MR., G. 1—30,000—16-10-29.

# MADRAS RECORD OFFICE.

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## Government of Madras.

Revenue DEPARTMENT.

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| G.O. No. | 2210 | Press / ~~Mis.~~ |
| 307-08. Dated | 19-8- | 1868. |

***Not to be folded or roughly handled***

## *Proceedings of the Madras Government, Revenue Department, 19th August* 1868.

No. 307. Read the following letter from the Superintendent of Revenue Survey, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated Chepauk, 13th August 1868, No. 1,228-45 :—

1. I find that considerable doubt exists among Survey Officers to whom powers under Act XXVIII. of 1860 have been granted, as to the exact mode of procedure under Section 4 of the Act.

2. I have therefore drawn up a form of procedure which I have the honor to submit for reference to the Government legal adviser, and when amended or confirmed I purpose issuing it, with the sanction of Government, as a guide to the Officers of the department.

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*Procedure under Act XXVIII. of* 1860.

I. When a person or persons have been reported for refusing or failing to attend at the demarcation, measurement, &c., of his or their fields or holdings, &c., the Officer appointed for the purpose of demarcation or survey may summon him or them and also the witnesses for the investigation and disposal of the complaint under Section 4 of the Act.

*Section* 3 *of Act II. of* 1839 *referred to in Section* 4 *of Act XXVIII. of* 1860.

And it is hereby enacted that in all cases in which offenders are or may be punishable by fine before a Magistrate according to the provisions of any Act heretofore passed, or which hereafter shall be passed by the Governor General of India in Council, it shall be lawful for the Magistrate, and he is hereby required to receive proof of the commission of the offence upon oath or upon solemn affirmation in cases where a solemn affirmation is receivable by law instead of an oath.

II. The charge having been taken down in writing, the witnesses should be put on oath or on solemn affirmation ; their depositions should be reduced to writing, and after reading to them their statements, or informing them of the exact contents, the signature of each witness should be obtained to his depositions.

*Latter part of Section* 14 *of Act XXVIII. of* 1860.

Persons so summoned shall be subject to all the provisions of the laws in force regarding persons summoned as witnesses before the Collector when acting judicially.

III. The defence of the accused person should next be heard after due inquiry and consideration of the evidence on both sides ; if the Officer is of opinion that the accusation has been proved, he may fine the prisoner or prisoners according to the powers entrusted to him to such extent as he may deem fit, with the alternative of a proportionate term of simple or rigorous imprisonment in default.

*Section* 49 *of Madras Act II. of* 1864.

The Officer charged with the execution of the warrant shall thereupon arrest the defaulter, or his surety, or both, and convey him or them to the District Jail and deliver the warrant to the Jailer, which shall be a sufficient authority to him to receive the prisoner or prisoners. A copy of such warrant shall be retained by the Jailer, who shall forthwith despatch the original to the Officer in charge of Jail.

IV. In the event of the fine inflicted not being paid, the prisoner should be committed to the District Jail with a warrant under the hand of the Officer inflicting the punishment, drawn up in the form prescribed.

*Section* 1 *of Act II. of* 1839.

It shall be lawful, in case of non-payment, if no other means for enforcing the payment are or shall be provided by such Act or otherwise for the Magistrate, by warrant under his hand, to levy the amount of such fine by distress and sale of any goods and chattels of the offender which may be found within the jurisdiction of such Magistrate.

*Indian Penal Code, Chapter III., Sec.* 68.

The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

V. At the same time, the amount of fine (if not paid by the prisoner or by any on his behalf) should be levied by the issue, under the hand imposing the fine, of a warrant of distress and sale of such property as may be found belonging to him. The prisoner to be released before the term of imprisonment awarded has elapsed, if the fine be paid by him or by any one on his behalf, or if the amount be realised by the sale of his property under the warrant of distraint.

*Mr. Mayne's Commentary on the Indian Penal Code, Page* 27.

The imprisonment which the Court is authorized to impose in default of payment is intended as a punishment for non-payment, not as a satisfaction and discharge of the amount due. The object of Sections 64 and 70 is explained by the authors of the Code, as quoted in the Commissioners' second Report 1847 and 487:—"But we do not mean that this imprisonment shall be taken in full "satisfaction of the fine. We cannot consent to permit the offender to choose whether he will suffer "in person or in his property. To adopt such a course would be to grant exemption from the punish- "ment of fine to those very persons on whom it is peculiarly desirable that the punishment of fine "should be inflicted, to those very persons who dislike that punishment most and whom the appre- "hension of that punishment would be most likely to restrain We therefore propose that the "imprisonment which an offender has undergone shall not release him from the pecuniary obligation "under which he lies. His person will indeed cease to be answerable for the fine, but his property "will for a time continue to be so. What we recommend is that at any time during a certain "limited period, the fine may be levied on his effects by distress (Section 70)."

CHEPAUK,
*13th August* 1868.

(Signed) F. J. B. PRIESTLEY, Lieut.-Colonel,
*Superintendent of Revenue Survey.*

No. 308. ORDER THEREON, 19th August 1868, No. 2,210.

Land Revenue.

Forwarded for the observations of the Director of Revenue Settlement.

(True Extract.)

(Signed) F. BRANDT,
*Under Secretary to Government.*

To the Director of Revenue Settlement.
" the Superintendent of Revenue Survey.

Exd. F. R. Bantlêman.

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№ 2210

Forwarded for the observations of the

Director of Revenue Settlement —

19th Augt

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