M.R.O. 14.—18,000—97-6-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1767 Press ~~Mis.~~

528 - 579

Dated 2-7 — 17 — 18 67

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
29th July 1867.

No. 548. Read the following Proceedings of the Board of Revenue, dated 15th July 1867, No. 4,434 :—

Read the following Proceedings of the Madras Government, dated 4th October 1864, No. 1,824, Revenue Department.

ABSTRACT.—Requesting the Board to draw up and submit a set of rules applicable to the circumstances of this Presidency, laying down the terms on which grants of lands should be made for mining purposes.

1. In this Order the Government request the Board to draw up a set of rules applicable to the circumstances of this Presidency, laying down the terms on which grants of lands should be made for mining purposes. Subsequent to its receipt, the Order of Government, under date 9th October 1865, No. 2,434, was forwarded to all Collectors.

2. With their Proceedings, under date 5th May 1866, No. 3,183, the Board, in submitting the Collectors' replies to the latter Order, expressed their conviction that any reservation by Government of a right to minerals was inexpedient and impolitic.

3. In the Order of the Government of India, under date 15th March 1867, an opinion is expressed to the same effect.

4. Under these circumstances it is presumed that no separate reply is needed to the Government Order above recorded.

No. 549. ORDER THEREON, 29th July 1867, No. 1,719.

L 1 Revenue.

1. Ordered to be recorded.

2. The Resolution of the Supreme Government, dated 15th March 1867, has disposed of the question referred by Government to the Board in October 1864.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

No. 1053(A).

FROM J. MONRO, ESQ.,

Offg. Under-Secretary to the Government of Bengal,

TO THE OFFG. SECRETARY TO THE BOARD OF REVENUE.

Revenue. *Fort William, the 7th October* 1861.

SIR,

WITH reference to your letter No. 197, dated 19th March last, I am directed to transmit to you the accompanying copy of a letter No. 544, dated the 28th ultimo, from the Solicitor to Government forwarding the Advocate General's Opinion on the form of lease submitted by the Board. As altered by Mr. Ritchie the form of lease has the Lieutenant-Governor's approval, and should be used wherever applicable except in Palamow, which it will be best to await the decision of the Courts on the matters in dispute.

I have the honor to be,

SIR,

Your most obedient Servant,

J. MONRO,

Offg. Under-Secretary to the Government of Bengal.

(Secd. Copy.)

[Exd. W. Cones.]

Bengal Record

From F. C. Sanders, Esq., Solicitor to Government, to J. D. Gordon, Esq., Junior Secretary to the Government of Bengal,—(No. 544, dated the 28th September 1861.)

Sir,

I have the honor to acknowledge the receipt of your letter No. 1164B., dated the 18th instant, calling attention to your previous communication No. 454A. of the 17th April last, and in reply beg to forward herewith, for the information of the Hon'ble the Lieutenant-Governor of Bengal, the Advocate General's Opinion upon the form of the lease which has been sent for the approval of His Honor by the Board of Revenue and also a copy of the lease in question as settled and revised by Mr. Ritchie.

2. I also send herewith the printed Draft of a Mining License in the English form alluded to in the last paragraph of the Opinion.

[Exd. W. Coners.]

OPINION.

I THINK the form of Lease with the alterations inserted by me will answer the purpose required where the tract granted is the absolute property of Government and is not of any great extent or value.

When the soil is not known to belong to the Government, although the right to the Mines and Minerals intended to be let is clear, the Grant should, I think, assume the form of a License and not of a Lease.

In cases of importance where the value of the lands intended to be let is great, or difficulties as to the right to let the soil may arise, I think the common form ought not to be trusted to, but that the Lease or License should be submitted to the Government Solicitor for special settlement.

I send herewith the printed Draft of a Mining License in the English form about to be granted to a Mining Company in the Kumaon District after much consideration both by the Government of India and the Home Authorities.

The 21st September 1861. (Signed) W. RITCHIE.

[Exd. W. Cones.]

Form of Lease for the right of mining in Government Estates.

THE Secretary of State for India in Council doth hereby grant to you C. D. this Lease for the term of* years from the 1st of next acres of land bounded as follows:—

North.
East.
West.
South.

and situated in the Village in on the following conditions:

* Not to exceed 35 years.

1. THAT within three months after the expiry of each year of the Lease you or your Representatives pay rent for such year at the rate of† Rupees per beegah amounting to Rupees and also a Royalty of‡ for every hundred maunds of Coal which you may have extracted from the said land during the preceding twelve months, the said rent being treated as paid on account of such Royalty and in full liquidation thereof in case its amount shall be equal to or exceed that of the Royalty.

† Not to exceed rate of similar lands in the neighbourhood.

‡ Not to exceed 1 Rupee.

2. That within one month of the expiry of each year of the Lease you or your Representatives file in the Office of such Officer as the Commissioner of the Division or the Board of Revenue may direct, a return of the quantity of Coal taken out of the said land by you or them during the twelve Calendar months immediately preceding and that if required so to do you or they verify the correctness of the Return given in by the production of your or their books and accounts should you or they fail or refuse to produce such a Return when required to do so or should the Return filed by you or them be proved to the satisfaction of the§ to be incorrect, you or they shall be considered to have committed a breach of one of the conditions of this Lease rendering it thereby liable to cancelment under Clause VII below.

§ Commissioner or other corresponding Officer.

3. That the minimum quantity of Coal mined yearly shall not be less than ten maunds per acre from and after the third year.

4. That it shall be competent to you or your Representative at any time during the currency of this Lease to resign the same on payment of a sum which with reference to the time of the year at which your or their resignation may be tendered shall be proportionate to the amount of Royalty which may have been last paid by you or them.

5. That the decision of the highest Revenue Authority subject to the Government of Bengal shall be final and conclusive in respect to all questions arising out of this Lease and that you and your Representative will abide by such decision.

6. This Lease shall not be transferred without the written consent of the Commissioner of the Division or some Officer appointed by him or of the Board of Revenue. Upon such consent being given the transfer must be registered in this Office but whether so registered or not all terms and conditions of this Lease shall be binding on the Transferee.

7. That on non-fulfilment of any of the foregoing conditions of this Lease on your or your Representative's part, it shall be competent to any Civil Officer of the Government having with authority in the with the sanction of the Commissioner of the Division or Board of Revenue to declare, forfeited and annul this Lease and to take possession of the land leased in it together with all buildings erected thereon and all Coals and Minerals then being thereon which land and buildings and Coals and Minerals shall thenceforward become, and be the absolute property of the Government free from all claims of you the said C. D. your Representatives or Assigns.

8. That at the end or sooner determination of the said term of years you C. D. your Representatives and Assigns shall peaceably and quietly give up and surrender unto the Secretary of State in Council or to such person as the Commissioner for the time being shall appoint to receive the same, the lands and premises hereby let. Unless this Lease shall be forfeited and annulled under the 7th Clause it shall be lawful for you to remove and possess for your use all the buildings erected by you upon the premises, you using all reasonable dispatch in removing the same and leaving the lands in as good condition as they would have been if no such buildings had been erected and you also first giving the Secretary of State in Council or to the Commissioner of the Division the option of purchasing such buildings at a fair valuation.

In witness whereof I A. B., by order of the Lieutenant-Governor of Bengal on behalf of the Secretary of State in Council hereunto set my hand and seal this day of 186

A. B.

I C. D. do hereby acknowledge that I have accepted and received the lease of which the foregoing is a copy, and I do hereby agree on behalf of myself and my Representatives and to and with the Secretary of State for India in Council that I and they shall perform and abide by all its conditions.

This is to be endorsed on the original Lease and on the Duplicate thereof to be filed in the Deputy Commissioner's Office.

In Witness whereof, I hereby set my hand and seal this day of 186

Witnesses.

E. F.

G. H.

C. D.

[Exd. W. Cones.]

FORM No. 3

OF A

DEED OF COVENANT,

TO GRANT

MINING LICENSES

FOR WORK ON A LARGE SCALE.

This Indenture made * * day of * * 1858 between the SECRETARY OF STATE IN COUNCIL OF INDIA of the first part and * * * * * * * * * * * * * * and * * of the second part.

WHEREAS the parties hereto of the second part have applied to the Governor-General of India in Council on behalf of the said Secretary of State in Council to grant unto them the license and the liberties privileges rights powers and authorities hereafter described. And the said Governor-General of India in Council on behalf of the said Secretary of State in Council has in consideration of the several royalties reservations and covenants hereinafter reserved and contained and upon the condition that the parties hereto of the first part would before the execution of these presents pay into the Government Treasury of * * * in such manner as the Governor-General in Council should direct the sum of Company's Rupees * * * being the amount of paid up capital subscribed by the parties hereto of the first part and immediately available for the purposes of the works hereafter mentioned to be repaid by the said Secretary of State in Council of India in the manner hereafter mentioned agreed to grant to the said parties hereto of the second part their executors and administrators such license and such liberties privileges rights powers and authorities as hereafter mentioned. And whereas the said sum of Company's Rupees * * has been before the execution of these presents and on the * * * * day of * * * * * last paid by the parties hereto of the first part into the Government Treasury of * * * as and being the paid up capital subscribed by the parties hereto of the first part immediately available for the purposes of the works hereafter mentioned and which sum is to be repaid by the said Secretary of State in Council of India in the manner hereafter mentioned.

NOW THIS INDENTURE WITNESSETH that the said Secretary of State in Council of India (so far as the covenants and agreements hereinafter contained are to be observed and performed by him his successors or assigns) doth hereby for himself his successors and assigns covenant with the said parties

hereto of the second part their executors administrators and asigns. And the said parties hereto of the second part (so far as the covenants and agreements hereinafter contained are to be observed or performed by them their heirs executors administrators or assigns) do and every four three two and one of them do and doth hereby for themselves and himself their and his heirs executors administrators and assigns covenant with the said Secretary of State in Council his successors and assigns in manner following that is to say :—

1. That the said Secretary of State in Council his successors or assigns shall and will from time to time and at any time or times within the term of * * years to be computed from the * * day of * * * 185* grant unto the said parties hereto of the second part their executors administrators or assigns at their costs and charges by an instrument or instruments in writing to be executed by and under the hand and seal of the Governor-General of India in Council or by and under the hand and seal of any person lawfully exercising the power and authorities of the Governor-General in Council or who shall be by the said Governor-General in Council expressly authorized in that behalf full and free license and liberty power and authority to dig mine work and search for and to work smelt manufacture and make merchantable all and every the iron iron ore limestone and other ores and minerals lying and being in under or upon or which can shall or may be obtained or gotten without disturbing the occupation of any ryots or cultivators or persons who may from time to time be in lawful occupation of any part of the surface of the said land in through and upon such pieces or parcels of land situate within the limits or boundaries next mentioned that is to say

Here insert the description of the grant

as shall from time to time during the continuance of the term hereafter mentioned be selected by the said parties hereto of the second part their executors administrators or assigns and approved of by the said Governor-General in Council or by such person or persons so exercising such powers or so authorized as aforesaid as fit and proper places or sites for getting or searching for iron ore or other ores limestone or other minerals or for establishing works for the smelting manufacturing and preparing such ores and the burning of such limestone for so much or such part of the said term of * *

years from the said * * day of * * 185* as shall at the time of granting such instrument or instruments be unexpired at or for the royalties or sum or sums of money therein to be expressed and hereinafter mentioned and agreed on and under and subject to the covenants agreements and conditions hereinafter mentioned.

2. That it shall be lawful for the said parties of the second part their executors administrators and assigns to dig sink and search for iron limestone and other minerals in or upon the land comprised in such instrument or instruments as aforesaid and to sink open and make mines shafts drifts aircourses watergates watercourses drains embankments and other works as well for obtaining iron limestone or other minerals from or out of the said land comprised in such lease or leases as aforesaid or for more conveniently working any mines which shall or may be sunk opened or made as aforesaid as for the avoiding and carrying away of water or foul air from or out of the said mines or for conveying air into the same.

3. That the Governor-General of India in Council will from time to time when and as it shall be requisite so to do cause to be assigned or made over to the said parties hereto of the second part their executors administrators or assigns an area of forest land in the neighbourhood of the said works sufficient to furnish the said parties hereto of the second part their executors or administrators with the fuel requisite for smelting such ores as shall or may be got or raised on or out of the land comprised in such instrument or instruments as aforesaid. And shall and will permit the said parties of the second part their executors administrators and assigns to use (free of additional charge) such streams of water or water-power as may be available. But so that no water-power or streams of water used by or in the possession of other tenants or occupants either for the purpose of irrigation or any other purpose shall be taken against the wishes of such other tenants or occupants without proper compensation being made for any harm or damage which may be done or occasioned by the taking or using of the same.

This may be modified if thought fit by reference to the corresponding Clause in the Draft No. 1.

4. That it shall and may be lawful for the said parties of the second part their executors administrators or assigns to search for win dig and get any stone clay or sand and to make bricks and tiles in and upon any land comprised in such lease or leases as aforesaid for the use of the said iron works or the works or buildings connected therewith but not for sale. And also (with the consent of the said Secretary of State in Council or the Governor-General in Council to be testified by some writing under the hand of the Governor-General in Council or of some Officer duly authorized in that behalf as aforesaid) to search for win and get iron ore in any other part or parts of the said District of * * * but only for the purpose of employing the same in the reduction smelting or manufacture of the ores to be raised or got out of or on the land comprised in such lease or leases as aforesaid.

5. That if the said parties hereto of the second part their executors administrators or assigns shall not within six calendar months from the date of

their being put in possession of the land comprised in any such instrument or instruments as aforesaid use and occupy the same *bonâ fide* for the purpose of such iron works as aforesaid or for works connected therewith or shall at any time allow the said land or the works erected thereon to remain unworked for six consecutive calendar months it shall and may be lawful for the said Secretary of State in Council his successors or assigns to re-enter upon the whole of the land described in the instrument appropriating or referring to the land so unused or unoccupied as aforesaid or upon the whole of the land upon which such works as aforesaid shall have been erected and allowed to remain unworked as aforesaid or any part of the said land in the name of the whole and the same thenceforth hold and enjoy as in his or their former estate and as if no lease thereof to the said parties hereto of the second part their executors administrators or assigns had been granted.

6. That upon the execution of any such instrument or instruments all and every the covenants and provisions herein contained shall apply to and be in force as to the license or licenses and the liberties privileges and authorities thereby granted and the portion or portions of land over which the same shall be so granted as fully as if the same had been repeated therein expressly with respect to such license or licenses and to such portion or portions of land respectively.

7. That the said Secretary of State in Council his successors or assigns will give and grant to the said parties hereto of the second part their executors administrators or assigns all such further lawful and reasonable powers authorities and concessions as [the parties hereto of the second part their executors administrators or assigns shall satisfy the Governor-General of India in Council are or may be] really necessary convenient or proper to enable them to carry on the said iron works to advantage.

8. That if the said parties hereto of the second part their executors administrators and assigns shall after the expiration of the said term comprised in any instrument or instruments be desirous of obtaining a new license or licenses in respect of any of the premises comprised in any such instrument or instruments as aforesaid after the expiration of the said term of * * years and shall in all things have observed performed fulfilled and kept the covenants and agreements herein contained and on their part to be observed performed fulfilled and kept and shall at least six calender months before the expiration of the said term of * * years signify such their desire by a notice in writing to be given to the said Governor-General of India in Council his successors or assigns the said Secretary of State in Council his successors or assigns shall and will at or before the expiration of the said term of * * years at the costs and charges of the said parties hereto of the second part their executors administrators or assigns make and execute unto them a new and fresh instrument or new and fresh instruments of grant and license similar to the former grant and license of such part or parts of the land or lands comprised in any

If it be thought right to give the grantees the power of questioning the decision of Government as to what privileges should be accorded, the language may be slightly altered here by omitting the words in brackets and substituting 'shall' or 'may be,' and leaving the question, in case of difference, to arbitration.

such instrument or instruments hereinbefore mentioned as shall at the expiration of the said term of * * years be actually and *bonâ fide* in the occupation of and worked under the direct management of the said parties hereto of the second part their executors administrators or assigns exclusively of such part or parts of the said premises as shall have been signed or sub-let to third parties for a similar term of * * years to commence from and after the expiration of the said term of * * years so agreed to be granted in the first instance as aforesaid and under and subject to such of the terms conditions and agreements herein contained (excepting however this covenant for renewal) as shall be applicable to such renewed license or licenses. And that in case of any difference as to the applicability of any such terms conditions and agreements the same shall be referred to arbitration as hereinafter provided. But that any neglect default or failure on the part of the said parties hereto of the second part their executors administrators or assigns to observe perform fulfil and keep the covenants agreements and conditions herein contained and on their part to be observed performed fulfilled and kept shall be a sufficient ground for the refusal by the said Secretary of State in Council his successors or assigns to grant such renewed license or renewed licenses as aforesaid although the said Secretary of State in Council his successors or assigns shall not or may not have exercised the right or power hereinafter given or reserved to them of re-entry into or upon the said lands and premises upon or in consequence of any such neglect default or failure as aforesaid being made.

10. That all such liberties privileges rights powers and authorities in respect of any part of the premises comprised in any such instrument or instruments as aforesaid as shall at the expiration of the said first term of * * years be held or enjoyed by or in the tenure of persons to whom the same shall have been sub-let with such consent as is hereinafter mentioned by the said parties hereto of the second part their executors administrators or assigns shall upon the expiration of the said first term of * * years lapse and cease or revert to the said Secretary of State in Council of India his successors or assigns subject to the terms and conditions hereinafter expressed and contained of and concerning the same and to such of the other terms and conditions herein expressed and contained as shall be then applicable thereto.

11. That in case of any such renewed license as aforesaid being granted the said Secretary of State in Council his successors or assigns will from time to time during the second term of * * years assign and make over to the said parties of the second part their executors and administrators or assigns (for the purpose of enabling the said parties of the second part their executors administrators or assigns to provide themselves with fuel for working the said iron works or concern) portions or tracts of forest land proportionate to the average produce of iron at the said works for or during five years next preceding the time of assigning or making over such forest land. And

that it shall and may be lawful for the said parties hereto of the second part their executors administrators or assigns during such renewed term of * * years to use (free of additional charge) such streams of water or water-power as shall or may at the expiration of the said first term of * * years be actually used or employed by them.

12. That the royalties or sums to be paid for or in respect of the license or licenses to be granted in such renewed instrument or instruments as aforesaid shall be re-adjusted at the renewal of the expired lease or leases and that the amount of such rent or royalty shall in case of difference be determined by such arbitration as hereinafter mentioned.

13. That during the continuance of the said first term of * * years the said Secretary of State in Council his successors or assigns shall not and will not authorize or empower any person or persons other than the said parties of the second part their executors administrators or assigns to raise or get any iron ores limestone or other minerals out of or upon any portion of the land comprised within the limits or boundaries hereinbefore specified or to erect or construct any works for the smelting of such iron or ores as aforesaid on the said land or any part thereof. But that it shall and may be lawful to and for the said Secretary of State in Council his successors and assigns after the expiration or other sooner determination of the said term and notwithstanding any such renewal as herein mentioned to authorize or empower any person or persons other than the said parties of the second part their executors administrators or assigns to raise and get ores limestone or other minerals out of or on such portion or portions of the land comprised within the limits or boundaries hereinbefore specified as may not be in lease to and actually in the occupation of the said parties hereto of the second part their executors administrators or assigns.

14. That the said parties hereto of the second part their executors administrators or assigns will pay unto the said Secretary of State in Council his successors or assigns as or by way of royalty for the license liberties privileges powers and authorities so to be given and granted to them the said parties hereto their executors administrators and assigns as aforesaid the sum of One Rupee for every ton of iron which shall be produced from ore got or raised on or out of the land so to be assigned as aforesaid and smelted at the said iron works and also such sum or sums of money not exceeding Company's Rupees * * per ton as the said Governor-General in Council his successors or assigns and the said parties hereto of the second part their executors administrators and assigns shall hereafter determine and agree to be a proper sum or proper sums of money to be paid as or by way of royalty for or in respect of all such iron ore or other ores or minerals as shall or may be raised or got out of or on the said land and sold by the said lessees their executors administrators or assigns without being or having been smelted and that the amount of such last mentioned

royalty or sum shall in case of difference be settled and determined by arbitration as hereinafter mentioned and that the said royalty or royalties shall be paid yearly on the * * day of * * * in each year and in such manner that the whole of what such rent as aforesaid shall have amounted to during the year next preceding such day of payment shall be then paid.

15. That if the several sums of money or royalties hereby reserved or made payable to the said Secretary of State in Council his successors or assigns or any part thereof shall be behind and unpaid by the space of Twenty-one days next over or after any of the days whereon the same ought to be paid as aforesaid (and whether the same shall have been demanded or not) it shall be lawful for the said Secretary of State for India in Council his successors or assigns not only to stop and hinder the taking away of iron ore iron limestone or other ores minerals or metals from the said land and premises comprised in any such lease or leases as aforesaid but also to enter into and upon any part of the mines and minerals iron iron ore and limestone included in the occupation of the parties hereto of the second part their executors administrators or assigns. And to seize and distrain all or any machinery engines implements plant utensils horses cattle carts carriages or other live or dead stock and all the ores metals and minerals which shall be remaining within the limits or boundaries described in any such instrument or instruments as aforesaid or any of them or any part thereof and the same to impound sell and dispose of for and towards the satisfaction and payment of all such sums of money and royalties as aforesaid and also of all costs charges and expenses incidental to or occasioned by such distress or distresses in the like and as full and ample manner and form as any rent whatsoever can or may be recovered by Law.

16. That the said parties of the second part their executors administrators and assigns shall and will keep or cause to be kept fair and legible books of account with true regular and exact entries therein of the weight of all iron obtained or produced by smelting or otherwise or manufactured at the iron works to be erected or constructed within the limits and boundaries described in such instrument or instruments as aforesaid and also of the weight of all such iron ore or other ores or minerals as shall or may be raised or got out of or on the said land described in any such instrument as aforesaid or shall or may be sold without being smelted or manufactured and of the times when and the person or persons to whom and the prices at which the same shall be sold or disposed of and shall and will at all times when thereunto required produce and show such books of account or any of them to such person or persons as the said Secretary of State in Council his successors or assigns or the Governor-General of India in Council shall in that behalf appoint and permit and suffer such person or persons to take any extracts therefrom or copies thereof and shall and will give any explanation which may be reasonably required in

See Note to corresponding Clause of Draft No. 1.

relation thereto and shall and will in all other respects give every or any other opportunity facility and means to such person or persons as the said Secretary of State in Council his successors or assigns or the Governor-General of India in Council shall in that behalf appoint to ascertain and become acquainted with the quantity of iron ore smelted at the said works and the weight and value or price of such ore or ores or minerals as shall or may be got on or out of the said land and sold without being smelted or manufactured to the end and intent that the amount of royalties or from time to time payable and becoming payable may be ascertained and known and shall and will join and concur in any arrangements which shall or may be reasonably devised and proposed for effecting the object last hereinbefore mentioned. And also shall and will at the end of each year not only of the said term of * * years but also of such renewed term (if any) as aforesaid and also at such other time or times during such term or terms as aforesaid as such person so appointed by the said Secretary of State in Council his successors or assigns or the Governor-General in Council as aforesaid shall by notice in writing under his hand require the same deliver to the person so appointed by the said Secretary of State in Council his successors or assigns or the Governor-General of India in Council as aforesaid a true and fair account in writing of all and singular the iron ore and other ores or minerals which shall have been raised or got during the preceding year or during such time or times as shall be specified in such notice as aforesaid stating in such account the weight of the iron which shall have been obtained or produced by smelting or wrought or manufactured at the iron works to be erected or constructed on the said land and smelted at the said works and the times when and the person or persons to whom the same shall be sold and disposed of and the weight and quantity of all such and so much of the said iron ore or other ore or ores or minerals as shall or may be raised or got out of or on the said land and sold without being smelted or manufactured and of the times when and the persons to whom and the prices at which the same shall be sold and disposed of every such account being verified by a declaration in writing under the hands of the said parties hereto of the second part or one of them their or one of their executors administrators or assigns or of their agent duly authorized for that purpose.

17. That the sum of Company's Rupees * * paid by the parties hereto of the second part into the Government Treasury at * * * * has been subscribed by them as part of their paid up working capital as aforesaid and is available immediately for and shall be duly applied for and to the purposes of the said works *and* that the said sum shall be repaid to the said parties hereto of the second part their executors administrators or assigns when and as the same shall be required by the said parties hereto of the second part their executors administrators or assigns for the purpose

See the corresponding Clauses in Draft No. 1, and the Notes thereon.

of enabling them to proceed with the works so to be erected or constructed as aforesaid and in such sums as shall from time to time be required for the purpose last aforesaid and upon cheques or drafts drawn by the said parties hereto of the second part their executors administrators or assigns on the * * Treasury (countersigned by the Commissioner of or for the * * District of) * * And that the said Secretary of State in Council his successors or assigns shall and will allow and pay unto the said parties hereto of the second part their executors administrators or assigns interest at the rate of five per cent. per annum on the said sum of One Hundred Thousand Rupees or the portion thereof for the time being remaining in the hands of the said Secretary of State in Council his successors or assigns until the same shall be drawn out and paid as aforesaid and that such interest shall be paid half-yearly.

See Note as above.

18. That the said parties hereto of the second part shall and will within five years from the said * * day of * * * 185* erect and construct or cause to be erected and constructed upon or within the limits or boundaries described in any instrument or if there be more than one upon or within the limits or boundaries described in some one of such instrument or partly within the limits or boundaries described in one and partly within the limits or boundaries described in one other or in some other of the instruments as aforesaid not less than * * furnaces for the smelting or blasting of iron ore or iron complete with all appliances and appurtenances each furnace to be of a calibre equal to the production of three tons of pig iron daily and that at least * * of the said furnaces shall be completed in all respects within three years from the said * * day of * * * 185* [or else shall and will [the option being with the said parties of the second part their executors administrators or assigns] lay out and expend within the period of three years from the * * day of * * * 185* in or about the erection and construction within the limits or boundaries described in such instrument or if more than one described one or more of the said instrument of works for the smelting of iron not less than * * Rupees.]

This provision may be varied in such manner as may be thought fit, regard being had to the nature of the particular Company or undertaking.

This option may be given to the grantees if thought advisable, though I scarcely think it desirable to omit altogether the condition as to the number of furnaces to be set up within a given time.

19. That the said parties hereto of the second part their executors administrators or assigns shall and will during the third fourth and fifth years of the said term manufacture at the said works at least * * tons of iron per annum taking the average of the said three years and shall and will from and after the expiration of the fifth year of the said term and until the expiration of the said term and of such renewed term as aforesaid (if any) manufacture at the said works at least * * tons of iron per annum taking an average of three years.

20. That the said parties hereto of the second part their executors administrators or assigns shall and will from time to time during the said term and any such renewed term as aforesaid make and keep or cause to be made and kept a proper and accurate plan or proper and accurate plans of the

said works and of the workings of such mines as aforesaid and shall and will permit and suffer such Officer as shall be in that behalf appointed by the Government of India from time to time and at all reasonable times during the said term of * * years and also during such renewed term as aforesaid (if any) to have access to and to make copies of or to take extracts from the same plan or plans at the Office at or belonging to the said iron works. And also shall and will permit and suffer such Officer as lastly hereinbefore mentioned and such person or persons as such Officer shall think proper to take along with him to assist him in making such survey as hereinafter mentioned from time to time and at all times during the said term and during such renewed term as aforesaid if any to enter into and upon the said iron works so to be erected and constructed as aforesaid and to descend into any mines which shall be sunk upon any lands comprised in any such instrument or instruments as aforesaid and to use the servants and horses engines ropes rollers and other materials thereto belonging for that purpose and for returning out of the said mines and also enter into and upon any forest land which may have been assigned and made over to and may from time to time be in the possession of the said parties hereto of the second part their executors administrators in pursuance of these presents to view inspect and survey the said iron works mines and forests.

21. That the said parties hereto of the second part their executors administrators and assigns shall and will in all things well and faithfully observe perform keep and obey all such orders rules and regulations as shall from time to time be made by the Governor-General of India in Council or any Officer duly appointed by the Government of India in that behalf for the conservancy and renewal of the forests in the said District of * * * and for the mode in which the said lessees are to be at liberty to cut and carry away timber and also shall and will if required by the said Governor-General of India in Council or by such person to be appointed as aforesaid plant new trees in the place of those cut down by them under the liberty hereby granted in such manner and according to such rules as the Governor-General of India in Council or such person as aforesaid shall prescribe in that behalf.

Same as in No. 1.

22. That the said parties hereto of the second part their executors administrators or assigns shall and will at any time after the expiration of the * * year of the said first term of * * years and from time to time as and when thereunto required furnish and supply to the said Secretary of State in Council his successors or assigns or to such person or persons as the said Secretary of State in Council his successors or assigns or the Governor-General in Council shall in that behalf direct or appoint such quantity or quantities not exceeding however in any one year * * tons of iron ore the produce of the land comprised in such lease or leases as aforesaid as the said Secretary of State in Council his successors or

Same as in No. 1.

assigns or the Governor-General in Council shall in that behalf direct or require and at such price as shall hereafter be mutually agreed upon between the said Secretary of State in Council or the Governor-General in Council on the one hand and the said parties hereto of the second part their executors administrators or assigns on the other hand or as shall in case of difference as to such price be determined by reference to such arbitration as hereinafter mentioned.

23. That the said parties hereto of the second part their executors administrators or assigns shall not and will not at any time or times transfer or assign over or under-let or otherwise part with to any person or persons whomsoever the license liberty or grant or licenses liberties or grants to be comprised in any such instrument or instruments as aforesaid or the said liberties authorities or privileges hereinbefore agreed to be granted or given or any of them or any part thereof for the whole or any part either of the said term of * * years or of such renewed term as aforesaid (if any) without the consent and approbation in writing of the said Governor-General of India in Council or of some person by the Governor-General in Council to be authorized in that behalf for that purpose first had and obtained. [And that the drafts of all transfers or assignments or sub-leases of the license liberties privileges rights powers and authorities comprised in in any such instrument or instruments as aforesaid shall if required by the said Secretary of State for India in Council his successors or assigns be submitted to the Law Officers or Counsel of the said Secretary of State for India in Council his successors or assigns for approval on behalf of the said Secretary of State for India in Council his successors or assigns the draft of which shall not have been so submitted and approved as lastly hereinbefore mentioned after reasonable notice to the parties hereto of the second part their executors administrators and assigns that they are required so to submit the same shall be binding upon or against the said Secretary of State in Council his successors or assigns unless the same be expressly recognized and sanctioned by him or them.]

This need not be insisted on if objected to, but will be some additional protection to Government against improvident sub-leases if inserted.

24. That if the said parties hereto of the second part their executors administrators or assigns shall be desirous of determining the said license or licenses so agreed to be granted as aforesaid and the liability of them the said parties of the second part their executors administrators or assigns under these presents at the end of five years from the said day * * of * * 185* or before such period of five years shall have expired and of such their desire shall give to the said Secretary of State in Council his successors or assigns or to the Governor General in Council at Calcutta not less than six calendar months previous notice in writing and if the said parties hereto of the second part their executors administrators or assigns shall at or before the expiration either of such five years or of the period named in such notice or if no period shall be named in

such notice then at or before the expiration of six calendar months from the giving of such notice (as the case may be) pay and discharge the several royalties hereinbefore reserved and which shall then have become payable and perform and fulfil the several covenants conditions and agreements herein contained and on their part to be performed and fulfilled up to that time then and in such case at the end of the said term of five years from the said * * day of * * 185* or at the expiration of the period named in such notice or if no period shall be named in such notice then at the expiration of six calendar months from the date of giving such notice (as the case may be) such license or instrument or licenses or instruments as shall or may have been granted in pursuance of these presents and as shall be then subsisting and undetermined and all every the liberties privileges rights powers and authorities thereby granted and hereby agreed to be granted shall thenceforth cease and determine and be of no effect.

25. That if the said parties hereto of the second part their executors administrators or assigns shall be desirous of determining the said license or licenses so agreed to be granted as aforesaid and the liability of them the said parties of the second part their executors administrators or assigns under these presents at any time after the expiration of five years from the said * * day of * * 185* and of such their desire shall give to the said Secretary of State in Council his successors or assigns or the Governor-General in Council at Calcutta not less than six calendar months' previous notice in writing and if the said parties hereto of the second part their executors administrators or assigns shall at or before the expiration of the period named in such notice pay and discharge the several royalties hereinbefore reserved and which shall then have become payable and shall also pay to the said Secretary of State in Council his successors or assigns a similar sum to that which shall have become due or payable by them the said parties hereto of the second part their executors administrators or assigns as rent or royalties in respect of the said premises for the year ending on the * * day of * * next preceding the date of giving or leaving such notice and shall perform and fulfil the several covenants conditions and agreements herein contained and on their parts to be performed and fulfilled up to that time then and in such case at the expiration of the period named in such notice or if no period shall be named in such notice then at the expiration of six calendar months from the time of giving such notice as aforesaid such license or licenses instrument or instruments as shall or may have been granted in pursuance of these presents and as shall be then subsisting and undetermined and the liberties privileges rights powers and authorities hereby agreed to be granted and all further liability or claim under these presents shall cease and determine and be of no effect.

I doubt the expediency of giving the grantees the privilege at all events upon such easy terms after the expiration of the first five years, during which they ought to have ascertained the probabilities of success of the undertaking. But I insert the Clause in case it be thought right to grant such a privilege. The conditions may of course be varied at pleasure.

26. [That the parties hereto of the second part shall and will at all times during the said

If the first two branches of this Clause be objected to as inapplicable to this country (though, so far as I am aware, they are not open to this objection), substitute for the words as they now stand within the brackets the following words:—

26. That the said parties hereto of the second part their executors administrators or assigns shall and will at the expiration or other sooner determination of the said term of * * * * years of such renewed term as aforesaid (if any) peaceably and quietly yield and deliver up the land and premises comprised in any such instrument or instruments as aforesaid.

This also is an unusual Clause in English Mining Leases. But I doubt its applicability to surface mines in this country, and if it be not thought of importance for the preservation of the mining district, it should be omitted.

term hereby granted fairly work the said mines hereby demised in the best and most approved manner applicable in this country of working mines of the like nature.

And shall and will at all times keep and uphold the said mines and premises or such of them as for the time being can be worked with advantage and the matters and things thereto belonging in proper order condition and repair. And the same so upheld and kept in proper order condition and repair as aforesaid and other the premises hereby demised at the end or sooner determination of the said term of years or of any such renewed terms as aforesaid shall and will peaceably and quietly give up and surrender] unto the said Secretary of State in Council his successors or assigns or to such person or persons as he or the Governor-General in Council shall appoint to receive the same but so nevertheless that unless the said term of * * * * * * years shall be determined by re-entry for non-payment of the said rents or reservations or non-performance of the covenants in these presents contained under the power in that behalf hereinafter contained it shall be lawful for the said parties hereto of the second part their executors administrators and assigns to possess and remove for their use all the ores and minerals which shall have been taken or raised by them previously to the determination of the said term hereby granted the said parties of the second part their executors administrators or assigns using all reasonable despatch in removing the same and rendering and paying forthwith the full royalties and sums of money in respect thereof according to the true intent and meaning of these presents.

27. And also that the said parties hereto of the second part or either of them their or either of their executors administrators and assigns shall not nor will commit any unnecessary damage spoil or waste in or upon the aforesaid lands and premises or any part thereof in the carrying on the said works or in the exercise of the powers hereinbefore contained. [And shall and will fence round and fill up level and cover in a proper substantial manner to the satisfaction of the said Secretary of State in Council his successors and assigns and of the Governor-General in Council all such mines pits shafts and other works as may have been wrought out or can no longer be worked to advantage.] And shall and will make reasonable and fair compensation to any tenant or tenants occupier or occupiers of the surface of the premises hereinbefore demised or expressed and intended so to be and to any other person or persons whomsoever for any damage or loss which may be sustained by him or them by reason or in consequence of the said works or in the execution of the powers and authorities in these presents contained or any wise in relation thereto or to any matter or thing which may be done in pursuance of these presents so far as any such tenant or occupier or other person or persons shall be entitled to such compensation. And shall and will save defend keep harmless and indemnify the said Secretary of State in Council his successors and assigns his or their heirs and assigns and all and every the

person or persons entitled to or interested in the lands hereinbefore mentioned from all actions suits claims and demands on account of any such damage or loss as aforesaid.

28. That if the royalties and sums of money hereinbefore agreed to be reserved or made payable which shall in or by or any such instrument or instruments be reserved and made payable to the said Secretary of State in Council his successors or asigns or any of such royalties or sums of money or any part thereof shall be behind or unpaid for the space of forty days over or after the times when the same respectively shall have become due and payable in manner hereinbefore mentioned and according to the true intent and meaning of these presents or if the said parties hereto of the second part their executors administrators or asigns shall not faithfully keep observe and perform all and every the covenants conditions and agreements herein contained and on their parts to be kept observed and performed then and in either of the said cases it shall be lawful for the said Secretary of State in Council his successors or assigns or for any person appointed in that behalf by the said Governor-General in Council into and upon the mines and minerals comprised in any such instrument or instruments as aforesaid or into or upon any part thereof in the name of the whole or into or upon any such buildings or iron works as hereinbefore mentioned to re-enter or enter (as the case may be) and thenceforth to re-possess and enjoy the same together with all such engines and machinery as shall have been fixed to the soil but not such engines machinery plant or working tools as shall not have been fixed to the soil (which it shall be lawful for the said parties hereto of the second part their executors administrators and assigns to remove at their own expense) together also with all iron ore or other ore or minerals then being on the same land or premises as fully and effectually to all intents and purposes as if such license or licenses instrument or instruments as aforesaid had not been made or executed.

29. That if the said parties hereto of the second part their executors administrators or assigns shall by such notice as hereinbefore in that behalf provided determine such lease or leases as aforesaid at or before the expiration of five years from the said * * * day of * * 185* the said Secretary of State in Council his successors or assigns shall pay unto the said parties hereto of the second part their executors administrators or assigns the value of such buildings and erections as may be then standing upon the land comprised in such lease or leases as aforesaid (such value to be ascertained in case the parties themselves cannot agree by arbitrators appointed in manner hereinafter mentioned.) But that no compensation or payment shall be claimable by the said parties of the second part their executors administrators or assigns for any buildings and erections erected or placed by them or any of them upon the land comprised in any such instrument or instruments as aforesaid in case such instrument or instruments shall be determined by re-entry for forfeiture and that at the expiration of

the said term of * * years or of such renewed term as aforesaid if any (as the case may be) the same buildings and erections shall vest absolutely in the said Secretary of State in Council his successors or assigns without any compensation or payment by them in respect thereof.

30. That it shall be lawful for the said parties of the second part their executors administrators or assigns at any time or times within the space of twelve calendar months next after the expiration or other sooner determination of such license or licenses as aforesaid or of any renewal thereof and whether such license or licenses shall be determined by re-entry for forfeiture or by such notice as aforesaid or otherwise they having first paid and discharged the several rents and sums of money hereinbefore reserved and having observed and performed all and singular the covenants and agreements hereinbefore contained and on their parts to be observed and performed to remove and take away for their own use all and every the iron ore or other ores or minerals which shall have been previously raised or got out of the said land and shall be then on hand and also all the iron and other stock-in-trade of the said parties of the second part their executors administrators or assigns and also all and every the steam-engines and the machinery and utensils thereunto belonging and all other engines gins mills rollers timber wood ropes and other materials but not the rails and sleepers on any waggon-way or waggon-ways or other ways which the said parties hereto of the second part their executors administrators or assigns shall at any time or times during the said term of * * * years or any such renewed term as aforesaid have erected set up laid placed fixed or used in or upon any such land so comprised within the limits or boundaries described by any such license or licenses as aforesaid (save and except the stone and brick-work of or belonging to such steam-engines or other engines as aforesaid.

31. That the said Secretary of State in Council his successors or assigns shall not make any charge for the privilege which it is hereby agreed to allow to the said parties hereto of the second part their executors administrators or assigns of keeping such of the engines machinery articles and things in the last preceding clause and covenant mentioned upon the land comprised within the boundaries or limits described in any such instrument or instruments as aforesaid for the twelve calender months which shall next succeed the time of the expiration or other sooner determination of any such lease or leases as aforesaid but if the whole of the engines machinery and other articles and things which the said parties hereto of the second part their executors administrators or assigns are by the last preceding clause authorized to remove and take away from off the said land shall not have been so removed and taken away it shall be lawful for the said Secretary of State in Council his successors or assigns either to take for their own use or purposes all such or so many of the engines machinery and other articles and things mentioned in the last preceding Clause as shall at the end of such period of twelve months be on or about

the said land comprised in any such lease or leases as aforesaid at a valuation to be made in case the parties themselves cannot agree by arbitrators appointed in the manner hereinafter mentioned or to sell the same at the risk of the said parties of the second part or to charge such rent for such part or parts of the said land or premises as shall be occupied by such engines machinery or other property of the said parties of the second part their executors administrators or assigns as aforesaid as shall be agreed on between the parties hereto or in case the parties cannot agree such rent as shall be determined by arbitrators to be appointed as hereinafter mentioned.

32. That upon the determination (either by re-entry for forfeiture or by such notice as aforesaid or otherwise) of any such instrument or instruments license or licenses as aforesaid such part of the land comprised within the limits or boundaries described in any such instrument or instruments as aforesaid as may have been assigned or sub-let shall revert to the said Secretary of State in Council his successors or assigns. And that no sub-licensee or sub-licensees or under-tenant or under-tenants thereof or of any part thereof shall have any right or claim to a new or fresh license or grant of the portion of which he or they may have been sub-licensee or sub-licensees under-tenant or under-tenants unless the works erected on the portion of which such personor persons shall or may be sub-licensee or sublicensees or under-tenant or under-tenants shall have been at least five years in operation at the time when such license or licenses as aforesaid shall determine. But that unless in the case last aforesaid it shall be entirely in the discretion of the said Secretary of State in Council his successors or assigns to grant or refuse to grant such new or fresh license as aforesaid.

33. That if upon the determination of any such license or licenses as aforesaid the works erected or constructed on any portion of the land comprised in any such license or licenses as aforesaid which may have been assigned or sublet shall have been in operation more than five years and if the sub-licensee or sub-licensees or under-tenant or under-tenants thereof shall be desirous of taking a new or fresh license in respect of the premises of which he or they shall or may be such sub-licensee or sub-licensees or under-tenant or under-tenants as aforesaid for the portion which may be the unexpired of the said term of * * * years and shall in all things have observed performed fulfilled and kept the covenants and agreements herein contained and on his and their part to be observed performed fulfilled and kept and shall within three calendar months from the determination of the license or licenses in which the mines and minerals worked by him or them are comprised signify such his or their desire by a notice in writing to be given to the said Secretary of State in Council his successors or assigns or to the Governor-General in Council at Calcutta the said Secretary of State in Council of India his successors or assigns shall and will at the costs and charges of the person or persons applying for such new or fresh license cause to be made and executed unto such person or persons a new and fresh

instrument of license or new and fresh instruments of license in respect of the land of which such person or persons shall or may be such sub-licensee or sub-licensees or under-tenant or under-tenants as aforesaid for such portion of the said term of * * years as shall be then unexpired and under and subject to such of the terms conditions and agreements herein contained as shall be then applicable to such renewed license or licenses and that every such new or renewed license shall be executed in the same manner and form and by the same persons and authorities as is hereinbefore provided in respect of the original instrument or instruments or license.

34. That it shall be lawful for the said parties hereto of the second part their executors administrators and assigns paying the several royalties or sums of money hereinbefore agreed to be reserved and in or by any such instrument or instruments reserved or made payable and observing and performing the covenants conditions and agreements in these presents contained and on their part to be observed and performed from time to time and at all times during the continuance of the said term of * * years and during such renewed term as aforesaid (if any) peaceably and quietly to get and take the said iron ores limestone and other ores and minerals and to have use exercise possess and enjoy the said liberties privileges rights covenants powers and authorities and all and singular other the premises hereinbefore agreed to be granted without any let suit trouble interruption or disturbance of or by the said Secretary of State in Council his successors or assigns or of any person or persons whomsoever lawfully claiming or to claim by from under or in trust for him them or any of them.

35. That if any doubt difference or dispute shall at any time or times hereafter arise between the said parties hereto their respective successors representatives or assigns touching the value of or the price to be paid for any of the things which may be about to be paid for or purchased in pursuance of these presents or touching the cession or granting by the said Secretary of State in Council his successors or assigns to the said parties hereto of the second part their executors administrators or assigns of water-power or forest land or touching the system of forest management or the rules for cutting trees or planting new ones or touching the rent or royalties to be paid on or the conditions to be contained in any such renewed lease as aforesaid or touching the manner in which the said powers liberties and authorities so granted or agreed to be granted as aforesaid or any of them ought to be exercised or used or touching the construction of these presents [or touching the grant of any further privileges powers or authorities which the parties hereto of the second part may apply for as necessary or proper for the convenient carrying of the said works] or any other matter or thing whatsoever arising out of these presents or having relation to the premises and in respect of which the decision of the Governor-General of India in Council is not hereby or is not by the said instrument or instruments made or declared to be final

Omit these words if it be intended to reserve the decision as to these privileges for the Governor-General in Council, and not to submit them to arbitration.

then and in such case and as often as the same shall happen such doubt difference or dispute shall be submitted and referred to the arbitration of three different persons one to be from time to time appointed by the Governor-General of India in Council or any person lawfully exercising the powers of the Governor-General of India in Council and the other to be appointed by the said parties hereto of the second part their executors administrators or assigns within one calendar month after either of them the said parties in difference shall have made to the other a requisition to that effect and the third to be named by the said two persons so appointed as aforesaid within one calendar month after they shall have been themselves chosen. And further that if either of the parties so doubting differing or disputing as aforesaid shall by notice in writing such notice being under the hand of the said parties hereto of the second part their executors administrators or assigns or of a majority in number of such persons or of some person authorised in writing by such persons or by the majority thereof in case the same shall be given by or on behalf of the parties of the second party and under the hand of the Secretary or of one of the Secretaries to the Government of India in case the same shall be given by or on behalf of the said Secretary of State in Council his successors or assigns require the other of the said parties to submit and refer the same to arbitration and to name some person as arbitrator and if the party to whom such requisition shall be made shall for the space of one calendar month after such requisition neglect or refuse to comply therewith or shall name a person who shall neglect or refuse to act as arbitrator then and so often as the same shall happen it shall be lawful for the person chosen to be arbitrator on behalf of the party making such requisition by any writing under his hand to appoint an arbitrator to act as arbitrator on behalf of the party who or the arbitrator named by whom shall refuse or neglect as aforesaid and that such two persons shall name a third arbitrator as aforesaid. And further that it shall be lawful for the said arbitrators or any two of them to arbitrate determine and award of and concerning all and every the matters and things touching which such doubt difference or dispute as aforesaid shall have arisen and (if they or any two of them shall see fit so to do) at the expense of the parties in difference or one of them to call in the aid and take the opinion either of any person or persons having experience in the management of mines or iron works or of counsel or of any other person or persons and to adopt such other measures as shall appear to the said arbitrators or any two of them advisable or expedient. And further that the parties so doubting differing or disputing as aforesaid and all persons claiming by from through under them respectively shall in all things obey abide by observe and perform the award order and determination of the aforesaid arbitrators or of any two of them so as the award of the said arbitrators or of such two of them as shall concur be made in writing under their hands and be ready to be declared to the said parties respectively

or such of them as shall desire the same within three calendar months next after the third of such three arbitrators for the time being shall have been named or within such further time as the said arbitrators shall from time to time in that behalf appoint. And that the said parties so doubting differing or disputing as aforesaid and all persons claiming by from through or under them respectively will if required by the said arbitrators or any two of them attend personally and submit to be examined relative to the matters in doubt difference or dispute and will produce to and deposit with the said arbitrators or any two of them all such deeds evidences letters papers and writings relative to the matters in doubt difference or dispute as shall be in the possession or power of the said parties respectively or the persons claiming as aforesaid and as the said arbitrators or any two of them may wish to peruse or inspect and will so far as in them respectively may lie furnish or cause to be furnished all such documents proofs and evidence and do or cause to be done all such acts and things for better enabling them to make the said award as the said arbitrators or any two of them shall require. And that the costs charges and expenses of and attending or in any wise relating to any arbitration including the compensation to be made to the arbitrators for their trouble and the fees and compensation to be paid and made to any counsel or other person or persons who may be called on as aforesaid shall be in the discretion of the said arbitrators or any two of them who shall direct by whom and to whom and in what manner the same shall be paid. And that any submission or reference to arbitration under or by virtue of these presents may be made a rule of the Supreme Court of Judicature at Fort William in Bengal according to the statute in that case made and provided if the said Court shall so please and either party shall be at liberty to apply to the said Court for that purpose and to instruct counsel to consent thereto for the other part. And that in case either of the parties hereto shall refuse or neglect after being duly required so to do by the other party hereto shall refuse or neglect after being duly required so to do by the other party to submit any such matter in difference as aforesaid to arbitrators to be appointed in manner aforesaid or to obey abide by observe or perform the award order or determination of the said arbitrators or any two of them made in pursuance of these presents or shall make any attempt to revoke the authority of the arbitrators to be appointed in pursuance of these presents or of any or either of such arbitrators the party so refusing or neglecting shall besides without prejudice to any other remedy to which the other party may be entitled for every such refusal or neglect pay to the other party Company's Rupees * * * * * not by way of penalty but by way of liquidated damages.

In witness whereof the said Secretary of State in Council of India and the said other parties to these presents hereunto set their respective hands and Seals the day and year first above written.

Note.—The marginal Notes are by the Advocate General.

[Exd. H. H. Barlow.]

29-7-87

29.7.87

No 1986 of 1887

General Department

From

The Offg Revenue Commissioner Ex-

To

The Acting Chief Secretary to Government

Poona 15th October 1887

Sir,

With reference to the subject of my letter No 1985 of this day's date, I have the honor to submit for the instructions of Government the accompanying copy of a letter dated 29 ultimo, from the Collector requesting that sanction of conducting the Exploration of the Surpaticgrounds there on the part of Government as he at first proposed in his letter & you a copy of which accompanied your Memorandum No 1849 of 26 October he may be allowed to do so on the terms of a Joint Stock Company.

2 I would respectfully suggest that the case of the Bombay Pacific Railway Company be referred to, & the Collector should be referred to the Government Solicitor with a view to ascertain the exact terms on which mines belonging to the Crown are let in England.

England, and elsewhere to Companies
and that whatever are the usual terms
on such cases be offered to the Company
at present represented by Mr Le Couf-
3 I would also suggest that they
be required to pay the Revenue Survey
Assessment with a minimum limit
of one rupee per acre for such land as
they take up from Government for
mining purposes in addition to the
proportion of profit agreed on as such
for the royalty of the mines.
It might also be well to limit the
extent of land secured under lease to
the Company when they shall have fixed
on the locality in which they desire to
carry out their operations to a certain
extent, say 1000 acres. Whatever land
they apply for whether or not this
consolation be adopted, they should
only obtain in the regular manner
through the Collector to whom I would
suggest that copies of the correspondence
would be sent with a request that he
will afford Mr Le Couf such assistance
and

and assistance as may be in his power
towards forwarding his preliminary
Explorations.
5- I think that Government should
issue early and precise instructions as
to whether or not there would be any
objection on their part to any of their
officers taking shares in the Company's
undertaking, and if not whether it
would be necessary to impose any restric-
tions upon them other than the usual
one that they should take no active
part in the management of the Com-
pany's affairs. An early decision on
this point may prevent future question
and difficulty.
I have the honor to be Sir
Your most obt. Servt
Offg Revenue Commissioner
Southern Division.

copied DBS
SM

No. 2656.

From,

W. Grey, Esquire,

Secretary to the Government of India.

To,

The Secretary to the Government
of Bombay.

Dated Fort William,
the 15th November 1860.

Home Department
Revenue.

Sir,

I am directed by the Governor General in Council to forward for the information of His Excellency the Governor in Council the accompanying copy of a letter, No. 2243 of this date, addressed to the Government of Bengal on a reference from the Directors of the Bengal Coal Company, respecting the right of Government to assess the produce of Mines: and to call attention to the decision of Government therein expressed to exempt from assessment the produce of Coal Mines in estates belonging to private persons.

I have the honor to be, &c.

(Signed) W. Grey
Secretary to the Govt. of India

No. 2243

No. 2243.

From,

H. Grey, Esquire,

Secretary to the Government of India

To,

H. S. Seton-Karr, Esquire,

Offg: Secretary to the Government of Bengal.

Home Department.

Separate Revenue.

Dated Fort William,

the 15th November 1860.

Sir,

I am directed to forward the accompanying Memorial which has been addressed to the Government of India by the Directors of the Bengal Coal Company complaining of the purport of an order passed by the Honorable the Lieutenant Governor upon a reference from the Board of Revenue respecting the right of the State to tax the produce of mines.-

2. In the reference from the Board two points were raised, namely- First whether, in making a permanent settlement of land being private property and not the property of the State, the Government

Government can reserve a right to tax the produce of mines at a future period, independently of the land revenue. Secondly whether, in making a permanent settlement of land, the Government can legally include rent derived from mines actually at work as part of the assets from which the permanent jumma is calculable.-

3. On the first of these two points the Lieutenant Governor, upon grounds which appear to the Governor General in Council to be unassailable, has ruled that no right to prospective taxation of minerals can be reserved in making a permanent settlement.

4. On the second point the Lieutenant Governor, adopting the principle declared in a paper written by Mr. Millett in 1842, that the State has a right to a share of the produce of land in minerals as in other things, whenever it has not abandoned the right by express promise, or otherwise, has ruled "that the rent of mines existing tangibly and

and definitely at the time of the settlement should be treated as an asset of the estate to be settled in the calculation of the jumma.

5. It is against this last ruling that the Bengal Coal Company appeal, and at the same time they raise a further issue, namely that the Government had no legal right to make certain temporary settlements of the resumed estate in which their mines are situated, which settlements are alleged to have been made in 1842, 1848, and 1853; and that, assuming the right of the State to assess the produce of the mines at all, such right can be legally exercised only on the basis of the first settlement made after the resumption of the estate.-

6. The Governor General in Council, I am desired to state, entirely concurs in the views held by the Lieutenant Governor respecting the right of the State to assess the produce of mines as a portion of the general produce of the land. He has no doubt whatever that, according to law, the produce of mines is an asset of the land revenue, and may be calculated as such in determining the jumma of a resumed lakhiraj estate. But he also agrees with His Honor in thinking that the proprietor of a resumed lakhiraj estate in a permanent settled district, is entitled to a permanent settlement thereof, based on the assets at the time of resumption.-

7. Further, the Governor General in Council is of opinion that, as a matter of policy, it will be wise in the Government to relinquish its right to derive a revenue from Coal in unsettled estates, being private property, or to include in any future settlement of the land revenue of any such estate the produce of Coal mines as an asset thereof. Besides the objection which arises from the fact that Coal mines are exhaustible, and that consequently their produce, though legally assessable, cannot be realized on as an asset for any great length of time, much less in perpetuity, it appears to His Excellency in Council that the vast importance of the Coal trade specially demands the removal of every impost which can have the effect of discouraging the working of mines by their owners, or of raising the price of coal to consumers.- At present, no doubt, the

the profits of the trade are high enough to enable the proprietors of collieries in unsettled states to pay a proportion of the value of their annual produce to the Government, but His Excellency in Council does not consider it expedient either to diminish the inducement to further production by subjecting those profits to special taxation, or to impose a burthen which might have the effect of preventing the opening of mines in more distant and less accessible localities, where they might be worked at a profit.

8. In estates which have been permanently settled, the Government is barred from demanding any more revenue on account of Coal, and the Governor General in Council thinks it should refrain from enforcing its demand for revenue on account of the produce of coal mines in all other estates.

9. A copy of this letter will be communicated to the Memorialists, and I am directed to request that the Revenue Authorities in Bengal may be instructed to guide themselves by the views which it expresses.

I have the honour to be, Sir,
Your most obedient Servant,
(Signed) W. Grey,
Secretary to the Govt of India.

No. 4654 of 1860.

Revenue Department.

Copies of the letter from the Government of India, No. 2656, dated the 15th ultimo forwarded for information to

The Commissioner in Sind
The Revenue Commissioner, Northern Division
The Revenue Commissioner, Southern Division

Bombay Castle, 13th December 1860.

(Signed) H. E. Robertson
Actg Chief Secretary to Govt

Copy to Secretary to Govt

No. 2243

From

W. Grey Esquire
Secretary to the Govt of India,

To

W. S. Seton Karr, Esquire
Offg Secretary to the Govt. of Bengal
Dated Fort William, the 15th December, 1860

Home Dept
Rev. Dept

Sir,

I am directed to forward the accompanying Memorial which has been addressed to the Government of India by the Directors of the Bengal Coal Company complaining of the purport of an order passed by the Board of Revenue, copies of which were received from the Board of Revenue respecting the right of the State to tax the produce of Mines.

2. In the reference from the Board two points were raised, namely—

First, whether, on granting a permanent settlement of land being private property are not the proprietors of the Soil, the Government can reserve a right to tax the produce of mines at a future period, independently of the land Revenue.

Secondly, whether, on granting a permanent settlement of land, the Government can legally exclude rent derived from mines other than coal mines, as part of the assets from which the permanent

permanent income is calculable.

3. On the first of these two points the Lieutenant Governor, upon grounds which appear to the Governor General in Council to be unassailable, has ruled that no right to prospective Expansion of Revenue can be assumed as making a permanent settlement.

4. On the second point the Lieutenant Gov., adopting the principle declared in a paper written by Mr. Thiellet in 1842, that the State has a right to a share of the produce of land in Minerals as in other things, whenever it has not abandoned the right by a compromise, or otherwise, has ruled "that the rents of Mines existing tangibly and definitely at the time of the settlement should be treated as an asset of the estate to be settled in the calculation of the Jummah."

5. It is against this last ruling that the Bengal Coal Company appeal, at the same time they raise a further issue, namely that the Government have no legal right to make certain temporary settlements of the Revenue of estate in which their mines are situated — which settlements are alleged to have been made in 1802, 1848, and 1850, and that, assuming the right of the State to assess the produce of the Mines at all, such right can be legally exercised only on the basis of the first settlement made after the resumption of the estate.

6. The Governor General in Council, having

to state, entirely concurs in the view held by the Lieutenant Governor respecting the right of the State to assess the produce of Mines as a portion of the general produce of the Land. He has no doubt whatever that, according to law, the produce of Mines is an asset of the Land Revenue and may be calculated as such in determining the Jummah of a permanent settling estate. But he also agrees with His Honor in thinking that the proprietor of a Revenue Settling estate in a permanent settlement, is entitled to a permanent settlement thereof, based on the assets as existing at the time of resumption.

7. Further, the Governor General in Council is of opinion that, as a matter of policy, it will be wise in the Government to relinquish its right to derive a revenue from Coal in settled estates, being private property, so far as concerns any future settlement of the Land Revenue of any such estate the produce of Coal mines as an asset thereof. Besides the objections which arise from the fact that Coal mines are exhaustible, and that consequently their produce, though legally assessable, cannot be relied on as an asset for any great length of time, much less in perpetuity, it appears to His Excellency in Council that the vast importance of the Coal trade specially demands the removal of every impost which can have the effect of discouraging the working of Mines by their owners, or of raising the price of Coal to consumers. At present, no

doubt

doubly the profits of the trade are high enough to enable the proprietors of collieries in unsettled states to pay a proportion of the value of their annual produce to the Government, but Mr Courtenay in Council does not consider it expedient either to diminish the inducement to further production by subjecting those profits to special taxation, or to impose a burthen which might have the effect of preventing the opening of mines in more distant and less accessible localities, where otherwise they might be worked at a profit.

8. In states which have been permanently settled, the Government is barred from demanding any more revenue on account of Coal, and the Governor General in Council thinks it should refrain from enforcing its demand for revenue on account of the produce of coal mines in all other estates.

9. A copy of this letter will be communicated to the Memorialists, and I am directed to request that the Revenue Authorities in Bengal may be instructed to guide themselves by the view which it expresses.

I have &c.

(Sd) H. Grey

Secretary to the Govt of India.

From

F. A. Halliday Esquire

To

F. J. Halliday Esquire

Secretary to the Government

of Bengal

Dated the 26th. January 1842

Sir,

I have the honor to ac-
knowledge the receipt of the Deputy
Secretary of Govt's letters Nos. 1318 and
1477, dated respectively the 24th Aug-
ust and 28th September 1841, for-
warding correspondence from
Major J. Ouseley the Commis-
sioner in Chota Nagpore, relating
to the Coal Mines in certain Estates
and Ulee Lands in Pachete, and re-
questing my opinion on the points to
therein discussed.—

2.— The questions involved in
these papers may be thus stated.—

1st. Has the Government the pro-
prietary right in Mines situated in
permanently assessed Estates of Zemindars

2d. Has the Government the proprietary right in the Coal Mines in certain Ghatwallee Lands in Pachete or is this right vested in the Zemindar or have the Ghatwalls any title or interest in them?—

3d. In regard to the first question it appears to me that Government can have no right of Ownership in Mines situated in Lands the property of others.—

According to the Mahomedan Law "a mine is considered part of the land in which it lies and as such upon a transfer by sale of the land the mine becomes the property of the purchaser".— It is the Law of England also that Ores or Mines in the soil of a subject belong to the proprietor of the soil excepting Mines of Gold and Silver which belong to the Sovereign by prerogative.—

Though it may happen that the right to the Minerals and the fee simple of the soil are on different persons either by reason of a special exception in case of conveyance or from

Hedaya Vol. 1 pp. 41–43.—

Case of the Queen (Elizabeth) Verses the Earl of Northumberland.—

Plowden's Report pp. 310–10.—

Vol. 1 & 2, 331.

other particular cause.—

4th. But there is another question which arises out of this part of the subject which has not been adverted to viz. whether the Government is entitled to any portion of the produce of Mines situated as above in the shape of Revenue.—

5th. By the Mahomedan Law, Hedaya, Vol. 1 pp. 39–41. Ditto – Vol. 2–4, 208. Law & Constitution of India pp. 57, 58, 15–16. the Sovereign is entitled to a fifth of the produce of Mines discovered in the Kheeraj Lands which is distinct from the Kheeraj or land tax, and according to the same Law, separate treasuries should be established for the reception of the different branches of Revenue, but the practice of the Mahomedan Government in this Country does not appear to have been in conformity with the Law on this point.— "Commonly" says the Author of the Ayeen Akberry "the yuit rent is called Mal, the taxes on Manufactured, Jehat, and to all other imposts, one in general, named Ayezjehat".—

The points of importance to be

ascertained is how the constitutional right of the Government to a portion of the produce of the land was affected by the great measure of the permanent Settlement.—

6th I can find no mention of the produce of the Coal Iron or indeed, of any mines in the general discussions which took place at the periods of the settlement; nor perhaps is this surprising, considering the little value the native they had then attracted, but there is evidence to show that at the date of the Dewanny Grant, the Government claims of the produce of mines was incorporated with the Malgoozaree land.—

7th Mr. Grant describing the Sunnarica Mahals brought to the public account and Kistbundy or profit by (as he calls them) speaks of the result of the Nawaub's financial operations under the head of "Kistbundy Hunting Wood" as the Revenue of the District of Beerbhoom.—

"Accordingly the whole Establishment was in great part reduced, and the assigned lands resumed by Government which together with the result

(Vide Analysis of the Finances of Bengal Appendix 8th Report pp. 286, 89.)

(Vide 228), and see also page 287.)

result of a local scrutiny into the yearly receipts of rent from the Ryots, throughout the rest of the District, enabled the Subadar to form an equitable standard for the future assessment of the whole Territory and the prescribed and only rules for collection of a proper settlement technically understood by the word "Hustabood", indicating a comparative review of former and actual sources of Profit Revenue", and if a larger increase of annual income might have been expected from the old rated Lands chiefly in consideration of their assertained superior worth or perhaps in small degree on account of the remunerable commodities of Iron Coal and Sulfur, Silk in a manner peculiar to this Province, besides the other more ordinary productions of Bengal. We are to recollect that the two former articles found chiefly on the surface of the ground, and the latter found abundantly in the wood by a

Coolie will

caterpillar feeding on the leaves and
[illegible] tree instead of the Mulberry, afford
more than a presumptive proof of gen-
eral poverty of soil or at least the
imperfect state of cultivation".—

It is also observed that the to-
tal Net Revenue of the Soubah of
Bengal, under every denomination
as established during the adminis-
tration of Cofeem Ullee Khan, con-
tinued thenceforward until the ac-
quisition of the Dewanny.—

Ditto p. 297, —
(p. 356), Revenue.

8th — The History of the Saha Mehal
in Zillah Beerbhoom is fully set forth
in the case of Goroopershad Doss,
Appellant, versus Beeroo Chun Keya,
decided by the Court of Sudder Dewan-
ny Adawlut on the 31st July 1811. The
exclusive right of the late Zemindar
of Beerbhoom, to the iron produced
in his Zemindaree, was thereby es-
tablished. — The collections from
this source of profit formed a dis-
tinct Mehal of his Estate and con-
stituted one of the assets on which
the Revenue of the whole Zemindaree

Sudder Dewanny
Reports Vol. 1. pp.
337-343. —

See correspondence
between the Board
of Revenue, and the
Collector from
1788 to 179[illegible]. —

was fixed at the decennial Settle-
ments, and this Mehal was sold
as one of those composing the Estate
on the public sale of its component
parts in satisfaction of the arrears
of Government Revenue. — It appear-
ed however that there were sever-
al particular Saha Mehals in the late
Zemindary annexed to particular
said Mehals. —

9th — Very important principles
respecting the operation of the perma-
nent Settlement are to be found in
the Resolution of Government, dated
the 24th December 1818, embodied in
a letter addressed to the Board of
Commissioners for Behar and Benar-
es which terminated the discus-
sions on the subject of the right of Go-
vernment to a separate Revenue
from the Nimcheroos or Salt petre
Mehal in Bengal, Behar and
Benares". —

The following are extracts from
that letter: —

Para. 2 — "The original right of

Government to derive a Revenue from Saltpetre in the same manner as from other products of the soil, appear to be undisputed."—

Para: 3— "The only question is how far that right has been permanently alienated by special grants or compounded for by the general operation of the Settlement"—

Para: 20— "The perpetual Settlement Government have of late repeatedly had occasion* to announce more or compromises for the share of the State in the profits and resources of whatever description of lands to which the Settlement extended."—

If exceptions to the operation of that compromise are set up, the burthen of proof is distinctly on Government."—

"The Governor General in Council is decided of opinion that in all cases respecting the Saltpetre produced in the Estates permanently

* See letter to Board of Commissioners in Behar and Benares, dated 22nd May 1818, and letter to Board of Revenue, No 667, dated 19th June 1818, also Section XXXI Regulation II, 1819.—

permanently settled a clear reservation (either express or by fair construction of the Permanent Sanads) must be shewn to entitle the Government to make any demand on account of that article."—

"Before acting on any general statement that the Sanads given in or Cabooleats executed by the proprietors of any tract of country exclude the Nemmuck Mahal it will be proper to call for and inspect the several documents referred to. The contents of one must not be inferred from those of another, still less must the exclusion of the article be presumed from the silence of the records regarding it."—

"The article must in the judgment of the Governor General in Council be presumed to have been included in the settlement in all cases in which there may not exist distinct proof of its exclusion."—

"The extent to which the General right of Government to share

in

in the produce of the soil) has been li-
-mited by the perpetual settlement,
it must be superfluous to state nor
can it be necessary to inform your
Board that on the principles of that
great measure it is not enough for
the purpose of justifying the demand
of an increased Revenue to shew
that a particular article of profit
was not included in the Assets in-
the permanent Jumma and Ad-
-justed. It must, as also be in-
timated, be shewn that the
article was unquestionably except-
ed either in express terms or by fair
forming a necessary virtual exception.

On these grounds the claim ad-
vocated by the Board of Commissioners
on behalf of Government to
additional Revenue from the Salt-
petre Mehals in the three Provinces
above mentioned. —

10. — On examining the records
the Decennial Settlement con-
cluded with the Rajah of Pachete,
find no notice of Coal Mines,
nor

indeed the Collector's statement con-
-tains no particulars of the Assets on
which the Jumma was adjusted. —

An application was made
by Mr. J. J. Heatly in 1822, to the
Secretary to Government in the Rev-
-enue Department, "for copies of
documents" relating to certain Coal
Mines in the district of Pachete,
granted by the Rhenghur Rajah to his
father, Sir Eustonius Grant Heatly, jointly
with Messrs. J. Sumner and Rodfern
some time between the years 1773 and
1776, the documents specified being
the Grant of the Rajah, and the Govern-
-ment Sunnds confirming the same.
In a previous application to the
Board of Revenue dated 19th October
1821, he stated — in December 1777,
I sent a quantity of Coals, the produce
of these Collieries amounting to 2000
Maunds, were delivered into the
Company's Military Stores. —

I am not aware what docu-
-ments exist among the Government
Records on the subject of Mr. Heatly's

Enquiry

enquiry, but if the abuses were not marked at the period of the decennial settlement, it is probable no mention will be found of them in the detailed accounts of the Settlement in the Collector's office; the Government Revenue having been adjusted on the actual resources of the Zemindaree. Indeed, I gather from Captain Hannyngton's letter* that they are silent on the subject. —

* 28th Feby 1841

II. — The Rev.d J. Jones who established Collieries in Pegumah Shearghur in Tillah Jungle Mehals in 1816, in a letter to Government dated 22d. May of that year says, —

"Having been under the necessity of building six large huts and encamping, grained and rock together to the amount of 99 beegahs, I was in justice bound to take a pottah from the proprietors of the land which is in Shearghur Pegumah, Tillah Jungle Mehals and Zemindaree of the Revenue of Burdwan, Jalaon the

"First appendix to the 7th Report of Select Committee of House of Commons on 1831 page 327."

take a grant of all the Coal in the Shearghur from the Rajah of Burdwan. I am not certain that he holds the right to give such a grant, however those papers being in my own name I shall deliver them over to Government whenever they may be called for, and I hope I may not be thought presumptuous in taking them without orders as I have merely done it to prevent trouble hereafter." —

Extracts 301, 303, 307, 326, 327. — It appears from the Rev.d J. Bracken's Evidence before the Select Committee of the House of Commons in 1831, that the late Firm of Alexander and Co.y who had a contract with Government to supply them with Coals for their Marine and a part Department, held a perpetual lease from the Rajah of Burdwan of the Lands in which the Coals were produced. —

The Government do not appear to have regarded themselves either as the proprietors of these Coal Mines or as being entitled to draw an additional revenue from the profits

profits of them.—

12.— On the whole, I conclude that the Government cannot claim any additional revenue from the Coal Mines, the Zemindary lands of Pachete unless it can be clearly shewn that the right to do so was specially reserved at the time of the settlement.—

13.— I now come to the second Division of the subject, and first as to the right of Government to the property in the Coal Mines in the Ghatwallee lands of Pachete.— I understand that these Ghatwallee or Beegwarree lands are situated in the Zemindaree of the Rajah of Pachete, that they are interspersed with the Jaghireedarree and Khaloagaree lands and that there is no difference between the Beegwaree and Jaghireedarree lands except that the latter pay a quit rent to the Zemindar and the former are held rent free.* I consider therefore the absence of any proof

* Letter 25th Aug 1841

* Major Ouseley refers in his letter of the 19th July 1841, to Regulation 29, 1814, relating to certain Ghatwallee tenures in Beerbhoom but on examining into the history of those pecuniary tenures, I do not perceive any thing similar to the present case. I may here remark that a number of the Estates in the Behar portion of Zillah Ramgurh were permanently settled with the persons denominated Ghatwals, see statement enclosed in Collector's letter of 21st June 1791.—

proof to the contrary, that the Rajah is the proprietor of the soil and consequently for the reasons assigned in the discussion of the first question that Government have no right of ownership in the Mines.—

Captain Harrington states that the Ghatwallee are lands "which at the time of the decennial Settlement were set apart for the maintenance of a rural Police and were in consequence left entirely unassessed". It has therefore been usual to assume that these lands are the real property of Government the Zemindar having no right whatever in them.— Indeed the same thing is clearly implied in Clause 4, Section VIII, Regulation I, 1793.—

But in this view Captain Harrington does not distinguish between the proprietory right, and the right of Government to assess the lands in question.— The general character of the Police lands is that they were lands allotted by

the Zemindars out of their Estates for the maintenance of Police officers whom they were formerly bound to keep up for the preservation of the peace of their districts; when therefore the Government undertook the charge of the Police and the produce of some of the lands was resumed under the clause above quoted, the Collectors were directed* to make the settlement of them with the Zemindars of the Estates in which they were situated as being acknowledged the proprietors of the lands so resumed.—

* See Circular Order of Govt. to the Collector dt. 10th April 1793

14.— Thus the Government in communicating to the Acting Magistrate of Midnapore their sanction for the partial resumption of the produce of the Pykt lands in his district added "the lands are of course to be left in the possession and to continue the property of the landholders and the resumed portion of the produce of them is to be collected and brought

Board to Govt. 19th Dec. 1794

Collector's letters to Board of Revenue 18th Nov. and 13th Dec. 1794.

brought to account in the manner prescribed in the orders this day issued to them".—

So also when the Collector of Beerbhoom after having received the sanction of Government for the resumption of the Police Jagheer lands in his district, spoke of them as "late the property of the Zemindar" and of "receiving charge of them from him" the Board of Revenue in addressing Government on the subject observed "We apprehend that the Collector has misconceived the intent of the Regulations in supposing that they are to be taken from under the charge of the Zemindar, the object of the Regulations.— On this point being as we conceive, only to subject the Zemindar to the payment of such a sum over and above his fixed Jumma as may appear proportionate to the produce of the lands which were heretofore set apart for the support of the Police".—

Again when the Rajah of Burdwan objected

objected to engage for the assumed Zamindaree lands of his Zemindaree and the Collector on his part made of overcoming the difficulty proposed that (if not inconsistent with the Rajah's proprietary right) the lands should be sold by auction either upon the Assessment proposed or on such an Assessment as might be deemed reasonable after local investigation and deduction of the proprietary 10 per Cent.— The Government informed him that in their opinion "it would neither be proper nor just for Govt. to retain possession of the lands or to dispose of them at Public Sale".—

{Collector to Govt. 16th June 1793

{Govt. Reply 26th July

15.— The question whether the Zemindars or the Khatuals have a right to the produce of the Coal Mines in the Khatwalee lands, I find to be a very difficult one.— It is in some measure connected with another discussed in the papers of this reference, viz., whether the Zemindar has a right to enhance the rents of the Police Jaghiredars on his Estate.—

16.— On the part of the Zemindar it might be urged that the lands described in Clause 4 Section VIII Regulation I, 1793, having been formerly allotted by him for the maintenance of certain descriptions of Police Officers, and he having been peremptorily required to discharge those Officers on Government taking upon itself the charge of the Police, it is at his election to impose such rents upon their lands and the neighbouring lands of a similar quality as are assessed and in case of the present occupants declaring to engage for them on those terms, to make such other arrangement respecting them as he thinks proper; also that being the proprietor of the soil he has a right to the produce of the Mines it contains.— It must be supposed at the same time that the Zemindar expresses his readiness to enter into engagements for the payment of the Revenues which may be fixed upon the lands according to their produce,

including

Compare Art 1 of the Police Regulation of 7th Dec. 1792.— Para. 17 of the Cir. letter to the Collectors of the same date.— Column 4, Sec. VIII, Reg. I, 1793.— Sec. 11, Reg. XXII, 1793.—

including that of the Chiefs, whenever Government may think fit to resume the privilege under the Clause above quoted:—

17— "As the Police Chaukeeas Lands of all description must fall within the provisions of either of Clause 4, Section VIII. Regulation I, 1793, or Section 41 Regulation VIII, 1793, in which latter case they are at the disposal of the Zemindar; I do not perceive how the above plea can be refuted, but it is certain that the practice at least in the South Western districts of Bengal has been different, and that there the Police Officers occupying the lands contemplated in the first mentioned Clause, the produce of which had not been resumed have been continued as if in the employ of Government.— If this practice be admitted to be legal, it would I think follow that the Zemindar has no right either to assess such lands when held rent free or to increase

increase the assessment of such as pay a quit rent so long as the Government find it expedient to keep up the Establishment of Officers occupying them.— The Lands must in that case be regarded as having been resumed by the Zemindars to Government for the purposes of Police during the pleasure of the latter in consideration of the services having been relieved from the burthen of preserving the peace of their Estates.— And then as Captain Harrington justly remarks "the reason the rent ought to be unalterable, for, if not, they might be raised until the tenure ceased to be remunerative and then what would become of the Police".—

And Johnstone it states in the report of the Collector of Midnapore, dated 25th June 1828, that on the investiture of the Zemindars of Midnapore with the joint charge of the Police of the Estate and the consequent restoration

to him of the resumed Pykes Jaghear
Lands, he bound himself by his
Cabookut not to resume any of these
lands and not to demand any revenue
from the Pykes beyond the Peshkush
paid by them previously to 1793 on
account of their Behallee Jaghear Lands. —

18. — Although it seems clear in
this view of the case that the Talier
Shatwals and Jaghiredars of Pachete
would be entitled as respects the
Zemindar to the profit which they
might derive from their Lands by
the improvement of cultivation and
the clearance of waste, the point
still remains whether they would
be also entitled to the produce of
the Mines. —

19. — By the Mahomedan Law
a mere leaseholder would proba-
bly not be considered entitled
to work new Mines, because "at the
expiration of the lease the land must
be restored in its original state"
and I believe that by the English
Law a tenant for life cannot open
new Mines, but the tenures under
consideration

{ Fidaya Vol. III. p. 0254
Bhuya Vol. II. p. 0367

are of a peculiar
kind and I can discover no law
or precedent applicable to them.
Before coming to a decision it
would be proper to ascertain, if
possible, what are considered the
relative rights of the parties in
similar tenures in other parts
of the country. —

If the Zemindar's right to the
Mines be established, it might then be
a question whether the Government
would not be entitled to a renewal
from the Zemindar's profits from the
Mines. — On the ground that the Talier
Lands were excluded from the oper-
ation of the permanent Settlement
and an equitable compensation would
be due from the Zemindar to the
Shatwals for the produce of any
Land which might be rendered
unfit for cultivation by opening
new Mines. —

On the other hand it might be
pleaded on the part of the Zemindar

that under Clause 4, Section VIII, Regu-
lation 1, 1793. — Only such produce
of the lands as was appropriated for
Police purposes was excepted from the
operation of the settlement and the mi-
nerals having been judged not to
form a portion of such produce, the
Government right as regarding them
must be held to have been com-
prounded for at the settlement in
common with all other profits not
especially excepted from that ar-
rangement. —

Ex 58.

No 590

From

C. W. Peaver Esqre
Secretary to the Board of Revenue
Lower Provinces

To

The Officiating Secretary
to the Government of Bengal
Dated the 13th December 1859.

Sir,

At the desire of Mr Staunton
the following subject is submitted for
the consideration and orders of the
Lieutenant Governor.

2. On the 27th April last the Commissioner of Burdwan, Mr Elliott solicited the opinion of the Board whether he would be entitled, in the permanent settlement of a Lemmed Estate, if proper Care-
fully to make a Reservation of the Right
of Government to any minerals that
might be found thereafter on the Estate.
He was told in reply, that no such
Reservation could be made, that the
Estate must be settled made. The terms

of the permanent Settlement; or one
independent of the Order now
appealed by Messrs Dampier and Hamilton.

3. That the present Commissioner,
Mr J. H. Young brought to the notice of
the Board, that in 1850 the then Board of Revenue
had directed in the case of the Settle-
ment of a Lot named Ellahee in Barcoorah
that the right of Government to tax
the produce of the Estate constituent
of the Land Tax must be expressly
reserved; and as this order confirmed
a like, that of the present Board instruc-
tions were solicited as to which of
the two Rulings would be considered
in force.

4. When this opinion letter was
received the Members of the Board
were Messrs Dampier, Allen and Grote.

5. Mr Dampier recorded that he
differed entirely from the Ruling of 1850,
which he considered to be a mistake. He
was of opinion, that by the provisions
of Regulation XIX of 1793, the proprietors

of

of Estates held Rent free were entitled
to be considered and to be assessed as
independent Talookdars, either at one
half of the annual produce of the Land
or according to the rule prescribed
by Regulation VIII of 1793 and that
new additional terms can be added
by the Board to such Settlements. He
doubted indeed whether such could be
done by a Court.

6. Messrs Allen and Grote on the
other hand were of opinion that the
Ruling of the Board in 1850 was correct
that it was quite legal now to avoid
the mistake made by those who concluded
the Decennial Settlement, and to
introduce the Reservation respecting
Mines which they omitted to do.

7. The Commissioner of Burdwan
was instructed accordingly to the view
of the majority of the Board, and
a Circular was issued, directing that
in all future Settlements, whether
temporary or permanent, the Right

of

of Government to all claims should be reserved.

8. Upon his return from leave of absence, Mr Mainforth became acquainted with the office of the Circular above mentioned, and considering that it is illegal has desired the present reference to the Court to decide that point.

9. He observes that the Lakhiraj land seems to have been left wholly unassessed at the time of the Decennial Settlement, the appointment thereupon being declared in Section 36 of 1793, to be "exclusive and independent of such land."

10. At the time of the confirmation of the settlement, however, provision was, the Remarks, made in Clause 3 Section 8 Regulation I. and Section 7 and 8 Regulation 19 of 1793, for assessment of such Lakhiraj lands as exceeded 100 Beegahs in extent; the Revenue equivalent to the value of a portion of the produce of the soil, i.e. of the crops raised on

the

the surface being declared to belong to Government; and at the same time it was provided in Section 2 Regulation III of the same year, that such assessment the rights of persons in property of the nature should not be raised but by warrant of law.

11. Accordingly, the proceedings to obtain the same in Regulation V of 1817 were passed in strict conformity with Section 2 Regulation III, 1793, proving the Government rights over property found buried in the earth, but no Law has hitherto been passed giving it a right to Revenue derivable from Mines, and until such a Law be passed, the Right in question cannot be maintained, exist.

12. Moreover, he adds, the powers of the Officers of Revenue is founded immediately on the decrees of resumption. Those decrees merely give power to act according to the Law, and in Mr Mainforth's opinion we shall

exceed

exceed the powers given by them as well as the Law if we attempted to extract Revenue from Mines on Lands which are private property" in the Regulation Provinces."

13. Under these considerations, he is of opinion that the Board's Circular Order, dated 12th August, No. 310, should be immediately recalled.—

14. Messrs. Allen and Grote, on the other hand, adhere to the opinion they expressed before relative to the perfect legality of the instructions issued by the Board in 1850. They also think that the argument drawn by Colr Stain for the from our special legislation for "buried treasure" does not bear upon the appointment of land according to its capabilities, which includes all its natural products, and not, as their colleague seems to urge, only the crops raised on its surface.—

They therefore think that

the

the Circular lately issued should be allowed to remain in force.—

I have &c

(Sgd) E. J. Trevor

Secretary to the Board

of Revenue

No 80

From

E. H. Lushington Esq^re

Offg Secy to the Government of

Bengal

To

The Secretary to the

Board of Revenue

Revenue

Dated Head Quarters the 19th January 1860

Sir,

I am directed to acknowledge the receipt of your letter No 390, dated the 13th ultimo, submitting, at the desire of Mr Blainfort, for the consideration and orders of the Lieutenant Governor, the question of reserving to Government the right to all mines in all land settlements, whether temporary or permanent, and in reply to communicate as follows.

2. There is no question as to the right of a holder of a late Zemindaree Lakhiraj tenure to the minerals, subject to any payment of revenue which

which it may be lawful to assess, and which may be assessed either now or hereafter with reference to this particular asset. And as the Lieutenant-Governor understands the present reference, the practical question now raised is not whether rent now actually derived from minerals may be included as part of the assets or produce of the land, whereof a certain proportion may be assessed by the Revenue Authorities as the Summa payable to Government, or not; but it is whether we now making a settlement with the holder of such a tenure, the summa being fixed exclusively with regard to the rent resulting from the produce of the surface of the soil, it is lawful to reserve a right to increase the summa at any future time by the addition of an assessment on account of the rent that may hereafter be derived from minerals. This Item to observe, is the question on which the legality of the Board's order of the 19th of February 1866 (shaped by Messrs. Gordon and Ricketts) depends, which order lays down the rule

that in making a permanent settlement of land believed to contain valuable minerals which have never yet been worked, "the right of Government to tax the produce of the mines independent of the land tax, must be expressly reserved." The legality of that order is now supported by Mr Allen and Mr Grote, but is impugned by Mr Dampier and Mr Stainforth.

3. Mr Stainforth in his argument raises a second question, by denying the legality of including rent which may now be derived from mines actually at work, as part of the assets from which the permanent Summa payable by the proprietor of the land, inclusive of its minerals, is calculable.

4. The first of these questions which from the respect due to the opinions of the high authorities on both sides demands most careful consideration will be treated first.

5 The argument set forth in support of the legality of the order in question, is that it is quite legal now to avoid the mis=take made by those who concluded the decennial settlement. The mistake alluded to, the Lieutenant Governor presumes, is the not having reserved a right prospec=tively to tax the future production of the dormant, and probably unknown minerals of the lands whereof the land tax was permanently fixed. But upon this it is to be remarked first, that whether this course was a mistake or not, is a question open to discussion. Where the land containing minerals is State property, there can be no doubt of the propriety of the State reserving a share of the produce of its own mines, when it allows private persons to work them. There can be no reason why the State should not act like a private landowner in such a matter, or why it should give away its mineral treasures for nothing, any more than its forests. But in the present case, admittedly, the minerals are

not the property of the State, but the property of the holder of the lands; it is not therefore a question of Seigniorage but of special taxation. The powers of the decennial settlement advised by abandoned all right to prospective land tax from such waste lands as were or were held to be private property, conceiving that the country would benefit more by encouraging the expenditure of capital in the reclamation of such lands, than by taxing it. It cannot be assumed that they would not have applied the same reasoning to the case of hidden minerals. And Secondly, it is to be remarked that the question, as a question of law (in which form alone it now arises) is not what might to have been done, but what was done, when the laws according to which all the permanently settled Provinces must be made, were passed.

6. Reasoning upon those laws,

&c. &c.

Mr Dampier and Mr Mainprise to maintain that the Reservation directed by the Board in 1830 to be made, is unlawful, Mr Allen and Mr Grote on the other hand, except that they contend that one argument used by Mr Mainprise from the Regulation regarding hidden treasure, does not bear upon the question (in which opinion the Lieutenant Governor agrees with them) do not meet this deciding founded on the laws as they stand.—

7. In Mr Mitchell's valuable paper dated the 26th of March 1842, whereof a copy was forwarded to the Board on the 9th of January, 1837, the following dictum is quoted from a Resolution of Government dated the 24th of December 1818:— "The beneficial settlement, as Government have of late repeatedly had occasion to announce, was a compromise of the share of the State in the profits and

Resources of whatever description of lands to which the settlement extends. This dictum, and the whole Resolution are decisive as to the principle of the decennial settlement, and as set forth in the Regulations of 1793 being intended to represent the whole claim of the State from the land, including its minerals. When therefore the Regulations of 1793 lay down rules for the assessment of Jummas, they intend such Jummas to be all that is, or may be demandable as the share of the State in the profits and Resources of the land to which the Rules apply, "of whatever description:" that is to say including the minerals.—

8. The claim therefore in the part of the Revenue Authorities to assess land to which the Rules of assessment laid down in 1793 apply, otherwise than in accordance with those Rules, is in the Lieutenant

Governor

Governor's judgement, accountable in respect of mineral profits or resources, as it would be in respect to any other sort of produce. Regulation XIX of 1793 lays down Rules for the assessment of resumed Zemindaree & Khiraj lands, such as are now in question. Clauses 2 and 3 of Section VIII of that Regulation lay down Rules for calculating the Revenue to be fixed on such lands, and provide that if the Proprietor agree to the amount so fixed, he and his heirs and successors shall hold the land at such fixed Revenue for ever." There is no power to make any Reservation on account of any particular sort of profit, or any one or more of the resources of the land; and no power to reserve a Right of future increase on any account whatever. The Jumma must be assessed once and for ever, as the whole demand of the State on its share of the profits and resources of the land of whatever description."

9. The only way in which any encroachment about the first years Revenue is allowable, under the above Regulation, is by the fixing of a Resumdee, or progressively increasing Jumma; which is allowable only when part of the land is uncultivable and must be definitely fixed at the time of settlement, under certain reasonable restrictions. This provision is wholly inapplicable to the case under notice. The chance of future profits from the extraction of minerals like the chance of future profits from the introduction of a new species of crop, the making of new roads or canals, or any other improvement whether the result of the outlay of capital by the owner or otherwise, was left all to the proprietor. Government abandoned all its share of such chances, in respect to lands to be settled in future under Regulation XIX of 1793 exactly as it had abandoned the same in respect to lands already settled under

the

The decennial settlement No. 91 is open to any one to contend that the principle on which the law was thus made was mistaken; though to the Lieut. Governor individually, it appears to be an economical principle, the early adoption of which is as a measure of the highest wisdom to which the great comparative wealth which Bengal has since acquired, and the great comparative revenue it now pays are mainly attributable. But after referring to the Regulations in question, the Lieutenant Governor does not see on what grounds it can be contended that the law is not thus, as has been observed, so much grounds are advanced in the papers submitted.

On this question, therefore, the Lieutenant Governor concludes in accordance with the opinion of Mr Dampier and Mr Stainforth.

On the second question, the Lieutenant

Lieutenant Governor does not concur with Mr Stainforth. He sees no reason to doubt that profits and resources from minerals are, and were intended to be treated exactly like all other sorts of profits and resources of land; the state share of which was and was intended to be compromised for by the jumma permanently assessed on the land, while the remaining share, present and prospective was left wholly to the proprietor. The Lieutenant Governor does not see the force of the argument drawn from a limited interpretation of the words of the law, which provide that the amount of revenue to be assessed shall be equivalent to the value of a portion of the "produce of the soil" etc etc etc. He has concluded, the state has a right to a share of the produce of land in minerals, as in other things, which

it has not abandoned that right by compromise, or otherwise. The Lieutenant Governor conceives that by produce of the soil" every existing aspect of the land was intended. In calculating the permanent assessment many things, besides the rent of cultivated land, were included. Indeed it would seem an unreasonable principle to have gone upon which should have allowed the Talookdar of a mine in the proceeds of which undoubtedly the state had a right to a large share, to retain the whole by a compromise under which he was to pay nothing at all for the mine, or even for the soil above it if left barren.—

12. The Lieutenant Governor has no doubt therefore that the rent of mines existing tangibly and definitely at the time of settlement, should be treated as an aspect of the Estate to be settled, in the calculation of Jumma.—

13 In the Board's order of 1850.

The Lieutenant Governor observes that it was directed in case more than one sixth of the land of the Talook should not be under cultivation to make a settlement for only twenty years. He requests to be informed under what law it was thought justifiable to refuse in such a case a permanent settlement; and if such a practice still obtains.—

I have the honor to be &c.

J. E. Ed. Colebrooke

Offg Secy to the Govt of Bengal

Revenue

No. 5

From

The Right Honble Sir Charles Wood Bart. M.P.

Her Majesty's Secretary of State for India

To

His Excellency the Right Honble

Earl Canning

Governor General of India in Council

Dated London the 8th March, 1861.

My Lord

I have considered in Council your letter of the 27th November last (No. 40), and I have to signify my approval of your Resolution to exempt from assessment the produce of Coal Mines in Estates not permanently settled, belonging to private persons. I am of opinion that it is inexpedient as a matter of policy, to throw any impediment by means of special taxation in the way of persons desirous of working such mines, but I abstain from expressing any opinion on the question discussed by the Lieutenant Governor, whether the produce of mines was or was not included among the assets on which

the

the permanent settlement was founded until I shall have perused the paper recorded by Mr. Millett in 1842, which is referred to in Mr. Grey's letter of the 15th November last, and with a Copy of which I desire to be supplied. The profits derived from Coal Mines, like profits derived from any other source will, of course, continue liable to assessment for the Income Tax.-

I have &c
(signed) C. Wood.

Copy forwarded to the Government of Bengal in Continuation of letter No. 2243, dated the 15th November, 1860, with a Request that printed Copy of Mr. Millett's Letter to the Government of Bengal, dated the 26th March 1842, may be furnished for transmission to the Secretary of State.-

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No. 813

Copy forwarded to the Foreign Department and to the Government of Bombay in Continuation of the Communication from this Department, No. 2656 dated the 15th November 1860.

By order &c.
Home Department } (signed) A. Mr. Monteath
The 22nd April 1861 } Under Sec. to the Govt. of India

No. 2148 of 1861

Revenue Department

Copies forwarded for information to

The Commissioner in Sind
The Revenue Commissioner N. D.
The Revenue Commissioner S. D.

with reference to Government Memorandum No. 4654, dated the 13th December last.

Bombay Castle 6th May 1864 } (signed) Jn. J. Shaw Stewart Under Sec. to Govt.

(True Copies)

H. Escourt
Offg Under Secy to Govt.

List.

Letter from Mr. Hart, Officiating Revenue Commissioner Northern Division No. 1986 dated 15th October 1861.

Letter from the Secretary to the Government of India No. 2656 dated 15th November 1860 with accompaniment.

Government Memorandum No. 4654 dated 13th December 1860.

Memorandum from the Under Secretary to the Government of India No. 813 dated 22nd April 1861 with accompaniments.

Government Memorandum No. 2148 dated 5th May 1861.

16th September 1864.

E. Jacomb
Offg. Under Secy. to Govt.

Copied
[illegible]

No 2333 of 1864.

Revenue Department

The Honble A. D. Robertson
Secretary to Government
Bombay.

Poona 27th July 1864.

Sir,

In reply to the Under Secretary's No 2460, dated 29th Ultimo, I have the honor to state, for the information of Government that no grants of the kind therein referred to have been made in the Northern Division.

Enquiry by the Madras Government as to the terms on which grants of land believed to contain minerals are made in the Bombay Presidency.

I have the honor to be &c
(signed) B. H. Ellis
Revenue Commissioner
Northern Division

No 3090 of 1864.

Revenue Department

From The Revenue Commissioner N. D.

To The Offg Under Secretary to Govt

Poona 8th August 1864.

Sir

Sir,

With reference to your Endorsement, No 2459, dated the 29th June last, forwarding for my report a letter from the Government of Madras enquiring on what terms lands believed to contain minerals are granted in this Presidency for mining purposes, and what royalty is reserved on the minerals raised, I have the honor to state that the only case which I can remember, in which the question of making such a grant has arisen in the Districts of my Division, was that which formed the subject of the correspondence ending with the Government Resolution (G. D.) No 950, dated 23 June 1862. That case related to Mr. Le Sorej's project for the exploration of the Kuppatgood Hills in the Dharwar Collectorate, where auriferous quartz rock was supposed to exist, and for working any gold mines which might be discovered there. The terms of negotiation proposed in my letter No 1986, dated 15th October 1861 seem to have been approved; but, the project having subsequently been abandoned, no grants of land were made or asked for.

2. I am aware of no general rules on the subject of your reference, excepting that relating to Coal Mines laid down in the correspondence ending with the Government Endorsement (R. D.) No 2148, dated 6th May 1861, and that contained in paragraph 12 of the Resolution of the Government of India, No 3264, dated 17th October 1861, relating to the sale of Waste lands and the redemption of the Land Revenue. With respect to Coal mines in Estates not permanently settled, belonging to private persons, it has been ruled that their produce should be exempt from assessment; and in the case of Waste lands sold in perpetuity, it has been ruled that the grant should convey all the property of Government in the soil including all rights connected with mines.

† Received with the Resolution of the Bombay Government (R. D.) No 5026, dated 21st November 1861.

I have the honor to be &c.

(Signed) W. Hart.

Revenue Comm[r] S. D.

No 94.

№ 94 of 1864.

Revenue Department

Memorandum

In reply to endorsement № 2896, dated 1st Instant, from the Officiating Under Secretary to Government, the Commissioner in Sind has the honor to state for the information of Government that grants of land for mining purposes have not been made in this Province.

Commr's Office
Dhur Yaroo
16th August 1864.

Signed J. Mansfield
Commissioner in Sind

№ 1986

Copied
Clerk

28-1719

Bombay Revenue Department

Memorandum of the
extent to which land has been granted for
mining purposes in the
Province.

29th July 1867

Mr Secy Land Revenue Dept

1867. Department.

No. 1905.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 15th July 1867.

No. 4,434.

ating that the Board in Proceedings dated
May 1866, No. 3183 expressed there con-
ion that any reservation by Government of
ght to minerals was inexpedient and im-
itic and that no further reply is needed to
O. dated 4th October 1864, No. 1824.