

MADRAS RECORD OFFICE

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2434

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*Proceedings of the Madras Government, Revenue Department,
9th October 1865.*

No. 134. Read the following Extract from the Proceedings of the Government of India, in the Home Department (Revenue), under date Simla, the 19th September 1865, No. 2,092 :—

Read the Resolution of the Government of India, dated the 17th October 1861; the Despatch from the Secretary of State, dated the 9th July 1862, No. 14; and the correspondence connected therewith, regarding the sale of waste lands in fee simple, and the redemption of existing land revenue.

OBSERVATIONS.—Since the promulgation of the Resolution of 17th October 1861, important suggestions have from time to time been made for modifying the rules for the sale of waste lands.

2. It has appeared also on enquiry that in at least one material point, the Resolution of 1861 has in some Provinces been departed from. Neither in Bengal nor in Madras do the local rules follow the terms of paragraph 10 of the Resolution of October 1861.

3. That paragraph, read in connection with paragraphs 27 and 28, admits at the grantee's option that any portion of the price of the grant (not exceeding nine-tenths thereof) may remain unpaid, a fixed annual sum being in that case paid at the rate of 10 per cent. on such unpaid portion of the price; while, on the contrary, both the Madras rule and the Bengal rule enforce payment of the entire purchase money within a specified term.

4. The time has come when the opinions of the several Local Governments and Administrations may, with advantage, be asked on the practical working of the rules for the sale of waste land as now in force in each Province; and in requesting a report on the subject, the Governor General in Council would indicate the following as points which seem more especially to deserve careful consideration :—

(1). Whether it should or should not be left entirely optional to persons wishing to acquire lands, whether they will do so by purchasing the fee simple, or by taking the lands on lease on favorable terms, and subject to re-assessment at the end of the term?

(2). Whether, in the case of purchase, the land should or should not be charged with a moderate *fixed* quit rent, to commence either from the date of purchase, or from any subsequent date as may be determined, but never to be liable to increase at all, or beyond a certain maximum rate. The quit rent to be susceptible of redemption at any time, on the terms prescribed for the exceptional redemption of land revenue in the concluding sentence of paragraph 75 of the Secretary of State's Despatch dated 9th July 1862?

(3). Whether, in disposing of waste lands, either by sale or by lease, the Government should or should not reserve a right to minerals that may subsequently be discovered, and if so, to what minerals?

5. With regard to the first of these questions, the main considerations which may seem to point to the expediency of altering the existing rule,* are the general advantage of allowing men to acquire land in the way best suited to their circumstances and inclinations, and the certainty that, in some cases, a long lease on easy terms is the only condition on which waste land is likely to be sought for. Compulsion to purchase must in fact tend

* The existing rule, it has been said, in Bengal and Madras, absolutely requires completion of the purchase; and the rule, even as prescribed by the Resolution of 1861, may be said practically to force the grantee to complete the purchase; for it would generally be more advantageous to do so, than to pay 10 per cent. on the unpaid portion of the purchase money.

to prevent men of small capital from embarking in agricultural undertakings; and it may be doubted whether, in this country, such a restriction is expedient. It has been found, in practice, absolutely necessary to modify the rule in some parts of the Lower Provinces of Bengal, there being tracts of waste land in those Provinces in which no speculator would invest, as a preliminary, even two Rupees

eight annas an acre, though persons have been found willing to take the same lands on a favorable lease.

6. With regard to the second question, it has been urged that the payment of a fixed quit rent would ensure to the Government the receipt of a yearly revenue which may be relied on, in lieu of fitful and precarious payments, producing abundant resources at one time and little, or nothing at another, and that a regular and frugal administration of the finances would be promoted thereby.

7. And in the interests of the community, it is argued that while such a rule would save the planters much outlay at a time when their expenses must be heavy and their returns small, it would impose on them merely a moderate annual charge which would be felt as no burden, when their business should begin to be productive; while, at the same time, their tenure would be just as perfect for every purpose of security and inducement to improvement, whether the land were held subject to a fixed quit rent of one or two Rupees an acre, redeemable at the current rate of the 4 per cent. securities, or without any payment whatever.

8. It is obvious of course that, assuming it to be expedient to derive some yearly income from the land, the proposed plan would effectually secure it, inasmuch as it would be worth the while of very few to redeem a fixed quit rent on the terms abovementioned.

9. The third question may be regarded under two heads,—first, whether there should be an absolute reservation of *property* in the mineral products of the soil; or, secondly, whether the right of exacting a royalty merely should be reserved.

10. The reasons which are sometimes urged in favor of reserving absolutely to Government the entire right to mineral products, may be stated as follows:—If the owner of the surface hold also the proprietary right in minerals, whether absolutely or subject only to the payment of a royalty, it lies entirely with him whether they shall be worked at all or not, that is to say, he has the power of preventing the working of minerals, however necessary to the requirements of the State, and to the industry and prosperity of the country; and, at the same time, of withholding from Government the revenue which it would derive if entitled to a royalty on mineral products. And it is argued that this is a question which should not be left to settle itself by the mere force of self interest; because it may very likely happen that the owner of the soil has no capital or no energy to work the valuable ores which lie dormant beneath its surface, and may yet be unwilling to allow them to pass into other hands; or it may be that his right is doubtful and open to litigation; or that he is ignorant and incredulous as to the value of the minerals; or otherwise prevented by some personal feeling or unreasoning prejudice from working them, or allowing them to be worked. A paper by the Secretary to Government in the Home Department, on the general question of the expediency of reserving to the State a right to mineral products, will accompany this Resolution.

ORDER.—Ordered that the foregoing observations be communicated to the Government of Fort Saint George, with a request that the opinion of the Governor in Council as to the expediency of making alterations in the existing rules for the disposal of waste lands, may be communicated to the Governor General in Council at an early date.

(True Extract.)

(Signed) E. C. BAYLEY,
Secretary to the Government of India.

MEMORANDUM BY THE SECRETARY, DATED THE 20th JUNE 1865.

1. The Honorable Mr. Grey desires, it may be considered “whether, in disposing of waste lands generally, it is expedient to reserve the right of the State to minerals that may subsequently

“be discovered, in other words, to sell a limited right of property instead of, as now, an absolute right.”

2. This question, Mr. Grey goes on to observe, is cognate to that recently discussed, viz., the right of Government to assess mines, or reserve the right of assessing mines to be discovered hereafter, in making a permanent settlement of lands already occupied.

3. The difference lies in the fact that the entire property of mines, in the case of waste lands, is certainly, before the lands are granted, vested in Government; and it is therefore quite competent to Government to reserve either the entire property in such mines, or the right to receive any royalty on the amount of ore raised, or any share of the produce, or of the profits realized as revenue.

4. In fact, the only point for consideration seems to be, whether it is expedient to make the reservation, and if so, what form it should take when the lands are sold, in order to protect the rights of Government.

5. The first difficulty which lies on the threshold of the case, is the nature and definition of the things to which such a reservation should extend.

6. This difficulty is touched upon in the Honorable Mr. Muir's Minute on the reservation of mineral rights under the permanent settlement, but he does not fully, I think, appreciate the extent of it.

7. Broadly he seems to lay down that, all metals and coal which do not lie on the surface, should be held to belong to Government.

8. But do no valuable minerals lie on the surface? What is a metal? Or rather, what constitutes an ore of metal? Again, is nothing below the surface, which is not either coal or metal, a valuable mineral such as to be deserving of the notice of Government in a question of reserving the right to mines?

9. A Rule or even an Act of the legislature which adopted such a definition as Mr. Muir seems to propose, would go a very short way, and would virtually leave to litigation the settlement of some of the most important points which could be raised on this subject.

10. As a matter of fact, some of the most valuable of all mineral products are surface products. All the diamonds, all the tin, nine-tenths of the gold, many of the sapphires and topazes, much of the iron, and even some of the copper, much of the salt, and all the borax annually produced, are obtained from surface deposits.

11. The diamond mines of India and Bengal; the tin of Cornwall and Malacca; most of the gold of California, Australia, Oregon and New Zealand; the sapphires and topazes of Brazil and Ceylon; some of the iron of India and Siberia; are found on the surface or in alluvial deposits only a few feet thick; and the copper of Lake Superior and Australia occurs in huge masses on surface of the ground; so also the borax and salt of Thibet, and the salt of Central India, are found floating at the edges or on the surface of lakes.

12. Again, what is an ore of metal? Much of the iron of commerce—the bulk indeed of the iron of England, is produced from what, to unpractised eyes—could not be distinguished from building stone, or even from common clay. In fact, the line between iron ore and stone or clay is practically dependant in many cases, merely on the fact, whether it is worth while or not, commercially speaking, to extract the ore, and the commercial result naturally varies with the inventions of processes for extraction, the price of iron, the proximity of markets, &c., &c.

13. Moreover, new metals are coming into daily use, and some of them are even now extracted from mineral products, which certainly would not, ten years ago, have been classed as ores, and yet the metals extracted from them, e. g., aluminum and magnesium may, indeed, probably will, as the means of manipulating the substances in which they exist are better known,* supersede the better known metals for many of the commercial purposes. Aluminum is even now partially superseding tin, and were it equally cheap, as it ought to be if its reduction to the state of metal could be more cheaply effected, and this may very probably soon be the case, it would probably go far to drive both tin and zinc out of use altogether.

14. Again, many articles which are not coal or metals (or which have not been popularly recognized as containing metals, even though some, chemically speaking, do contain metals or metallic bases), are commercially of great value and use without being reduced to their metallic state, and are found beneath the surface. For example, rock salt, pottery clay, kaolin—some

* Magnesium, within a few months of its manufacture for general sale, has fallen to almost one-third of its first selling price from this cause. At present it is extracted for commercial purposes from a mineral imported from the Mediterranean. I have seen it asserted that this mineral exists in the Sonthal Pergunnahs; but if the process can be improved, it may be extracted from any magnesium mineral which are numerous, and of very common occurrence, “as Dolomite” or Magnesian Limestone.

The alum minerals are equally common; but for facility of extraction, aluminum is at present produced only from a mineral imported from Danish Greenland (cryolite).

† All these articles, except perhaps “bitumens,” are, I believe, known to exist in considerable quantities within the limits of British India.

kinds of sand—barytes, strontian, sulphur, petroleum, cobalt, are all found ordinarily in mines or quarries; and though, except sand, sulphur, and petroleum, they all contain a metallic base, yet practically they would not be defined as metals, indeed are rarely ever (never, so far as I know, for any mercantile purpose) reduced to a metallic state, and yet their pecuniary value is often great. A fair ore of cobalt, not so rich as some specimens which have been sent Home from India, is when free from certain noxious admixtures, worth £750 per ton.* I have been assured that some Indian ores would be worth £1,000 per ton in London, if properly worked and prepared.

15. Again, springs and other waters often contain minerals valuable as drugs or for manufacturing purposes. I have seen it said that the waters of the Dead Sea are to be utilized for the bromine they contain, and I know myself a spring in the Himalayas, the waters of which have been pronounced, on analysis, to contain an amount of iodine, which would well repay the cost of its extraction.

16. It may perhaps be thought that these instances press the case to an extreme limit; but they have only been used to shew the difficulty of laying down any position, and the expediency of making use of a *negative* definition in securing the reservation of mineral rights by Government.

17. I believe that this reservation should be, of all the products of the land and water not being vegetable (or if need be "animal"), with *such exceptions* only as it might be considered expedient to make in favor of the grantees, of kunkur, building stone, &c., which exceptions might easily be laid down in one general rule.

18. Any attempt positively to define the terms "mineral" or "metal" by law or special contract, would, I believe, give rise to endless litigation.

19. The next question to be considered is the degree to which reservation should be made, that is, should it be an absolute reservation of *property* in the mineral products of the soil? or of the right merely of exacting a royalty upon them? And if the latter, what shape should that royalty assume? or rather, in what mode and at what stage should it be levied?

20. There are several reasons in favor of reserving absolutely to Government, the entire right to all mineral products, and so far as I know, only one consideration against it.

21. The Government would be enabled to secure the development of mineral resources without the hindrance which private interests might otherwise offer. It would ensure to Government probably a larger or more certain income, than from a mere per-centage, or legal royalty, on whatever minerals private owners might work. The original selling price of the land would not be affected sensibly by the reservation, and the difference between qualified reservation of a royalty, and entire reservation of the property, would be absolutely, in ordinary cases, *nil* as operating to diminish the market price of the land.

22. In the first place, if the owner of the soil hold also the proprietary right in minerals, whether absolutely or subject only to the payment of a royalty, it lies with him whether they should be worked at all or not, that is to say, he has the option of preventing the working of minerals, however necessary to the requirements of the Government, or to the industry and prosperity of the country, and of, at the same time, withholding from Government the revenue which it would derive from any royalty to which it might be entitled.

23. Nor is it to be supposed that it is a question which may be left to settle itself by the force of self-interest. It may very likely be that the owner of the soil has no capital or no energy to work the valuable ores which lie dormant beneath its surface, and may be yet unwilling to allow them to pass into other hands, or that his rights may be doubtful and open to litigation, or that he may be ignorant and incredulous as to the value of the minerals, or otherwise prevented by some personal feeling or unreasoning prejudice from working them or allowing them to be worked.

24. Such causes have again and again delayed or prevented the opening of mines in England, and it is hardly probable that they will have less effect in India.

25. Again, as may perhaps without difficulty be shown, the reservation of possible metallic products, will, if proper precaution be taken, hardly diminish the selling value of the lands, or the absence of reservation enhance their value, nor will it make any material difference whether the reservation be of a royalty, or of the entire proprietary right.

26. Lands on which no mines are known to exist, will rarely, if ever, be bought on the chance of such being found; they will be taken up for agricultural purposes, or building purposes, and at what they are worth for such objects. Indeed, even in countries in which there is much mineral wealth, the chance of mineral products being found, is comparatively small. It is not perhaps easy to say what the chance may be, but save as to deposits of coal, salt, and iron, mineral deposits, even in the richest mineral regions, occur in but very few and limited spots, and the chance of a deposit of any mineral occurring on any given spot (no indication of it being apparent) are so small, that they are scarcely worth calculation.

27. Taking, for example, the hill tracts of Assam or the Himalayas, or the Central Provinces, it is probable that the chance of finding minerals on any given grant of the maximum amount

* Or was, till very recently; the price has fallen greatly within the past year.

allowed, is so small that, even under present rules, it may be said without much fear that it does not appreciably affect the market value of the grant.

28. To withhold, therefore, even absolutely the right to minerals which the present rules give, would probably not affect that marketable value in any sensible degree, and it follows that the qualified reservation of a royalty could scarcely affect it less.

29. It may accordingly perhaps be assumed that, while the Government gain nothing either immediately or prospectively by the sale of waste lands *with* the right to minerals, it sacrifices absolutely, and without any recompense, the chance of future income from such minerals—a chance which, on a large number of grants in a mineral country, is equivalent to an eventual certainty of much value.

30. One objection only exists, so far as I know, against such a reservation, viz., the necessity in any grant of the land, to reserve also a right of entry, if necessary to search for, and to work the reserved minerals.

31. Such a right of entry does not follow, as a matter of course, from the right to the minerals, such at least has been the decision of English law.*

32. It would indeed probably suffice simply to reserve such a right,† the known rules of law will define it, and prevent any undue conflict with the rights of the proprietor of the soil.

33. Nevertheless it is very possible that a reservation of this class might operate, however carefully worded, to destroy confidence in the validity of the title to the land, and so affect the sale and the market value of grants.

34. It would not necessarily do so, for, as said before, the chance of any minerals existing in any given grant are extremely small. Still as there is great jealousy of their rights, both amongst European and Native grantees, such a reservation might operate prejudicially.

35. It would be expedient perhaps, therefore, to modify the right of Government by certain conditions.

1st.—The owner of the soil might have the option, if he chose, and could satisfy Government (by finding security or otherwise) that he could and was willing to work the minerals—a preferential claim to engage for them on any terms which Government may decide on fixing.

2ndly.—If the owner of the soil would not engage, he might have a right to enforce the resumption by Government at any time, within a certain period (say five years) after the commencement of mining operations, at the market value of the day, with all improvements of the grant or such portion of it as may be affected by the Government right of entry, such value to be fixed by arbitration.

3rdly.—It might be perhaps expedient also to allow the same option to Government, in case of any dispute or conflict of rights. This would be a clause which would prevent, in many cases, a good deal of collision as to use of water, timber, stone, &c., but it might be also on which would awaken some jealousy.

36. There is one further point, viz., supposing Government to reserve, in every case, the absolute right to minerals, will it be best, when such come to light, to deal with them by sale outright or by license only on a royalty? and if so, what should be the form and extent of such a royalty? As this point will, however, be dealt with in a separate Note, it is unnecessary to say any more here

E. C. B.

Extract from Mr. Broome's Legal Maxims.

Although the general rule, which obtains in the absence of any express covenant or agreement between the parties interested in land, is as above stated, and although it is a presumption of law that the owner of the free-hold has a right to the mines and minerals underneath, yet this presumption may be rebutted by shewing a distinct title to the surface and to that which is beneath; for mines may form a distinct possession, and different inheritance;* and, indeed, it frequently happens, that a person being entitled both to the mines and to the land above, grants away the land, excepting out of the grant, the mines which would otherwise have passed under the conveyance of the land, and also reserving to himself the power of entering upon the surface of the land which he has granted away, in order to do such acts as may be necessary for the purpose of getting the minerals excepted out of the grant, a fair compensation being made to the grantee for so entering

* An extract on this point, from Mr. Broome's Legal Maxims, is put up at the end of this Note.

† Unless indeed it were expedient to reserve also in any particular case, the right to use water-power-timber, or other fuel, or any of those minerals, as building-stone or lime, which may have been specially included in the grant to the Zemindar.

In such a case, however, it might perhaps be better, instead of inserting such conditions in the grant, to provide otherwise for altogether resuming the grant on full compensation, as suggested further on.

‡ 1 Crabb, Real Prop., page 93.

6 *Proceedings of the Madras Government, Revenue Department,*
9th October 1865.

and working the mines. In this case one person has the land above, the other has the mines below, with the power of getting the minerals; and the rule is, according to the maxim last considered, that each shall so use his own right of property as not to injure his neighbour; and therefore the grantor will be entitled to such mines only as he can work, leaving a reasonable support to the surface. And here we may observe, that the bare exception of the mines and minerals, without a reservation of right of entry, would vest in the grantor the whole of the mines and minerals; but he would have no right to work or get them, except by the consent of the plaintiff, or by means of access through other shafts and channels, with which the grantee's land had nothing to do; because, in this case, the two properties, viz., in the surface and in the subterranean products, are totally distinct.*

* *Harris vs. Ryding*, 5 M. and W. 60, 66, 73.—See *Earl of Rosse vs. Wainman*, 14 M. and W. 859; 1 Crabb, Real Prop., 95.

No. 135. ORDER THEREON, 9th October 1865, No. 2,434.

Land Revenue.

Forwarded to the Revenue Board for report after communication with the Collectors.

(True Extract.)

(Signed) W. HUDLESTON,

Acting Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

(3)

lies entirely with him whether they shall be worked at all or not, that is to say, he has the power of preventing the working of minerals, however necessary to the requirements of the State, and to the industry and prosperity of the country; and, at the same time, of withholding from Government the revenue which it would derive if entitled to a royalty on mineral products. And it is argued that this is a question which should not be left to settle itself by the mere force of self interest; because it may very likely happen that the owner of the soil has no capital or no energy to work the valuable ores which lie dormant beneath its surface, and may yet be unwilling to allow them to pass into other hands; or it may be that his right is doubtful and open to litigation; or that he is ignorant and incredulous as to the value of the minerals; or otherwise prevented by some personal feeling or unreasoning prejudice from working them, or allowing them to be worked. A paper by the Secretary to Government in the Home Department, on the general question of the expediency of reserving to the State a right to mineral products, will accompany this Resolution.

ORDER.—Ordered that the foregoing observations be communicated to the Government of Fort St. George with a request that the opinion of the Governor in Council as to the expediency of making alterations in the existing rules for the disposal of waste lands, may be communicated to the Governor General in Council at an early date.

(True Extract.)



Secretary to the Govt. of India.

Six Spare Copies

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14. 10. 1884

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23/7/88

Rev. 1865. V. part.
Pro: of Govt for Octo
No. 2781.

Extract from the
Pro: of the Govt. of
India in the Home
V. part.

Dated 19th Sept. 87
Received 11th Oct. 87/65

C-1- No. 2092.

Communicating ob-
servations of the Supreme
Govt. and requesting the
opinion of this Govt. as to
the expediency of making
alterations in the existing
waste land rules.

From the Under Secy to the
Govt. of India 4th Dec 85
No. 2434. 9 October

With Order. 2

From the Under Secy to the
Govt. of India 21 March 86
No. 918.
From the Secy to the
Board of Revenue 15 May
1866 No. 1348.

No. 134 & 135.

Copy to Secy to Govt.

For the communication
to the Hon. Secy to Govt.
9th Oct. 87/65