort St. George,
26th November 1857.

No. 4164

From,
J. D. Sim Esqre
Ag Secretary to the Board of Revenue.

To,
H. Forbes Esqre
Ag Secretary to Government
Revenue Department.

Sir,

With reference to Extract Minutes of Consultation dated 3rd August 1857 No. 1775 R. D. I am directed to submit for the consideration of Government the accompanying Draft of an Act for the recovery of Ryotwary Arrears of Revenue.

2. The Board have thought it best to make as few alterations in the present Law as possible in order to prevent difficulties and delay in the disposal of the question.

3. Arrears due to Government can now be recovered by the sale both of real and personal property though in an exceedingly embarrassing way. The Draft Act merely proposes to give the Collector the power of

of realising an arrear by the sale of the
personal & real property of the defaulter
according as he may deem most advisable
for the prompt recovery of the just dues
of Government. At present the whole
property of a defaulter is liable and
imprisonment may be resorted to when
the property is insufficient to meet
the arrear as under the present law.

4. Personal property will
still be sold according to Reg: XXVIII
of 1802 and real property according to
Reg: XXVI of 1802 and imprisonment can
be effected only through the agency of
the Courts.

5. The only alteration therefore
consists in the option allowed to the
Collector as to the property he shall
distrain and sell in the first instance.
Interest in all cases
to be charged from the 30th day
succeeding that on which the arrear
accrues.

The other provisions of the
Act do not appear to call for any partic-
ular remark. The Board send there
recent

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1235

recent references regarding the difficulties
caused by the existing Law, to show
the necessity of it's being modified
without delay.

We have the honorable,
Sir,
Your most obed't Servants.

Rev. Board's Office,
Fort St. George,
26 November 1834.

To
W. Sullivan Esqre
Agt. Secy to Government
Revenue Department.

16. 6. 13

Revenue 1857 Dept.
Dito Cons 1st Dec.
№ 1450

From
The Ag Secretary to the
Board of Revenue
To The Ag Secretary
to Government
Rev Dept.

Dated 26th Jan 1857.
Rec 27th Jan 1857.
4 Encls. №-416

Submitting with the Board's remarks, for the consideration of Government, a Draft of an Act for the recovery of Rent due to Land Revenue.

Under our Order
No 1235. 28th Nov 1857

№ 1235.

Resolved that the foregoing letter and its enclosures be forwarded to the Government Pleader, with a request that he will be good enough to state his opinion on the Draft Act prepared by the Board, and return the papers to Government in time for transmission to Calcutta by the Steamer of the 10. December next.—

By Order of His Excellency the Governor in Council
28th Nov 1857

Copy to the Govt Pleader with Duplicate Copies of the Draft Enclosures

Diff 28

Copy of the Number of the Legislative Letters for March
26 Feb 58
Re 264

№ 41. 42