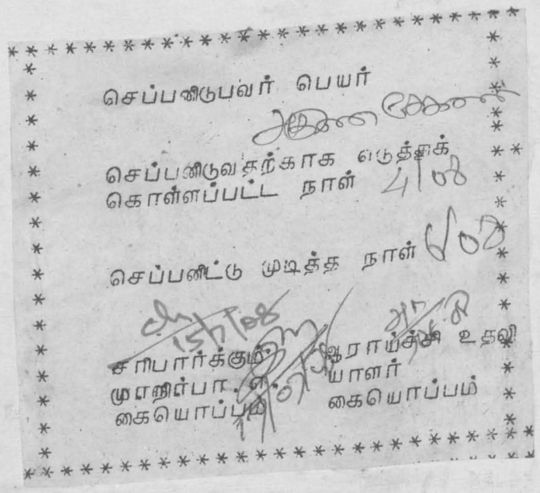


No. 42. Read the following letter from CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to HENRY FORBES, Esq., Acting Secretary to Government; dated Madras, 17th February 1858, No. 18.

SIR,

Para. 1. I have the honor to acknowledge receipt of an Extract from the Minutes of Consultation noted in the margin,* and to state for the information of the Right Honorable the Governor in Council, that I have since gone through the papers which accompanied.

* *Minutes Consultation 30th January* 1858, *No.* 131, *Revenue Department.*

2. Referring to Section II. of the proposed Bill, I would observe that not having the former draft before me, I do not remember the alterations I made in it, and consequently my reason for the alterations does not (with certainty) recur to my mind, I would however observe that in inserting the words "whether written or verbal," I was not advocating the propriety of verbal engagements being entered into, for I consider such a course most objectionable, the insertion of those words, however, would not have the effect of altering the practice pursued by Revenue officers, or of sanctioning verbal arrangements, for it only enacted in *express* terms, what it is still proposed to enact, for under the term "or other engagement" rent due under a verbal engagement (if that engagement be binding in law) would be recoverable under that Section.

3. Referring to Section III. Rule 1st, the last line, I would suggest that "the name of the place" is scarcely sufficient to meet what is required; supposing the Collector of Trichinopoly, or any District having a large town in it, to distrain, would it be considered sufficient if the distraining officer endorsed on the copy furnished to the distrainee, that the property attached was lodged at Trichinopoly? I opine not, and would suggest that after the word "place," the words "where it" should be omitted, and instead of those words should be inserted "with the number of the house and name of the street (when such a description may be practicable) where such property."

4. The 2d rule is somewhat ambiguous in the use of the term "immediate," I would suggest the propriety of its being omitted. The term "previously" in the last line also affords the distrainee no information, as to the time within which he may be at liberty to redeem his property; I would suggest that that word be omitted and after the word "discharged" be added "within a time to be therein specified."

5. I admit that in legislating for this country, difficulties do arise in making those precise provisions which can be enacted in England. It occurs to me, however, that in the proposed bill might be usefully inserted, clauses providing for the time within which sales should be effected (Section XVII. does not appear to provide for the case) and for the purpose of providing for unforeseen difficulties, a certain limit might be allowed; thus it might be enacted, that property distrained should not be sold under a certain number of days, (say 10), but should be sold within a certain number of days (say 31 or 40), unless that time should be prolonged at the request in writing of the distrainee, and with the sanction of the distrainer.

6. In the 3d Rule the word "absent," if left by itself, may (and is likely to) lead to disputes, unless the words "before the expiration of the 3d day calculating from the day of the attachment" be omitted. I would suggest that those words be omitted, and that after the word absent be inserted "from his usual place of residence at the time when the property may be attached;" and instead of the words omitted insert "on the day on which the property may be attached."

7. In Section IV. I would suggest that a time be specified before the word "neglect." The words "absconded" and "not forthcoming" are open to great question. If a Defaulter be absent on business, or bona fide, say in Madras, and the attachment be made in a distant Zillah, it could not be said he had absconded, and scarcely that he was "not forthcoming;" and yet all the mischief wished to be provided against, arises now it appears to me, that if a distraining officer goes to the usual place of residence of the Defaulter, and is unable to meet with the Defaulter there, the substituted service may in all fairness be made; if there be any relative or servant in the house, by serving one of them; if no relative or servant, and there be any other occupiers in the house then by serving one of them; but if the premises be vacant, then by fixing the demand with the necessary endorsements on the premises.

8. In Section VI. I would suggest that there be inserted in the 5th line after the word sold "provided nevertheless that any persons purchasing under this Section the crops or ungathered "products of the lands shall have the same powers of reaping or gathering and storing such crops "or ungathered products as Distrainers have," and in the 6th line after the word products, should be inserted "whether the same shall have been purchased under the provision hereinbefore "contained, or shall be reaped or gathered and stored by the distrainer."

9. In Section XI. I do not understand that there is any object in retaining the words "under Farmers or Ryots," I would suggest the propriety of omitting those words and substituting "Defaulters."

10. Referring to Section XIII. I do not see any object in retaining the words "not being owners," supposing property is improperly attached, the owner has his remedy, but I submit there should not be the slightest countenance given to a party to use force, or to act clandestinely in taking away property distrained.

11. In Section XIV. after the word "granary," I would suggest that "godown outhouse" should be inserted, and after the word "building" to insert "as also."

12. In Section XVI. omit the word "third," and I would suggest that the term of imprisonment should be "for any term not exceeding" 6 months. As also that the party aggrieved should have the option of bringing an action in a Civil Court for damages.

13. In Section XVII. I would suggest the omission of the words "at the expiration of"; and substitute the word "between"; I would also omit the words "before the expiration of"; I would also suggest that proclamation of the intended sale, should likewise be made by beat of drum, in such of the adjacent villages as the Distrainer may direct; not exceeding 3 miles from the village where the distress was made.

14. In Section XIX. the 5th line, I would suggest the omission of the words "calculating from" and substitution of the words "exclusive of"; also omit the words "following the" and substitute the word "of."

15. In Section XX. fifth line, I would suggest after the word "against" the insertion "of and sell," and in the last line I would suggest the omission of the word "further."

16. In Section XXI. third line, I would suggest after the word "not" should be introduced the word "fully," and in the last line for the word "such" substitute "the" and after the word "balance" introduce "thereof."

17. In Section XXIII. first line, the last Section there mentioned as XVII. requires to be altered to XVIII.

18. By the terms of Section XXIV., the Collector is not allowed to arrest a Defaulter unless the arrears may remain unliquidated by the sale of the personal and real property of the Defaulter; the language is not free from ambiguity, but I entertain no doubt that the proper construction to be put upon that Section as now framed, is that a Collector is not to have authority to arrest a Defaulter, until after he has sold *all* the real and personal property of the Defaulter. It follows that if a Collector were to overlook some property belonging to, and should arrest such Defaulter, the arrest would be illegal, and the Collector rendered liable to an action for a wrongful arrest, for I do not think a Collector could defend himself under a plea that it was an act done in the collection of the revenue. It is not for me here to question the policy of deferring the arrest till after the sale of all the Defaulter's property, but I would recommend that at the close of the XXVth. Section should be added, "And no other proceeding in any Court within Her Majesty's Dominions shall be had or taken against the Collector."

19. Is the whole of Section XIII. (including the five Clauses) to be incorporated into this Act?

20. In the XIIIth. Section of Regulation XXVII. of 1802, Clause the first, I observe the Collector is directed to "depute 2 Peons and no more with a writing under his office seal and signature" to arrest the Defaulter; I do not observe that any provision is made for cases of resistance, &c., and I am of opinion that only for suppressing a breach of the peace could the Magistrate or Police interfere, or render assistance, and nobody else could assist. I do not understand the reason for this restriction, it appears to me impolitic; doubtless in the generality of cases one Peon would suffice; but in cases of resistance 2 Peons would not be sufficient to effect the capture, and indeed, in cases of mere passive resistance similar to that recorded of an American against whom pro-

cess was issued and who informed the officer he did not intend to resist the law, or his capture, but quietly laid himself on his back, the arrest may indeed be made, but I opine it would require more than 2 Peons to "convey" the Defaulter to Jail, and I am of opinion that no person would be justified in assistingthe Peons by applying force to effect the removal of a Defaulter so arrested.

21. No provision is made for cases where Defaulters may be resident or located within the limits of the Supreme Court.

22. Referring to the XIIth. Section of Regulation XXVII. of 1802, I would submit that it is ambiguous which Zillah will be the proper one to apply to if the lands be in one Zillah and the Defaulter be arrested and confined in another; reference is also made to a decree, time for appealing, &c. &c., as well as to persons in confinement under process issued by a Collector. If it should be considered desirable to enact more clearly in which Zillah the application is to be made, I would suggest that so much of the Section as is applicable should be re-enacted.

23. I observe that Sections XXV. XXVI. XXVII. and XXVIII. of the Act as submitted by the Board are omitted in the reprint; but referring to the Board's observation opposite the XXVIIIth. Section of their Act, I would remark that I have not offered any remark or objection to a Collector or his officers being mulcted in damages for any wrongful act done by them; on the contrary, I am of opinion that it is only right he should be so mulcted, it was against the arrears *due being forfeited* if the provisions of the Regulation were not strictly complied with, that my observations were directed; in fact not putting the burden on the proper person.

24. With reference to the last Section "inserted for my consideration," I have the honor to state that it appears to me to be unobjectionable.

No. 43. ORDER THEREON, No. 260; dated 26th February 1858.

The Government having given their consideration to the views offered by the Government Pleader regarding the provisions of the proposed Bill for the recovery of arrears of public revenue due on land not permanently settled, resolve to adopt his suggestions with certain exceptions which will be noticed hereafter.

Para. 2.
Section III. Clause I.

2. The entry in the endorsement on the demand for the arrears of "the name of the place" where the distrained property is situated appears to the Government sufficient. Every large town is situated in different villages, and the name of the village and not of the large town of which it is a component part, is intended in the Act, and is always entered.

Para. 2.
Section III. Clause II.

3. Mr. Dale would substitute "*within a time to be specified*" for the "immediate" sale of the property, and says that "*previously*" gives the defaulter no information as to the time within which he may receive his property. The Government think that the alterations are not needed, especially as the words in the Draft Act are the words of the original Regulation XXVIII. of 1802, on which it is founded, and from which it is desirable to make as little deviation as possible.

Para. 5.

4. Mr. Dale recommends that Clauses should be inserted providing for the time within which sales should be affected; he does not give the ground of his opinion, and the Government think it would be better not to fetter the Collector.

Para. 6.
Section III. Clause III.

5. The words adopted in the Draft Act are those used in the original Regulation on which it is founded. A grammatical error in both the original Regulation and the Draft Act, viz., "when defaulters may be absent" "shall be fixed to *his* residence" has been corrected.

Para. 7.
Section IV.

6. In this Section also the wording is that made use of in the original Regulation XXVIII. of 1802. The Government do not think that it would be advisable to make a distinction on account of the cause of absence, the Ryots would at once find out what cause was admissible, and every defaulter would assert, and prove it.

Para. 8. *Section VI.*

7. The necessity for the additions recommended by Mr. Dale is not apparent, the object of enacting that the distrainer may reap the crops in due season, and store them in proper places, is probably to protect the defaulter from loss; if, however, the standing crop be sold, the purchaser may safely be left to consult his own interest in reaping and storing, and it can hardly be necessary to authorize a man to reap his own crop, and it has become the purchaser's own by the act of a legal purchase.

Para. 12. *Section XVI.*

8. The word "Third" was evidently entered by mistake and will be omitted. The original Regulation XXVIII. of 1802, contains the specific penalty of 6 months' imprisonment, and the Government do not see why it should be altered. They think moreover that it is not necessary to declare that an action may be brought, the Courts are open to all considering themselves aggrieved, without a specific enactment for every kind of grievance.

Para. 13. *Section XVII.*

9. The verbal alteration here suggested has been adopted. "The proposed addition of tom-toming in such villages as the distrainer may direct," seems hardly necessary, it cannot be made obligatory in all villages within 3 miles in a populous country, and to enact that it shall be done, or not, at the distrainer's discretion appears needless, as he may exercise his discretion in the matter without a law.

Para. 18. *Section XXIV.*

10. Under the reading of Mr. Dale the words he suggests in this para. will be added to Section XXV.

Para. 19.

11. The Government do not see what parts of the five Clauses of Section XIII. of Regulation XXVII. of 1802 can be omitted.

Para. 20. *Section XXIV.*

12. The Government do not think it necessary to provide by law for such a case as that referred to by Mr. Dale in this paragraph.

Para. 21.

13. The existing law makes no provision for the arrest of defaulters who may be within the limits of the Supreme Court, and the Government do not see that any change is required in this law, especially as it is only temporary.

Para. 22. *Section XXV.*

14. The Government do not see that there is any ambiguity here. By Section XXIV. the Collector is to proceed according to Section XIII. of Regulation XXVII. of 1802, which requires that he shall depute peons who shall convey the defaulter to the Jail of the Zillah, which must mean the Jail of the Zillah in which the default occurred.

15. Resolved that a Draft Act, revised in conformity with the above views, be forwarded to the Legislative Member for Madras, in view to its being brought before Committee for early consideration and enactment.

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

AN ACT TO AMEND ACT 23 OF 1856.

Whereas doubts still exist regarding the process to be taken against defaulters in payment of the Public Revenue due on lands not permanently settled, and whereas difficulties occur under the provisions of Regulations XXVII. and XXVIII. of 1802 in recovering arrears of such Revenue, it is hereby enacted as follows:

Clause 1 *Section V. Regulation XXVIII. of* 1802 *modified.*

II. Whenever Rent or Revenue may be withheld beyond the day on which they fall due according to the Kistbundy or other engagement, whether written or verbal, or in cases where no particular day is fixed, then beyond the time when such Rent or Revenue became payable agreeably to local usage, the Collector shall have authority to proceed for the recovery of such arrears by the distraint or seizure, and the sale of the personal or real property of the defaulter.

III. In the distraint or seizure and sale of personal property for arrears of Rent or Revenue, the following rules shall be observed:

Clause 1 *Section VIII. Regulation XXVIII. of* 1802.

First.—Distrainers shall furnish to the persons employed to attach the property of defaulters, demands in writing and signed with their names, specifying the amount of the arrear for which the attachment may be issued, and the date on which the arrear fell due. The persons so deputed shall produce the writing as authority for making the attachment, and on the day on which the property may be attached shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property attached, and the name of the place where it may be lodged or kept.

Clause II. Section VIII. Regulation XXVIII. of 1802.

Second.—The writing shall further set forth the intention of the distrainer to bring the attached property to immediate public sale, unless the amount and expenses of the attachment be previously discharged.

Clause III. Section VIII. Regulation XXVIII. of 1802.

Third.—Where a defaulter may be absent, a copy of the writing, with the endorsement, shall be fixed or left at his usual place of residence before the expiration of the third day, calculating from the day of the attachment.

Clause IV. Section VIII. Regulation XXVIII. of 1802.

IV. Where defaulters on receiving notice may neglect to pay the amount due, or to give satisfactory security for early payment, or where defaulters may have absconded, or may be otherwise not forthcoming, so that the notice cannot be served upon them, the attaching officer shall in either case transmit an inventory of the property attached to the nearest public officer empowered to sell distrained property, in order that it may be publicly sold for the discharge of the arrear due.

Note.—Clause V. and VI. of Section VIII. Regulation XXVIII. of 1802 *omitted.*

Part of Section IX. of Regulation XXVIII. of 1802.

V. Where defaulters may tender payment of the arrear demanded in the presence of two credible witnesses, after their property may have been attached, and prior to the day fixed for sale, together with payment of the necessary expenses attending the attachment, the distrainer shall receive the amount of such arrear and expenses immediately upon the same being tendered, and shall forthwith release the property.

Note.—Section X. of do. omitted.

Section XI. of do. modified.

VI. Distrainers attaching the crops or ungathered products of the lands belonging to defaulters may cause them to be sold in due course without reaping or gathering them, or at their option may cause them to be reaped or gathered in due season and stored in proper places until sold. The expense of reaping, or gathering, and storing such crops or products, shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold.

Section XII. of Reg. XXVIII. of 1802.

VII. Distrainers shall not work the bullocks or cattle, or make use of the goods or effects distrained; they shall provide the necessary food for the cattle or live stock, the expense attending which shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold.

Section XIII. of do. modified.

VIII. Where property distrained may be stolen or lost or damaged while in the keeping of the distrainer by reason of the necessary precautions for its due preservation not having been taken, the loss or damage shall be made good by the officer whose neglect occasioned the loss or damage.

First part of Section XIV. the rest omitted.

IX. The distress levied shall not be excessive, that is to say, the property distrained shall be as nearly as possible proportionate to the amount of the arrear-

First part of Section XV. the rest omitted.

X. Attachments shall be made after sunrise and before sunset, and not otherwise.

Section XVI. of Reg. XXVIII. of 1802.

XI. Where defaulters may make a fraudulent conveyance of property, to prevent the attachment of it for arrears, the Zillah Court upon proof thereof, shall cause the property to be delivered up to the distrainer, and compel the person to whom such transfer or conveyance may have been made to pay to the distrainer damages equal to the value of one-half the property, with costs of suit.

Middle part of Section XVII.

XII. Where persons not being defaulters, or responsible for defaulters, may claim a right to the property distrained, and the distrainer may, notwithstanding, cause the same to be sold, the claimants, on proof of such right in the Zillah Court and in the event of the distrainer being unable to prove responsibility for the arrear of rent or revenue, on account of which the property may have been sold, shall recover from the distrainer the full value of such property, with costs and damages, according to the circumstances of the case. But claims to crops upon the ground, or to gathered product of the ground attached, in the possession of the defaulter, whether founded upon a previous sale, mortgage, or otherwise, shall not bar the prior claim of rent or revenue due from the ground upon which such crop or product may have been grown.

Section XVIII.

XIII. Where persons may be convicted of forcibly or clandestinely taking away property once distrained, the Zillah Court upon proof thereof, shall cause such persons to be imprisoned, until they restore the property, or make good the value of it to the distrainer, and moreover, to pay to him, as damages, a sum of money equal to the value of such property, with costs of suit.

Clause 1 Section XIX.

XIV. Distrainers shall have power to force open any stable, cowhouse, golah, granary, godown, outhouse or other building, as also to enter any dwelling house, the outer door of which may be open (excepting the apartments in such dwelling-house appropriated for the Zenana, or residence of women,) and to break open the door of any room in such dwelling-house for the purpose of attaching property belonging to a defaulter and lodged therein.

Clause II. Section XIX.

XV. Where distrainers may have reason to suppose that the property of a defaulter is lodged within a dwelling-house, the outer door of which may be shut, or within any apartments appropriated to women, which by the usage of the country are considered private, such distrainers shall represent the same to the Police (within whose jurisdiction the house may be situated,) and on such representation, the Police shall send a Police Officer to the spot, in the presence of whom distrainers may force open the outer door of such dwelling-house, in like manner as they may break open the door of any room within the house, except the Zenana; distrainers may also, in the presence of the Police Officers, after due notice given for the removal of women within a Zenana, and after furnishing means for their removal in a suitable manner (if they be women of rank, who according to the customs of the country cannot appear in public,) enter the Zenana apartments for the purpose of attaching the defaulter's property deposited therein; but such property, if found, shall be immediately removed from such apartments, after which they shall be left free to the former occupants; and nothing in this Regulation shall be understood to authorize a distrainer or his agent to force open the door of a dwelling-house, or to enter the apartments of women which by the usage of the country are considered private, in any other mode than is herein prescribed.

Part of Cl. III. Sec. XIX. Note. Sec. XX. omitted.

XVI. Persons entering the apartments of women, or forcing open the outer door of dwelling-houses, contrary to the provisions of this Regulation shall be imprisoned for six months.

Sec. XXI. modified.

XVII. Between the 10th and the 30th day following the day on which the attachment was made, the Public Officer empowered to sell distrained property shall cause to be affixed to the outer door of the defaulter's house a list of the property to be sold, with a notice specifying the place where, and the day and hour at which the distrained property will be sold, and shall

cause proclamation of the intended sale to be made by beat of drum in the village to which the lands on which the arrear has accrued may belong.

XVIII. At the appointed time the property shall be put up in one or more lots as the distrainer may consider advisable, and shall be disposed of to the highest bidder. Where the property may sell for more than the amount of the arrear, the overplus, after deducting expenses of process and interest, shall be paid to the defaulter.

Section XXII. modified.

XIX. The property shall not be sold for other than ready money, and the purchaser shall not be permitted to carry away any part of the property until paid for. Where the purchaser may fail in the payment of the whole or part of the purchase money within five days, exclusive of the day of the sale, the whole of the property, or the part of it which may be unpaid for, shall be resold by the distrainer on such day as he may fix for the best price offered for it: the defaulting purchaser shall make good to the distrainer any loss arising, as well as the expenses incurred on the resale. If any profit accure on the resale, it shall be accounted for to the defaulter.

Note—Sections XXIII. to XXXIII. omitted.

XX. When defaulters shall not have any personal property on which the Collector can distrain, or when he may elect not to distrain on any personal property, or when the personal property of such defaulter shall be 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, and sell the real property of the defaulter for the amount due with interest and all expenses attending such sale.

XXI. 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 fully liquidated by the sale, the Collector may of his own authority distrain and sell the personal property of the defaulter for the recovery of the balance thereof with interest, and all expenses of distraint and sale.

XXII. Immediately on the occurrence of an arrear, or at any subsequent period, the Collector shall have authority to attach at his discretion the whole or such portion of a defaulter's landed property as he may deem sufficient to answer the amount in arrear, but the previous sanction of the Board of Revenue shall be necessary for the sale of landed and other real property.

XXIII. The provisions of Sections XI. XII. XIII. XV. XVI. XVII. XVIII. Regulation XXVI. of 1802 shall be applicable to sales of landed property under this Act, but a Persian translation of the sale advertisement shall not be necessary.

XXIV. 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 prescribed in Section XIII. of Regulation XXVII. of 1802.

XXV. Parties considering themselves to have been aggrieved by the Collector's acts under the preceding Section shall have liberty to appeal to the Judge, who on receiving such appeal shall proceed according to Section XII. of Regulation XXVII. of 1802, and no other proceeding in any Court within Her Majesty's dominions shall be had or taken against the Collector.

XXVI. Interest at one per cent. per mensem shall be charged on all arrears of Rent to Revenue under this Act from and after 30 days after the arrear has accrued.

XXVII. Regulation V. of 1802 shall not be applicable to sales of property under this Act.

XXVIII. This Act shall not apply to Zemindars, Mootahdars, or others holding lands on permanent tenures, or to their sub-tenants.

XXIX. Arrears of Revenue due to Government other than Land Revenue and hitherto recoverable under Regulation I. of 1826 and V. of 1832, as well as sums leviable under Sections VI. and X. Regulation IX. of 1822, and Acts XII. and XX of 1850, shall hereafter be recoverable solely under the provisions of this Act.

XXX. Regulation XXVIII. of 1802 and Act XXIII. of 1856 shall be inoperative as respects arreas of Revenue due to Government on lands not permanently settled.

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

Fort Saint George, Revenue Consultation of 2d March 1858.

No. 44. From H. FORBES, Esq., Acting Secretary to the Government of Fort Saint George; to the Honorable D. ELIOTT, Esq., Member of the Legislative Council for Madras; dated 26th February 1858, No. 261.

From Board of Revenue 26th Nov. 1857, *No.* 4164.
From Govt. Pleader 11th Dec. 1857, ,, 134.
From Board of Revenue 24th Dec. ,, 4702.
Extract Minutes Cons. 30th Jan. 1858, ,, 131.
From Government Pleader 17th February.
Extract Minutes Consultation 26th do. ,, 260.

SIR,

With reference to your letter of the 12th November last, I am desired by the Right Honorable the Governor in Council to forward a Draft Act to amend Act XXIII. of 1856, together with a copy of the correspondence noted in the margin.

2. The resolution of this Government dated 30th January will give you a precis of the correspondence and of the discussions that have taken place with the Board of Revenue and the Government Pleader on the subject of the proposed law for the recovery of arrears of Public Revenue due on land not permanently settled. Since the date of this resolution the Government have made a further reference to the Government Pleader on the provisions of the Draft Act as modified by the Board. Mr. Dale's reply forms a part of the correspondence transmitted, and it will be seen contains various suggestions in respect of the provisions of the contemplated law, with few exceptions, Mr. Dale's views and suggestions have been adopted. The matter has thus been fully considered, and the Governor in Council requests that the Draft as finally revised may be brought before the Legislative Council in view to its early consideration and enactment.

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No. 18

From Clement Dale Esquire Government Pleader Sudr Udalut
To Henry Forbes Esquire Acting Secretary to Government

Madras 17th February 1858

Sir

Para 1. I have the honor to acknowledge Receipt of an Extract from the Minutes of Consultation noted in the Margin; and to state for the information of the Right Honorable The Governor in Council that I have since gone through the Papers which accompanied

M/C 30th January 1858 No 131
Revenue Department

2. Referring to Section 2. of the proposed Bill I would observe that not having the former Draft before me, I do not remember the alterations I made in it, and consequently my reason for the alterations does not (with certainty) recur to my mind; I would however observe that in inserting the words "whether written or Verbal" I was not advocating the propriety of Verbal Engagements being entered into, for I consider such a course most objectionable, the insertion of those words however would not have the Effect of altering the practice pursued by Revenue Officers, or of sanctioning Verbal arrangements, for it only Enacts in Express terms, what it is still proposed to Enact; for under the term "or other Engagement" Rent due under a Verbal Engagement (if that Engagement be binding in Law) would be recoverable under that Section.

3. Referring to Section 3, Rule 1st, the last Line, I would suggest that, "the name of the place" is scarcely sufficient to m[illegible]

supposing the Collector of Trichinopoly, or any District having a large Town in it, to distrain, would it be considered sufficient if the Distraining Officer Endorsed on the Copy furnished to the Distrainee, that the property attached was lodged at Trichinopoly? - I opine not, and would suggest that after the word "Place", the words "wherein it should be omitted, and instead of those words should be inserted "with the Number of the House and name of the Street (when such description or Residence may be practicable -) where such property."

4 - The 2d Rule is somewhat ambiguous in the use of the term "immediate"; I would suggest the propriety of its being omitted. The term "previously" in the last line also affords the Distrainee no information, as to the time within which he may be at liberty to redeem his property; I would suggest that that word be omitted and after the word "discharged" be added "within a time to be therein specified"

5 - I admit that in legislating for this Country, difficulties do arise in making those precise provisions which can be Enacted in England. It occurs to me however, that in the proposed Bill might be usefully inserted, Clauses providing for the time within which Sales should be Effected (Section 17 does not appear to provide for such Case) and for the purpose of providing for unforseen difficulties, a certain limit might be allowed, Thus it might be Enacted, that property distrained should not be sold under a certain number of days, (say 10) but should be sold within a certain number of days (say 30 or 40), unless that time should be prolonged at the request in writing of the Distrainee, and with the consent of the Distrainer

6 - In the 3d Rule the word "absent", if left itself, may (and is likely to) lead to disputes, unless the words "before the Expiration of the 3d day Calculated from the day of the attachment" be omitted. I would suggest that those words be omitted and that after the word absent be inserted "from his usual place of Residence at the time when the property may be attached"; and instead of the words omitted insert "on the day on which the property may be attached"

7 - In Section 4 I would suggest that a time be specified before the word "neglect" - The words "absconds" and "not forthcoming" are open to great question - If a Defaulter be absent on bussiness, or bonafide, say in Madras, and the Attachment be made in a Distant Zillah it could not be said he had "absconded", and scarcely that he was "not forthcoming"; and yet all the mischief wished to be provided against, arises as it appears to me, that if a distraining Officer goes to the usual place of Residence of the Defaulter, and is unable to meet with the Defaulter there, the substituted Service may in all fairness be made, If there be any Relative or Servant in the House, by serving one of them; - If no Relative or Servant and there be any other occupier in the House then by serving one of them, but if the Premises be vacant, then by fixing the demand with the necessary Indorsements on the Premises.

8 - In Section 6 I would suggest that these be inserted in the 5th line after the word Sold "Provided nevertheless that any persons purchasing under this Section the Crops growing thereon products of the Lands shall have the same powers of Reaping or gathering and Storing such Crops or ungathered products as Distrainer have" and the 6th line after the word products, there be inserted "which on the same shall have been

rchased under the provision hereinbefore contained
- shall be reaped or gathered and stored by the
istrainer."

In Section XI I do not understand that there
s any object in retaining the words "under Farmers
- Ryots" I would suggest the propriety of omitting
those words and substituting "Defaulters"

Referring to Section 13 I do not see any objection
in retaining the words "not being Owners," Supposing
property is improperly attached, the Owner has
his remedy, but I submit there should not be the
slightest countenance given, to a party to use force,
- to act clandestinely in taking away property
distrained

In Section 14 after the word "Granary" I
would suggest that "Godown Cutchouse" should
be inserted and after the word "Building" to insert
a "also"

In Section 16 omit the word "third" and
I would suggest that the term of imprisonment should
be for "any term not Exceeding" 6 months As also
that the party aggrieved should have the option
of bringing an Action in a Civil Court for damages

In the 17th Section I would suggest the omission
the words "At the Expiration of"; and Substitute
the word "Between" I would also omit the words "before
the Expiration of"; I would also suggest that proclamation
the intended Sale, should likewise be made by
Beat of Drum, in such of the adjacent Villages
the Distrainer may direct; not Exceeding 3 Miles
from the Village where the Distress was made

In Section 19, the 5th Line, I would suggest
the Omission of the words "Calculating from" and

substitution of the words "Exclusive of"; also omit the
words "following the" and substitute the word "of"

15 In Section 20 fifth line I would suggest
after the word "against" the insertion of "and sell" and
in the last line I would suggest the omission of the
word "further"

16 In Section 21, third line, I would suggest
after the word "not" should be introduced the word
"fully" and in the last line for the word "such"
substitute "the" and after the word "balance" introduce
"thereof"

17 In section 23 first line, the last Section
there mentioned as XVII requires to be altered to XVIII

18 By the terms of Section 24, the Collector is
not allowed to arrest a Defaulter, unless the arrears
may remain unliquidated by the sale of the personal
and Real property of the Defaulter, the language is
not free from Ambiguity, but I entertain no doubt that
the proper Construction to be put upon that
Section, as now framed, is that a Collector is not to
have authority to arrest a Defaulter, until after
he has sold all the Real and personal property of
the Defaulter It follows that if a Collector were
to overlook some property belonging to, and should
arrest such Defaulter, the arrest would be illegal, and
the Collector rendered liable to an Action for a
wrongful arrest, for I do not think a Collector
could defend himself under a plea that it was an
act done in the Collection of the Revenue It is not
for me here to question the policy of deferring the
arrest till after the sale of all the Defaulters property
but I would recommend that at the Close of the

25th Section should be added "And no other proceedings in any Court within Her Majesty's Dominions shall be had or taken against the Collector."

Is the whole of Section 13 (including the five clauses) to be incorporated into this Act?

In the 13th Section of Regulation 27 of 1802, Clause the first, I observe the Collector is directed to depute 2 Peons and no more, with a "Writing under his Office Seal and Signature" to arrest the Defaulter; I do not observe that any provision is made for Cases of Resistance &c., and I am of opinion that only for suppressing a breach of the peace, could the Magistrate or Police interfere, or render assistance, and nobody else could assist. I do not understand the reason for this restriction, it appears to me impolitic; Doubtless in the generality of cases One Peon would suffice; but in cases of Resistance, 2 Peons would not be sufficient to effect the Capture; and indeed in cases of mere passive resistance, similar to that recorded of an American against whom process was issued, and who informed the Officer he did not intend to resist the law, or his Capture, but quietly laid himself on his back, the arrest may indeed be made, but I opine it would require more than 2 Peons to convey the defaulter to Jail, and I am of opinion that no person would be justified in assisting the Peons by applying force to effect the removal of a Defaulter so arrested.

21 No provision is made for Cases, where Defaulters may be Resident or located within the limits of the Supreme Court

22 Reference to the 12th Section of Regulation

27 of 1802. I would submit that it is ambiguous which Zillah will be the proper one to apply to, if the Lands be in one Zillah, and the Defaulter be arrested and confined in another. Reference is also made to a Decree, time for Appealing &c., as well as to persons in Confinement under process issued by a Collector. If it should be considered desirable to enact more clearly in which Zillah the application is to be made I would suggest that so much of the Section as is applicable should be re-enacted.

23 I observe that Sections 25, 26, 27 and 28 of the Act as submitted by the Board are omitted in the reprint; but referring to the Boards observations opposite the 28th Sect. of their Act, I would remark that I have not offered any remark or objection to a Collector or his Officers being mulcted in damages for any wrongful act done by them; On the Contrary I am of opinion that it is only right he should be so mulcted; it was against the arrears due being forfeited if the provisions of the Regulation were not strictly complied with, that my observations were directed; In fact not to shift the burden on the proper person.

24 With reference to the last Section "inserted for my consideration" I have the honor to state that it appears to me to be an objectionable.

I have the honor to be
Sir
Your most Obedient Servant

Government Pleader

U10

This memorandum refers to the alterations proposed by the Government Pleader in the Act to amend Act -

The Govt are pleased to accede to each of their orders, on each point, in the margin -

Mr. Dale para 2. Act. Sec II

"Kilbundy or other engagement", include 'Built' actual engagements, and render the intention of the Legislature needless.

para 2. Sec III cl 1

The entry in the endorsement on the demand for the arrears of "the name of the place" where the distrained property is situated, is held sufficient - Every large town is situated in different villages, as Madras is composed of Egmore, Kilpauk, Royapettah &c., and the name of the village

Penang 1858 Sept 15
By Govt Sec. to Govt

No 2314

From the Govt Pleader

Acts Enacted

Letter 17 Sept 1858
Rec'd 20 Sept 1858
Pub: 20 Sept 1858

Offering amendments and alterations to the Procedure Bill for the extent of Malabar and the Moplah Outrages.

Put by

para 8
Lee VI

The necessity for the addition recommended by Mr. Dale is not apparent. The object of excluding dust the distance may reach the crops in due season, and store them in proper places, is, probably, to protect the depositaries from loss — if however the standing crop be sold, the purchaser may safely be left to conduct his own interest in reaping and storing, and it can hardly be necessary to authorize a man to take his own crop — and if he cannot purchase own by the act by a legal purchase.

para 9.
Lee XI.

In this section "depositaries" may with be substituted for "under farmers or Ryots" —

para 10
Lee XIII.

The words "such being owners" had better be omitted as Mr. Dale suggests

para 11.
Lee XIV.

The words "or Mortgaging" appear seem to include "granary", but if it can be added it thought necessary.

para 12
Lee XVI.

The word "Said" appears evidently entered by mistake.

The original regulation XXVIII of 1802, contains the specific penalty of 6 months imprisonment, and I do not see why it should be altered —

I think that it is not necessary to declare that an action may be brought — The Courts are free to take cognizance whether acquired, without a specific enactment for every kind of nuisance

para 13
Lee XVII.

This is a verbal alteration which may be made or not, according as it is considered an amendment —

The proposed addition of town-housing in small villages "as the Distance may direct" is hardly necessary — it cannot be made obligatory in all villages within 3 miles in a populous country

and to enact. But it should be done or not, at the discretion discretion is needless - he may exercise his discretion in the matter as shall seem best -

This is a verbal alteration to be adopted or not as may be approved.

para 15 Sec: XX.

Here suggestions may be also adopted.

para 16. Sec: XXI.

The proposed introduction of the word "fully" before "liquidated" appears unnecessary - a balance can be held to have been liquidated, if it be not fully liquidated -

"The" should be substituted for "such", and "thereof" be added, as suggested by Mr Dale.

para 18. Sec XXIV.

10

Under the wording of Mr Dale the words be suggested may be added to Sec: XX

para 19. I do not see that part of the first clause of Sec: XIII of Reg XXVII of 1802 can be omitted -

para 20. Sec XXIV. The Govt will say if they think it necessary to provide by law for such a case as Mr Dale relates of the Americans - See the ending - not of the Americans but Heirs &c.

para 21. No existing law makes no provision for the arrest of defaulters &c may be within the limits of the Supreme Court, and it may be easy to make no change in the law - Such, often as, is only temporary.

para 22. Sec XXV I do not think there is any ambiguity here. - by Sect: XXIV the Collector is to proceed according to Sec XIII of Reg XXVII of 1802, Such requisites must be stated deputy person &c shall convey the instance to the Court

of the Gillah - it does not say that Bail is necessary the Jail of the Gillah in which the default occurred.

I send this in Steel circulation in order but it may receive order in time for the Draft act to be sent up by the Steamer

L. L.

20-2-58.

V14

Revenue Department

No. 260

Extract from the Minutes of Consultation

Under date the 20th February 1858

Read the following letter from the Government Pleader Senr Assistant &c.

(Here enter 17th Feby 1858 No 18)

The Government having given their consideration to the views offered by the Government Pleader regarding the provisions of the proposed Bill for the recovery of arrears of public Revenue due on land not permanently settled,

settled, resolve to adopt
his suggestions with
certain exceptions which
will be noticed hereafter.

2. The entry in the en- para 2.
dorsement on the demand Sec. III Cl. I
for the arrears of "the name
of the place" where the
distrained property is
situated appears to the
Government sufficient.
Every large Town is situated
in different villages, and
the name of the village
and not of the large town
of which it is a component
part, is intended in
the act, and is always
entered.

3 Mr Dale would para 2.
substitute" within a time Sec III Cl. II
to

015

to be specified" for the im-
mediate" sale of the pro-
perty, and says that
"previously" gives the de-
faulter no information
as to the time within
which he may receive
his property. The Govern-
ment think that the al-
terations are not needed,
especially as the words
in the Draft Act are the
words of the original
Regulation XXVIII of 1802,
from which it is founded,
and from which, ~~before~~
~~it specifies in the~~
~~Legislative Council~~ it is
desirable to make as
little deviation as pos-
sible.

Mr

Mr Dale recommends that clauses should be inserted providing for the time within which sales should be asserted. he does not give the ground of his opinion, and the Government think it would be better not to fetter the Collector.

para 5

5 The words adopted in the draft act are those used in the original Regulation on which it is founded. A grammatical error in both the original Regulation viz. and the draft act, "whom defaulters may be absent" "shall be fixed to his residence"

para 6
Sec III & VIII

6 The words adopted in the draft act are those used in the original Regulation on which it is founded. A grammatical error in both the original Regulation viz. and the draft act, "whom defaulters may be absent" "shall be fixed to his residence"

U46

para 7
Sect IV

In this section also the wording is that made use of in the original Regulation XXVIII of 1803. The Government do not think that it would be advisable to make a distinction on account of the cause of absence. the Ryotts would all once find out what cause was admissable, and every defaulter would assert, and prove it.

para 8
Sec VII

7 The necessity for the additions recommended by Mr Dale is not apparent. the object of exacting that the defaulter may keep the Collector duly advised of

and

and stone thereon in proper
places, is probably, to pro-
tect the defaulter from loss;
if however the standing
crop be sold, the purchaser
may safely be left to
consult his own interest
in reaping and storing,
and it can hardly be ne-
cessary to authorize a
man to reap his own
crop - and it has become
the purchaser's own by
the act of a legal purchase

8 The word "Fluid" was para 12
evidently entered by mis- See XVI
take and will be ~~corrected~~ omitted.
The original Regulation
XXVIII of 1802, contains the
specific penalty of 6 months
imprisonment, and the
Government

U17

Government does not see why
it should be altered. They
think moreover that it is
not necessary to declare
that an action may be
brought - the Courts are
open to all considering
themselves aggrieved,
without a specific enact-
ment for every kind of
grievance

The verbal alteration

para 13 9 here suggested has been
See XVII adopted. The proposed addi-
tion of town-towning in
such villages as the dis-
trainer may direct seems
hardly necessary - it cannot be made
in all villages within 3
miles in a populous
country, and to enact
that

that it shall be done, or not,
at the distrainer's discretion
as
appears needful, ~~the Govt.~~
~~must limit that~~ he may
exercise his discretion in
the matter without a law.

10 Under the reading of para 18
the Bill the words he — See XXIV
suggests in this para will
be added to Sec XXV.

The Government do para 19
not see what parts of the
nine clauses of Sec XIII of
Reg. XXVII of 1802 can be
omitted.

The Government do para 20.
not think it necessary See XXIV
to provide by law for such
a case as that referred to
by Mr Dale in ~~this~~ Para-
graph.

The

U 18

para 21 13 The existing law
makes no provision for
the arrest of defaulters who
may be within the limits
of the Supreme Court and
the Government do not see
that any change is required
in this law, especially as
it is only temporary.

para 22 The Government do
See XXV not see that there is any
ambiguity here. By Sec XXIV
the Collector is to proceed
according to Sec XIII of Reg.
XXVII of 1802, which before enjoins
that he shall depute a
person who shall convey
the defaulter to the Jail
of the Zillah, which
must
means the Jail of
the Zillah in which
the

24/12/65

the default occurred.

18 Resolved that a Draft
Act revised in conformity
with the above views,
be forwarded to the Le-
gislative Member for
Madras, in view to its
being brought before
Committee for early Con-
sideration and enact-
ment.

2 Copies to Secy of Stv.
with Draft Act
Dis: 27.

3 — Hon. Mr. D'Eath
with Advs from Legl Solicitor Dis: 27
& Draft Act &

V19

Revenue 1865 Departt
Dy to Cons: 2d March

No. 260

Extract Mins: of Cons:
Dated 26th Feby 65.

From the Legl Council for the Madras
Railway 7th April 65 R 3370 Cons
11 May

Pass observations & orders
on the views proposed by the Govern-
ment Pleader regarding provisions
of the proposed Bill "for the recovery
of arrears of Public Revenue due on
land not permanently settled"
and resolve that a Draft Act
revised in conformity with those
views be forwarded to the Legislative
Member for Madras in view
to its being passed into Law.

Revenue Department

No. 261.

To

D. Scott, Esqre.

Member of the Legislative Council for Madras

Sir,

A

1. With reference to your letter of the 12th November last, I am desired by the Right Honorable the Governor in Council to forward a draft Act to amend Act XXIII of 1856 together with a copy of the correspondence noted in the margin.

2. The resolution of this Government dated 30th January will give you a precis of the correspondence and of the discussions

From Bd. of Rev 26 Nov. 57 No 1164
From Govt Pleader Madras " — " 1340
From Bd. of Rev 26 " — " 4702
Ex Mins Cons — 30 Jany 58 — 131
From Govt Pleader 7 Feby " —
Ex Mins Cons — do — — —

discussions that have
taken place with the
Board of Revenue and
the Government Pleader
on the subject of the pro-
posed law for the recovery
of arrears of public reve-
nue due on land not
permanently settled.
Since the date of this
resolution the Govern-
ment have made a
further reference to the
Government Pleader on
the provisions of the
draft Act as modified
by the Board. Mr. Dale's
reply forms a part of the
correspondence transmitted,
and it will be seen contains
various suggestions in
respect

V21

respect of the provisions of the
contemplated law. With few
exceptions, Mr Dale's views
and suggestions have been
adopted. The matter has
thus been fully considered,
and the Governor in Council
requests that the Draft as
finally revised, may be
brought before the Legis-
lative Council in view
to its early consideration
and enactment.

D7

Fort St. Geo.
26 Feb 1858

24 Feb 58

Revenue 1858 Dept
Dy. to Govt. 2nd March

Pro 261

To Member of the Legislative Council for Madras
Dated 26th Feby/58

Forwarding a Draft Act to amend Act XXIII of 1856 regarding the recovery of arrears of Public Revenue due on Lands not permanently settled.

No 44