Reference Conseil Vaticon.

№ 656 d) 13-5-1859.

Dated 11th to 17th May 1859.

No. 17. Read the following letter from R. D. PARKER, Esq., Member of the Board of Revenue; to J. D. BOURDILLON, Esq., Secretary to Government, Revenue Department; dated 30th April 1859.

1st. In continuation of my letters of the 24th March and 21st April last, I have now the honor to submit the portions of the Revenue Code remaining to be furnished by Mr. Mayne, and myself, *viz*:—

1. An Act for the Settlement of the Land Assessment and Collection of the Public Revenue.

2. An Act to enforce payment of the Revenue due to Zemindars and Enamdars.

3. The Schedule of Acts repealed by the Preliminary Act already submitted.

2nd. In Mr. Stokes' sketch it was not proposed to have a distinct Act for the recovery of arrears due to Zemindars; but the provision by the same Sections for enforcement of the claims of Government and the Zemindars, though both relate to Revenue and not Rent, was found inconsistent with clearness, and it was deemed preferable, therefore to treat them separately.

3rd. The substance of Act XXXIX. of 1858, recently passed, for the recovery of Ryotwarry arrears is embodied in the first of the Acts now submitted.

4th. The instructions of Government applicable to these Acts are contained in Extract Minutes Consultation of the 15th September 1856.

5th. We propose that the Act for the Settlement and Collection of Revenue should be numbered 4 in the Code. Its first 10 Sections relate to the Settlement of the Land Revenue. On this portion of Mr. Stokes' sketch the Government made no remark, except that all such parts of the present law as create or declare any rights of Zemindars or Proprietors should be preserved. This object we suppose to be fully effected by Section IV, which provides, that the conditions of the deeds of Sunnud-i-Milkut Istimrar shall be strictly observed.

6. The sources from whence the various provisions adopted have been derived will be found distinctly noted in the margin. I have the following remarks to offer regarding the details of the first 10 Sections.

Section II.

7. Without attempting to define the much disputed rights of Meerassidars the language of this sect is intended to secure to them any which they may succeed in establishing.

Section V.

8. It was necessary in this place, while defending the Ryots from capricious changes in rates of the Assessment of their fields, to secure to Government their inherent right of increasing the burden of the Land Tax, if the necessities of the State should absolutely require it.

Section VI.

9. The period at which it is desirable that notice of an intention of relinquishing land should be given varies in regard to wet and dry land—but in a law it was desirable, for the sake of simplicity, to have one period only—and two months before the commencement of the new Fusly appeared to be the most convenient that could be named.

Sections VII, VIII, IX.

10. These sections provide for a Registry of lands paying an assessment to Government, but it will be observed that it is not specified where the Registry is to be kept. A Registry at the Talook Cutcherry will satisfy the requirements of the Act. At the same time it is obviously desirable that there should be a register from which Extracts can be taken. It is a rule in Law that the best evidence in every case shall be produced—hence the expediency of the clause noted in the margin to prevent the person making the registry being continually summoned to the Civil Courts to prove it.

"*A certificate copy of such registry shall be primâ facie evidence of occupancy in all Courts of Justice and against all parties, without proof of the death or official character of the person making the same.*"

A Collector is made liable to suit only in cases where he refuses to transfer a registry under

certain circumstances; but it will be observed that he is not obliged to satisfy himself of more than a *primâ facie* title, otherwise, all the labours of a Civil suit might be imposed on him on the death of every registered occupant.

11. It is proper that I should bring prominently to notice the fact that no provision is made in the Act for the exchange of Puttahs and Moochilkas. These documents have never constituted good evidence of title, and the tendency of revenue reform is to be dispense with a yearly agreement which gives a temporary aspect to a tenure which it is desired to consider permanent. The provisions relative to registry afford all the hold on the ryot which is necessary; but if deemed useful for the purpose of informing him of the amount of the demand against him, a Puttah can be given, the Act presents no bar to any subsidiary arrangement of the kind—only a Puttah will be no proof of title like an extract from the register.

12. Before quitting this part of the subject it is necessary that I should remark, that the term "occupancy" as explained by Section 3 of the Draft does not imply the actual but the legal possession of land, *e. g.* a Sub-Tenant may till a field, but the occupant will be the registered proprietors who receives rent from him.

13. The further Sections of the Act No. 4, as far as Section LVIII, relate to the Collector of the Assessment and the means of enforcing payment of arrears. It is to be borne in mind that they apply to the realization of the Government Revenue from Zemindars as well as from Ryots.

Sections XI, XII. 14. Though notice of Instalments may be fixed up in the Collectors Cutcherry, the communication now usually made by the Head or Curnum of the Village to the individual will suffice. The commencement of an arrear is fixed for the first day of the Calendar Month succeeding that on which the Instalment was due. This seemed to me preferrable to allowing a whole month from the date whatever it might be fixed for payment of the Instalment.

Section XIII. 15. This Section gives power to the Government Officers to recover arrears from any person holding land under an occupant as well as from the occupant himself; and, as directed in the concluding part of Section II of the Extract Minutes Consultation of the 15th September 1856, permits him to charge the amount against the land-owner.

Extract Minutes Consultation, 15th September 1856. *Paras.* 13, 14, 15. 16. Sections 14 to 17 inclusive give the Government a lieu on the crops in Ryotwaree lands. A written notice is prescribed of at least one month in accordance with the views expressed by Government in the order noted in the margin. By Section XVIII the Collector may take security in lieu if he prefers it.

Sections XIX to XXVIII. 17. The only remark which it occurs to make in regard to these Sections, which relate to the attachment of lands for arrears, is that by Section XXV "all deeds of land at a rate lower than the usual rates of assessment and not "made bona fide for bringing waste land into cultivation shall be null and void against the "Collector if he shall so declare." This is the practice under the present law. Section XXVIII enables any one claiming an Interest in land to release lands from attachment by paying the demand, and such payment, if proper, is constituted a charge on the land.

18. When a sale of property is required for the recovery of an arrear, the Draft gives the option, as is allowed by Act XXXIX of 1858, of either selling land or moveable property and the Sections prescribing the Rules to be observed are from XXIX to LXI both inclusive. In selling lands Government is not restricted to those on which the arrear is due, but, agreeably to the view expressed in para. 11 of Extract Minutes Consultation, 15th September 1856, may take those which the Collector "thinks will be most likely to effect the recovery of the arrear." In regard to moveable property, however, we have ventured to deviate from the instruction contained in para. 12 of the Proceedings cited above, and to confine the distraint to such property as belongs to the occupant or tenant. If the property found on the land of a defaulter to whomsoever belonging may be taken, the sufferer may be a casual traveller, or a Salt trader halting his bandies for the night; for it must be borne in mind that the land in arrear may be used in various ways—possibly, as a Pettah or Enclosure receiving for hire travelling bandies for a day or night.

Proceedings of the Madras Government, Revenue Department, from 11th to 17th May 1859.

Section XXXIV. LII. Para. 18, *E. M. C. 15th Sept.* 1856. 19. Defaulters are not allowed to be purchasers of their own land or goods.

Ibid Para. 17. *Section XXXI LIII.* 20. Tender of payment may be made 5 days before the day appointed for sale in respect to immoveable and 2 days in respect to moveable property; and all sums properly so paid may be recovered from the defaulter.

E. M. C. 15th Sept. 1856. *Para.* 19. *Section LVII.* 21. The Government did not approve of Mr. Stokes' proposal to give power to a Collector to imprison a Defaulter immediately, if he should think fit, and directed that the power should be confined "to cases in which the whole available property of the "defaulter has been sold without defraying the arrears, and where "these may be reason to suppose that he has concealed or made away with property in order to "evade the demand." The draft now submitted follows this direction.

22. The remaining sections of the draft No. 4 give authority to farm the Public Revenue, to recover arrears from sureties simultaneously with, or previously to, their enforcement against the principal; and to recover arrears of Revenue other than Land Revenue, and demands recoverable as arrears of Revenue, advance for Cultivation, and Curnums fees, in the same manner as arrears of Land Revenue. The question was discussed between Mr. Mayne and myself, as to whether the same mode of recovery should be extended to Road and Maramut cesses, but it was deemed by him objectionable that methods of recovery should be provided, before the taxes themselves have been legalized. The authority of Collectors under the Act is also extended to their Subordinates in charge of Divisions, or may be delegated in writing to others not so in charge, the Collector retaining a power of review.

Section LXIV. Section LXX. Section LXXI Section LXXII.

23. The Act relating to Landholders and their Tenants, will be found to reproduce in a concise form, all the essential parts of the present regulations on the subject. It also gives power of recovery of arrears by distraint to Enamdars as well as Zemindars, as although this was objected to in Extract Minutes Consultation of 15th September 1856, I have ascertained that Government are willing to reconsider this point; but the power is not extended to Ryots as regards their sub-holders nor in fact, does the Act provide for the recovery of rents properly so called, but only of assigned Revenue.

Section I. 24. The term "Landholders" is used to cover Zemindars and the different descriptions of Enamdars. Proprietor might seem preferable, but this term had been used in a restricted sense in the Act for the Court of Wards. It will be observed that Zemindars holding otherwise than under a Sunnud Istimrar are specifically named. I suppose that as "farmers of the Revenue" they could recover in this way under the present Regulations—but it has been deemed expedient to avoid all obscurity on the point.

25. The provisions as regards Puttahs may not exactly suit the present lax arrangements between Landholders and Tenants; especially when the former are small Enamdars; but it is impossible to adapt Laws specifically to every varying relation between individuals. The Law itself must be made as simple as possible, and individuals must adapt *their arrangements* to *it*. The Puttah need not express the exact amount to be paid, which it may be difficult to determine at the beginning of a year, when the settlement is on a division of the produce, or the sources of Irrigation uncertain in their supply. It will be sufficient that the principle of the engagement be laid down, *e. g.* what proportion of the produce is to be the share of the Landholder.

Section IV. 26. To the long established regulation against unauthorised exactions contained in this Section, an important provision is added, that a Landholder may raise the Assessment on account of improvements, "provided or procured at this own expense." Otherwise a Zemindar charged by Government with a large cess for water supplied by the Godavery Anicut would be unable to recover any portion of it from his Ryots receiving the actual benefit.

27. This Section gives a power to a Collector which, according to a *Section IX.* recent decision of the Suder Udalut, he does not now possess, *viz.*, to amend a Puttah on a dispute brought before him for adjudication, otherwise a Landholder may go on for ever tendering Puttahs without the Collector approving of them.

28. The power given to Landholders by Clause 8, Section XXIV of Regulation XXVIII of 1802 of compelling the attendance of their Tenants for the adjustment of their rents is not continued by the proposed Act. It was considered dangerous, and has, I believe, been much abused in Bengal. An agreement sufficient for the object might be inserted in the Puttah, and could be enforced by Civil Suit.

29. The above are all the remarks it occurs to me to make on this draft.

30. The Schedule stitched to the Act relating to the Land Assessment should, when, the Code is made Law, be pasted to the Preliminary Act, No. 1.

31. The Acts drafted by Mr. Mayne make no provision for Curnums, and the old Regulations regarding them unrepealed.

32. Regulation VII of 1817 is repealed. The drafts provide for endowments other than religious; and it is for Government to consider whether a separate statute should not be enacted for religious endowments. As a Member of the Board of Revenue, I am aware that the question is now before them.

33. The sections retained in Regulation V of 1822, prescribed the mode of procedure in cases of violent disputes in regard to lands—I myself am disposed to think that the ordinary Criminal law would suffice to restrain these, and that the Regulation may be entirely swept from the Statute Book.

34. The whole of the work originally committed to Mr. Dale has now been performed by Mr. Mayne. The preparation of an Enam Act did not form part of the task, and it is I believe fully understood that the Commission to Mr. Mayne and myself does not extend to it.

35. In conclusion I beg to state, that in engaging Mr. Mayne, I made no arrangement in regard to his remuneration, as I understood from him that this is usually fixed through the mediation of Mr. Boyson, the Solicitor to Government.

No. 18. ORDER THEREON, 13th May 1859, No. 656.

Referred to the Board of Revenue, in continuation of the orders of Government dated 5th and 30th April 1859, Nos. 469 and 591, for any remarks that they may wish to offer.

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

Revenue 1859. Department.
Cons: 17th May.

No. 838

From C. D. Parker Esqre
Member of the Board of Rev.

Dated 30 April &
May 1859.
Recd. 10

2. Enclo.

Copies Board of Revenue 23 June/59
Cons. 1217 vii Cons. 29 July No 6263
& Ex. of 25th Aug. 1859 - C. A. 2224 -

Submits the portions of
the Revenue Code remaining to be
furnished by himself & Mr. Mayne.

No. 656. 13th May/59
With an order

Copy in d Letter to E
d/ 21st Sept. 1859 No 51

30/6/98
11-7-02

13-6-13

No. 656.
Reference to the Board of Revenue
in continuation of
dated 5th and 30th April 1859 and 9 May

for [redacted] may remain to Board

Copy in d Letter to Govt
d/ 13th May 1859.

Cons. 13 May 1859.
Rec'd from the Sec. to Govt.
with [illegible]

No. 17 & 18.