

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	469	Press Mis.
Dated	5-4-	1859

Not to be folded or roughly handled

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Fort Saint George, Revenue Consultation of 5th April 1859.

No. 20. Read the following letter from R. D. PARKER, Esq., Acting Member of the Board of Revenue; to J. D. BOURDILLON, Esq., Secretary to Government in the Revenue Department; dated Fort Saint George, 24th March 1859.

SIR,

On the 9th Ultimo, I had the honor to receive Extract Minutes Consultation under date the 7th Ultimo, appointing me to the duty of superintending the preparation of the Acts to constitute the revised Revenue Law of the Presidency, and directing me to secure the services of Mr. Mayne, Barrister-at-Law for the actual work of drawing them up.

2. I lost no time in engaging Mr. Mayne, but as the Supreme Court was sitting in term at the time, it was not till the 23d February that he was at liberty to give his attention to the Code. Since this date I have had several personal conferences with him, and have now the honor to submit the Acts drafted by him on the ground work of Mr. Stokes' first and third Acts, the former devoted chiefly to the repeal of existing Regulations, the latter to the definition of the powers of the Board of Revenue and Collectors.

3. For some reasons it would be more convenient, perhaps, that the whole Code should be submitted to Government together; but as time is an object, and some of the clauses may excite discussion, it appeared to us desirable, on the whole, that the distinct portions of the Code should be in the hands of Government as soon as prepared, and I would suggest for consideration whether such portions, when approved of by Government, may not also, with advantage, be forwarded to the Madras Member of the Legislative Council, in order that he may call for any explanation which he may require without delay.

4. As stated by Government Mr. Stokes' Acts were merely sketches. The present drafts are necessarily therefore in much greater detail, but it has been our endeavour to avoid all needless prolixity and all technicalities. Generally we have confined ourselves to making provisions on the principles already sanctioned by Government, but some entirely new matter has in some places been introduced which will be pointed out and explained, in the proper places.

PRELIMINARY ACT.

2 REPEALING CLAUSE.—5. Slightly altered and a necessary proviso added. The enumeration of the Acts to be repealed in a Schedule is a usual and convenient arrangement.

3 INDEMNITY CLAUSE.—6. The proviso added to this Clause, is required by common justice as the Government cannot in cases like the present desire the power to exclude individuals by ex-post facto laws from seeking a remedy for alleged past injuries. All that can be necessary is to limit the time during which suits may be preferred.

SECT. VII.—7. As doubts may arise as to the parties who are under the official control of the Collector, and Government have on several occasions intimated their opinion that all natives of the District should be so considered, the words "all natives of the District" have been added. Uncovenanted Deputy and Assistant Collectors have also been subjected to the same restriction as the Covenanted Officers.

SECTION IX.—8. This is wholly an addition but appears to be indispensable. It will be observed that both Government and the Board of Revenue are constituted Appellate authorities by Clauses introduced in the proper places.

AN ACT FOR REGULATING THE POWER AND DUTIES OF THE REVENUE AUTHORITIES OF THE MADRAS PRESIDENCY.

9. It does not appear to me necessary to offer an explanation of any of the first twelve Sections of this act as though they slightly differ from Mr. Stokes' draft, and some of them do not appear there, their propriety seems obvious, and for the most part has already been admitted by Government.

10. The XIII. Section is an addition which seems to me very necessary. If it had been stated generally, as proposed by Mr. Stokes, that all Revenue Officers might be sued in the Civil Courts, Suits might have brought against the Revenue Board for acts done in Ganjam, and great inconvenience have been the consequence.

11. The Government will observe that in Section XIV. the power assigned to the Member or other person deputed, with the sanction of Government, to any special duty, falls considerably

short of that of the Commissioner nominated directly by the Government. The provisions of the Section will also admit of a deputation on special duty at the Presidency as well as in the Provinces, and the Selection is not confined to the Members of the Board.

12. It is in the Sections relating to Endowments and Escheats that the greatest innovations have been made. Except in stating that the Board should prevent misappropriation of endowments, and have superintendence of Escheats, Mr. Stokes' Act contains but little Regulation. It appeared to Mr. Mayne and myself that the mode and extent of the interference of the local authorities should be distinctly specified, and further that it should be provided that all future endowments should be made by a written instrument to be kept on the public record and registered, and the rights of the founders carefully preserved to them. It is not to be supposed that persons will alienate property to purposes of general utility, if their heirs retain no power of seeing that the trust is carried out. I deem it necessary particularly to direct the attention of the Government to the Section giving power of recall to the endowment to the heirs as well as the grantor within six months. This may be objected to as throwing an unnecessary impediment in the way of endowments: but we deemed it far better, advertent especially to the Hindoo Law of inheritance, that endowments should be limited to those made with the full and deliberate consent of all interested, than that any should be the subject of after dispute. In the case of Escheats also it appeared to us right and proper, that safeguards should be enacted, against the too hasty assumption of lands as Escheats, to the injury of private individuals and the ultimate loss of Government from expenditure in unsuccessful litigation. It is provided, therefore, that the Collector shall in the first instance assume charge in trust only for the person who shall prove eventually entitled or for the Crown in the event of an Escheat, that notices shall be given of the intention to claim as an Escheat, and that when other claims may be preferred, they shall be considered at one and the same time by the Civil Court, and possession given to the claimant, whether the Crown or an individual, who may shew the best prima facie title, without prejudice to the right of persons, not parties to the Suit, who may bring an action within the time prescribed by the statute of limitations.

13. The Sections 40 to 55 relating to the powers and duties of Collectors in matters of Revenue seem to require no remark except that they will be found to comprize the alterations and additions directed by the Extract Minutes of Consultation under date the 18th February 1857.

14. As regards the special judicial power of Collectors in certain Civil cases the Government concurred with the Board of Revenue in deeming the Sections in Mr. Stokes' draft as too brief and superficial, and in considering that much more precision should be given to this part of the enactment.

15. The present Draft states in detail the cases which the Collector is competent to decide, and the mode of Procedure. As directed by Government* it authorizes Tahsildars to decide all cases investigated by them, and allows causes to be brought before them where the total value of the subject matters in issue shall not exceed Rupees 500. In regard to this limit

Section LXXI.

* *Extract Minutes Consultation 18th February 1857, No. 18.*

however I venture to suggest for consideration whether it may not be lowered without risk of delays, and with advantage in respect to the chance of right decisions, now that it is resolved to increase the strength of the Mofussil Revenue Establishments by the addition of Uncovenanted Deputy Collectors.

16. Section LIX. requires some remark as connected with Section LXIX. As a general rule, Ryots are not allowed to break up Government lands without the previous permission of the Revenue Authorities, and when they do so, they are now, in many cases, ousted under the general powers of the Collector. So also the Collector assesses waste land newly brought under cultivation according to the rules of the District; and neither as regards the occupation or assessment of Government waste do the Courts exercise any power of interference. Such power, however, may appear to be conferred by the Sections noted above. It is not intended that they should curtail any of the rights that Government, through its Revenue Agents, has hitherto exercised in regard to the waste, nor will they, in Mr. Mayne's opinion, have that effect but as these rights are not clearly known as respects Meerassee and some other villages, we have

not ventured to restrict the class to Zemindaries only. I draw attention to the point that it may receive the consideration of Government.

17. LXXIV. gives authority to refer cases brought before the Collector to Punchayets, but only when both parties consent. Considering the great influence which a rich Native exercises over others we have thought it dangerous to allow one party to force a cause before a Punchayet. Another innovation on the present law, is that instead of each party being allowed to name Members of the Punchayet, the selection is vested in the Collector alone, and checked by giving the parties power of objecting. Under the present system, a Punchayet too often consists of strong partisans who cannot in any way be brought to agree to a decision. It will be observed that an endeavour is made to prevent litigious Appeals against the decisions of Punchayets by providing that they shall subject the Appellant to fine. The decision of the Civil Judge on an Appeal from a Punchayet is final, instead of being open to review by the Sudder Udaltut on a special Appeal as in other cases. As both parties agree to the Punchayet it would seem no hardship to narrow the right of Appeal as much as possible.

18. Next come the Sections in substitution of Regulation IX. of 1822, which confer on Collectors criminal powers for the punishment of malversation. The persons rendered amenable are the same as those enumerated in Regulation IX. of 1822, with the addition, as directed by Government, of servants in the Department of Public Works, and the exclusion of those employed in endowed Institutions. The proposed Sections in regard to endowments, while they would render the interference of the Board of Revenue more effectual when really required, would at the same time, place these Institutions in a position of more general independence. In pursuance of the same policy, we have thought it desirable to relieve the persons in charge of all criminal liability, except under Act XIII. of 1850, and the general Law applicable to frauds. The powers of prosecution there given, in connection with the Clauses relating to endowments in this Act, we think ample to prevent malversation; and it is a hardship, in our opinion, that the descendant of a man who has benefited the Public by his liberality should, in consequence of the public spirit of his ancestor, be more liable to annoyance and disgrace than other people. The managers of Chuttrums are, as Government are aware, very often related to the Founders.

19. The limit of the punishment which can be inflicted by the Collector is fixed as desired by Government, and according to the principle of their direction in regard to Civil Suits, Tahsildars are authorized to decide as well as investigate, such cases as are referred to them.

20. The Proceeding in cases of Appeal from sentences by the Collector under the present Law are universally condemned as tedious, harrassing and unsatisfactory. The present Draft Act makes the Collector's decision final where the money ordered to be paid shall not exceed Rupees 100, or the period of imprisonment in default thereof shall not be greater than two months. In other cases the Appeal as desired by Government lies to the Sessions Court instead of the Board of Revenue.

SECTION LXXXIX.—21. The powers of enforcing the production of evidence under this Act are the same as those possessed by Civil and Session Judges, according as the case is of a Civil or Criminal nature.

22. Under the Law as it now stands it repeatedly happens that a Collector is sued for Acts done in his Judicial capacity, and although in cases under Regulation V. of 1822, he need only plead the fact to have the case dismissed as regards him, yet trouble and correspondence is occasioned, which should not be the case. Under Regulation IX. of 1822 his judgment may become the subject of a Civil Suit. There seems to be no reason why the Collector should answer for his judgments before another tribunal any more than the Civil and Sessions Judge. Section XC. therefore, expressly secures him this immunity.

23. The only other portion of the Act which appears to require remark is the power given to the Collector to compel Zemindars to repair tanks when necessary to secure public roads, &c. against damage, and Inamdars holding a village jointly to elect one or two responsible managers. These provisions were suggested by myself as Collector of Madura, and I at the same time urged that a Collector should also possess the same power of compelling the repair of a Zemindars or Inamdars Tank when required for the purpose of securing the usual supply of water to the Ryot. No such provision it will be perceived is inserted in the present draft. The point has been anxiously discussed by Mr. Mayne and myself, and we have been fully alive to the hardship

Fort Saint George, Revenue Consultation of 5th April 1859.

which may be suffered by Ryots who have expended capital in forming rice lands, when Zemindars and Enamdars neglect to repair their Tanks; but we could see no way of providing for their being summarily compelled by a Collector to repair a Tank which the interests of all parties require to be maintained, without obliging them to perpetuate Tanks which prudence would lead them to discontinue. In other words, we could not reconcile it with justice to take from a landlord the right, which Government exercise, of judging for themselves what works of irrigation shall be kept up on their lands. We have therefore thought it better that parties deeming themselves aggrieved should seek their remedy in the Courts.

24. I regret to say, that as Term in the Supreme Court commences on the 22d, Mr. Mayne will be prevented from continuing the preparation of the Code for some time. We have made the Act regulating the powers of the Revenue Authorities the second on the list, because the Acts relating to specific branches of Revenue may multiply by lapse of time, and should, it would seem follow each other consecutively. The one which we propose to submit next is that regulating the Proceedings of the Court of Wards.

No. 21. ORDER THEREON, No. 469; dated 5th April 1859.

Ordered to be referred to the Board of Revenue for any remarks they may wish to offer. They will be requested to lay them before Government at their earliest convenience.

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

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REVENUE BOARD OFFICE, }
Fort St. George, }
24th March 1859. }

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

W. P. Parke
Acty Member of the
Board of Revenue

Copy in return to C.
of 20th 44th 109 1831

11-7-1831

13 613

Revenue 1839 Deposit

Nov 5th April

N: 517

Thom R. D. Parker Esq^r

Acting Member of the

Board of Trade

Date 24th }
Rec: 25th } March/39

From B^y of Rec^d of 23rd June/39
to B^y 1217 and B^y 29 July
to B^y 62-63

Encl. 2.

Pr 1098

Submitting the Drafts etc
prepared by Mr Mayne to
consider the revised Revenue
Law of this Country

With an Order.

N: 469 of 5th April/39

N: 209 21

N: 26th March 1831