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Revenue Department

Minutes of Consultations

30th June 1857

Back Numbers 38-41

Order nos 656-658 dated 27th June 1857

பாதுகாப்பு பிரிவு-1

செப்பனிடுபவர் பெயர்

செப்பனிடுவதற்காக எடுத்துக் கொள்ளப்பட்ட நாள்

செப்பனிட்டு முடித்த நாள்

சரிபார்க்கும் முதல் மு.நி.பா.எ. கையொப்பம்.

தணிக்கைப்பரிசோதிக்கும் உதவியாளர் கையொப்பம்

No. 38. Read the following Extract from the Proceedings of the Board of Revenue; dated 3d June 1857, No. 1888.

Read again letter from the Acting Collector of Malabar, 3d February 1857, No. 10 A.

Read again Proceedings of the Board of Revenue 12th March 1857, No. 771.

* *In Cons. 3d June 1857, No. 1621.*

Read letter from the Acting Collector of Malabar 29th April 1857.

(Here enter No. 58.)

In his letter of the 3d February 1857, the Acting Collector in acknowledging the receipt of the Board's Circular Order of the 6th January 1857, No. 45, expressed a doubt of the applicability of Act XXIII. of 1856 adverted to therein, to the District of Malabar, the tenure of land in which he considered essentially proprietary, the Government possessing only the right of collecting a Negady, or public cess, on cultivated waste, and all land, waste or other being the fee simple property of the ryot.

2. The Board, in reply, intimated their opinion that the question would turn on whether the settlement made with the Malabar landowners was permanent, such as is made with a Zemindar or a settlement from year to year such as is made with an ordinary ryot; and they requested an explanation of certain items in the yearly accounts, and any further information which Mr. Robinson could supply, to enable them to form a judgment on this point.

3. This requisition is complied with in the Acting Collector's letter of the 29th April last.

4. Statement No. 6 appended to the Board's General Report to Government for Fusly 1262 exhibits the number of individual Puttahs in Malabar at 1,85,371. The entry was taken from Statement No. 3 enclosed in the Collector's Jammabundy report for that Fusly. Mr. Robinson explains that the above are revenue payers, classified as required, but not Puttah holders; a small number of them only receiving, or ever having received Puttayoms of any kind. The lands of a still smaller portion, he states, are subject to annual settlement; "By far the greater number "pay a fixed and unvarying revenue, based on the ancient settlement of Tippoo, and the only "Puttayoms now ever issued are to individuals to whom remissions are made at the Jummabundy, "and only on the occasion of changes. "These Puttayoms" he adds "are not considered as "Title Deeds, but are intended merely to secure the ryot against unauthorized demands by "the village servants when a change in the demand takes place." The number of simple land revenue Puttahs issued in Fusly 1265 was 16,921, some of which were "made out in the name "of Jenmees, some of mortgagees, and some of tenants on various tenures existing in Malabar. "They are granted to the individual in whose name the demand stands in the revenue accounts, "which under the early administration of the province were kept without much reference to "the letter of the Law."

5. Having given this information, Mr. Robinson states his opinion that the question does not turn on the issue of Puttahs, as the mere holding of this document cannot affect the existing Law of the land as regards a proprietary District, nor can these Deeds operate to give any Law such as Regulation XXVIII. of 1802 or Act XXIII. of 1856, which are otherwise inapplicable to the condition of the District, and were enacted to regulate legally acknowledged relations quite other than those existing in the District, any statutable effect within Malabar.

6. Here the Board would observe, that they did not call for explanation in regard to Puttahs, from an opinion that the reception or otherwise, if this document could be held *as decisive* of the nature of the tenure of the land to which it applies; but because they considered that a Civil Court, before which the question at issue may be eventually tried, cannot but regard it in the light of important evidence; inasmuch as a Zemindar receives no yearly Puttah while its issue by Government is a prominent feature of the ryotwar settlement.

7. In asserting that Act XXIII. of 1856 as well as Regulation XXVIII. of 1802 was enacted to regulate legally acknowledged relations quite other than those existing in the Malabar District, because the collections there made by Government are not "khas," the Acting Collector assumes the very point at issue; and the fact of the Sudr Udalut having by an ex-

press decision declared Regulation XXVII. of 1802 applicable to Malabar is of no avail, because this construction was given before the enactment of Act XXIII. of 1856, and was pronounced of ryotwar Districts in general as well as Malabar. Being recently upheld, by the Government Pleader, and thought to militate against the punctual collection of the Government revenue, the Legislature at the instance of the Madras Government passed Act XXIII. of 1856, for the express purpose of destroying its effect, and this statute declares 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." According to the dictum of the Sudr Udalut arrears of public revenue payable by proprietors or farmers immediately to the Collector or other officer of Government under settlements, permanent or temporary, were recoverable under Regulation XXVII. of 1802, and this was held to affect ryotwar Districts generally. Now, under Act XXIII. of 1856, revenue payable on settlements direct with the ryots is to be deemed khas, and recoverable under Regulation XXVIII. of 1802, and the thing to be proved is not that collections in Malabar cannot be rightly classed as khas, but that the settlement is not one made direct with the ryots. There are so many points of similarity between the proprietor of Malabar and the Meerassidar of the Carnatic that the Board are disposed to think that the Courts will primâ facie assume that the designation of ryot is applicable to both, and that they equally come within the parview of Act XXIII of 1856, and they imagine that the Collector will be called upon to prove that they do *not*, and not to prove his locus standi under that statute.

Campbell's Edn. of Regs. Para. 89.

8. Most of the arguments adduced by Mr. Robinson will be found to concern the question of whether the collections in Malabar can be considered khas collections, which as stated above is now immaterial; but he also mentions some facts which must be admitted to tend in some degree to establish a distinction between the Jenmekaren of Malabar and the Meerassidar of ryotwar Districts in general. A small portion of them only it is said, receive or ever have received Putteyoms of any kind; the greater number, paying a fixed unvarying revenue. And of the same description is a circumstance not dwelt upon by Mr. Robinson, but which struck the Board, that "all land, waste or other, is the fee simple property of the ryot proprietors, the Government possessing only the right of collecting a Negudy, or public cess, on cultivated land." So that it would appear that land (waste) may remain the property of a ryot in Malabar without Government possessing the right to demand payment for it; whereas, in ryotwar Districts in general, Government assert the right to charge for waste unless the ryot will resign it. On the other hand it will be seen from the enclosures of every Jummabundy report, and is admitted by Mr. Robinson, that remissions are granted for withered crops, poverty, inundations and other causes, the same as in the Carnatic, and it is clear that these are not confined to the holders of escheats or the class holding really under Jenmakarans which Mr. Robinson terms non-descript ryots, but are participated in by Jenmies themselves; as Mr. Robinson mentions that it is only to persons obtaining remisions that Puttahs are granted, and that in Fusly 1265 some Puttahs were made out in the names of Jenmies. In this respect therefore the latter resemble the Meerassidars of the Carnatic, and the settlement with them is different from that with Zemindars who receive no remission on account of circumstances of season.

From Acting Collector 3rd February 1857, para. 2.

9. If Act XXIII. of 1856 had not been passed, and the question now before the Board was whether arrears in Malabar should be recovered under Regulation XXVII. or Regulation XXVIII. of 1802, they would be convinced by Mr. Robinson's reasoning that the former was most applicable and most suitable to the District, but the only point now for consideration is whether the land holder of Malabar is a ryot in the sense in which the term is used in Act XXIII. of 1856, and after anxious consideration the Board are reluctantly compelled to say they think he is.

10. It is resolved however to submit the corrrspondence for the consideration and o ers of Government, and the Board take the opportunity to state their conviction that both for Malabar and other Districts, a modification of Act XXIII. of 1856 is very desirable. In Malabar gene-

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rally, and in other Districts sometimes, it will be preferable to attach the land instead of personal property. Prior to the enactment of this statute Collectors exercised the option, and it was the intention of Government, that it should be secured to them by the new Law; but the language which has been employed precludes it.

11. As Mr. Robinson alludes to a decision given against him on the point of selling personal instead of landed property, the Board must explain, before closing these Proceedings, that this course was adopted before the enactment of Act XXIII. of 1856, and was therefore plainly illegal at that time. Under these circumstances, the decision in question does not aid in determining whether that statute is applicable to the District. Proceedings had been drafted with the view of laying the decree in question before Government; but their submission has been stayed by a Telegraphic Despatch intimating Mr. Robinson's intention to make a further communication relative to the suit.

Para. 12, 29th April in Cons. 3d June 1857.

(A true Extract)

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

No. 39. ORDER THEREON, No. 656; dated 27th June 1857.

In the Proceedings above recorded, the Board of Revenue submit a letter from the Acting Collector of Malabar, in which he expresses his opinion that the tenure under which land is held in that province will not admit of the dues of Government being recovered under Regulation XXVIII. of 1802, and that recourse should be had to Regulation XXVII. of the same year. The Board dissent from this view, but while they are of opinion that Regulation XXVIII. is applicable to the Malabar District, they point out that it may there be very preferable to distrain and sell the land, in preference to the personalty of the defaulter.

2. The Government are of opinion that although the revenue in Ryotwary Districts was collected under Regulation XXVII. of 1802, prior to the enactment of Act XXIII. of 1856, the officers of revenue, now that that Act is in force, have no power to take advantage of the older law, and that consequently they are bound by the provisions of Clause 7, Section XXXIV. of Regulation XXVIII., and can sell landed property only after the expiration of the revenue year, and then only through the intervention of the Zillah Court. The inconvenience which was formerly felt from the obligation first to sell landed property, is now experienced from the necessity of selling first the personal property of defaulters, and the Right Honorable the Governor in Council considers it highly desirable that legal power should be given to its officers to sell either land or personalty, as in any case may be desirable.

1802.

3. Ordered therefore that the Clerk of the Legislative Council be requested to adopt measures to obtain from the Council a short Act, giving to the Revenue officers of this Presidency power to sell, for arrears of revenue, either real or personal property, as to them may seem expedient.

4. Ordered also that this proceeding be reported to the Government of India.

(Signed) H. FORBES,
Acting Secretary to Government.

Ordered in consequence that the following letter be despatched.

No. 40. From H. FORBES, Esq., Acting Secretary to the Government of Fort St. George; to W. MORGAN, Esq., Clerk to the Legislative Council, dated 27th June 1857, No. 657.

SIR,

I am directed by the Right Honorable the Governor in Council to request that you will refer to the correspondence noted in the margin, between this Government and the Honorable Mr. Eliott, upon the subject of an amendment of the law under which the land revenue in Ryotwar Districts has been collected in this Presidency, which led to the enactment of Act XXIII. of 1856.

To Hon'ble Mr. Eliott 23d Oct. 1856, No. 1127.
Minute by do. 20th November 1856.

2. In the 3d paragraph of the Honorable Mr. Eliott's Minute of the 20th of November 1856, he said that he had considered, whether it might not be expedient to introduce a new Section into the Bill, ultimately passed as Act XXIII. of 1856, modifying Clauses 6 & 7 of Section XXXIV. of Regulation XXVIII. of 1802, so as to empower Collectors to sell the lands of defaulting Ryots for arrears of revenue due by them, before the expiration of the Fusly; there was not then time to communicate with this Government on the subject, and without such previous communication Mr. Eliott did not feel himself authorized to make the addition he referred to.

3. Previous to the enactment of Act XXIII. of 1856, great inconvenience had been felt in this Presidency, from the necessity under which the Revenue officers were placed (by a ruling of the Sudr Court of Udawlut, that the public demand on ryotwar holdings could be collected only under the provisions of Regulation XXVII. of 1802,) to sell land before personal property could be distrained, and it certainly was the intention of this Government, in moving for an amendment of the law, to obtain for its Revenue officers, power to sell either real or personal property at their discretion. Unfortunately this intention, although apparent in the draft Act submitted, was not separately communicated to Mr. Eliott, and, as is shewn above, although its necessity was apparent to him, he did not, in the absence of special instructions, feel authorized to supply the omission.

4. The Board of Revenue have now submitted to Government a letter from the Acting Collector of Malabar, in which he expressed his opinion that the tenure under which land is held in that province will not admit of the dues of Government being recovered under Regulation XXVIII. of 1802, and that recourse should be had to Regulation XXVII. of the same year. The Board dissent from this view, but while they are of opinion that Regulation XXVIII. is applicable to the Malabar District, they point out that it may there be very preferable to distrain and sell the land, in preference to the personalty of the defaulter.

5. The Government are of opinion that, although the revenue in Ryotwar districts was collected under Regulation XXVII. of 1802 prior to the enactment of Act XXIII. of 1856, the officers of revenue, now that that Act is in force, have no power to take advantage of the older law, and that consequently they are bound by the provisions of Clause 7, Section XXXIV. of Regulation XXVIII, and can sell landed property only after the expiration of the revenue year, and then only through the intervention of the Zillah Court. The inconvenience which was formerly felt from the obligation first to sell landed property, is now experienced from the necessity of selling first the personal property of defaulters, and the Right Honorable the Governor in Council, considers it highly desirable that the original intentions of the Government, as foreseen by the Honorable Mr. Eliott, should be acted on, and legal power be given to its officers to sell either land or personalty, as in any case may be desirable.

1802.

6. The Government are not unmindful that it is in contemplation to request at the hands of the Legislative Council a revision of the whole Revenue code of this Presidency, but they are uncertain when the Draft Acts which they have prepared will be put by the Government Pleader in a form for submission to the Council, or what length of time may be occupied in discussion when the drafts are formally submitted. In the mean time, they consider it inexpedient that any doubt should be felt as to the means to be adopted for the realization of the revenue in Malabar, or that the inconvenience now elsewhere experienced from the obligation to sell personal property, should any longer continue. I am therefore directed to request that you will adopt measures to obtain from the Council a short Act, giving to the Revenue officers of this Presidency power to sell, for arrears of revenue, either real or personal property as to them may seem expedient.

No. 41. From H. FORBES, Esq., Acting Secretary to the Government of Fort St. George; to the Secretary to the Government of India, dated 27th June 1857, No. 658.

SIR,

I have the honor, under the orders of the Right Honorable the Governor in Council, to submit for the information of the Right Honorable the Governor Ge-

Pro. of the Board of Revenue dated 26th September 1856, *No.* 3136.
Extract Minutes Consultation dated 23d October „ „ 1126.

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To the Madras Member of the Legislative Council of 23d October 1856, *No.* 1127.
Minute of do dated 20th November 1856.
Telegraphic Despatch from do dated 29th November 1856.
Extract Minutes Consultation dated 3d December 1856.

neral in Council, copies of the correspondence noted in the margin, having reference to the recent enactment of Act XXIII. of 1856, for the better recovery of arrears of revenue under Ryotwar settlements in this Presidency, and to report the amendments that are now found necessary.

2. The circumstances which rendered legislation necessary are fully explained, not only in the papers now forwarded, but also in the letter from this Government to the Honorable the Court of Directors dated 15th January last, No. 1, copy of which was transmitted to the Government of India on the 30th Idem, and I therefore abstain from swelling this communication with any unnecessary details.

3. From Mr. Chief Secretary Pycroft's letter to the Legislative Member for Madras dated 23d October 1856, No. 1127, paras. 5 and 7, the Government of India will see that it was the intention to obtain an enactment empowering the Collector to attach and sell either the personal property or land of the defaulter, whichever might afford the readiest mode of recovering the arrear, and the original draft sent up by this Government would seem to have been worded so as to secure this object. But the Council instead of declaring that "Regulation XXVIII. of 1802 is and shall be available for the recovery, &c." enacted that the " collection of the Government " revenue due on account of lands under settlement direct with the ryot is a khas collection on " the part of Government within the meaning of Section XXXVIII. Regulation XXVIII. of " 1802." This alteration limits Collectors in the recovery of Ryotwarry arrears to Regulation XXVIII. of 1802, to the exclusion of Regulation XXVII. of the same year, or in other words, the new enactment makes it imperative to distrain personal property before proceeding to the attachment of land.

4. Previous to the enactment of Act XXIII. of 1856, great inconvenience had been felt in this Presidency from the necessity under which the Revenue officers were placed, (by a ruling of the Sudder Court, that the Public demand on ryotwar holdings, could be collected only under the provision Regulation XXVII. of 1802,) to sell land before personal property could be distrained, and it certainly was the intention of this Government in moving for the amendment of the law, to obtain for its Revenue officers power to sell either real or personal property at their discretion. Unfortunately, this intention, although apparent in the draft Act submitted, was not separately communicated to Mr. Eliott, but from his Minute of 20th November 1856, it is clear that the necessity of a provision of the description under notice was apparent to Mr. Eliott, though he did not, in the absence of special instructions, feel authorized to supply the omission.

5. Under these circumstances this Government have, in a communication of this day's date, requested the Clerk of the Legislative Council to adopt measures to obtain from the Council a short Act, giving to the Revenue officers of this Presidency power to sell for arrears of revenue, either real or personal property as to them may seem expedient. A copy of this communication is enclosed, and as the punctual realization of the land revenue of this Presidency is at stake, His Lordship in Council anticipates the ready concurrence of the Council in the proposal now laid before them.

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venue dated 26th September 1856, *No.* 3136.
tation dated 23d October „ „ 1126.

55 Revenue Department

No 1888

Extract from the Proceedings of the Board of Revenue, dated 3d June, 1857.

Read again Letter from the Acting Collector of Malabar - 3d February 1857 No 10 -

Read again the Board of Rev: 12th March. No 771.

Read Letter from the Asst Collr of Malabar 29th April 1857.

In Cons 3d June 1857. 1621.

(Here Insert No 58.)

In this Letter of the 3d February 1857 the Acting Collector in acknowledging the receipt of the Board's Circular Order of the 6th January 1857 No 45 expressed a doubt of the applicability of Act XXVII of 1856 addressed to Canara, to the District of Malabar, the tenure of land in which he considered essentially Proprietary, the Government possessing only the right of collecting a Tazady or Public Cess on cultivated Waste, and all land, waste or otherwise being the fee simple property of the Ryot

2. The Board, in reply, intimated their opinion that the question would turn on whether

whether the Settlement made with the Malabar Landowners was permanent such as is made with a Zemindar or a Settlement from year to year such as is made with an ordinary Ryot: and they requested an explanation of certain items in the yearly accounts and any further information which Mr Robinson could supply, to enable them to form a judgment on this point.

3. This requisition is complied with in the Acting Collector's Letter of the 29th April last.

4. Statement No 6 appended to the Board's General Report to Government for Fusly 1262 exhibits the number of Individual Puttahs in Malabar at 185,371. The entry was taken from Statement No 3 enclosed in the Collector's Summary Report for that Fusly. Mr Robinson explains that the above are Revenue payers, classified as required, but not Puttah holders; a small number of them only receiving or ever having received Puttayons

Puttayons of any kind. The lands of a still smaller portion, he states, are subject to annual Settlement. "By far the greater "number pay a fixed and unvarying "revenue, based on the ancient Settlement "of Tippoo, and the only Puttayons now "ever issued are to individuals to whom "remissions are made at the Summabundy "and only on the occasion of changes. These "Puttayons" he says "are not considered as "title Deeds, but are intended merely to "secure the Ryot against unauthorized de- "mands by the village servants when a "change in the demand takes place". The number of simple Land Revenue Puttahs issued in Fusly 1265 was 189,21, some of which were "made out in the name "of Sumeeo some of Mortgagee, and "some of tenants on various tenures ex- "isting in Malabar. They are granted to "the individual in whose name the "Demand stands in the Revenue Accounts, "which under the early administration "of the province were kept without much

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"preference to the letter of the Law."

5 Having given this information Mr Robinson states his opinion that the question does not turn on the issue of Puttahs, as the mere holding of this document cannot affect the existing Law of the Land as regards a Proprietary District, nor can these Deeds operate to give any laws such as Regulation XXVIII of 1802 or Act XXIII of 1836 which are otherwise inapplicable to the condition of the District, and were enacted to regulate legally acknowledged relations quite other than those existing in the District, any Statutable effect within Malabar.

6 Here the Board would observe, that they did not call for explanation in regard to Puttahs from an opinion that the reception or otherwise, if this document could be held as decisive of the nature of the tenure of the land to which it applies; but because they considered that a Civil Court, before which the question at issue may be

incidentally tried, cannot but regard it in the light of important evidence; inasmuch as a Zamindar receives no yearly Puttah while its issue by Government is a prominent feature of the Ryotwar Settlement.

7 In asserting that Act XXIII of 1836 as well as Regulation XXVIII of 1802 was enacted to regulate legally acknowledged relations quite other than those existing in the Malabar District because the collections there made by Government are not "fixed", the Acting Collector assumes the very point at issue; and the fact of the Zabr Moolukh having by an express Decision declared Regulation XXVII of 1802 applicable to Malabar is of no avail, because this construction was given before the enactment of Act XXIII of 1836, and was pronounced of Ryotwar Districts in general as well as Malabar. Being recently upheld by the Government Pleader and thought to militate against the punctual collection of the Government Revenue, the Legislature at the instance

of

the Madras Government passed
Act XXIII of 1856 for the express purpose
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clares that "the Collection of the Govern
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of 1802. - and this was held to affect
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There are so many points of similarity
between the Proprietor of Malabar
and the Meerasidar of the Carnatic
that the Boards are disposed to think
that the Courts will primâ facie assume
that the designation of Ryot is applicable
to both, and that they equally come
within the purview of Act XXIII of 1856.
and they imagine that the Collector will
be called upon to prove that they do
not - and not to prove his locus standi
under that Statute.

8. Most of the arguments adduced
by Mr Robinson will be found to concern
the question of whether the collections
in Malabar can be considered Khas
Collections, which as stated above is
now immaterial; but he also mentions
some facts which must be admitted to
lead in some degree to establish a dis-
tinction between the Jenmetaram of Malabar
and the Meerasidar of Ryotwar Districts
in general. A small portion of them only

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From Act. Collect. 2d July 1827 p. 2

Robinson terms non descript Ryots, but are participated in by Jemmies themselves; as Mr Robinson mentions that it is only to persons obtaining Remissions that Puttahs are granted, and that in July 1265 Some Puttahs were made out in the names of Jemmies. In this respect therefore the latter resemble the Meerasidars of the Carnatic and the settlement with them is different from that with Zemindars who receive no remission on account of circumstances of season.

9. If Act XXIII of 1836 had not been passed and the question now before the Board was whether arrears in Malabar should be recovered under Regulation XXVII or Regulation XXVIII of 1802 they would be governed by Mr Robinson's reasoning that the former was most applicable and most suitable to the District - but the only point now for consideration is whether the land holder of Malabar is a Ryot in the sense in which the term is used in Act XXIII of 1836, and after anxious consideration the Board are reluctantly compelled to say they think the

his is.

10. It is proper however to submit the correspondence for the consideration and orders of Government and the Board take the opportunity to state their conviction that both for Malabar and other Districts a modification of Act XXIII of 1836 is very desirable. In Malabar generally, and in other Districts sometimes, it will be preferable to attach the lands instead of personal property. Prior to the enactment of this Statute Collectors exercised the option, and it was the intention of Government that it should be secured to them by the new Law; but the language which has been employed precludes it.

11. As Mr Robinson alludes to a decision given against him on the ground of selling personal instead of landed property, the Board must explain, before closing these Proceedings that this course was adopted before the Enactment of Act XXIII of 1836, and was therefore plainly illegal at that time. Under these circumstances the

Para 12 - 23rd April in Cir 5th June 1857.

the decision in question does not aid in determining whether that Statute is applicable to the District. Proceedings had been drafted with the view of laying the Decree in question before Government, but their submission has been stayed by a Telegraphic Despatch intimating Mr Robinson's intention to make a further communication relative to the Suit.

(A true Extract)

J. Stein

Actg Secretary.

To,

H. Forbes Esq

Actg Secretary to Government

Rev. Department.

Rec'd.

Revenue Department.

No.

Extract from the Proceedings of the Board of Revenue, dated 12th March, 1857.

Read letter from the Acting Collector of Malabar dated 3d February 1857.

Revenue 12th March 1857. (Here enter No. 10A.)

By their Circular No. 45 under date the 6th January last, the Board of Revenue called the attention of all Collectors to the Provisions of Reg. No. XXIII of 1856 as requiring that the coercive process used to enforce payment of arrears of Postway Revenue should in future be that prescribed by Regulation XXVIII of 1802.

2. In the letter recorded above, the Acting Collector of Malabar submits for the consideration of the Board the doubts he entertains as to the applicability of that Regulation to Malabar, which he considers to be a purely

such Zemindary District in which a
Regulation XXVII of 1802 can be employed
with superior advantage.

3. "Malabar," he observes "is
"essentially a proprietary District in which,
"with the exception of a few escheats, "
"the Government has not, and never can
"claim any title to be considered Land-
"lord or Proprietor. All land, waste or
"other, is the fee simple property of the
"Ryot. Proprietors, the Government pos-
"sessing only the right of collecting a
"Tax, Tyady or public Cess on cultivated land.
"When assessing land, the Government
"Officers distinctly recognize the Land-
"lords separate right and there is re-
"served a share of the produce "
"(irrespective of the actual Cultivators
"Patankar profit) or Poraspaad as a
surplus produce
Jenmy bhogum".
Landlords share

4. In Regulation 29 of 1802,
which Mr. Robinson wishes to apply
to

to Malabar, the term Proprietor of
land referred to in that Regulation,
is explained in Section 11 to include Ze-
mindars, independent Talookdars, and
all actual Proprietors of land who pay
the Revenue assessed upon their Estates
immediately to Government.

5. The Sudr Adalut in 1829
ruled that the description embraced
Ryots in unsettled Districts who paid
their tax direct to Government.

It was the object of the
Regulation XXIII of 1828, to withdraw the Ryots
of unsettled Districts in general from
the operation of Regulation XXVII of
1802, and the language employed for
the purpose is as follows. "The Col-
"lection of the Government Revenue
"due on account of lands under settle-
"ment direct with the Ryots shall be
"deemed a Khas Collection on the part
"of Government within the meaning of

Section

Section XXXVIII "Regulation XXVIII of 1802."

7. Turning to that clause the Board find that the Khas Collection referred to therein was one "where no Settlement may have been made with any Proprietor or farmer." The definition drawn by Act XXIII of 1850 would therefore appear to be between permanent Settlement such as is made with a Zemindar and a Settlement from year to year such as is made with an ordinary Ryot.

8. Before the Board can express a decided opinion as to which of these two classes the Settlements in Malabar belong to, they require further information.

9. In Statement No. 6 attached to the General Report for July 1862, the number of individual Pattahs in Malabar is entered as 185,371 while the number of Jenmees is reckoned in the Glossary

In Comm. Jr. 25th September 1863

135

Glossary of Terms received with the Acting Collector's letter of the 15th August 1863 as 114,378. Again in Summabundy Statement No. 2 for July 1862 the number of Pattahs is given as 38,900. The Board would wish to know the nature of the smaller number of Pattahs 38,900, and if there are such as are given for lands which have escheated, the Collector will be so good as to state what Regulations he considers applicable to them. Regulation XXVII or XXVIII of 1802. He will also explain the nature of the Pattahs remaining to make up the number 185,371 whether these are all given to Jenmikars or to whom? and whether, also, they are given from year to year or in any other manner. It has been understood that in often times the Jenmikars retain a mere peshpar Cowle Rent on their land, in which case it is probable that they reside at a considerable distance from the Village

in

which it is situated. Under such
circumstances the Board would ask
whether the Pottah is made out in
their names, and whether when an
arrear accrues the demand is made on
them? The Acting Collector will con-
sider whether when all but a minute
portion of the profit from the land
is received by others it would be equit-
able to make the Jenmeekarans res-
ponsible for the arrear?

In ordinary Ryotwar Dis-
tricts, the owner of the land and the
actual Cultivator are frequently distinct
persons. The former generally receives
the Pottah, and either a share of the
produce or a money Rent. The diffi-
culty is to draw a legal distinction
between these and the Jenmekarans of
Malabar. The questions in the preceding
Para: have for their object, to draw out
that distinction, and as they may prove

insufficient for the purpose, Mr. Robinson
will be so good as to add all the informa-
tion bearing on the point which his
intimate knowledge of the subject may
suggest.

(True Extract)
(signed) C. D. Lyon.
Acting Secretary.

To
H. A. Robinson Esqr.
Acting Collector of
Malabar.

(True Copy)
Acting Secretary.

D. Cuts.

Rev: Dept. No 651

A question of some importance is involved in this discussion - it is, Whether the landed or personal property of the landholder of Malabar is to be first resorted to for the public revenue or whether the liability of the landholder to this duty should be reduced by Regulation XXVII of 1803 and Act Regulation XXVIII of 1803 now applicable to the Ryotwar District, the revenue is to be collected under the provisions of the former regulation, & of Clause 1st Section VI, the land is to be sold before the personal property should be touched. The circumstances which led the Govt to

Government being recovered

under

Sub. Collector's Letter from the Acting Secretary to the Board of Revenue to the Collector of Malabar Fort St. George dated 3rd May 1837 No 1838

Copy

Bd. Rev. & Judicature dated 12th March 1857

R 657/57

Copy

Expediency of Regulation Exercised in Malabar

Read XXIII/9/1856

apply to the Legislature, and
Act xxiii of 1856 on passed
declaring that areas re-
-cently in Protwar district
might be collected under Section
xxxviii of Regulation xxxviii of
1802.

This section gives to Collectors
for account of Govt. Revenue
power to collect the revenues
such as are given in Sections 11,
and clause 7 of Section xxxiv,
to Proprietors under their
respective tenures, under Section 8 Regulation
proprietors may be distrained
proved, and under clause
7. Section xxxiv, certain
landed property may be
sold, but only on application

the Zillah Judge, and only if
the balance remain unpaid
after the close of the current
year.

In applying for Act xxiii of
1856, I think but I can no
doubt the intention of Govt.
to obtain an Act to enable
give the Collector authority to
sell either landed or personal
property, as he might think
expedient — inconvenience
had been felt from the re-
-cent Act Collectors were
under these, first, landed
property, and subsequently
it was felt from the objection
these personal property, &

not admit of the dues of
Government being recovered
under

from the absence of authority to
see Landed property, except
through the intervention of the
Judge, and at the close of the
revenue year.

The execution Sheriff act
XXIII of 1856 precluded Collectors
in Rs Ryotwar District having
recourse to Reg XXVII of 1802,
on part of Govt & the Board of
Revenue in their proceedings
of the 17th of January last, &
in an order dated the 29th of
January, the Govt said that
they had no doubt that they
were precluded -
The Board are, in favor

M.S. 16x.

from a 10 state their conviction
that a modification of act
XXIII is needed, & on the side
of Collectors the Action of
selling land is necessary.

The Govt will be pleased
to lay before they with the
Questions to be brought be
fore the Legislative Council
- they may probably be some
Revision on the part of the
Legislature to take up the
Question at a time when the
revision of the State Enactments
Code of this Presidency is

in

not admit of the dues of
Government being recovered
under

contemplation – on the other hand the Act passed is not that the Government asked for – they asked for but Mr Sick according adopted in our Province has depicted Col. Cotton's Bill

Q. 656

R. D. 19x.

1656 206

18x.

19x.

186

the Act passed last year was evidently insufficient – but it was in accordance with the legislation of the day –

[illegible] it is the opinion at present that it can be enforced – [illegible] it appears by concurring upon the [illegible] subject – [illegible] opportunity of thanking the Hon. Col. [illegible] & [illegible] his [illegible]

not admit of the due of Government being recovered under

I think - that a humble Petitioner
to appeal at once - as he may
have Permit - a long time set for
the Period - Limitation -
- I do not think it proper to
Enquire into Statements & Representations
Facts - which have been made before
it - by Petitioner - in support of his Original
Petition - I also do not think it proper
Power - to Enquire into - the Amount
Salaries &c. of Pensions - if they please

R. D. 18

No 656 295

18

195

Prohibit - & have the responsibility
to the Legislative Council -

The cases of this nature in which
Pension is commuted - did at the
same time to appeal to the
Govt of India -

H. C.

not admit of the due of
Government being recovered
under

R. D. 19

No. 656 295

Extract from the Minutes of Consultation

Under date the 27th June 1854

Read the following

Extract from the Proceedings

of the Board of Revenue.

(Here enter 3 June 1854 No. 1255

From the Proceedings

above recorded the Board of

Revenue submit a letter

from the Acting Collector

of Malabar in which he

expresses his opinion that

the tenure under which land

is held in Malabar will

not admit of the dues of

Government being recovered

under

under Regulation XXVIII of
1802, and that recourse should
be had to Reg XXVII of the
same year. The Board
dissent from this view, but
while they are of opinion
that Reg XXVIII is applic-
cable to the Malabar Dis-
trict, they point out that
it may there be very prefe-
rable to distrain and sell
the land in preference to the
personalty of the defaulter.

2 The Government
are of opinion that although
the revenue in Ryotwar dis-
tricts was collected under
Reg: XXVII of 1802 prior
to the enactment of Act XXIII
of 1836, the Officers of revenue,

1802

now that that Act is in force
have no power to take ad-
vantage of the older laws
and that consequently they
are bound by the provisions
of clause 4 Section XXXIV
of Reg XXVIII, and can sell
landed property only after
the expiration of the revenue
year, and then only through
the intervention of the
Zillah Court. The incon-
venience which was formerly
felt from the obligation
first to sell landed pro-
perty, is now experienced
from the necessity of selling
first the personal property
of defaulters, and the Right
Honorable the Governor in
Council

Council considers it highly
desirable that legal power
should be given to its Officers
to sell either land or personal
-ty as in any case may be desira-
-ble.

3 Ordered therefore that
the Clerk of the Legislative
Council be requested to adopt
measures to obtain from the
Council a short act, giving
to the Revenue Officers of
this Presidency power to
sell for arrear of revenue
either real or personal pro-
perty, as to them may seem
expedient.

4 Ordered also that
this Proceeding be reported
to the Government of India.

Ordered

Ordered therefore that
the following letters be des-
-patched.

225

To
The Clerk to the Legis
-lative Council.

Forwarder 27 June 1857
No 657

To
The Secretary to the
Government of India.

Forwarder 27 do — 658/

E Z

3 Copies to the Bd of Rev.
with 2 Encls Copies 29

them may seem expedient.

June 1857

93 b

Revenue 1857 Dep.t

D.o to Cons: 20th June

No. 656.

C.

Extract Mins: of Cons:

D. 27th June 57.

Pro. Bd of Rev
26 Nov 57 No. 4164
rec.d 1st Dec

Requesting the Govt
of the Legislative Council to adopt
measures to obtain from the
Council a short Act giving to
the Revenue Officers of the
Presidency power to sell, for
arrears of revenue, either real
or personal property, as to
them may seem expedient.

No. 38 & 39.

19 June 1858

No 658

To

W. Morgan, Esqre

Clerk to the

Legislative Council

Sir,

I am desired by

the Right Honorable

the Governor in Council

to request that you

will refer to the cor-

respondence noted

in the margin, be-

tween this Govt and

the Honorable the

Elliott, upon the sub-

ject of an amendment

of the law under which

the land revenue in

Ryotwar

To Honorable Mr Elliott 23rd Oct 1856
No 1127
Immate by Rs 20 Mr Jan 1857.

Ryotwar Districts
has been collected in
this Presidency, which
led to the enactment
of Act XXIII of 1856.

2. In the 3d. para-
graph of the Honorable
Mr. Elliott's Minute
of the 20th of November
1856, he said that he
had considered whe-
ther it might not be
expedient to introduce
a new Section into
the Bill, ultimately
passed as Act XXIII of 1856,
modifying clauses 67 of the XXIII of Reg.
XXVIII of 1802, so as to em-
power Collectors to
sell the lands of de-
faulting Ryots for ar-
rears of revenue due
by

L Comrs

56

by them, before the ex-
piration of the Fasly-
there was not then time
to communicate with
this Govt. on the subject,
and without such pre-
vious communication
Mr. Elliott did not feel
himself authorized to
make the addition he
referred to.

3. Previous to the en-
actment of Act XXIII of
1856, great inconveni-
ence had been felt in
this Presidency from the
necessity under which the
revenue officers were
placed by a ruling of the
Sudr Court of Adawlut,
that the public demand
on ryotwar holdings
could be collected only
under the provisions of

Reg. XVII of 1802 to sell land before personal property could be distrained, and it certainly was the intention of this Govt., in moving for an amendment of the law, to obtain for its revenue officers power to sell either real or personal property at their discretion. Unfortunately this intention, as the apparent on the draft act submitted was not separately communicated to Mr. Elliott, and, as is shewn above, although its necessity was apparent to him, he did not, in the absence of special instructions feel authorized to supply the omission.

4 The Board of Rev: have now

965 (3) 25

submitted to Government a letter from the Acting Collector of Malabar, in which he expressed his opinion that the tenure under which land is held in that Province in Malabar, will not admit of the due of Government being recovered under Regulation XXVIII of 1802, and that recourse should be had to Reg XXVII of the same year. The Board dissent from this view, but while they are of opinion that Reg XXVIII is applicable to the Malabar District, they point out that

that it may therefore be very
preferable to distrain
and sell the land in
preference to the personalty
of the defaulter.

5. The Govt are of
opinion that although the
revenue in Ryotwar
districts were collected un-
der Reg XXVII of 1802 prior
to the enactment of
Act XXIII of 856, the
Officers of Revenue, now
that that Act is in force,
have no power to take
advantage of the older law,
and that consequently
they are bound by the
provisions of Clause 7
Section XXXIV of Regn
XXVIII, & can sell landed
property

1802

J. Gilmore

275

property only after the
expiration of the Revenue
year, and then only through
the intervention of the
Zillah Court. The in-
convenience which was
formerly felt from the
obligation first to sell
landed property is now
experienced from the
necessity of selling
first the personal pro-
perty of defaulters;
and the Right Honble
the Governor in Council,
considers it highly de-
sirable that the original
intentions of the Govt,
as foreseen by the Honble
Mr Elliot, should be
acted on, and legal
power be given to the
Officers to sell either
land or personalty,
as

any case may be clear-
rable.

6. The Govt are not
unmindful that it is
in contemplation to
request at the hands
of the Legislative
Council a revision of
the whole Revenue code
of this Presidency, but
they are uncertain
when the draft Acts
which they have
prepared will be put
by the Govt Reader
in a form for sub-
mission to the Council,
or what length of
time may be occupied
in discussion when
the drafts are formally
submitted. In the mean
time they consider it
inexpedient that any

3.

985

doubt should be felt as to the
means to be adopted for the
realization of the revenue in
Malabar, or that the inconvenience
now elsewhere experienced from
the obligation to sell personal
property, should any longer
continue. I am therefore directed
to request that You will adopt
measures to obtain from the
Council a short act, giving
to the Revenue Officers of this
Presidency power to sell, for
arrears of revenue, either real
or personal property as to
them may seem expedient.

I have &c.

Fort St. George
27th June 1857

1 June 1857

95

Revenue 1857 Sept.
Dt to Cons: 20th June.

No 657.

To the Clerk of the
Legislative Council

Dt 27th June 57

From Actg Secy Govt Legs Council 0/17 July 57 C. No 846

Dr Cons: 4 Augt
From the Legs Council for the Madras Re-
-cding 7th April 58 R 557 in favr

Requesting to adopt
measures to obtain from the
Legislative Council a Short
Act, giving to the Revenue
Officers of this Presidency, power to
Sell, for arrears of revenues,
either real or personal property
as to them may seem expedient.

Copy to the Govt of India
27 June 57

No 40.

19 June 1823

REVENUE DEPARTMENT.
FORT ST. GEORGE,
27*th June* 1857.

No. 658.

From

H. FORBES, Esq.,
Acting Secretary to the Government of Fort St. George.

To

The Secretary to the Government of India.

SIR,

I have the honor, under the orders of the Right Honorable the Governor in Council, to submit for the information of the Right Honorable the Governor General in Council, copies of the correspondence noted in the margin, having reference to the recent enactment of Act XXIII. of 1856, for the better recovery of arrears of revenue under Ryotwar settlements in this Presidency, and to report the amendments that are now found necessary.

Pro. of the Board of Revenue dated 26th September 1856, *No.* 3136.
Extract Minutes Consultation dated 23d October ,, ,, 1126.
To the Madras Member of the Legislative Council of 23d October 1856, *No.* 1127.
Minute of do dated 20th November 1856.
Telegraphic Despatch from do dated 29th November 1856.
Extract Minutes Consultation dated 3d December 1856.

2. The circumstances which rendered legislation necessary are fully explained, not only in the papers now forwarded, but also in the letter from this Government to the Honorable the Court of Directors dated 15th January last, No. 1, copy of which was transmitted to the Government of India on the 30th Idem, and I therefore abstain from swelling this communication with any unnecessary details.

3. From Mr. Chief Secretary Pycroft's letter to the Legislative Member for Madras dated 23d October 1856, No. 1127, paras. 5 and 7, the Government of India will see that it was the intention to obtain an enactment empowering the Collector to attach and sell either the personal property or land of the defaulter, whichever might afford the readiest mode of recovering the arrear, and the original draft sent up by this Government would seem to have been worded so as to secure this object. But the Council instead of declaring that "Regulation XXVIII. of 1802 is and shall be available for the recovery, &c." enacted that the "collection of the Government revenue due on account of lands under settlement direct with the ryot is a khas collection on the part of Government within the meaning of Section XXXVIII. Regulation XXVIII. of 1802." This alteration limits Collectors in the recovery of Ryotwarry arrears to Regulation XXVIII. of 1802, to the exclusion of Regulation XXVII. of the same year, or in other words, the new enactment makes it imperative to distrain personal property before proceeding to the attachment of land.

4. Previous to the enactment of Act XXIII. of 1856, great inconvenience had been felt in this Presidency from the necessity under which the Revenue officers were placed, (by a ruling of the Sudder Court, that the Public demand on ryotwar holdings, could be collected only under the provision Regulation XXVII. of 1802,) to sell land before personal property could be distrained, and it certainly was the intention of this Government in moving for the amendment of the law, to obtain for its Revenue officers power to sell either real or personal property at their discretion. Unfortunately, this intention, although apparent in the draft Act submitted, was not separately communicated to Mr. Eliott, but from his Minute of 20th November 1856, it is clear that the necessity of a provision of the description under notice was apparent to Mr. Eliott, though he did not, in the absence of special instructions, feel authorized to supply the omission.

5. Under these circumstances this Government have, in a communication of this day's date, requested the Clerk of the Legislative Council to adopt measures to obtain from the Council a short Act, giving to the Revenue officers of this Presidency power to sell for arrears of revenue, either real or personal property as to them may seem expedient. A copy of this communication is enclosed, and as the punctual realization of the land revenue of this Presidency is at stake, His Lordship in Council anticipates the ready concurrence of the Council in the proposal now laid before them.

I have the honor to be,
Sir,
Your most obedient Servant,

(Signed) H. FORBES,
Acting Secretary to Government.

31 §

Revenue Dep.t

No. 657

To

The Secretary to the

Government of India

Sir,

I have the

honor under the orders

of the Right Honorable

the Governor in Council

to submit herewith

for the information of

the Right Honorable

the Governor General

in Council, copies of the

correspondence noted

in the margin, having

reference to the recent

enactment of Act XXIII

of

Proc. of the Bd. of Revr. 26 Sept. 1856
No 3136.
Ex. min. Con.t 3. 23d October " 1126.
To the Madras Member
of the Subordinate Council
of 23d Oct. 1856. No 1127.
Minute of Do. of 20. Nov. 1856.
Telegraphic Despatch from Do. of 29.
November 1856.
Ex. min. Con.t 3. Dec. 1856.

letter recovery of arrears & reasons under Rule 100 in Act Declaratory

collection of the Debt and to report the Reasons, amendments that are not found necessary.

2. The circumstances which rendered such Legislation necessary are fully explained, not only in the papers now forwarded, but also in the letter from this Govt to the Honorable the Court of Directors dated 15th January last of which a copy of which was transmitted to the Government of India on the 30th Idem, and I therefore abstain from swelling this communication with any

325

unnecessary detail.

3 From Mr Chief Secretary Pycroft's letter to the Legislative Department of Madras Member dated 25th October 1856 No 1121, paras 5 and 7, the Govt of India will see that it was intention to frame an enactment empowering the Collector to attach and sell either the personal property or land of the defaulter, whichever might afford the readiest mode of recovering the arrear, and the original draft sent up by this Government would

would seem to have been worded so as to secure this object. But the Council instead of so declaring that "Regulation XXVIII of 1802 is and shall be available for the recovery, &c" enacted that the "collection of the Government "Revenue due on account "of Lands under settlement direct with "the ryot is to be considered "to be on the part of "Government within "the meaning of section "XXXVIII Regn XXVIII "of 1802". This alteration limits Collectors

Ryotwary &c

to Regulation XXVIII of 1802, to the exclusion of Regulation XXVII of the same year, or in other words the new enactment makes it imperative to distrain personal property before proceeding to the attachment of land. As Previous to the enactment of Act XXIII of 1856, great inconvenience had been felt in this Presidency from the necessity under

could be [illegible]
and it certainly was
the intention of this
Government in
moving for the amend-
ment of the law, to
claim for its revenue
officers power to sell
either real or personal
property at their discre-
tion. Unfortunately
his instructions, although of
course with the most distinct authority
were not separately communicated to
Mr Elliott, but from
his minute of 20th
November 1856, it is
clear that the necessity
of a provision of
the description under
notice was apparent
to Mr Elliot, though
he

misled which the
Revenue Officers
were placed, (by
a ruling of the
Sudder Court
that the pub-
lic demands
are pyotees
[illegible]
to be collected only
under the provi-
sion Regulation
XXVII of 1802,)
to sell land
before per-
sonal property
could

of special instructions,
not authorized to suspend
the operation.

5 Under these
circumstances this Govt
have, in a communica-
tion of this day's date,
requested the Clerk
of the Legislative Council
to adopt measures to
obtain from the Council
a short act giving to
the Revenue Officers
of this Presidency power
to sell for arrears of
revenue, either real or
personal property as
to them may seem
expedient

355 355 24

as enclosed, o

the punctual real-
ization of the land
revenue of this Presi-
dency is at stake,
His Lordship in
Council anticipates
the ready concurrence
of the Council ~~with~~
the proposal now
before them

I have &c

J. W. Le Geyt
27th June 1857

Revenue 185 Sept. 18
Dº to Cons: 30th June

No 658

To The Secretary to
Govt of India
Dº 27th June 57

Submitting for the infor
of the Govt of India Copies of
correspondence therein related
reference to the recent enac
of Act XXIII of 1856 for the bet
recovery of arrears of rent
under Ryotwar settlement
this Presidency and reporting
amendements that are consid
necessary.

No 41.