M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 866-867 Press Mis.

294-296

Dated 17 . 4 . 1862.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 17th April 1862.

No. 294. Read the following letter from W. HUDLESTON, Esq., Secretary to the Board of Revenue, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 20th March 1862, No. 1,879 :—

SIR,

1. I am directed by the Board of Revenue to submit, for the consideration of Government, the following observations having reference to the "Bill relating to Breaches of Contract in bad faith" which is now before the Imperial Legislative Council.

2. In the first Section of the Act it is declared that the neglect to perform a contract intentionally from some motive of interest shall be deemed a breach of contract in bad faith, and the Board observe that in the discussion on the Bill it has been affirmed and not disputed that a lease is a contract, that the Ryotwary tenure of land is in fact a lease tenure, and that the possession of the land is tantamount to the receipt of a substantial consideration for the performance of the lease contract.

3. Thus, then, it would appear that if on any ground of personal interest (and many such can easily be imagined) a Madras Ryot should leave his land uncultivated and fail to pay the Government demand on it, he would at once become liable to all the penalties attached by the Bill to breach of contract in bad faith.

4. These penalties are :—

(1.) To be decreed liable to pay to the Plaintiff the full amount of damages necessary to indemnify him against all loss which he may have sustained or be declared reasonably likely to sustain by reason of the non-performance of the contract, including the loss of any profit which he has by the Defendant's breach of contract been directly prevented from making, whether the Defendant at the time of entering into such contract or of the breach thereof knew that such loss would be the direct consequence of such breach of contract or not.

(2.) In default of payment of the damages so calculated and decreed, to be imprisoned for a time ranging from three months to two years according to the decreed amount.

(3.) In default of providing his own subsistence while in jail, to be subject to hard labor for the time of imprisonment, and

(4.) As a necessary consequence of the preceeding under the existing Law, to be subject to prison discipline, that is to flogging, for non-performance of the prescribed labor or wilful indolence in its performance."

5. It may of course be argued that no such case could practically arise, and it was stated in the debate that the objection might be met by specially exempting Revenue defaulters ; but special exemptions from the operation of a general enactment are always invidious, and as to the improbability of such a case arising unless special exemption be provided, it must be borne in mind that Zamindars can undoubtedly legally exercise towards their Ryots, for the realization of the assessment due on the land, the same powers that the Government could exercise if it thought fit, in cases where no such middlemen exist, and it is not to be supposed that forbearance would always or usually be exercised in such matter by Zamindárs to the extent of ignoring the existence of this powerful instrument for punishment of breach of contract.

6. The fact that such a state of things as has been above described will be possible under the Bill, if passed into Law as it now stands, is in the Board's opinion unmistakable evidence of the unsoundness of its principle, and as such they direct me to bring it under the notice of Government.

(Signed) C. G. MASTER,
Deputy Secretary to Government.

Ordered that the following letters be despatched.

No. 295. From J. D. SIM, Esq., Secretary to the Government of Fort Saint George, to the Secretary to the Government of India, Home Department, dated 17th April 1862, No. 866.

SIR,

1. With reference to the Bill relating to "Breaches of Contract in bad faith" now before the Council of the Governor General for the purpose of making Laws and Regulations, and which from the "statement of objects and reasons" accompanying it appears to be intended to

apply also to Ryot landholders, I am directed to request that you will bring under the notice of the Council that so far as the Madras Presidency is concerned, special legal provision already exists for the realization of land revenue and rent. A new Law in this respect far from being required, will, the Government think, cause confusion and mistrust.

2. I am to explain that the Ryot or registered landholder of this Presidency does not occupy the position of an ordinary tenant, but possesses a proprietary interest in the land held by him so long as he pays the assessment due upon it, whether the payment be made direct to Government as in Ryotwary villages, or through a middleman as in Zamindári Districts. The enforcement of this payment in both cases, and the security of the public land revenue are provided for by special Regulations which have proved amply sufficient for the intended purpose. The Government therefore concur in the remarks made by their Member the Honorable Mr. Forbes on the introduction of the Bill, that further legislation and the imposition of new penalties would excite mistrust in the landholders of this Presidency and should be avoided as unnecessary.

Regulation XXVIII of 1802.
Regulation XXV of 1802.
Regulation XXVII of 1802.
Act XXXIX of 1858.

3. Moreover, I am to draw attention to the conflict of Laws which the new Act would introduce. By one Law a Zamindár can only recover his arrears by a certain process, while by another he can adopt a different course; under one Regulation the Collector is the Judge in the first instance, under another the Civil Court is the tribunal; and a Puttah which a Collector may declare invalid may be accepted as a legal contract by the Civil Judge.

4. Under the circumstances above stated, I am directed to request that measures may be adopted expressly to exempt the Ryot landholders of Madras from the operation of the proposed Act, in respect to the assessment of their lands.

No. 296. From J. D. SIM, Esq., Secretary to the Government of Fort Saint George, to the Honorable H. FORBES, Member of the Legislative Council of India, dated 17th April 1862, No. 867.

SIR,

I am directed to forward for your information copy of a letter of this date addressed by this Government to the Secretary to the Government of India, requesting, for reasons there stated, that the Ryots of the Madras Presidency may be expressly exempted, so far as the payment of their assessment is concerned, from the operation of the "Bill relating to Breaches of Contract in bad faith" now before the Council of the Governor General for the purpose of making Laws and Regulations. A copy of a communication from the Board of Revenue on the same subject is also enclosed for your information.

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Ceo

the law of 1802
first to distrain
and sell his
property – personal
and real and
it is only ultimately
by that he can
proceed against
his person for
the recovery of
any balance re-
maining due –
Further a
ryot can

Reg XXVIII of 1802

Reg XXX of
1802

by law compel the land-
lord to issue a lease
to him for the land
he holds at certain es-
tablished rates of rent
and can prosecute
him and obtain dama-
ges if he refuses. Surely
a tenant with these
rights cannot be looked
upon as an ordinary
renter of land, nor can
such tenure be regarded
as a simple contract –
So far as this Presiden-
cy is concerned Reg
~~XXVIII~~ of 1802 modified
by Reg V of 1822 has an-
swered every purpose
and the rights which
the ryots have acquired
under these laws cannot
with justice be summa-
rily swept away. I beg
order

orders as to collection any remonstrance shall be addressed to the Supreme Govt on this point or to the principle on which the Bill is founded.

Ad Upon
first sight to the Bill
is immaterial
as first read to
act on it.

L. R. S.

I recommend that we seek to exempt ourselves from the operation of the Bill, instead of arguing against the general principle of the Bill. We could do this on the ground that official legal provision already exists for the realization of land revenue & that consequently no new law is required, but might on the contrary cause confusion & mistrust. The introduction of the Bill, in which it is proposed to include certain classes of persons whose exemption is found necessary to make, but the Judges who frame the information ably, but it is addressed for the Govt to decide in the matter (if the case) both the subject should be mentioned.

Secretary's letter is to establish the Clerk of the Council, by giving a communication also to the Supreme Govt, but the correspondence which passed the Govt appeal against the decree has with Mr Secretary to the Govt

Jan 1868

The Secretary to the Govt of India
Home Department

Sir

I am directed to refer to the Act reading to Procedure of Courts of Inquiry before the Council of the Governor General for the purpose of punishing Persons guilty of Offences against Regulations made & which may hereafter be made under the Authority of Act 33 Geo III Cap 52 Sec 39 & 40 and to inform you that I am directed to request that you will be good enough to bring under the notice of the Governor General so far as the Madras Presidency is concerned, any special

~~Reg XXVIII of 1802~~
~~Reg I of 1803~~

especially legal provisions
already existing for the
realization of land revenue
and rent, & even when
no plea respecting any from
being registered with the
Government should cause
confusion and uncertainty
2 Care to explain
that the payment or registering
hereof by order of the Re-
-ceivership does not accept
the provisions of an ordinary
Summons that persons or
proprietary interested in the
land held by him so long
as he pays the assess-
-ments due upon it whether
the payment be made
direct to Govt as in Regt
every Collector, or through
a middleman as in
Permanently Settled
the enforcement of the
Regulations

Reg XXVIII of 1802
Reg XXV of 1802
Reg XXVII of 1802
Act XXXIX of 1838

prescribed in both cases
and the security of the
public land revenue
are provided for by
special Regulations
which have passed
simply sufficient for
the intended purpose.
The Government there-
fore concurs in the re-
-marks made by their
Honorable
Mr Forbes on the introd-
-uction of the Bill
that for the Regulation
and the imposition of
new penalties would be
excite uneasiness in the
land holders of this
Presidency and should
be considered as unnecessary
3 Moreover Govt
to draw attention to the
confused state of laws relative
to

the prior act provided
in the case. By one Law
a Commissioner can only
recover two arrears by a
certain process - while
by another he can
adopt a different course -
under one Regulation
the Collector & the judges
in the first instance
under another the
Circuit Courts & the
Caribbean Court Judges
referred to Collector may
elected) in which may
be accepted in a legal
contract by the Courts
Treasury

4 Under the con-
-sequential orders above stated
Law above stated by Regulation
that prescribed since
by a adopted expressed by
a certain the usual course
before

Form 46 Geo 3
Jan 1802 c 5

The
Copy of the Letter

holder of Collector from
the operation of the pro-
posed Act, in respect
to the assessment of
their lands -

SH

Bill relating to breaches of Contract.

Revenue 1862 Departt.
Recd: of Govt. for Consid.

fo 866.

Letter Secretary to the Govt. of India, Home Depart.
dated 15th April 1862.

Letter to Supreme Govt. requesting to exempt the Ryot and holders of Cultivated from the operation of the proposed Act relating to "Breaches of Contract in bad faith" in respect to the Assessment of their Lands.

fo 294 & 295

Read Copy & Letter dated 15th April 1862

No. 10.

fo 867.

The Honorable H. Forbes
Member of the Legislative Council
of India.

Sir,

I am directed to forward for your information a copy of a letter noted in the margin addressed to this Govt by the Secretary of State for India, & to request that you will move the Council, at the same time that you introduce the Bill for the purpose, to exempt the Ryots of Cultivated Lands from the operation of the Bill relating to Breaches of Contract in bad faith now before the Council.

So far as the Payment of the attached Crop

I am for the purpose of rendering Laws & Regulations - a copy of a Communication from the Govt of Madras on the

Lamine subject
is also enclosed
for your information
Sir

I. M.

To the Hon. R. Foley.

Fort St George
17th August 1802

Genl 1862 Deptt
Proc: of Govt for Appt.
from 17 April 1862.

The Secretary to the
Board of Revenue

To
The Secretary to
Government
Revenue Deptt

Dated 20th
Recd 21st } March 1862
No. 856 17 April
No.

Submitting for consideration certain observations having reference to the Bill relating to Breaches of contract on the part of workmen & more before the Imperial Legislative Council.

Copy & Trans. to Secty
19 April 1862

No 294.

6 Sheets 1 Abstract