Revenue Department

No 243

Dated 25-2-1859

No. 60. Read the following letter from CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to J. D. BOURDILLON, Esq., Secretary to Government; dated Madras, 12th February 1859, No. 18.

SIR,

Para. 1. I have the honor to acknowledge receipt on the 11th Instant of an Extract from the Minutes of Consultation noted in the margin; and agreeably with the request therein contained to return to you the several papers enumerated at foot.

Mins. Cons. 9th Feb. 1859, *No.* 174, *R. D.*

2. I have the honor to state for the information of the Right Honorable the Governor in Council, that having on the 10th Instant received a letter from Mr. Parker, requiring me to send him the papers relating to the Draft of the proposed Act, I on that day (and before receipt of the Minutes of Consultation noted above) forwarded to him, the papers which are referred to, as accompanying the Extract from the Minutes of Consultation dated the 15th September 1856, No. 982; together with one copy of Extract from the Minutes of Consultation dated the 18th February 1857, No. 173 and the accompaniments.

3. Regarding the 3 matters referred to in para. 3 of the Minutes of Consultation noted above I trust His Lordship in Council will allow me to express my deep regret at their having so long remained undisposed of, and to assure His Lordship in Council no further delay shall occur in transmitting early replies.

No. 61. ORDER THEREON, No. 243; dated 25th February 1859.

Ordered that the foregoing letter be recorded.

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

From

H. Stokes Esq^re

On Special Duty

To

T. Pycroft Esq^re

Chief Secretary to Government

Sir,

With reference to my letter of 1st Instant, I have the honor to forward herewith for Submission to the Right Honorable the Governor in Council my Fourth Report, on the Laws relating to Exempted Lands and Pensions in this Presidency, with the Sketch of an Act to be Substituted for them.

2 I take this opportunity of also forwarding the replies of three Collectors named in the Margin, to my Questions Circulated under date the 22^d Ultimo.

C. J. Bird Esq^re
C. B Thomas Esq^re
W. Fisher Esq^re

3 I have further to acknowledge the receipt of the Orders of Government

Government under date the 3d and 14th Instant respectively - The alterations I have already Suggested in the law for punishing Malversation appears to me Calculated to Effect the object which the Honorable the Court of Directors have in view in their Dispatch of the 5th of September.

Madras - - - 2 / Signed / H. Stokes
18 December 1855

On Special Duty

Compd PR

Fourth

Fourth Report

On the Laws that govern Exempted Lands. Grants and Pensions, in the Madras Presidency

1 The Law now to be reported on as found in the Enactments noted in the margin seems simple and Compact as compared with those which have hitherto occupied my attention - Never=

Reg. XXXI of 1802
Reg. III of 1803 Secs XXVII
6 XXIX and XLI
Reg. IV of 1831
Reg. VI
Act XXXI of 1836
Reg. XXIII of 1838
Reg. II of 1851 Sec. II

=theless, it will be found on Examination to involve questions of Equal difficulty and importance.

2 The first of these Regulations Passed on the 13th of July 1802 Contains with the preamble twenty Sections, for trying the Validity of titles to Exempted Lands under Grants not being royal Grants, and for determining the Annual Assessment to be imposed on such Lands as may be adjudged liable thereto. The Preamble sets out

resumed before the other lands in the same Tillah had been permanently assessed The seventh declares that after the permanant assessment parties holding Exempted lands may only be Ejected by decree of Court The Eighth declares that length of possession under invailed titles cannot bar the right of Government The ninth Section gives the Collectors power to require the Production of Summuds or deeds under which persons hold Exempted Lands under pain of fine for the first office and fine with imprisonment if repeated The tenth Section restricts Collectors from instituting suits without the written permission of the Board of Revenue but when so authorized, they may under the Eleventh attach the lands of Claimants who refuse to produce their Grants or deny that they have them and they may proceed against them as for arrears

of.

of revenue. The twelfth declares Grants to be invalidated if forged or Counterfeited; or a name substituted for the Original, or a new name inserted, or the denomination of the tenure altered, or date changed. And under the thirteenth, Persons practising frauds for the purpose of obtaining Exemption, are to be prosecuted Criminally. Under the fourteenth Section, lands recovered by the Officers of Government, are to be Charged with a full assessment.

5 The fifteenth Section prescribes the Keeping of a Register in Each Tillah of lands held Exempt from revenue, and these Registers are to be Corrected and renewed once in Every five Years. And Under Section Sixteen all Grants of land actually held under exemption, are to be registered whether they have been Confirmed or not by Competent authority Under the Seventeenth, the Collectors are to require by

Public

Public notice the registration of all exempt-
ed lands, and by the Eighteenth the omission
to Comply with such notice during one
whole Year from its publication, renders the
lands liable to full assessment under
Sanction of the Board of Revenue. The
next Section states how the Registers are
to be authenticated, and that Summuds
not registered, shall not be deemed Valid
And the last Section declares that Native
Servants, public or private, may be punished
on proof before a Court of Justice for receiv-
ing any Valuable Consideration for procur-
ing the registry of unlawful Grants Sur-
reptitiously or otherwise, by forfeit to Govern-
ment of the money received, a fine of
three times the amount with charges of
Suit, and by one Years imprisonment
in addition, besides being incapaci-
tated for re-employment.

S.

6 I have already noticed the

Third Report 1st December Para. 8. provisions of Regulation II of 1803 affect-
ing Enams. The twenty Seventh and
the two next Sections of this Regulation
require Collectors to report to the Board
of Revenue whenever it comes to their
Knowledge that lands are held under
invalid titles, and on receiving their
order, to prosecute the holders in the
manner prescribed by the Regulations
receiving after the final decision a
Commission equal to 25 per cent
of the Annual Assessment recovered

7 The forty first Section seems
to imply that the above is limited
to settled Districts, for it says "In
Districts where the land-tax may not
have been permanently fixed, Collect-
ors shall report to the Board of
Revenue all unauthorized alienations
of

of land, with every circumstance relating to such land, but Collectors shall not resume alienated lands without authority from the Board of Revenue I shall afterwards notice the some: what intricate discussions that have taken place as to the Construction of this Section in Connexion with Regulation XXXI of 1802 -

8 It would appear however that whether in Settled or unsettled Districts the law remained equally in abeyance - Some attempts were made to carry out the Registration clause in the Northern Circars, but I believe they will be found to have proved abortive time - Had there been any systematic effort to act on the intention of the Legislature, the difficulties in the way must have attracted earlier

attention

attention -

9 The Regulations of 1831 being the next in order of time that relate to Enams, seem intended to refer not so much to the validity of tenure, as to the disposal of Claims to succession although both may be comprehended in the letter of their provisions - Regulation Four of that year in four short Sections preserves to the Governor in Council the exclusive power to decide after due investigation by such persons and in such manner as he may deem fit on claims to hereditary or personal grants of money or of Land Revenue conferred by the Governor in Council, or as subsequently

extended

extended by Act XXXI of 1836, by any Native Government and confirmed or continued by the British Government, in Consideration of Services rendered to the State, or in lieu of resumed Offices or privileges, or of Zemmudaries, or Pallams forfeited, under attachment or management, or as a Yearmiah or charitable allowance, or as a Pension, unless the plaint be accompanied by an Order from the Secretary to Government referring the party to the Courts of Adawlut.

10 The third Section as modified by

by Act XXIII of 1838 declares such Grants not to be liable to attachment or sequestration in satisfaction of any process of Court - And the fourth saves decrees of Court previously passed from being affected by this Regulation -

11. By Regulation VI of the same year Claims to all service Enams and Emoluments were removed from the jurisdiction of the Courts, and reserved Exclusively to the Revenue department, while at the same time these tenures were declared to be inalienable by mortgage, sale, gift, or otherwise -

12. The second Section declares that the Emoluments from land, from fees, or other sources which have been annexed by the State to hereditary Offices in the Revenue and Police departments, are inalienable and not liable to the process of Courts - The third directs all Claims to them pending in the Civil Courts to be struck off the files, charges incurred being refunded

And

And the next in five Clauses makes them adjudicable by the Collectors with the assistance, if thought necessary of Native assessors, to whom they may at their discretion refer these Claims, and for enforcing the attendance of witnesses they may exercise the powers of Zillah Judges under Section VII Regulation III of 1802, the general provisions of which so far as applicable must be observed and witnesses in these investigations are liable to the penalties for perjury in the same way as if Committed before the Ordinary Courts. The fifth Section in two Clauses provides for an appeal to the Revenue Board from decisions passed or fines imposed by the Collectors if preferred within three months, to be extended if the Board see fit The Board decisions under the next Section are declared final, power only being reserved to the Governor in Council to revise and modify them when he may deem it necessary for the ends

ends of justice - The seventh rescinds Nineteen and twenty of Regulation XI of 1816, and places Village Watchers as well as all other persons holding hereditary and Village Offices in the Revenue and Police departments to which emoluments have been annexed under the immediate authority and control of Collectors; and liable for just cause to suspension or removal by them subject to the approval of the Board of Revenue, and the sanction of the Governor in Council, when he may see fit to interfere - The last Section explains that the foregoing provisions are not applicable to the office of Kurnum as established by XXIX of 1802; or to the public institutions referred to in Regulation VII of 1817, or to their Trustees and Superintendents.-

13. Such as it now stands is the whole Law affecting exempted lands grants and pensions in the Provinces; but by Section II of Act XII of 1851, a new

principle

principle is laid down as regards exempted lands under the Collectorate of Madras. It declares that Lakhiraj tenures of land of which uninterrupted possession has been held under alleged Grants exempt or partially exempt from assessment for sixty years, shall be valid and no others except under an unexpired Grant from the British Government. Prior to this enactment, exempted lands, as far as I can see, in Madras were subject to Regulation XXXI of 1802, and as such not entitled to acquire Validity simply by possession of any duration whatever.

14. The full import of Regulation IV of 1831 as extended by Act ~~XXXI~~ of 1836 appears to have been for the most part overlooked, when passed, and for long afterwards. The question seems to have been first raised by the Collector of Cuddapah in 1846, and again by the Judge of Nellore in 1848. Both these Officers pointed out that Bhatta Vritte Enams for the support of Brahmans or other

persons

persons, the most numerous class next to those annexed to Service, came under the terms "Charitable allowance," and were therefore removed from the cognizance or process of the Courts by the Extended law.

15 The question under another aspect was afterwards fully discussed between the Collector and Judge in Guntoor, and by them brought before the Sudder whose final decision only recently announced, is to the effect that, as the law now stands, the two classes of Enams Charitable and Service, defined in Regulations IV and VI of 1831 and Act XXXI of 1836 comprehend together all Enams whatever. Thus therefore all seem now removed from the jurisdiction of the Courts with the exception of those attached to the Office of Kurnum in Permanently Settled Estates, or such cases as under Regulation IV of 1831 may be referred to them by the Secretary to Government. I cannot say whether such was the intention of the legislature; or whether under Section VIII of VI of 1831, religious endowments are not still subject to

to the jurisdiction of the Courts.

16. I have now to point out what appear to be the defects in the law thus reviewed. They have been prominently brought out in the correspondence which has taken place since the Enam question has attracted the attention of Government.

17. The Papers noted in the Margin originated in an opinion expressed by the Collector of one of the Ceded Districts, that the investigation of Enams could not be carried out there without a new Regulation. Government desired the Board to obtain the opinion of the Sudder Judges on this point. This was given in 1837. but thro' apparent inadvertance, the Board did not proceed with the matter till 1843, when they recorded their views as differing to some extent from those of the Judges who themselves had not been unanimous; and Government having referred back the Board's paper to the Sudder, that Court as Constituted in 1843, dissented from them

Mins of Cons. 23d Augt 1836.
Bd of Revr to Sudder Adalut 31st July 1837.
Sudder to Board 25th Septr do.
Board's Pro 9th Feby 1843
Govt to Board 10th March do.
Bd to Government 20th do. do
Govt to Board 12th May do.
Do. Do. 17 Augt do.

their predecessors of 1837. The Board were again called upon with reference to the sentiments of the Judges in 1843, and to a full minute on the Enam question by the Honorable Wm Chamier to lay before Government the written instructions they proposed to issue for the investigation of Enams. There the matter seems to have ended, possibly in consequence of the views subsequently communicated by the Court of Directors, which I shall notice by and by.

18. Instead of recapitulating further the somewhat intricate correspondence above cited, I shall endeavour to extract the chief questions mooted in it, and the conclusions come to upon them. They are.

1- Whether under Section XLI of II of 1803. Enams in unsettled Districts are excepted from the operation of Section VII Regulation XXXI of 1802.

The

The Sudder Judges in 1834
were of opinion that the latter Regu-
=lation was meant to apply to perma-
=nently settled Districts.

2d. As to the power of the Reve-
=nue authorities to resume unauthorized
alterations of land, the jurisdiction
of the Courts being excluded, in unset-
=led Districts.

The Judges were of opinion that
although the Collector with the authority of the
Board is competent to assess lands un-
=lawfully alienated in unsettled Districts,
a land holder can only be ejected
by a decree of Court so long as he
pays the Assessment to which the
land may be liable, and there is
nothing to prevent his seeking re-
dress in the Courts if aggrieved by
the Collector's act. On this construction
it occurs to me to remark
that.

13

that the Ejectment of an Encumbar contem-
=plated in Section VII of Regulation XXXI
seems much the same as the resumption
of his Enam by assessing it, and En-
=forcing Payment of such assessment

3d. As to the position of persons
whether in settled or unsettled Districts
who had succeeded in the possession
of Enams those who were incumbents
in 1802.

The reply of the Judges is to the
Effect that such successors as regards
liability to the investigation of their
tenures would be in the same position
as the incumbents of 1802. This part
of the Courts reply seems to miss the
point as to the necessity of succession
by lineal descent, which the Regulation
seems to imply by using the words
incumbents or their ancestors)

4th. The power of Government
to question the competency of a
Grantor, supposing the Grant to be
anterior to the British acquisition
of the Province

The Sudder Judges in 1837
held

held the negative, and those of 1843 the affirmative view of this question.

5th. Whether the law recognised the Validity of any Enam not held under Summd.

At the Earlier period, the Sudder Judges seem to have held the possibility of a title being found: :ed on the mere fact of possession al: :though the necessity of a Summd seems recognized by them in Para 8 of the same paper. The Court at the later period were decided that the Exe: :istence of a genuine grant is indis: :pensable to the Validity of an Enam.

See Para 10
25th September 183[illegible]

Lastly admitting the Compe: :tency of the Revenue authority to assess invalid Enams in unsettled Districts, how far they are bound by the provisions of Regulation XXXI in other respects In 1837 the Judges seem to have considered the

the general principles of this Regu: :lation applicable to unsettled Districts

Para 6 In 1843 they thought it competent to a Collector in settled as well as unsettled Districts to assess Enams held under Summds not genuine, or by authority not competent I cannot understand however how if Summds are shown when called for, they can do this with: :out a Civil Suit in settled Districts

The important Correspon: 19 :dence on the mode of dealing with lapsed Enams printed among the Revenue Boards' Circular Orders, tho' professedly not touching the law upon this subject calls most for notice.

Civ: Order 22d May 1818
29th Sept.
27th July
See Page 450 and references

In April 1845 the Govern: 20 :ment appear for the first time to have prohibited the Continuance of the Enams of deceased incumbents to their Successors without Special authority, requiring all lapses to be reported. Proceedings taken in Consequence

Consequence of this Order led them three years later to record their Views more fully, having in the mean time been reminded by the Honorable the Court of Directors "that long undis-turbed possession not only affords Evidence of the Existence of the right, but moreover, with respect Especially to landed property, and to Tenures affecting whole classes of persons, creates, on Considerations Equally of policy and justice, a powerful mo-tive with Government for not wish-ing the possession to be disturbed." And the Court desired these instructions to be applied to Enams throughout the Presidency Rules framed in accord-ance with these Directions were cir-culated by the Board on the 27th of July 1848, and continue to be the guide for Collectors on the occasion of Lapses. Rules VI to IX inclusive relate to Enams held without Grant, and declare that if for Service they are to be Continued so

Ese Instr Comm 9th May 1848

Dispatch 13th Oct 1847
Do 19th Jany 1848

long

long as the Service is performed and may be transferred, provided the transfer carries with it the obligation of Service; but such Enams for the personal benefit of the holder are pronounced inalienable. From this I gather that the alienation of a personal or charitable Enam held under a grant valid according to the requirements of Regulation XXXI of 1802 is not disallowed.

21. The indulgence to Enamdars was carried further under the Board's Circular orders of 21st December 1848, which allow Entry in the Survey accounts to be considered evidence of possession sufficient to constitute a valid title, and Succession to be allowed in default of a lineal male heir, to a brother or cousin, of an undivided family. See the note at Page 186 the Board explain that the continuance of Enams under the above Rules in Kurnool

is to be no bar to the adoption of any measures which may be determined on in the general inquiry to be hereafter held there. This reservation seems equally proper wherever no general inquiry has been made.

22 More recently, the Collectors have been called upon for their opinions on a still more laxly indulgent principle for the disposal of Enams, according to which all, under a certain extent as one or two Cawnies, were to be continued without inquiry.

23 It thus appears that of late years, the views of the ruling authorities have undergone a right change as regards the treatment of Enams. The latest Bombay Law Act XI of 1852, to which the Govt point in their minutes of the 5th of October last, as likely to afford useful assistance in settling the law for this Presidency will be found to embody the later and more lenient theory. But before noticing it, it will be well to glance at

at the previous state of the law on this subject in the Bombay Presidency.

24 It appears from the forty second Section of Regulation XVII of 1827 of that code, that by Regulation III of 1814 the principle of validity laid down by Regulation XXXI of 1802 for Madras was applied to the Grants in the territories then under the Bombay Govt. that is to say, that they should have been made by competent authority, and actually held prior to the Company's acquisition of the Province, and had not subsequently escheated, or been resumed, and that the Summuds had been registered within one year from the Collectors Public injunction so to register them. But there seems to have been a difference with respect to Enams held without Grants which as already seen, were ignored by the Madras law. At least Section XXXV of Regulation XVII of 1827 expressly provides that in such cases

cases enjoyment of Sixty years in succession
provided it has been under some tenure
recognized by local custom, shall be
considered a sufficient title to exemption.
And that twelve years enjoyment antecedent
to British acquisition, shall be considered equi-
-valent to Sixty years. These periods were sub-
-sequently reduced by one half.

25. The ninth chapter of the above Re-
-gulation contained in five Sections the principles
of exemption; and the tenth chapter in
twelve Sections, the rules by which these principles
were to be applied in the examination of titles
which duty was vested in the Collector.

26 The recent Act XI of 1852 is
intended to apply to the Deccan, Kandeish
Southern Mahratta Country and other Districts
more recently annexed, and to which the Rules
in Chapters IX and X Regulation XVII of 1827 and
Clause I of VI of 1833. do not apply. It con-
-sists

Consists of seven Sections with two Sche-
-dules. The first Section declares that
Orders previously passed in Districts
which were not brought under the
Regulations of Bombay by Regulation
XXVIII of 1827 of that Code are not to be
affected by this Act, and the three next
Empower the Government in any of
those Districts to appoint an Inam
Commissioner with the requisite
Assistants and Establishment to discharge
the duty defined in Schedule A, and
adjudicate Claims to Exempted lands
under the Rules Contained in Schedule B.
The fifth Section vests the Commissioner
and his Assistants with the ordinary
Powers of the Civil Courts for the
Enforcing of attendance, Evidence &c
but reserves all appeals from the
acts of the Assistants to the Commis-
-sioner, and from those of the Com-
-missioner to the Governor in Council.
The Sixth makes Officers on the
Establishment of the Commissioner
Punishable for Malversation by a fine,
or imprisonment without labour
not

not Exceeding five years. And the Seventh declares that no decision or Order under this Act shall be questioned in any Court of Law; and that no person acting under its provisions, is liable to be sued in any Civil Court, for any act bona fide done under it.

27. The Mode of procedure of the Inam Commissioner, is Contained in fourteen rules in Schedule A.

28 The Commissioner and his Assistants are to investigate the titles of persons to the possession of Inams or Exemption from the payment of Land Revenue and in all matters not specifically provided for in this Enactment, to act according to the instructions of Government. The Orders of the Assistants are appealable to the Commissioner, and those of the latter to Government. They are to receive and record the Statements and Evidence of Claimants in support of their titles Either directly or thro' the Talook authority without any previous procedure, Except a general invitation

But

Rule 1.

R. 2.

Rs 3 & 4

Rule 5 But should this not be sufficiently attended to, notice should be issued to any Claimant to appear at a specified place and within a specified period not less than two Months to prove his title. The notice is to state that non Compliance will render the land liable to attachment.

R. 6. The notice is to be served upon the Claimant, or if his residence be unknown, on the person acting for him, or in charge of the land, and if such persons cannot be found, it is to be posted in the Office of the Native Revenue Officer of the District, or most public place of the Village, and is to allow Six Months for the appearance of the

R. 7.

R. 8. Claimant, failing which the land is liable to attachment. The attachment thus provided for is to be Enforced by the Collector at the written requisition of the Commissioner.

R. 9 As soon as possible after the receipt of the Statements in Each District, and the Evidence recorded, they are to be tested by the accounts and records

of

of Government, and decisions passed.
Where no Claimant has appeared — Rule 10.
under the notices in Rules V and VII
the decision is to be Exparte and —
attachments Enforced under Rules 8, R. 11.
to be removed on receipt of a Comm.
-unication from the Commissioner
the Collections made in the meantime,
however, only to be given to the —
Claimant under instructions from —
Government. Certified decisions R. 12.
are to be given when passed to the
Claimants, or if made Exparte sent
to the Talook Officer for the parties
Concerned. Decisions are to be Carried
into Effect by the Collector, at the R. 13.
requisition of the Commissioner, and
Appeals may be preferred within R. 14.
One hundred days, or later on proof
of necessary delay. Decisions —
Cannot be set aside for want
of form.

29. Schedule B Contains Eleven
rules, some of them with Several
provisions for the adjudication of
titles. The first rule with one —
provision

provision admits Inams already declared
permanent by Competent authority under
the British Government the Competency
where doubtful being pronounced upon
by the Governor in Council. The second
those held under Summuds declaring them
to be hereditary, provided 1st that they were
made by Competent authority. 2d that
the tenure involves no breach of the
laws of the land, or rules of public
decency. 3d that the Grant has not been
revoked or disallowed, or an alteration
of its terms ordered or recognized by
Competent authority. The third and
fourth rules modified by three provisi=
=ons are somewhat Complicated, but
as I understand them to refer to Inams
held without Summuds and of these
they declare that if uninterruptedly
held for sixty years prior to British
acquisition and then in the authorized
possession of a Ground Son in male
descent, or his male heir, they are to
be continued so long as there shall be
any male heir of the person who

was

was incumbent when the British Govt was introduced, but if the Inam had been so held for forty years and was then in the authorized profession of a son or male heir of the body of a son of the grantee it may be continued until the death of the last surviving son of the person who was incumbent at the British Assumption. The provisions are that an entry in the genuine accounts of the District is sufficient to Establish uninterrupted and authorized possession, provided there be no entry to the opposite effect. In the absence of proof to the contrary the claimants assertion is to be sufficient as Evidence of the number of years and descents required to fulfil the conditions of Rules three and four. Rule five is wanting in the Schedule, by Rule six Inams not continuable under those preceding are to be resumed on the demise of the incumbent. But those held under a recent grond are to be resumed at once. By rule seven Inams for the support of

of Mosques, temples, or similar institutions are to be continued permanently even though such permanence may not have been provided for in the Grant with the exceptions specified under Rule two, as are also by provision 4th those unduly [illegible] enjoyed as shown by entry in the genuine accounts of the District officers for forty years before the introduction of the present Govt. But the advantages of the rule are not to apply to the holdings of individuals in their own names for the performance of ceremonies and claims under it unsupported by Title or prescriptive Enjoyment are to be adjudged under Rule 6. Under the eighth rule which however provisions, official Inams of any hereditary office such as Kazees Village Joyshees &c are to be continued permanently with or without Summud subject to the exceptions under the second rule; and exclusive of Emoluments for

Service

Service to the State which are to be disposed of under the regulations established for such holdings. The Ninth rule allows of provision being reserved for the widows of the last incumbents during their lives but it is explained that the widow of a proprietor who leaves no male issue or other heirs is to be considered heir and entitled during her life to hold the Enam undiminished. By the tenth, tenures of a political nature are reserved to be determined by Govt. and the last declares the power of the Government to relax any of the previous rules in particular cases or to interpret them when questions may arise.

30 Having thus passed in review the Madras Law of Enams, on

the

the discussions that have grown out of it and the Bombay law at its earlier and latter stages, I have now to state for the consideration of Government my own views on the general question and the outline of a proposed enactment.

31 For that a new Enactment is called for will scarcely be questioned. Even were it not included as a necessary part of a Consolidated Revenue Code as desired by Government its necessity has sufficiently been shown in the preceding remarks. It is true the highest Court has acknowledged the power of the Revenue authorities to resume or assess invalid Enams in old Districts. At the same time it may be doubted whether in a settled District a Collector acting on this view when assessments of former Governments might be forthcoming, could sustain his act if contested in the Courts. Moreover the application of Regulation XXXI of 1802 to inset-tled Districts can only be forced and partial. Besides it seems consonant with the principles avowed by Govt. in

in legislating for this subject in all the Presidencies that the determination of Claims to exemption and the proprietary interests involved in them should be conducted under legal provisions and to some extent with judicial formality. These objects cannot be secured in Madras without a new law applicable to all Districts.

32 I think it equally clear as a matter not only of policy and interest as regards the recovery of Public Revenue but more perhaps as a matter of abstract justice and for the interests of the people themselves that general investigation of Enams should no longer be postponed or abandoned under the notion that they can be disposed of in the manner recently introduced on the occurrence of lapses. It is to be feared that a very small proportion even of lapses will come under notice and under this practice it is scarcely to be expected that the enquiry and decision will be made on fixed and uniform principles

Note. I would quote here Para 7 of the letter addressed by me to the Commissioner in N.C. on the 26th December 1853. I would observe that the urgency for the proposed investigation does not rest solely or chiefly on the importance of recovering the misappropriated revenue of the state but on the Public duty of defining the real nature of the tenures of about one Sixth of the arable land of the whole District (Guntoor) By leaving these tenures in their present state of uncertainty and abeyance the Government and individuals are alike losers and the improvement of the country greatly retarded"

principles at different times and by different Officers.

33. Next as to the adjudicating tribunal I see no alternative but to follow the example set in Bombay of constituting by Commission a special authority for the duty. It would have been a physical impossibility to have disposed of any considerable number of Inam questions in the manner contemplated by the law of 1802 under the ordinary duration of a Civil Suit from its institution to the last appeal.

34. I cannot suppose that this Government any more than that of Bombay would sanction a principle so anamalous and difficult to reconcile with even handed justice as that of exempting small Inams from enquiry it would be scarcely less strange to exempt small fields from assessment. The Bombay Act will serve as a model as regards the general constitution and procedure of an Inam Commission although

although I think the complicated nicety of the rules as regards prescriptive tenures must greatly retard proceedings and encourage trickery without securing more real justice and I also think that the mode in which the indulgence of Government may be extended to Inams not good at law should not form any part of the legal provision. The Scope of the Act in other respects ought I think to embody in a simpler and consolidated form the substance of our present law with an addition providing in accordance with the expressed sentiments of the Home Government and as has been done in Bombay for the recognition of prescriptive titles as a matter of grace. I cannot think however that the Courts remarks were intended to apply to fraudulent alienations I conceive that the Framers of our own Regulation dis-allowed all Inams

without

without Summons from believing there in almost all cases to have originated in fraud or collusion. It is notorious that Village Servants have at all time been in the habit of Effecting surreptitious exemptions from Assessment and on a favorable opportunity such as a change of Government pointing them into the Village accounts. Even the latest and most considerate view of prescriptive title does not profess to sustain Inams on that ground, unless they have been "fairly and legitimately obtained." [See Para 12 Boards Proceedings 19th of June 1848] Instead of conceding so much authority as has been done in the Bombay Act to these most treacherous records, I would prefer leaving such claims for the most part to the absolute indulgence of Government.

35 A very important point in the investigation of Inams I conceive to be the exact and finial determination

determination of the Inamdars interest whether by determining the precise extent of land to be enjoyed by him, or the amount of Assessment to be remitted. All officers of Revenue experience know how studiously the genuine boundaries or measurements of Inamins are kept out of sight, and how successfully encroachments are maintained

36 It would of course fall under the commissioners duty to determine in each case whether or not an Inam can be rightfully transferred, and to leave such as can, to the general jurisdiction of the Courts.

37 The Government have in this Presidency asserted and exercised the right of resuming partially assessed Inams, on failure of the holder to pay such partial assessment punctually. It may be well to recognize this liability in the Law.

38 As I have done in the case of the two branches of the Revenue law already reported on, I submit a

Model of a new Act on this subject but without drafting subsidiary rules which so far as regards the treatment of invalid Inams, I am not in a position to do, till favored with the present views of Government. My own opinion is substantially the same as recorded in my letter to the Commissioner of the Northern Circars dated 30th December 1850. which I presume is to be found in the Government office. Of the invalid titles I would recommend for immediate resumption all that are found to have originated without competent authority since the British acquisition 2d all those in regard to which there is evidence of fraud either by fabrication of documents, alteration, mutilation or obstruction of accounts or summons 3d all which have escheated 4th Where unlawfully alienated from service annexed, or transferred subsequent to 1831 in violation of the law then promulgated. All

6 All such as have been diverted from their Original intention.

All other invalid Inams may be treated with more or less indulgence. I think however that in all cases their eventual extinction should be provided for. The strongest claim to consideration will be long Incumbency to the endowment. For village Offices not being strictly for services to the State, or public benefits conferred such as construction of Tanks &c and the least entitled to continuance beyond the present lives will be Batta with dry or exemptions allowed to Brahmins simply as such without any special cause assigned. Those that profess to be held as emoluments for services to Government such as Head of the Village, Accountant, Watcher &c would be liable to curtailment if found to be excessive.

Madras
17th December 1855

} Sd/ H Stokes

Secretary Board of Revenue

Sketch of

An Act to be substituted for the Laws which have hitherto governed Exempted Lands, Grants and Pensions in the Territories of the East India Company subject to the Government of Fort Saint George.

Note.
This is taken from Clause, Second Section II Reg: XVII of 1827 of Bombay.

I Nothing contained in this Act may be understood to affect the right of Government to assess to the public revenue all Lands under whatever title they may be held whenever and so long as the exigencies of the State may render such assessment necessary.

2- It shall be competent to the Governor in Council to vest in the Collector of any District within his District, or in any [other] Covenanted Civil Servant within such local limits as may be prescribed, by Commission, to be pub=lished in the Official Gazette, authority to ad=judicate all titles to Entire or partial Exemp=tion from Assessment on land, or to grants of land or land Revenue, and to assign to him so many Assistants and such Establishment as may be necessary.

necessary. Assistant Com=missioners shall in regard of their powers stand in the same position to the Commissioner as Assistant Collectors to their Collector.

3 Every Officer so Commissioned, may Exer=cise the powers of the Civil Courts for procuring Attendance, or taking of Evidence, or punishment of false testimony or of Con=tempt.

4. In adjudicating titles, the Commissioner shall

shall be guided by the
following principles.
1st. All grants or Exemp=
=tions made or confirmed
by competent authority
in writing under the
British Government and
not revoked, are Valid
according to their terms.
2d. Grants or Exemptions
made by competent autho=
=rity in writing and ac=
=tually Enjoyed by the
Grantee prior to the British
acquisition of the Province
are Valid, unless Vitiated by
some one of the causes
specified below.
3d. Exemptions from As=
sessment without such
written authority tho'
possessing no legal Va=
lidity will be dealt
with according to their
apparent

apparent Claims to indulgence
under Rules to be framed
by the Board of Revenue
with Sanction of the Governor
in Council.

5th. The Competency of
any authority to issue Confirm
or revoke Grants Or Orders
for Exemption from Assess=
=ment, is determinable by
the Governor in Council

6th. A Grant for Ex=
=emption becomes legally
invalid.

1st. By Escheat.

By

2d. By Expiry of its term.

3d. If the land shall have paid Revenue for twelve years prior to the Exemption being Claimed.—

4th. By any unauthorized alteration of the Grant.

5 By omission to register when Registration may have been enjoined under Regulation ~~XXXI~~ of 1802.

6. By the nonproduction of the Grant when Called for after prescribed Notice.

7. By violation of the terms of the Grant.

8. No Charitable grant — may pass out of the family, for which it was designed

9. No Charitable grant — or Pension can be sold or made subject to any process of the Courts.

10. In Every Case — investigated by the Commissioners, he shall pass a written decision — under

7. Endowments and Emoluments for Service Can in no Case be alienated from the objects to which they are annexed.

under his Official Seal and signature, and if an Exemption be confirmed, such decision shall specify the family name and fathers name of the incumbent, the Exact Extent and boundaries of the land to be Enjoyed by him, or the Exact interest in money or grain, as the case may be, with all Conditions as to future succession, rights of transfer &c.

11 An appeal shall lie from a decision of

The Bombay Law says "Governor in Council" but there is no Board of Revenue there.

of the Commissioner to the Board of Revenue within thirty days from its delivery but the period may be extended on just cause being shown.

12 All orders and decisions of the Commissioner shall be carried into effect through the Collector of the District.

13 All Inams resumed under the orders of the Commissioner shall be assessed according to the local rules or usage by the Collector under the order of the Board of Revenue.

14 When no investigation of the Tenure of an exemption may yet have been

been made by authority of the British Government such Tenure shall be held to be in the same position in respect of investigation as it was at the acquisition of the Province and its sub=sequent continuance or entry in the Village ac=counts shall not be held to cure any flaw of title, or to bar the liability for any fraud.

15 The Commissioners proceedings are to be con=ducted according to sub=sidiary rules to be framed under orders of the Governor in Council.

16 No decision or order

passed under this act shall be questioned or avoided in any Court of Law nor shall any person acting under it be sued for any act co bonâfide done under its provisions.—

17th December 1855. /Signed/ H. Stokes.

/True Copies/

R Thomas

Dy Secy to Govt.

Compd