

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	5	Press ~~Mis.~~
⁸⁻⁹ Dated	3 - 1 -	18 68.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
3rd January 1868.*

No. 8. Read the following letter from W. SCHARLIEB, Esq., Editor of the "Madras Jurist and Revenue Register," to the Secretary to Government, Revenue Department, Fort St. George, dated Madras, 18th December 1867 :—

1. In the absence of the proprietor of the "Madras Revenue Register," I beg to wait upon you with a copy of the last number of that journal, which has just come out of press, with the view of soliciting the patronage of Government in encouragement of the undertaking.

2. I am aware that Government have long given up the practice of subscribing for a number of copies for distribution among their officers, but I beg that they will be good enough to subscribe for one or two copies for the use of their own office, as they do in the case even of the daily journals.

3. Much difficulty has been experienced by the conductors of the "Revenue Register" in finding sufficient material of the proper character to fill its pages : and another of my objects in this address is to beg that I may be furnished with copies of interesting Revenue papers, such as the Government themselves may wish, on account of the importance or general utility of the subject, to see published in a journal like the one whose interests I am now advocating. The Board of Revenue are kind enough to supply me with their Circulars as they come out, and have even promised to bear in mind my request for interesting papers ; but I apprehend that they are not at liberty to furnish me with correspondence wherein their orders are not final on the subject matters of reference or discussion.

4. Should the Government be further pleased to accord their permission for the publication of the "Revenue Register" under their patronage, as is the case with the "Calcutta Revenue Civil and Criminal Reporter," as they will see from the accompanying (3rd December) number* of that publication, it will be a further

and a special boon to the "Madras Revenue Register."

5. The "Revenue Register" is a branch of the "Madras Jurist," regarding which (the latter) a similar application will be laid before the Chief Secretary to Government in charge of the Judicial Department.

No. 9. ORDER THEREON, 3rd January 1868, No. 5.

Miscellaneous.

1. The Government do not require any copies of the "Madras Revenue Register."

2. Copies of Revenue papers communicated to the public press will in future be supplied to the Editor of the "Register."

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Editor of the "Madras Jurist and Revenue Register."

Exd. S. T. Augustin.

Rev. 3425/67
Proc. 3 Jan 1868

MADRAS REVENUE REGISTER.

No. 12.] MADRAS :—MONDAY, DECEMBER 16, 1867. [Vol. I.

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Madras:

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MADRAS REVENUE REGISTER.

No. 12. MADRAS :—MONDAY, DECEMBER 16, 1867. Vol. I.

FINANCIAL LEGISLATION—I.

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In these days of plethoric legislation, when Act upon Act issues with marvellous rapidity out of the Indian Legislative Factories, local as well as Imperial; when the efforts of our Law manufacturers seem to be principally directed to swelling the State Revenues; and when it appears that his honor the Governor General in Council has further measures in contemplation for placing the finances of India on a yet more *satisfactory* footing, by enacting fresh statutes and consolidating those already in existence,—it will not be out of place in a paper like ours, devoted as it is to the record and discussion of topics of a revenue character, to take under view what we would term the Financial Legislation of this country, and see what may be its real excellencies or defects—its merits or its demerits. As we cannot accomplish our purpose in one article, without prolonging it beyond the patience of our readers, and without of necessity passing over several points that seem to require deep and anxious consideration, we propose to deal with our subject part by part; and in pursuance of our plan, we shall devote the present article to an enquiry into the state of the laws relating to Judicial taxation. We think it the more important to pay special attention to this branch of our subject, because in our humble opinion erroneous and dangerous principles have been made the foundation of the provisions to be found in Schedule B appended to Act XXVI of 1867 (our new Stamp Act). We shall discuss the question of levying stamps on judicial

proceedings both as a matter of abstract theory, and as one of expediency; and we shall then apply our remarks to the Stamp laws obtaining in India. There is of course a great deal of difference of opinion between politicians and legislators, who always look at the question from a practical point of view, and learned writers on the theory of legislation, who take up the subject in a philosophic spirit and enquire whether it is right, in the abstract, to take money from, or impose duties on, those who are obliged to resort to tribunals of justice for protection, or for the benefit of those remedies provided by the law. On the question of judicial taxation, Bentham is perhaps the most important writer who holds that there should not be any tax on justice. He classes this kind of impost under the head of "*examples of attacks upon security*" and says—"They (taxes on law proceedings) include all kinds of attacks upon security, since they are equivalent to refusing the protection of the law to all those who cannot pay for it. They consequently offer a hope of impunity to crime. It is only necessary to choose as objects of injustice individuals who cannot afford the advances necessary to a judicial prosecution, or who are not rich enough to run the risk." It is indeed superfluous to comment on words plain and simple as these, the truth and soundness of whose meaning are patent to the reason and common sense of every man. But, of course, the question is—however excellent in theory the principle may be, will it always be sound and expedient in practice? May not the unrestricted adoption of this principle in actually dealing with the

world rather open the door to vexatious and groundless litigation? We are not aware of any philosophic writer who has discussed this latter view of the question; but we may refer to the discussions which took place in the Council Chamber at Calcutta among the honorable members of our Imperial Legislature, for the views they entertain on the propriety of judicial taxation. The Honorable Dr. Summer Maine, the only member who at all attempts to answer the objections which have been urged against the levy of imposts on the administration of justice, remarks "that the opinion against judicial taxation is extremely modern"—"that the opinion against judicial taxation was entirely produced by Jeremy Bentham, and was not older." "It is true," he proceeded, "that Jeremy Bentham's opinions in this respect have not been practically carried out at home, and that large amounts are still levied in the form of judicial taxes, in aid of the payments which the State made to its judicial officers. But the truth is that Bentham's name is now so great in England, that even those views of his which had never been acted upon, have obtained currency and importance in the shape of commonplaces. It is, however, an urgent matter to enquire what were the reasons of Bentham for denouncing judicial taxation as mischievous—not certainly any vague notion, couched in figurative language, that you must not tax justice. Bentham's idea was that all litigation, or all but a very little, was entirely the fault of Government, and therefore he naturally objected that Government, which caused litigation, should profit by it. Bentham believed that litigation was owing to the complexity of law, and that this litigation might be almost entirely removed by legislation adapted to true principles. He thought that litigation, and therefore the expense of litigation, might be reduced to a minimum, if it were not for the blindness, or the stupidity, or the cupidity of legislatures,

in not simplifying the laws." "Now, without entering into the question of the truth of these views, had they any application whatever to India? The simple fact is that the people of India object to having their laws and institutions simplified, and resent such interference as a breach of the conditions on which the country is governed." "The truth appears to be that the people of this country are not only wedded by custom and religious feeling to complex systems of law, but pride themselves on their usages in proportion to the complexity of those usages. If this be so, the foundation of Bentham's doctrine collapses, and the doctrine itself has no application to India. The legislature is estopped, by the conditions of our tenure of the country, from so simplifying the law as to render judicial taxation mischievous." "I do not mean to imply that indefinite judicial taxation is legitimate in this country. All I argue is that it is governed by the same principles as the levying of any other tax, and not by any special consideration of the mischievousness of judicial taxation."

The Honorable Mr. Hobhouse expresses himself in the following manner. "I am aware that there is an opinion among certain writers in England that justice should not be taxed, but as far as I know that theory does not meet with entire approbation in England; for I find that, according to the returns of the year 1862-63, in the County Courts, the amount of fees averaged something like fifteen or sixteen per cent. of the value of the property litigated. I fear therefore that the theory can hardly answer even at home. But I am sure that it cannot be applied to this country. The community of this country is so particularly litigious, that litigation is with the great majority of the people something like what an engrossing pastime, such as the ring, is to some persons at home, and *they will pay whatever amount is demanded*

rather than not litigate." "However that might be, I think that stamp duties should be levied, *not only to check petty and vexatious litigation, but in some degree with a view to support the courts.*"

It is clear from the foregoing extracts, that although the odiousness of taxing judicial proceedings is apparently not disputed in the abstract, it is nevertheless contended that even in enlightened countries it is not possible to adopt the sentiment as a principle of action. And we agree that this view is correct, for we find that even in England, where Bentham's opinions are so much respected, the principle is actually ignored in practice, inasmuch as judicial proceedings are taxed to a certain extent. But the Indian Council go beyond moderation, and argue from the foregoing fact not only that justice should be heavily taxed, but that it is legitimate to impose the highest rate of burden on those compelled by circumstances to seek the protection of our law Courts. How any man of reason and common sense can conscientiously work himself into such a conclusion it is impossible to conceive. We are quite willing to admit, as practical thinkers, that Bentham's principles, however admirable in theory, are scarcely fitted for more than a Utopian state of existence; but still there is a limit beyond which the more practical view ought not to be carried. We are fully aware that a Government must be supported, and the only way of finding the means is taxation. That admitted, it has next to be considered what may fairly be taxed; and having selected legitimate subjects of taxation, it then becomes matter for the legislator's consideration at what rates these subjects should be individually taxed. Experience shows that there are some things that will well admit of heavy taxation, and others again that must be moderately taxed. Of this latter description, we emphatically maintain that justice is one. If it cannot be had for nothing, at all events

the expense of having it should be reduced to a minimum. It is one of the paramount duties of a Civilized Government to ensure the safety and well being of its people, to protect property, and to remove all obstacles likely to defeat those objects. The right of security and the right of property must be enforced by the interposition of the tribunals of justice, if the parties cannot amicably settle their differences out of Court. It is therefore the duty of the State to make the reaching of these seats of justice as easy as possible. To effect this object, the State would be justified in demanding, from those seeking the aid of its institutions, as much as it can in the shape of contributions towards the support of those institutions, such demands being consistent however with reason and principles of sound policy. Beyond what may be demanded in common fairness, the State ought not to go; the only reasonable limit of the principle advocated by Bentham being the support of our Courts of justice. It is mere delusion to suppose that vexatious and groundless complaints can be put down by the institution of Stamp duties as Mr. Hobhouse contends: indeed, with strange inconsistency, he contradicts himself, for he is of opinion that the people of this country "*will pay whatever amount is demanded rather than not litigate.*" And is this ignoble view of the question to be the basis of a legislator's measures for the administration of justice? To a person who brings a vexatious and groundless suit it matters not whether he has to pay 10 per cent. or 20 per cent. on the subject matter of the litigation. He is only playing a game; if he wins, the stake has been well laid out; if he loses, he has lost but a little more. It is curious to see that in this policy the avowed object of which is to deter the rogue, the real effect produced is more ruinous and pernicious to those very classes intended to be protected. Honest men, aware of the nature of legal proceedings, and

who feel that the prosecution of a suit is but the playing of a game, are induced either to give up the prosecution of a just or *bond fide* claim, or when unjustly sued, to refrain from putting in what may turn out to be but bootless opposition. Hence, it appears to us that so far from severe stamp laws checking vexatious and groundless litigation, their real effect would rather be to injure, and deny redress to, those very people whom it is the bounden duty of a Government to protect to the utmost of its power. Thus we see the absurdity of limiting Bentham's principle by such considerations as the suppression of "petty and vexatious litigation." We feel confident that the Legislature is wholly in the wrong in working on the notion that Stamp laws check litigation. With as much wisdom may it at once impose the heaviest duties possible, so as to deter people from resorting to Courts of Law, and write on its closed doors of justice *Delenda est Carthago!* To levy a Stamp duty which, including Counsel's fees and other costs incident to the action, will ultimately saddle a party coming into Court and losing his action, with about 45 to 50 per cent on the litigated amount in ordinary cases, and not less than 20 or 30 per cent in the heavier cases, is simply to cause palpable diminution in the number of honest suits filed. The only way in which it appears to us that vexatious suits may be checked with effect, is not by enacting a general stamp law operating like the Greek fire on all that comes in its way, but by punishing those who bring such suits. What are such suits will entirely depend on the merits of each case. No absolute rule can be laid down to determine that which can alone be determined by the acumen and experience of the Judge. Vexatious litigants may be punished either by heavy fines in the Civil Courts, or by the forcible hand of Criminal law. Such seems to be the only proper and effective course for the suppression of groundless

litigation. We venture to assert that the experience of our learned Judges and of our Advocates in all the three Presidencies will bear us out in our conclusions; and we certainly doubt whether any of them will be found to subscribe to the views with which the members of our Legislature have sought to justify the iniquitous taxes imposed by Schedule B of Act XXVI of 1867. It was only the other day, in the hearing of a regular appeal from Tanjore, wherein the appellant had to put in his appeal on a stamped paper of the value of 6,000 Rs. (!), that our Chief Justice remarked that Government had passed the new Act to increase the revenues, but that he was very much afraid it would have a tendency in the opposite direction, whereon the Advocate General rejoined that the object of the Legislature was to put down litigation, but for that purpose he thought they may as well demand the whole of the litigated property, or shut up our Courts of justice.

Having thus glanced at the general principles which it seems to us ought to govern the enactment of Stamp laws bearing on the administration of justice, we may next refer to those special considerations which more particularly affect this branch of legislation. As a measure then of expediency and finance, we concede that moderate judicial taxation cannot be dispensed with. But the question we would now put is, may this tax be reasonably imposed on postulants for redress without distinction as to whether they seek the aid of Original or Appellate Courts? There can be no doubt that Appellate Courts have been established, not with the view of affording an arena in which the pleasures of litigation may be indulged, but with the express object of supplying an institution to correct the errors of the Courts below. Such being the case, is it not monstrous and utterly unreasonable for the State to say—"you shan't have the errors of the inferior Courts amended, unless you pay us an additional tax equi-

valent to that which you have already paid for having bad law administered to you!" Can it be said therefore that the same arguments put forward in favour of taxing applications for redress in Courts of first instance, hold good also in the case of appeals to tribunals specially maintained to remedy their defects? We answer no. He that asks for simple justice may perhaps fairly be required to pay for it, because it cannot be had for nothing as the agency appointed to administer it has to be maintained with money at the cost of the State. But is it right to ask the suitor to pay twice or thrice for that which he ought to have had in the first instance? Law being just and immutable, surely it is the bounden duty of the State to provide proper and efficient agency to dispense it *at once*. It may be urged that he that wins, and who of course must be presumed to have the right on his side, either in the first instance, or eventually escapes taxation, the party that loses having to pay the costs on both sides. No doubt this is so; but is it reasonable to make even the losing party pay twice or thrice for ascertaining a result, of which he ought to have been assured in the first instance? Either make your Courts of Appeal free of access, or establish tribunals of such competency as will enable you to shut up your Courts of Appeal. So long as Courts of Appeal exist, men will be tempted to seek their aid wherever injustice has been done, or at all events wherever they imagine that justice has not been done them. Let us take a case of this kind which is not of infrequent occurrence. A District Munsiff pronounces judgment, which on appeal is reversed by the Civil Judge as wrong in law. The party aggrieved by the second judgment specially appeals to the High Court, who reverse the judgment of the lower Appellate Court and confirm the original decision. Here the losing party is eventually taxed thrice; and yet in the

course of the proceeding he was pronounced to be on the right side of the hedge by a Court of superior jurisdiction. And there are cases where the eventual loser has been even twice right in the Courts below, viz., both in the Court of first instance and in the lower Appellate Court. Had the special Appeal to the High Court carried no Stamp—as indeed under the very terms of Article 11 of Schedule B of the new Act, Appeals to the High Court ought not to be stamped, a view in which we are borne out by no less an authority than Mr. Justice Holloway, whose profound logical mind and legal acumen entitle his opinions to the highest respect, not alone in the mere construction of Statutes, but in the wide range of jurisprudence in general—we say had the special appeal carried no stamp, final judgment would have been obtained at a cost to the losing suitor of about 45 to 50 per cent; whereas by enforcing a Stamp on appeals to the High Court, justice is purchased at a cost of from 60 to 65 per cent. to the loser, whereof about 30 per cent. of the property litigated goes into the coffers of the State. As there can be no doubt that the chief, if not the only, end in view for the introduction of the new Stamp Act was to raise additional funds, we would suggest for the more effectual attainment of this object, that none but utterly unlearned and incompetent judges be employed in the Courts below; for then, giving credit to the people of this country for passionate litigating propensities which Mr. Hobhouse so freely accords to them, nearly every case will be carried up in appeal to the Court of last resort in this country, to the great pecuniary advantage of the Government. Already within the last few months, have numbers of suitors been deterred from seeking the protection of the Appellate Courts in consequence of the new Stamp Act; and though the Government may not be able to observe any visible diminution in the number of appeals, they do not know how discontented is the feeling rankling in the minds of those who are obliged

to resort to the Courts of law. There is no public voice in this unhappy country, and whatever feeble expression of opinion may at times be raised is met by the most contemptuous disregard on the part of the Powers that be. There is no one connected with the Courts, be he Judge, Advocate, or Suitor, but is struck with the monstrous character of the new Stamp Act. Without saying anything in respect to the complexity and intricacy of the provisions which make the mere institution of a suit more than a difficulty, the general principles on which those provisions are based are not only unsound as we have already observed, but they have a strong tendency to shut out justice from the very people who want it. This danger is increased a hundred fold by the peculiar defects existing in the administration of justice in the Mofussil. The property of the people is at the disposal there of officers who have little or no experience in judicial matters. It is not trained lawyers that are frequently appointed to seats on the Mofussil Bench, but persons who have some standing in the Government service—to-day Superintendents of Police, to-morrow Revenue Collectors, the following day Judges with full powers. Can it be reasonably expected that men of such Protean capabilities are the best fitted, as a rule, for the satisfactory administration of justice? Even in advanced countries where trained and learned lawyers sit on the judgment seat, and equally trained and learned Counsel conduct cases before them, it is impossible to say with certainty that the correct result has always been worked out. How then can we make sure of judgments not open to question being pronounced in the Mofussil, where neither the judges nor the practitioners are lawyers? From such Courts, even appeals groundless in law are inevitable; and although the Appellate Court may be unable to say, as we have often heard our Judges declare their inability to say,

whether the judge below did anything wrong to call for their interference, still they are unable to say whether the judge below has found out the truth. The party aggrieved who feels, and who alone knows with certainty, that the lower Court has missed the truth, resorts to the Appellate Court, thinking he will there find the acumen essential to the discovery of truth involved in the complexity of a law suit, and he is there told that his appeal must be dismissed because according to law the Appellate judges cannot interfere to give him redress, although had they been originally trying the case they might have come to a different conclusion. Without one word of comment on a position like this, we would simply enquire is it not monstrous, to say the least, on the part of Government, to demand a heavy tax from an appellant, for simply ascertaining that he has a case, but that the authority best fitted to determine his case aright is unable to interfere on his behalf?

The Honorable Sumner Maine drew a very important argument in favour of Stamps for India, from the fact that the people do not wish to have their laws simplified. But has this argument that force which it might have, were the position on which it is based wholly tenable? The only laws, if any, which the people of this country do not wish to be codified, are those relating to succession. Can it for one moment be contended that the suits coming into our Courts are all exclusively connected with the law of succession? Dr. Maine's argument may be a very good one for imposing Stamp duty on those who seek redress in matters of succession; but how can the argument, holding good up to that extent, form reason for imposing general duties indiscriminately on all seeking the protection of the Courts. It is matter for deep regret that an Act, affecting so largely the rights of property, should have received such superficial consideration at the hands of a lawyer like Sumner Maine, and that it should have been

passed with such indecent haste by the Legislature afterwards. We have no doubt that the pecuniary embarrassments of the Government blinded the Honorable member, as they did the other members of the Council, to the patent defects and pernicious consequences of the new Stamp Act, which though professing to be based on logical and salutary principles, is deprecated by all those learned men who administer the law, as well as by every experienced practitioner who aids by his advocacy in the administration of justice. It is the more remarkable that, in such an important measure as the enactment of a new Stamp law, not a single official in the Madras or Bombay Presidency appears to have been consulted, as to the applicability of such a law to the circumstances of the people or country within his experience. We may here appropriately mention what opinion the Madras Government and the Madras Board of Revenue entertained of the passing of the new Stamp Act. Though the opinion of these authorities was expressed on points which more immediately concerned them, we have no doubt that if the opinion of the leading members of the judicial administration were taken, it would be found to tally in every respect with that expressed by the local Government and by the local Revenue Board. The Board are understood to have regretted that neither themselves nor the local Government were consulted, and that the Act itself had been so hurriedly passed. They had no hesitation in deprecating the change as impolitic. They felt that the imposition of Stamp duty on all petitions to the Revenue authorities would be most unpopular, and would often amount to a denial of justice. And they were satisfied that the revenue thus gained would be dearly acquired. The Madras Government, on their part also, regretted that no opportunity had been afforded them to offer any opinion on the provisions of the act prior to its enactment. And with respect to the poorer class of royls, they be-

lieved that the operation of the law would be oppressive and most unpopular; and they were confident that the burden of the tax imposed would be intolerable, and that the revenue derivable would be very dearly acquired. Opinions such as these, emanating from authorities intimately acquainted with the circumstances of the people and country, cannot but lend crushing weight to the proposition we have ventured to place before our readers, viz. that the new Stamp Act, supposed by the members of the Governor General's Council for making laws to be a piece of sound and consummate financial legislation, is defective in theory, defective in practice, and defective in every other respect worth consideration. We can only hope that a change will come over the spirit of the Legislative dream, and that the odious Act will be repealed, or so revised, as to make way for the operation of such reasonable provisions as will be tolerable to suitors at large, and will at the same time reflect credit on the governing body of India as sound politicians and reasonable men.

MR. DALYELL'S FAMINE REPORT.

IN our last issue of the Revenue Register we informed our readers that at the hour of going to press we had been favored with a very ably written pamphlet on "The Madras famine of 1866" from the pen of R. A. Dalyell, Esq., of the Madras Civil Service. At the same time we expressed our regret, that, from force of circumstances, we should not be able to review the interesting and valuable information contained in Mr. Dalyell's brochure until our present number. Thus our readers will see that, in conducting a monthly serial, we are often constrained to follow considerably in the rear of the "topics of the day;" but the subjects discussed in Mr. Dalyell's pamphlet are so eminently deserving of prominent notice, that we are relieved, on this occasion, from

the necessity of offering an elaborate apology to our readers for being somewhat late in the field. If we say that we had not formed any very high expectations of the volume before us, it must not be inferred that we think disparagingly of the talents of Mr. Dalrymple; it was his modesty in calling his able and interesting work a "Memorandum," which cheated us into the belief that we were about to peruse a dry official document. Our disappointment therefore has been a most agreeable one, and we have followed the writer with increasing interest through each succeeding page of his book. Most of our readers will have read, as a matter of course, the history of the Madras Famine of 1866, and few can have done so without paying a well deserved compliment to the heart and head of Mr. Dalrymple. The business of his work has not been, ostensibly, to record his own labors, which as Honorary Secretary to the Relief Committee must have been very onerous; nor those of the Committee upon whom devolved the delicate duty of discharging the functions of public almoners; but to point out from the experience of the past, how much may be accomplished to escape the fearful consequences of famine in the future. With this view a brief notice is sketched of some of the most destructive famines of modern times, with more especial reference to those which have occurred in the Presidency of Madras, forming together Part I of Mr. Dalrymple's work; in Part II the condition of the people in the year preceding the famine is ably considered; Part III is the sad tale of "The Madras famine of 1866;" whilst the last or fourth Part of the work treats of the prevention of famines, and the duties of an Indian Government on their occurrence. Our duty will be to review as concisely as we can the salient points touched upon by the writer. No one can fail to observe how frequently and severely we suffer from famine in this country, and this Mr. Dalrymple endeavours to explain

by saying—"In most eastern countries the average produce of the soil is barely sufficient to support the lives of the inhabitants, in consequence of a primitive system of agriculture, and there is no foreign supply of food. The population by early Marriages &c. is in a manner forced beyond its natural bounds, and increases more rapidly than the means of subsistence. The people thus become accustomed to consume only the smallest quantity of food which will support life, and hence, any deficiency which may occur from a bad season, has a terrible effect on the country. This is doubtless the explanation of the frequency of famines in the Eastern world, and of their increased severity." Now whilst we are prepared to admit that much of what is said by Mr. Dalrymple in the foregoing passage is true, yet we should have been glad to have had his views, as to the causes of the frequency of famines in India in particular. Are these scourges to be considered inherent? or are they remediable? Probably the best reply which can be furnished to our enquiry is supplied by what Mr. Dalrymple says immediately after he has accounted for the frequency of famines in the East. He says—"In the earlier periods of European history, however, famines and dearths were of frequent occurrence." The logical deduction from the quotations we have given are, first, that famines are not the inheritance of the inhabitants of any country; secondly that they are remediable. Here, then, let us take this truth to heart. For 200 years we have been in the country, for more than 100 years we have governed it, yet how little have we done to keep the wolf from the door. Again the method of affording relief on the occurrence of one of these dire calamities is always a subject of fruitful discussion, and seldom has it happened that the hour, at which State-aid should have commenced, has been recognized, until death has stung the authorities into action. Mr. Dalrymple, with a large heartedness which

does him credit, lays bare with an unscrupulous hand our short-comings in all these matters in Part I. of his little work; and prepares a good foundation for the consideration of the means which should be employed in such emergencies.

Thus far we have been looking at our subject from the humane point of view; but it has another, and by no means unimportant aspect, that is to say when looked at financially. Commenting on the disastrous famine of 1833, in the Northern Districts, and especially in Guntur, and quoting from the report submitted to Government by the Public Works Commissioners in 1852, Mr. Dalrymple informs us that "the loss of revenue and the destruction of property were immense. First to take the land revenue; the average collections in the six years preceding Fusly 1242 (1832-33) were 13,94,168 Rupees; in that year they fell to 6,58,500 Rupees, and in the following two years they were 6,71,654 Rupees and 5,11,593 Rupees, respectively"!! Writing in 1852 the Commissioners further report that "the total loss by the famine, up to the present time, is found to amount to the enormous sum of 227,07,000 Rupees; or above two and a quarter millions sterling." Well may these figures make us stand aghast at the short sighted policy of our Financial Legislators!

In part II Mr. Dalrymple discusses the condition of the people of Southern India in the year preceding the famine, and has been led into a consideration of the respective merits of Ryotwary and Zemindary tenures. He shows the great improvement that has taken place in the condition not only of the ryot, but in "the position of every description of land holder whether ryot, zemindar, or inamdar during the last fifteen years." The Ryotwary system, our readers may be sure, commands Mr. Dalrymple's warmest sympathies, and although we are not

prepared to endorse fully all that has been said in its favor, we are willing to admit that it is, perhaps, better adapted to the present condition of the Natives of Southern India, than a system which would place a semi-barbarian between a paternal Government and the cultivator of the soil. Whether this state of things will be found the most advantageous for the Government, and for the country at large, when a higher order of education pervades Native Society, we shall take leave to question. There are now many minor-zemindars, wards in Chancery, so to speak, whose education is being conducted under the eye of Government; and it is to be hoped that their advent to power will inaugurate an era in the history of India, when an enlightened landed proprietary may be encouraged to become a bulwark to the State. We shall not, however, attempt to disguise from our readers any of the advantages which attend the ryotwary system; and as many of them may not have access to official records, we quote *in extenso* "the Ryotwary system of tenure" as "described in the Administration Report for the Revenue Department in 1855-56."

"Under the Ryotwar System, every registered holder of land is recognised as its proprietor, and pays direct to Government. He is at liberty to sublet his property, or to transfer it by gift, sale, or mortgage. He cannot be ejected by Government, so long as he pays the fixed assessment, and has the option, annually, of increasing or diminishing his holding, or of entirely abandoning it. In unfavorable seasons, remissions of assessment are granted for entire or partial loss of produce. The assessment is fixed in money, and does not vary from year to year, except in those cases where water is supplied from a Government source of irrigation to convert dry land into wet, or one into two-crop land. Nor is any addition made to the assessment, for improvements effected at the Ryot's own expense. The Ryot, under

this system, is virtually a proprietor on a simple and perfect title, and has all the benefits of a perpetual lease, without its responsibilities, inasmuch as he can, at any time, throw up his land, but cannot be ejected, so long as he pays his dues; he receives assistance in difficult seasons, and is irresponsible for the payments of his neighbours.

The assessment is fixed in perpetuity (so far as any increase to it is concerned) on each field, and the mode in which this was done is as follows:—A certain portion [of the produce was first set aside from the gross produce, as a joint contribution of the Ryot and Government for the pay of Village Officers, and the remainder divided in certain proportions, the share allotted to Government being commuted into money, at the average value of the produce for a period of years antecedent to the settlement.

"Unfortunately, the share of Government was generally fixed too high, and the result of this over-assessment, increased as its pressure has been, by the fall in the value of produce since the settlement was made, has never allowed the system a fair trial. Various restrictive rules, also, led to much interference with the Ryots though they were far from being a necessary consequence of the system. These restrictions are now being removed, and the reductions recently made, or in progress, and the correct survey, classification and re-assessment of the land now in contemplation, will do away with these disadvantages, and it may be expected, that the superiority of a system, which encourages industry and enterprise, by being based on individual proprietorship, will be more clearly evinced.

"The 'annual settlements' under Ryotwary, are often misunderstood, and it is necessary to explain that they are rendered necessary by the right accorded to the Ryot, of diminishing or extending his cultivation from year to year. Their object is to determine how much of the assessment due on his holding, the Ryot shall pay, and not to re-assess the land. In those cases where no change occurs in the Ryot's holding, a fresh puttah or lease is not issued, and such parties are in no-way affected

by the annual settlement, which they are also not required to attend.

"The greater portion of the Presidency is under Ryotwary, and a correct understanding of its principles, when properly carried out, is therefore particularly desirable.

To revert from Ryotwary to the Zemindary tenure would be to place a middle-man between Government and the people, to strike off from 15 to 33 per cent. of the existing Revenue, and to alienate the waste lands which now offer Government the means of lightening the heavy assessments now prevailing; to have recourse to village rents, would be to annul individual property in the land, and to make the community responsible for every member's short comings."

We cannot close our observations on Part II without noticing the deeply interesting and valuable statistics which it contains. These have evidently been collected with great care, and are worked out with as nice a regard to accuracy as the imperfect data available afford. Too much credit, therefore cannot be given to Mr. Dalyell for the pains he has taken in putting before the world the best exposition we have yet seen of the capabilities of the land, and its capacity for the sustenance of its population. In passing on to Part III we feel our inability to describe in the narrow compass of a review even a tithe of the misery and suffering detailed in it. It is to be feared, notwithstanding the account is a very luminous one, that all has not been told that might have been told. This is no reflection on the writer, for he speaks out boldly when the occasion requires, as we shall presently show; but it is due to the great hiatus in India's social condition, an unrepresented pauper population. The information regarding the out-lying districts is obtained from official sources, and that all was not done which should have been done, to alleviate the wants of the suffering millions under our rule, will be best understood by

a perusal of Mr. Dalyell's own views on this point. At Page 91 he says:—

"It will be observed from the foregoing résumé of the official information on the subject of the condition of the country, during the first half of the year 1866, that though a few deaths from actual starvation were reported to have taken place, in Ganjam, in February, and though some of the needier classes in that district, and in the districts of Bellary and Salem, were said, in the month of April, to be subsisting principally on roots and leaves, no special State measures of relief, beyond the partial employment of the people on public works, were directed in the first named district, until May, nor in the other two districts, until July, (though the accounts received of them in May, and June, were most unfavorable.) This hesitation is doubtless to be ascribed to the apprehension, lest State intervention should have put an end to private charity, and thus have aggravated the evils it was intended to remedy, and to the hope, that the opening of the usual agricultural season, in June, would have mitigated the distress, and enabled the people to tide over the scarcity, without any extraordinary measures of State relief. Had there been a plentiful fall of rain throughout the country in June, in all probability, no such measures would have been needed, except, in the Ganjam district, but, as matters eventuated, it cannot but be regretted that earlier action was not taken, for had the system of State employment, and semi-State relief which was subsequently adopted in Bellary, North Arcot, South Arcot, Salem, and Coimbatore, been initiated in these districts, during the month of June, instead of during the month of August, a large amount of human suffering would have been alleviated."

It is to be sincerely hoped that Mr. Dalyell's just reproof will not have been given without effect; and that hereafter the Government will better understand what course to take, and when to take it. But we feel that we cannot too often reiterate the maxim that prevention is better than cure, and that the authorities will do well to disembarass

themselves of their present parsimonious policy, for broader and more statesmanlike views. We have already shewn in an earlier part of this article, how the Public Works Commissioners had pointed out in 1852, that the loss, which had accrued to the country out of the famine of 1833, amounted, in the Guntoor District alone, to the enormous sum of upwards of 2½ Millions of money; and that much of the loss, and consequent suffering entailed on the population in times of drought, could have been saved, had timely expenditure been incurred on Irrigation Works. Fifteen years have elapsed since the fruit of the labors of the Commission was given to the world, but little has been done to bring it to maturity. We have only to look round on the passing events of the day, to witness the folly of the false economy of our financial rulers, and the disastrous results of the supineness of the executive. In corroboration of what we have said on this head, we now quote, from one of the daily journals, extracts from Official Reports, from which it will be observed that whilst one district is famishing for the want of water, another is flooded and the water allowed to waste, because nothing, or next to nothing, has been done to secure the blessing so freely given. We will only ask our readers to look on the two pictures which we now present to their notice, and to judge for themselves whether our observations are just or otherwise.

From the *Madras Times*, 12th December 1867.

FLOODS IN TINNEVELLY.—The Collector of North Arcot, writing to the Board of Revenue, on the 29th November, says:—
"The Board will have learned by my letters of the 22nd and 23rd instant, Nos. 322 and 324, that the state of the crops in this district had become the subject of serious apprehension. Since those letters were written, there has been a week of showery weather, but the rains have been so light that none of the rivers, so far as I have

monsoon commenced up to the end of the month. Rain fell steadily throughout the night of the 30th, and on the following day the river rose to a height of no less than twenty-four feet at Ambasamudram, and sixteen feet at Palamcottah; for miles the river, fields and channels were all one sheet of water, and it is wonderful how little damage has been done; the Ambur bridge, in course of reconstruction, was washed away as might have been expected, the piers being of the narrowest and the height of the bridge considerable; the road from Ambur towards Tinnevely, along the north bank of the river, was partly destroyed, and numerous cross-roads were injured, two aqueducts, and part of a bridge across the Suttauli channel, were carried away; some stones were displaced in the anicut, and the banks of all the main channels were breached in places: in the Tinnevely talook there were eight breaches, in Tenkasi six, and in Ambasamudram fifteen. These have all now been closed, and the crops have sustained no injury. The cost of closing breaches will probably be 1,000 Rupees: I have advanced 400 Rupees, but repairing damage thoroughly will cost 10,000 Rupees. Had the Strivicutum anicut been built, the tanks to the east would now be overflowing, instead of being nearly dry, for the fresh subsided before they got the water, which has to flow through miles of channel, and chains of tanks before it reaches the coast."

Part IV of Mr. Dalyell's work is devoted "to the prevention of famines, and the duties of an Indian Government on their occurrence." We regret that we shall be unable to consider this part of the author's labors so fully as the subject deserves. In it Mr. Dalyell has dealt most ably with the received opinions on political economy, and, without rashly setting at defiance the principles laid down by such authorities as Adam Smith, John Stuart Mill and others, nevertheless questions whether the principles enunciated by them are infallible, and of that universal application which most men are ready to concede. At page 153 he writes

yet heard, have flooded, and the tanks are still yet as empty as they were when the rain first set in.

A private report, which I received yesterday, gives a very gloomy picture of the state of things in the Palmanair talook. There the rain-fall had up to the date of the report been very slight. The standing dry crops had withered up extensively; and of wet cultivation under the tanks, there was little to speak of. I have ordered the temporary suspension of Act II of 1864, for the recovery of arrears of revenue, until I have fuller particulars of the actual state of the crops and agricultural prospects of that talook. Mr. Comyn, in a note dated a week back, writes that all the tanks in the Arcot talook were dry, and those in the other parts of his division very nearly so. The Range Officer in the Wallajah talook mentioned, in a memorandum, dated the 26th instant, that there had been some heavy showers in that direction, but that there had been no flood-water down the Palar since February; that there was no water whatever in the great Kaveripauk tank; and that three-fourths of the tanks in the range were all but dry.

"it is much to be regretted, that not one of the great masters of economic science have deliberately prescribed the course which a Government ought to follow, when its subjects are positively dying in large numbers from starvation," and in the concluding paragraph of his work ventures to suggest what that course should be. If we are not now able to give so much consideration to Mr. Dalyell's views on political economy as we could have wished, we may recur to this part of his subject at some future time; but meanwhile we may state for the information of our readers, that the general aim of those views and the conclusions to be drawn from them appear to us to be embraced in the following opinions—viz. that supply must be considered to meet demand, without reference to price, so long as the people can subsist; and that the exact time for Government interference would appear to be, when it becomes inevitable that its subjects must perish from want, unless extraordinary aid be rendered. It then becomes the unquestionable duty of the Government to preserve life, and to adopt such remedial measures as may clash only in the smallest degree with the ordinary course of trade. For more detailed and exact information as to Mr. Dalyell's views, we must refer our readers to the work itself, and in doing so, have the fullest confidence that they will derive as much gratification from the perusal of it as we have enjoyed. We think it will not be amiss to remark by way of conclusion that, with very great judgment and good taste, Mr. Dalyell has abstained from all compliment to the Famine Committee. Every one knows that a good Secretary is the mainspring and life of an institution; and had he referred with approbation to the labors of the Committee, however well deserved the tribute, ill-conditioned people might impute to a single

* The few copies which remain, we believe, may be had at Messrs. Gantz Brothers.

minded man the ungenerous desire to indirectly cry up his own labors in a cause, which it cannot be denied he has thoroughly well served.

RAMANDROOG.

We are not in a position to furnish our readers in this issue, as we had hoped to do, with a full report of the recent argument before the High Court on the question of the Magisterial jurisdiction set up by Mr. Macartney on the Ramandroog plateau on behalf of the Rajah of Sundoor, as their lordships the Judges have not yet pronounced their judgment which they had taken time to consider.

HIGH COURT.—MADRAS.

(Appellate Side.)

PRESIDENT—BITTLESTONE AND COLLETT, J. J.

Special Appeals 226 and 417 of 1867.

ERECTION OF DAM ACROSS IRRIGATION CHANNEL—SUIT TO MAINTAIN SUCH DAM BY RIPARIAN OWNER.

Held that the plaintiff and defendant possessed only the ordinary rights of riparian owners, which was to use the water so as not to interfere with the rights of those below, and that the lower court had no right to go beyond this, and direct the erection of a kalingula at the joint expense of both in order that the water might be equally shared between them.

Sri Rajah Row Bhaviah Zemindar v. 14 ryots and Sri Rajah Row Venkata Mahipati Gungathara Rama Row Bahadur Zemindar (15th Defendant).

This suit was originally brought in the Court of the District Moonsiff of Peddapuram, to prevent the loss of produce (970 Rs. a year) to the Viravaram lands by the loss of water from the Viravaram channel, and to maintain the Pamulagattu dam for that purpose. The Moonsiff decided the suit in the plaintiff's favor to the extent that he was entitled to retain the earth dam in dispute in its then condition, viz., 36 yards long and 3½ yards high; but that he was not to make any addition to it so as to prevent the water flowing freely according to immemorial mamool into the defendant's villages; and that each party was to bear his own costs. Dissatisfied with this decree, the Plaintiff appealed to the Principal Suder Ameen of Rajahmundry, who on his part reversed the Moonsiff's decree; and being of opinion that the plaintiff and the 15th defendant possessed equal rights in the water in dispute, decreed that a kalingula should be built in the place where the Pamulagattu dam then stood at the joint expense of both; that each was to use the water due to the villages of his (or her) estate; that the 15th defendant was to close

the dam he had raised in rear of the Pamulagattu dam; and that each party was to pay his own costs. The facts of the case are fully stated in the following judgment of the Principal Suder Ameen.

1. In the plaint preferred by the plaintiff, he sets forth, that for a long time he has been in the habit of raising a dam called Maddulavathikhandigattu, in order that the water of the channel which, branching off from the Viravaram channel, flows west to east, and is called Gorrikhandi, might be led to irrigate the fields of Viravaram attached to the plaintiff's mittah; that he was likewise in the habit of raising another dam called Pamulagattu, about 3 yards and a half high, and one-fourth coss below the said dam, on the confines of Viravaram and Tirapati, in order to irrigate the fields belonging to the villages of Viravaram, Rajapaliam, Tirapati and Chendramampallai; that in August 1862, the servants of the 15th defendant removed, of the said 2 dams, the one called Pamulagattu; that the plaintiff thereupon preferred a complaint in the above matter, on which the Sub-Magistrate of Peddapuram decided on the 8th August 1863 that the plaintiff was entitled by mamool to construct the said dam; that, in accordance with this decision, the plaintiff reconstructed the dam; and that the present Sub-Magistrate has however written to the plaintiff a letter, intimating that the defendants requested the District Magistrate to restrain the construction of the said dam, and that the District Magistrate thereupon issued the putkum (order) No. 79, cancelling the decision of the Sub-Magistrate aforesaid. The plaintiff says, that (this order) calling into question the plaintiff's title, and the removal of the said dam entailing loss of produce by depriving the fields of the said villages of the water (irrigating it), the plaintiff was constrained to bring this suit, and he accordingly prays to be established in his right to retain the said dam in its usual condition, the removal of which, would entail on him a loss of rupees 1,000-0-0, being the sum total of the value of the said dam, namely, rupees 30-0-0, and the loss of produce which would at present ensue, namely rupees 970-0-0, his costs of suit being adjudged to be paid by the defendants.

2. In the statement put in by the defendants 1 to 14, they contend among other things, that the allegations contained in the plaint, preferred by the plaintiff are not true; that Gorrikhandi which lies between Viravaram, Rajapaliam, and Tirapati, branches out from the Yeluru only; that the water of the said Yeluru flows also into the Viravaram channel, and thence, also into the said Gorrikhandi; that the said Gorrikhandi does not at all separately issue forth from the Viravaram channel, as is mentioned in the plaint; that the said water has not been exclusively allotted for the use of the plaintiff's estate; that the said channel, not having been dug by any particular individual, it is made use of by all; that there is nothing more unjust than the suit brought by the plaintiff to be adjudged to construct a dam across the said Gorrikhandi, with a view to remedy the incapability of the said water to ascend into the plaintiff's fields; that the plaintiff does not possess the right of constructing Khandigattu near Maddula, and Pamulagattu across the said Gorrikhandi; that there was no mamool even to that effect; that this is admitted by the very ryots of the village of Viravaram, in their petition to the Collector, under date the 2nd November 1839; that before the plaintiff obtained the possession of the Viravaram mittah, the ryots of Tirapati and other villages formed a dam across Gorrikhandi; that the said dam

was removed under the pukkum No. 135, issued by the Collector to the Darogah of the Peddapuram division, on the 14th November 1839, wherein the illegality of the act was established; that in 1855, the plaintiff again constructed through the said ryots the dam marked 2 in the plan, to the east of the one aforesaid; that this was also removed under the takid issued on the 10th August 1855 by the Amiu of the Peddapuram taluq; that, in August 1862, the plaintiff constructed the dam marked 3 in the plan, to the east of the aforesaid, which was knocked down immediately afterwards; that the complaint thereon lodged by the plaintiff against the Pariahs of Chatalada as the offenders in question, was dismissed by the Sub-Magistrate of the Peddapuram taluq, with the proviso, that the plaintiff should construct the said dam, until the passing of a declaratory decision in respect of the right to (construct) the same; and that they (defendants) preferred an appeal therefrom, whereon the District Magistrate passed a decision on the 23rd September 1863, cancelling the said proviso. They (defendants 1 to 14) further set forth, that should the plaintiff's right to construct the said dam be established, an impediment would be caused to the irrigation which certain jirayati lands paying a revenue of about 87,300 rupees, and inam lands paying a cist of 20,000 rupees and more belonging to them (defendants) and others—in the villages attached to the Peddapuram taluq—were entitled by mamool to share, and that those lands would thereby suffer; and that on the contrary, the plaintiff suffers no loss by the non-construction of a dam never authorized by mamool; and they accordingly pray, that the plaintiff's claim may be dismissed with costs.

3. The 15th defendant contends in his statement that the allegations contained in the plaint preferred by the plaintiff are not true; that Gorrikhandi is a jivanathi (living stream) which took its origin many years ago, and not one separately branching off from the Viravaram channel; that the water flowing through the river Yeleru formerly used to pass into Gorrikhandi through a channel called "Isukapallikalva," and another lying between Viravaram and other villages; that many years ago, the Zemindar of Peddapuram, within whose precincts Isukapallikalva was situate, filled it up unlawfully; that since then, the water of Yeleru used to pass into Gorrikhandi through the channel lying between Viravaram and other villages only, and thence flow to the fields attached to his (15th defendant's) Zemindary villages; that there has not been even a mamool of the said water flowing to the fields attached to the plaintiff's villages, that in 1827 and 1839, before the plaintiff obtained possession of the Viravaram mittah, and in 1855, after his obtaining possession of the same, the dams raised by the ryots of Viravaram Tirapati and other villages, preventing the flow of water into his (15th defendant's) villages were removed under the orders publicly issued by the then Collectors and other authorities; that the plaintiff's right, relative to the dam in dispute, has not been established by the Sub-Magistrate of Peddapuram; that the portion of the said decision referring to the construction of this dam was cancelled by the District Magistrate. The 15th defendant further states, that, should the plaintiff's right to construct the dam in dispute be established, an impediment would be caused to the irrigation which certain jirayati lands paying a revenue of about 87,300 rupees, and inam lands paying quit-rents &c., to the extent of about 20,000 rupees to the circar were entitled by

mamool to share and that those lands would thereby suffer. He accordingly prays that the plaintiff's claim may be dismissed with costs.

4. The District Munsiff of Peddapuram decreed that the plaintiff do maintain the present earth-dam in dispute, measuring 36 yards in length in its present state, as the same would in no way inconvenience any parties, and draw water therefrom, if necessary, for her use with the aid of carams and other vessels, without detriment to the passage of the water thereof to the defendant's fields, taking care that nothing whatever is done to it in the shape of improvement at any time, more than maintaining the same in its usual length of 36 yards and height of 3½ yards; that the water of the broad channel which is capable of flowing 10½ yards, and is situate to the south of the dam in dispute according to the mamool observed immemorially, do freely flow without any impediment from any party at any time into the defendant's villages; and that each party do bear their own costs.

5. Dissatisfied with the said decree, the plaintiff has preferred an appeal in No. 382 of 1864, on the following grounds:—

- (I.) That the dams marked 1 and 2 in the plan forged and filed by the defendants, appear to lie only on the eastern side of "Pamulagattu" in dispute marked 3; and not on the western; that the exhibits filed by the supplemental defendant appear only to have a relation to the said dams marked 1 and 2; that it does not appear therefrom, that the dams marked 1 and 2 lie to the west of the disputed dam marked 3 and that no mention is even made in those exhibits, of the names of Pamulagattu and the dam near Maddula, which are in existence from time immemorial.
- (II.) That the plan has been so fabricated as to show that Gorrikhandi branches out also from the Yeleru; and that the same is not true.
- III. That while the suit brought respecting the removal of Pamulagattu, was being proceeded with, the defendants have removed another dam near the aforesaid, built of a safety Calingula of 10½ yards and beams and pegs; that the same was intimated (to the Court) by the plaintiff, and correctly proved; that while so, it was decreed that the said dam should remain in the same condition in which it was after the subsequent removal thereof by the defendants, and that the plaintiff should make use of the water coming by the other dam for his lands with the aid of carams, &c., and that this decision is very unjust; also, that if the (said dam) remains as aforesaid, there will altogether be no water coming by the other dam; that the water will escape through the said Porlukanamah safety Calingula, and that great loss will thereby be entailed on the plaintiff.

6. Dissatisfied with that part of the (said) decree, which directs the continuation of the earth-dam, and his bearing his costs of suit, the 15th defendant has preferred an appeal in No. 98 of 1863, on the following grounds:—

- (I.) On the 14th November 1839, the then Collector issued the hukkum, which is marked 33 in this suit, with reference to the dam raised by the ryots of Viravaram, Tirapati

and Rajapalliam attached to the plaintiff's mittah of Viravaram, across the said Gorrikhandi, thereby preventing the flow of the water thereof into the supplemental defendant's villages, &c., which lie under it; whereon the said dam was removed. This is also admitted by the plaintiff, and the said hukkum has not been cancelled either by authorities higher than the said Collector, or by any judicial tribunals. Nor was there any permission granted subsequent to the said hukkum, to any individual for raising any kind of dam across the said channel. Hence, the plaintiff's claim is barred by the statute of limitation, and as the present suit was brought by the plaintiff 23 years after the date of the said Hukkum, in order to be given the right of raising a dam across the channel aforesaid, preventing the water thereof from passing further on, the same should be dismissed without even an inquiry.

(II.) Notwithstanding that the District Munsiff has approved and declared with certainty in the original judgment, para. 17, that the plaintiff's pleas and the evidence adduced by him appear to be not worthy of credit; and in para. 16, that it was proved by the evidence adduced by the defendants, that the plaintiff was not entitled either by mamool or right to raise a dam across the said Gorrikhandi; it is repugnant to justice, that the District Munsiff should have merely guessed and declared in the judgment that the plaintiff was entitled to maintain a dam of 36 yards long across the said channel in dispute.

(III.) The plaintiff's claim for loss of produce amounting to rupees 970 was dismissed as not proved, but it is nevertheless provided in the original decree, that the defendants should bear the costs they incurred on the said amount. This is inconsistent with the decree of the Sudr Court in suit No. 73 of 1855, quoted in the Rules of Practice.

(IV.) He therefore prays that this Court will inspect the place on which the channel stands, and observe the state, motion, &c., of the water thereof; and that the Court will take into their deliberate consideration, the said grounds, the original and appeal records of the suit, and the pleadings put in at the time of the hearing, and cancel the said portion of the decree, and adjudge that the plaintiff has no right to maintain the said earth-dam of 36 yards broad, and that the plaintiff should make good all costs.

This suit was heard.

7. It is urged by the defendants that Gorrikhandi took its rise from the Alaru at a time unknown, and that its head was closed many years ago. But this stands uncorroborated.

8. There is a channel which supplies water from the Yeleru to the Viravaram estate belonging to the plaintiff. The number of days, during which the said water should irrigate the said estate, has also been fixed. This way of sharing irrigation is not peculiar to the said estate alone, but also extends to many other estates, particulars of which can be found in the records of the Collector's Office. These facts were admitted by both the parties at the time of the hearing.

9. The lands pertaining to the plaintiff's Viravaram estate are irrigated with the water flowing

through the channel set apart for it, until the termination of the period for which they (the said lands) are so entitled to share irrigation; and the water thereafter remaining, flows into Gorrikhandi. Similarly, other estates are also irrigated by the means of channels set apart for them, and the water remaining as aforesaid, also flows into the same (Gorrikhandi.) These were also admitted. (Also vide plans belonging to both the parties.)

10. But the source of Gorrikhandi appears to be connected with the channel set apart for the Viravaram estate belonging to the plaintiff. On both sides of the head of the said Gorrikhandi, a few villages pertaining to the plaintiff's Viravaram estate are situated. Below these, to the end of the said khandi, are situated villages pertaining to the 15th defendant's Gollaprolu estate.

11. It is with reference to the superfluous water which enters Gorrikhandi from the channel set apart for the plaintiff's Viravaram estate, that the present suit has arisen between both the parties. This dispute is of a long existence, and it has not been judicially determined.

12. The floods which enter into Gorrikhandi, escape therefrom either by flowing over any kind of dams that it might be built across it, or by breaking through them; and they ultimately fall into the sea. The Vanthoniru (water irrigable according to shares) is the water brought into the Viravaram estate belonging to the plaintiff, through the channel set apart for it, when Yeleru runs ordinarily. That the superfluous water connected herewith is the water in dispute has been already mentioned. Such ordinary water cannot escape, when the dam laid across the said Gorrikhandi is a strong one. Neither is the said water able to break through it. And it will not in the least therefore extend beyond the said dam. Pamulagattu, which is at present in dispute, lies across Gorrikhandi; and it is clear from the judgment of the Lower Court, that the said dam is one of the above description; and this is also admitted by the plaintiff's pleader at the time of the hearing. The plaintiff's suit to be adjudged to maintain the said dam without removing, shows that his impression was, that he possessed the exclusive right to the said water. But the 15th defendant contends, that the right to the said water belongs to him alone, and not to the plaintiff. There are flaws in the pleas urged by both the parties, and they are here detailed.

(I.) Had it been originally intended that either party or both of them should be entitled to the use of the water flowing through the said Gorrikhandi, the same ought to have been necessarily entered in the statements kept at the Collector's office, containing the particulars of the shares in which the waters of the Yeleru should pass through the channel set apart for the purpose, and the same ought to be accordingly preserved. Had such entries existed and been preserved, one or other of these parties would have filed authenticated copies of them. But neither of them have done so. It has therefore to be determined, that there are no such entries in the said statements, and that Gorrikhandi had been originally intended only to prevent the destruction of crops raised on the lands pertaining to the respective estates by inundation, caused by the overflow of the floods of the Yeleru into the channels or by water remaining superfluous, over the quantity necessary for the irrigation by shares. It appears from the authenticated copies marked III and IV, and filed in original suit No. 17 of 1863 of

was removed under the pukkum No. 135, issued by the Collector to the Darogah of the Peddapuram division, on the 14th November 1839, wherein the illegality of the act was established; that in 1855, the plaintiff again constructed through the said ryots the dam marked 2 in the plan, to the east of the one aforesaid; that this was also removed under the takid issued on the 10th August 1855 by the Amiu of the Peddapuram taluq; that, in August 1862, the plaintiff constructed the dam marked 3 in the plan, to the east of the aforesaid, which was knocked down immediately afterwards; that the complaint thereon lodged by the plaintiff against the Pariabs of Chatalada as the offenders in question, was dismissed by the Sub-Magistrate of the Peddapuram taluq, with the proviso, that the plaintiff should construct the said dam, until the passing of a declaratory decision in respect of the right to (construct) the same and that they (defendants) preferred an appeal therefrom, whereon the District Magistrate passed a decision on the 23rd September 1863, cancelling the said proviso. They (defendants 1 to 14) further set forth, that should the plaintiff's right to construct the said dam be established, an impediment would be caused to the irrigation which certain jirayati lands paying a revenue of about 87,300 rupees, and inam lands paying a cist of 20,000 rupees and more belonging to them (defendants) and others—in the villages attached to the Peddapuram taluq—were entitled by mamool to share, and that those lands would thereby suffer; and that on the contrary, the plaintiff suffers no loss by the non-construction of a dam never authorized by mamool; and they accordingly pray, that the plaintiff's claim may be dismissed with costs.

3. The 15th defendant contends in his statement that the allegations contained in the plaint preferred by the plaintiff are not true; that Gorrikhandi is a jivanathi (living stream) which took its origin many years ago, and not one separately branching off from the Viravaram channel; that the water flowing through the river Yeleru formerly used to pass into Gorrikhandi through a channel called "Isukapallikalva," and another lying between Viravaram and other villages; that many years ago, the Zemindar of Peddapuram, within whose precincts Isukapallikalva was situate, filled it up unlawfully; that since then, the water of Yeleru used to pass into Gorrikhandi through the channelling between Viravaram and other villages only, and thence flow to the fields attached to his (15th defendant's) Zemindary villages; that there has not been even a mamool of the said water flowing to the fields attached to the plaintiff's villages, that in 1827 and 1839, before the plaintiff obtained possession of the Viravaram mittah, and in 1855, after his obtaining possession of the same, the dams raised by the ryots of Viravaram Tirapati and other villages, preventing the flow of water into his (15th defendant's) villages were removed under the orders publicly issued by the then Collectors and other authorities; that the plaintiff's right, relative to the dam in dispute, has not been established by the Sub-Magistrate of Peddapuram; that the portion of the said decision referring to the construction of this dam was cancelled by the District Magistrate. The 15th defendant further states, that, should the plaintiff's right to construct the dam in dispute be established, an impediment would be caused to the irrigation which certain jirayati lands paying a revenue of about 87,300 rupees, and inam lands paying quit-rents &c., to the extent of about 20,000 rupees to the circar were entitled by

mamool to share and that those lands would thereby suffer. He accordingly prays that the plaintiff's claim may be dismissed with costs.

4. The District Munsiff of Peddapuram decreed that the plaintiff do maintain the present earth-dam in dispute, measuring 36 yards in length in its present state, as the same would in no way inconvenience any parties, and draw water therefrom, if necessary, for her use with the aid of carams and other vessels, without detriment to the passage of the water thereof to the defendant's fields, taking care that nothing whatever is done to it in the shape of improvement at any time, more than maintaining the same in its usual length of 36 yards and height of 3½ yards; that the water of the broad channel which is capable of flowing 10½ yards, and is situate to the south of the dam in dispute according to the mamool observed immemorially, do freely flow without any impediment from any party at any time into the defendants' villages; and that each party do bear their own costs.

5. Dissatisfied with the said decree, the plaintiff has preferred an appeal in No. 382 of 1864, on the following grounds:—

(I.) That the dams marked 1 and 2 in the plan forged and filed by the defendants, appear to lie only on the eastern side of "Pamulagattu" in dispute marked 3; and not on the western; that the exhibits filed by the supplemental defendant appear only to have a relation to the said dams marked 1 and 2; that it does not appear therefrom, that the dams marked 1 and 2 lie to the west of the disputed dam marked 3 and that no mention is even made in those exhibits, of the names of Pamulagattu and the dam near Maddula, which are in existence from time immemorial.

(II.) That the plan has been so fabricated as to show that Gorrikhandi branches out also from the Yeleru; and that the same is not true.

III. That while the suit brought respecting the removal of Pamulagattu, was being proceeded with, the defendants have removed another dam near the aforesaid, built of a safety Calingula of 10½ yards and beams and pegs; that the same was intimated (to the Court) by the plaintiff, and correctly proved; that while so, it was decreed that the said dam should remain in the same condition in which it was after the subsequent removal thereof by the defendants, and that the plaintiff should make use of the water coming by the other dam for his lands with the aid of carams, &c., and that this decision is very unjust; also, that if the (said dam) remains as aforesaid, there will altogether be no water coming by the other dam; that the water will escape through the said Porlukanamah safety Calingula, and that great loss will thereby be entailed on the plaintiff.

6. Dissatisfied with that part of the (said) decree, which directs the continuation of the earth-dam, and his bearing his costs of suit, the 15th defendant has preferred an appeal in No. 93 of 1865, on the following grounds:—

(I.) On the 14th November 1839, the then Collector issued the hukkum, which is marked 33 in this suit, with reference to the dam raised by the ryots of Viravaram, Tirapati

and Rajapallam attached to the plaintiff's mittah of Viravaram, across the said Gorrikhandi, thereby preventing the flow of the water thereof into the supplemental defendant's villages, &c., which lie under it; whereon the said dam was removed. This is also admitted by the plaintiff, and the said hukkum has not been cancelled either by authorities higher than the said Collector, or by any judicial tribunals. Nor was there any permission granted subsequent to the said hukkum, to any individual for raising any kind of dam across the said channel. Hence, the plaintiff's claim is barred by the statute of limitation, and as the present suit was brought by the plaintiff 23 years after the date of the said Hukkum, in order to be given the right of raising a dam across the channel aforesaid, preventing the water thereof from passing further on, the same should be dismissed without even an inquiry.

(II.) Notwithstanding that the District Munsiff has approved and declared with certainty in the original judgment, para. 17, that the plaintiff's pleas and the evidence adduced by him appear to be not worthy of credit; and in para. 16, that it was proved by the evidence adduced by the defendants, that the plaintiff was not entitled either by mamool or right to raise a dam across the said Gorrikhandi; it is repugnant to justice, that the District Munsiff should have merely guessed and declared in the judgment that the plaintiff was entitled to maintain a dam of 36 yards long across the said channel in dispute.

(III.) The plaintiff's claim for loss of produce amounting to rupees 970 was dismissed as not proved, but it is nevertheless provided in the original decree, that the defendants should bear the costs they incurred on the said amount. This is inconsistent with the decree of the Sudr Court in suit No. 73 of 1855, quoted in the Rules of Practice.

(IV.) He therefore prays that this Court will inspect the place on which the channel stands, and observe the state, motion, &c., of the water thereof; and that the Court will take into their deliberate consideration, the said grounds, the original and appeal records of the suit, and the pleadings put in at the time of the hearing, and cancel the said portion of the decree, and adjudge that the plaintiff has no right to maintain the said earth-dam of 36 yards broad, and that the plaintiff should make good all costs.

This suit was heard.

7. It is urged by the defendants that Gorrikhandi took its rise from the Alaru at a time unknown, and that its head was closed many years ago. But this stands uncorroborated.

8. There is a channel which supplies water from the Yeleru to the Viravaram estate belonging to the plaintiff. The number of days, during which the said water should irrigate the said estate, has also been fixed. This way of sharing irrigation is not peculiar to the said estate alone, but also extends to many other estates, particulars of which can be found in the records of the Collector's Office. These facts were admitted by both the parties at the time of the hearing.

9. The lands pertaining to the plaintiff's Viravaram estate are irrigated with the water flowing

through the channel set apart for it, until the termination of the period for which they (the said lands) are so entitled to share irrigation; and the water thereafter remaining, flows into Gorrikhandi. Similarly, other estates are also irrigated by the means of channels set apart for them, and the water remaining as aforesaid, also flows into the same (Gorrikhandi.) These were also admitted. (Also vide plans belonging to both the parties.)

10. But the source of Gorrikhandi appears to be connected with the channel set apart for the Viravaram estate belonging to the plaintiff. On both sides of the head of the said Gorrikhandi, a few villages pertaining to the plaintiff's Viravaram estate are situated. Below these, to the end of the said khandi, are situated villages pertaining to the 15th defendant's Gollaprolu estate.

11. It is with reference to the superfluous water which enters Gorrikhandi from the channel set apart for the plaintiff's Viravaram estate, that the present suit has arisen between both the parties. This dispute is of a long existence, and it has not been judicially determined.

12. The floods which enter into Gorrikhandi, escape therefrom either by flowing over any kind of dams that it might be built across it, or by breaking through them; and they ultimately fall into the sea. The Vanthoniru (water irrigable according to shares) is the water brought into the Viravaram estate belonging to the plaintiff, through the channel set apart for it, when Yeleru runs ordinarily. That the superfluous water connected herewith is the water in dispute has been already mentioned. Such ordinary water cannot escape, when the dam laid across the said Gorrikhandi is a strong one. Neither is the said water able to break through it. And it will not in the least therefore extend beyond the said dam. Pamulagattu, which is at present in dispute, lies across Gorrikhandi; and it is clear from the judgment of the Lower Court, that the said dam is one of the above description; and this is also admitted by the plaintiff's pleader at the time of the hearing. The plaintiff's suit to be adjudged to maintain the said dam without removing, shows that his impression was, that he possessed the exclusive right to the said water. But the 15th defendant contends, that the right to the said water belongs to him alone, and not to the plaintiff. There are flaws in the pleas urged by both the parties, and they are here detailed.

(I.) Had it been originally intended that either party or both of them should be entitled to the use of the water flowing through the said Gorrikhandi, the same ought to have been necessarily entered in the statements kept at the Collector's office, containing the particulars of the shares in which the waters of the Yeleru should pass through the channel set apart for the purpose, and the same ought to be accordingly preserved. Had such entries existed and been preserved, one or other of these parties would have filed authenticated copies of them. But neither of them have done so. It has therefore to be determined, that there are no such entries in the said statements, and that Gorrikhandi had been originally intended only to prevent the destruction of crops raised on the lands pertaining to the respective estates by inundation, caused by the overflow of the floods of the Yeleru into the channels or by water remaining superfluous, over the quantity necessary for the irrigation by shares. It appears from the authenticated copies marked III and IV, and filed in original suit No. 17 of 1863 of

this Court, that the Vanthiniru (water irrigable according to shares) which as aforesaid issues forth from the Yeleru through the channels, will, if not properly protected, fall into Gorrikhandi, and thence into the sea. Copies of those documents have been annexed to the records of this suit. It may thus be observed, that the conclusion come to by the Court, viz., that the said Gorrikhandi had been originally intended only for the escape of superfluous water, is not erroneous. It may therefore be said, that neither of the estates belonging to the parties in dispute, is entitled to the water of Gorrikhandi in dispute. But the useless expenditure of the said water might have been discovered in the course of time, and the use of it commenced when the same was necessary. It is more natural to suppose, that this practice was commenced by the ryots of Viravaram, who live near the source of the said Gorrikhandi, than by those living farther off. The ryots of Gollaprolu, which has no channels to get in a supply of the water of the Yeleru, might have been led, by such necessity and the covetousness arising therefrom, to avail themselves of the said water either stealthily or forcibly for the irrigation of their lands. Such practice has merely given rise to disputes, and does not lead to a specific right to the said water being given to any party. Most of the arguments above detailed may be traced to the documents filed by both the parties.

(II) The ryots of Viravaram belonging to the plaintiff have once raised a dam across the said Gorrikhandi, which was cut and removed by the ryots of the Gollaprolu estate; and it was therein decided by the Collector against the ryots of Viravaram. While so, they have neglected to bring an action thereon before the Civil tribunals for a decision as to the right to the said water. It is impossible to trace this neglect of the ryots of Viravaram to any other cause, than to their conviction, that they did not possess any specific right respecting the said water.

(III) The defendants 1 to 14 are the ryots of the 15th defendant's estate, and are parties principally interested in the dispute in respect of the said litigated water. A complaint was preferred to the Sub-Magistrate in the first instance in respect of Pamulagattu, and he decided that the plaintiff should restore the same to a good condition. An appeal having been thereupon preferred by the said ryots to the District Magistrate, he cancelled the Sub-Magistrate's decision. An attested copy of the said appeal petition was filed by the plaintiff, and was marked LL. This contains the said defendant's admission, viz., that the said disputed water used to flow to a few villages attached to Viravaram belonging to the plaintiff, as also to their own, and that the same was a mamul. From the circumstance that the plaintiff has filed the said copy as a document, his admission has to be inferred of the circumstances, that he has not any exclusive right in respect of the said water, and that he and the proprietor of the Gollaprolu estate have a joint right to the same.

IV. In the second place, the said defendants, 14 in number, have not only clearly admitted in the said appeal petition, that the plaintiff has a joint right with themselves in respect of the water in dispute, but have also hinted the same in the statement put in by them in the present suit in the lower Court. The 15th defendant was only subsequently admitted by the Lower Court in this suit, and is not one who stood as a defendant *ab initio*. From this, as also from the circumstance from the spe-

cial interest, the said 15th defendant has in this suit, it may justly be inferred, that the said allegations of the other defendants were put on paper (written statement) with the consent of the said 15th defendant. While so, he set forth in his statement, that the said Gorrikhandi was a Jivanadi (living stream). Even should the said Gorrikhandi be viewed as Jivanadi (living stream), he would be frustrated in his hope of creating to himself the exclusive right to the whole water in dispute. If it were a Jivanadi (living stream), its water may be used by all parties, in the same manner as the waters of the Yeleru. How is it then possible to assert, that he was just in urging that he alone possessed the exclusive right to the said water? It is true, that in the decisions passed by Collectors, and reports, &c., made by Amins and others, and filed by the said 15th defendant, indirect hints are given, to show that the ryots of Gollaprolu alone possessed the right the said water. But the hukkums (orders) &c., issued by the Collector are based on the reports of Amins and others, and it does not appear that the said reports have good foundation. The Collector also appears to have no jurisdiction, either to determine upon rights or to pass hukkums in such cases as this; and they (such decisions or hukkums) have therefore become useless. *A fortiori*, the reports Amins, &c. have also become useless. For these reasons, the assertion urged by the 15th defendant, viz., that he alone possesses the right in respect of the water in dispute, cannot stand. This remark also applies with full force to the refutation of his contention, viz., that the plaintiff's claim was barred by the statute of limitation.

13. The plaintiff urges, that the Pamulagattu in dispute is in existence from a very long time, but this is contended by the defendants who aver that the said dam is a newly constructed one. The plaintiff has produced certain accounts in proof of her having continued to incur certain expenses in the matter of the repair of the said dam. From a consideration of the manner (in which) the said accounts (were kept), the Court are unable to place implicit reliance in them. Her witnesses declare, that the said dam stands there from a very long time, while the 15th defendant's witnesses allege that the said dam is a newly constructed one. These witnesses are respectively the dependants of their respective proprietors (parties in dispute), and the Court will not therefore take them into their consideration. The plaintiff and the 15th defendant have respectively attempted to obtain a decision establishing that their respective estate possessed the exclusive right to (the use of) the water in dispute; the former, by pleading that (she was) in the habit of raising the said dam in that particular locality, and the latter, by denying it. But the *mamuls* asserted by both the parties, are not (in fact) *mamuls*. That the people of Viravaram used to raise a dam across Gorrikhandi and carry water into their fields, inasmuch as the same was possible, that the people of the Gollaprolu estate used to remove the same when inconvenient to them, and carry that water; that the people of Viravaram used thereon to wait for opportunities, and reconstruct the dam and carry the said water to their estate; that the people of the Gollaprolu estate used thereon to break the same again, and that this was the case for a long time, are all evident from the documents filed on both sides. Therefore, if the construction of the dam by the people of Viravaram, could constitute a *mamul*, the removal of the same by the people of Gollaprolu

must also constitute a *mamul*. Such habits do not deserve to be styled *mamuls*. (That a certain act may) constitute a *mamul*, it must be immemorial, and of unmolested existence. But the *mamuls* alleged by both the parties are not of the above nature, and they cannot therefore avail them (the parties in dispute.)

14. However, there is room to allege, that the plaintiff raised a dam sometime ago in that locality, in a manner as not to affect the interests of the people of the Gollaprolu estate, and carried water into the fields of her villages; and that at present, she has improved it in such a manner, as to affect the interests of the people of the Gollaprolu estate; for, it is admitted by all the defendants, except the 15th, that the said water was also used by the plaintiff's villages. It has to be admitted that the water will not ascend into the said lands, unless the dam is constructed; and it must therefore be declared, that the plaintiff who constructed the dam has availed herself of some quantity or other of the said water. But had the said dam been as strong from the beginning as it is at present, the people of the Gollaprolu estate would have commenced the dispute earlier than the present. But they have not done so, and it has to be inferred therefrom, that the plaintiff has recently strengthened the said dam, and that the people of the Gollaprolu estate have commenced to dispute it, as the same affected their interests.

15. If any particular individual be asserted to possess a right to sue in respect of the water in dispute, it is the plaintiff that should be declared first in the scale, on a consideration of the source of the said Gorrikhandi, and of the same being bounded on both sides by the villages attached to the Viravaram estate, and the 15th defendant falls the second in that scale. While the case stands thus, the Lower Court decreed that the dam in dispute should stand in its usual condition, and also determined, that the strong dam appearing to have been raised by the 15th defendant (while this suit was in the course of trial before the said Court) in the southern part of the said Gorrikhandi inside the said dam in order that the whole water may flow over, notwithstanding the said dam (in dispute), into the Gollaprolu estate, should also remain as it stood. Properly speaking the party injured by the said decree is the plaintiff, and the one benefited by it is the 15th defendant. The appeal presented therefore by the plaintiff in the first instance appears to be for the purpose of obtaining justice, while the one presented after her by the said (15th defendant,) appears to be the result of his ingenuity.

16. The Court deem it just for all the reasons above detailed, that the plaintiff and the 15th defendant should be declared to possess equal title to the water in dispute. The Court also thinks it proper to adjudge, in order to prevent any future recurrence of this dispute between both the parties, that a Kalingula should be built in the very locality where Pamulagattu is situate, at the joint expense of both the parties in such a manner that the water in dispute may pass into their respective estates in equal proportions, also that both the parties should bear the costs of the suit equally, (as there are defects in the arguments of both of them), and that the 15th defendant should close the new dam. It also appears to them to be just that the plaintiff should be declared to have no connection on the other side of the said dam. The reason of this will be evident from the following. Of the lands irrigable by the

water of the said Gorrikhandi, the plaintiff's lands are only capable of yielding a produce of the value of rupees 900 only, whereas the lands of the 15th defendant are capable of yielding a produce of a much larger value. This is not contended. Moreover, the plaintiff possesses other means of irrigation, of which he can to some extent avail himself when necessary (vide the depositions given by the plaintiff's witnesses). But the Gollaprolu estate &c., of the 15th defendant has no other means of irrigation than the Viravaram channel issuing forth from the said Gorrikhandi, and other channels. These arrangements the Court believes will be not only beneficial to the said 2 parties, but will also meet their satisfaction.

17. The plaintiff, and the 15th defendant who is the Zemindar of Gollaprolu &c., are hereby declared to possess an equal right in respect of the superfluous water falling into Gorrikhandi through the Viravaram channel. It is decreed that a Kalingula be built in the place where Pamulagattu in dispute stands, in order to the division of the water in equal parts between the said 2 parties; that each make use of the water due to his (or her) share to the villages attached to his (or her) estate; that both the said parties bear equally the expenses incurred in building the said Kalingula; that the plaintiff have no connection with the water of that said of Gorrikhandi, which lies to the east of the said Kalingula; that the 15th defendant close the dam raised by him recently on the back of Pamulagattu to the south of Gorrikhandi and bear the expenses incurred therein; that the plaintiff and the 15th defendant bear their costs of suit equally, and that the other defendants bear their own. The decree of the Lower Court is reversed.

(Signed) S. VENKATADRY,

31st December 1866.

Principal Sadr Amin.

Both plaintiff and 15th defendant specially appealed against the above judgment Mr. Mayne, who appeared for the 15th Defendant contended that the suit was barred by the law of limitation; that the Principal Sadr Ameen's decree was not in accordance with the prayer of any of the parties, neither was it warranted by the plaintiff; that upon the facts found by both Courts, the only legitimate decree was for the dismissal of the suit with costs; that the petition of the 14 defendants to the District Magistrate was inadmissible as evidence against the special appellant; and that the principal Sadr Ameen had erred in assuming, without any evidence of the fact, that they had acted with the consent of the 15th Defendant.

Mr. Miller appeared for the Plaintiff and contended that she was entitled to retain her dam which she had immemorial right to erect from time to time. Sir Adam Bittlestone delivered the judgment of the High Court, of which the following is a note.

PER CURIAM.—In order to dispose of this case it is necessary to see what the Plaintiff claimed. She gets an order sanctioning the erection of a particular dam, and was stopped by a notice to desist; *ergo*, she brings a suit. It appears that the lower Courts have found that the Plaintiff had no such right. There have been disputes about the erection of this dam for years; but the parties have only the ordinary rights of riparian proprietors. Their right is simply to use the water so as not to interfere with the rights of those below them. This is the right that the Plaintiff has, but it is not the right the Plaintiff claims; and although the Principal

Sudr Ameen has virtually come to this conclusion, he has gone on to direct the erection of a Kalingula at the joint expense of the Plaintiff and the 15th Defendant, in order that the water might be equally shared between them, which he had no right to do. Both decrees will therefore be reversed and the suit dismissed with costs.

HIGH COURT.—CALCUTTA.

Special Appeal from Rajshahye.

Rajah Anund Nath Roy Bahadoor (one of the Defendants)

Appellant, versus Junmenjoy Biswas, (Plaintiff) *Respondent.*

Before Seton-Karr and Macpherson J. J.

Baboo Sreenath Dass and Mohineemohun Roy for Appellant.

Baboo Kalee Kishen Sein for Respondent.

A purchaser in execution of decree, if he has never got possession of his purchase property, cannot sue under Clause 6, Section 23, Act X of 1859 which contemplates a suit where the relation of landlord and tenant has been established. His remedy is by suit in a Civil Court.

We think that this suit will not lie, and that the plaintiff's remedy is by a regular civil suit, and not under Act X of 1859.

The plaintiff seeks to get possession of an under-tenure purchased by him at a sale in execution of a decree against, Ghassee Sirdar. The sale to the plaintiff was duly confirmed; he got a certificate and a bamboo, &c., upon the land, as provided by Section 264 of Act VIII of 1859, but he never got any substantial or real possession of the land, having been from the first resisted by the appellant. Under these circumstances, a suit to recover possession will not lie under clause 6, Section 23 of Act X of 1859, which relates only to cases where the relation of landlord and tenant has been admitted, or is conclusively established.

Here the plaintiff has, in fact, never had any possession and the appellant denies that he or Ghassee Sirdar (whose rights he purchased) has or had any right to possession, or any possession at any time, and the plaintiff cannot succeed but by a civil suit, in which he will have to prove his title in the ordinary way.

The decree of the Lower Appellate Court is reserved, and the plaintiff's suit is dismissed with all costs, both of this and the Lower Courts.—*Calcutta Civil and Revenue Reporter.*

Application for Review of Judgment.

Huro Prosad Roy Chowdhree and another, (Respondents)
Petitioners, versus Degumber Mitter, (Appellant) *Opposite Party.*

Before Kemp and Glover, J. J.

Baboo Kali Mohun Dass and Bhobany Chunder Dutt for Petitioners.

Baboo Mohendra Lal Shome, Onoocool Chunder Mookerjee, and Khetter Nath Bose for Opposite Party.

The admission by A of tenancy to B years ago is not sufficient to throw the onus on C in a case where admittedly for many years A has been paying rent to C.

We have heard the pleader for the applicant; it was no necessary to call upon the other side. The proprietary title is in dispute as between the two zemindars—Baboo Degumber Mitter and the Chowdhree party.

The admission of tenancy to the Chowdhree party by Manick Lushkur years ago is, to say nothing of the doubt which arises of its *bona fides*, not sufficient to throw the onus

on the other side in a case where admittedly for many years Manick Lushkur has been paying rent to Degumber Mitter. The mere receipt of rent years ago, irrespective of the *bona fides* of such payment, is clearly not sufficient to warrant our sending Degumber Mitter into the Civil Court to prove this title, with the onus upon him, instead of upon the Chowdhree party. The decision of the Chief Justice and Mr. Justice Jackson, quoted by the pleader, contemplates a case in which the enjoyment of the rent has been *bona fide*.

Application rejected, with costs and interest.—*Ibid.*

HIGH COURT.—BOMBAY.

Appellate Jurisdiction.

Present, ARNOLD, C. J. & NEWTON, T.

Special Appeal, No. 302 of 1864.

GIRJOJI valad BHIKAJI SONAR,.....Appellant.
KESHAVRAV bin, NAVJI PATIL HINGE,.....Respondent.

MORTGAGE.—Held that a mortgagee in possession of land was bound to cultivate the best crop which it was ordinarily capable of yielding.

This was a special appeal from the decision of F. D. Melvill, Acting Assistant Judge of the Puna District, in Appeal Suit No. 1040 of 1862, reversing the decree of the Munsif of Khed, in Original Suit No. 2795 of 1861.

Keshavrav claimed Rupees 754 5-6, principal and interest due on a mortgage bond, dated Shavran Sudha the 10th, Shake 1773, Girjoji admitted the bond, but alleged that, the plaintiff having forcibly taken possession of five bighas of bagayat (garden) land of the first class, contrary to the terms of the contract, he, the defendant had been unable to repay the money with interest, which he had agreed to do from the annual proceeds of the land; that the land had been in the possession of the plaintiff since Shake 1,777 (A. D. 1855), while the defendant Girjoji paid assessment, &c.; that the land was capable of yielding Rupees 125 a year; at which rate, calculating the income, the plaintiff had received, Rupees 1,000, in addition to Rupees 50 admitted by him to have been paid, and was consequently indebted to him, the defendant.

The Munsif found that the portion of the mortgaged land which the plaintiff had taken into his possession, contrary to the terms of the mortgage bond, must have yielded him during his eight years' possession (from Shake 1777 to 1784), at least Rupees 800; and that his claim was therefore satisfied. He accordingly decreed in favour of the defendant.

The Assistant Judge on appeal laid down the points for decision to be: (1) Was the Munsif right in enquiring, in the way in which he did, as to the average value of the produce? (2) Has the average value of the produce been rightly calculated? (3) Is any, and what, amount due to Keshavrav?

The following is an extract from his judgment:—From the accounts shown by plaintiff, and from the statements made by his two witnesses, it would appear that the land was always sown with bazari, or some such grain; and that the average annual produce realized by him was some eighty or ninety Rupees.

A commission appointed by the Munsif, to measure and report on the ground, has reported that, if cultivated with bazari, the average amount of the crop would be two or two and a half khandis,

the half of which, being plaintiff's share, would be worth about thirty or forty Rupees; but that if cultivated with potatoes, pepper, or such crops, the average annual produce would be worth one or two hundred Rupees. I do not know of any law which can compel a mortgagee, when in possession of the mortgaged land, to cultivate any particular crop. He may cultivate it as he likes and with as little profit to himself as he likes; and so long as the mortgagor chooses to allow him to retain possession, no objection can be made that he is not doing his best to help the former to pay off the debt.*

* NOTE.—The general rule, no doubt, is that the mortgagee in possession is only accountable for what he receives; and is not bound to take any particular trouble to make the most of another man's property. But, on the other hand, he is bound, as pledgee of the estate, to take the same care of it, as every prudent owner is in the habit of taking of his own property; and he is responsible for waste, for the consequence of wilful default, and for all loss resulting from negligence amounting to a breach of trust; though it is true the mortgagor cannot lie by without giving notice, and afterwards charge the mortgagee with the effect of his own negligence: Add. on Contr. Chap. VIII 5th Ed.; 2 Wh. & Ta. L. C. in Eq. 771, and the cases there cited. The Civil Law is the same, requiring of the creditor, exact diligence in the custody of the thing pledged; and to be as careful in that custody, as the average of careful men usually are in their own affairs: Inst., lib III. tit. XIV. 4; Dig. lib XIII tit VII 14. And so by the Hindu law as expounded by Sir T. Strange, (Chap. 12) the creditor in possession of property pledged "will be bound to indemnify his debtor, for any damage it may sustain at his hands for want of due care."—Ed.

In deciding, therefore, what amount has been realized by the plaintiff, I shall put out of consideration entirely what might have been realized if a more valuable crop had been cultivated. I do not consider the evidence produced by plaintiff to be perfectly satisfactory, and I am, therefore, compelled to decide on the evidence of the witnesses as to the supposed capabilities of the ground. According to that evidence, I consider that the average amount received by the plaintiff could not have been less than one khandi of bazari or some such grain; and that its value may be calculated at about forty Rupees. I therefore find on the second point, that the amount calculated by the Munsif as realized by the plaintiff is far too high.

The plaintiff has held the ground for eight years; and the amount, therefore, that he has realised is Rupees 320. This sum, together with Rupees 50 as specified in the plaint, making in all Rupees 370, must be deducted from the original claim of Rupees 850, leaving a balance due to him of Rupees 480.

The grounds of objection taken in special appeal were: (1) That the Assistant Judge had not allowed interest on the amount proved by him to have been realized by the plaintiff, although he allowed him interest equal in amount to the principal sum advanced; and (2) that he was in error in holding that a mortgagee in possession was not bound to cultivate garden land with its ordinary crop.

Dhirajlal Mattunddas for the appellant.

Shantaram Nardyan for the respondent.

PER CURIAM:—We hold that Keshavrav having obtained possession of the land, was bound to cultivate the ordinary crop which it was capable of yielding. We, therefore, reverse the Assistant Judge's decree; and confirm that of the Munsif, with costs.

Appeal Allowed.

Bombay High Court Reports.

REVENUE BOARD CIRCULAR ORDERS. (MADRAS.)

No. XLVII of 1867.

Mapping of Waste Lands.

1. The Board have observed that, on some occasions, when land is disposed of under the Waste Land Rules, the maps of such lands do not distinguish reserves, and the area occupied by these is not distinctly excluded from the block sold, or from the assessment charged.

2. All reserves, whether of streams, roads, rights of way, wood or any other rights, should be clearly shown in the Survey plan, being therein detailed and exhibited in some distinctive colour.

3. Collectors are, therefore, requested to furnish the Survey Officer with the necessary information on these points, in which there can be no difficulty, as even rights of way are well-known in the neighbourhood.

4. As it is essential that the purchasers should know exactly what their rights will be, (the general reservations in the Deeds being applicable only to reserves which from any cause cannot be declared at the time of sale,) Collectors will be careful to see that all reserves, such as those described above, are clearly entered on the maps before submitting them to the Board.

5. The assessment on the area reserved must in all cases be deducted from the aggregate assessment of the entire block.

No. XLVIII. of 1867.

Sale of Waste Lands within Municipal limits.

1. The attention of Collectors is drawn to the instructions conveyed in the Orders of Government, dated 10th April and 24th October 1867, Nos. 829 and 2,505, regarding the disposal of waste lands within Municipal limits.

2. It was never contemplated that all such lands should be made over to the Municipal Commissions, although any definite proposals for employing waste lands for the improvement of individual towns will receive favourable consideration at the hands of Government.

3. Collectors must, however, in no case alienate waste to Municipalities without having previously obtained sanction.

4. In the case of abandoned village or building sites which have, through lapse of time, come to be considered waste, it is to be observed that such lapse of time cannot be admitted as destroying any right of property which may exist in the land, nor can the Municipality have any claim to the reversion of such sites.

No. XLIX. of 1867.

Board's Orders necessary before dismissal or fine of Government servant.

With reference to paragraph 2 of the Board's Circular Order, No. XLIV. of 1866, Collectors are informed, that in cases where a Government servant has been formally tried for any offence and acquitted, but his re-instatement is considered inexpedient, or the infliction of a fine or other punishment deemed necessary, in consequence of neglect of duty brought to light in the course of the inquiry, the Board's orders should be obtained in the first instance.

CALCUTTA—REVENUE CIRCULARS.
NOVEMBER, 1867.

A. GROTE AND V. H. SCHALCH, ESQs.

No. 1.

Inspection Order Books.

The following addition is made to Clause 19, page 175 of the Board's Rules:—

The Register No. 76 serves also as an Inspection Order Book for each Head-Quarter and Sub-Divisional Station, in which are entered, in separate paragraphs, the orders passed by every inspecting authority, Commissioner or Collector, as the case may be, upon each visit. All such orders should be recorded on the left half of a foolscap sheet, the right hand half being reserved for the record of the measures taken by the Station Officer in consequence. This record should always be in the Officer's own handwriting. Commissioner's orders, passed upon inspection of Sub-Divisions should be always sent in at once for the Collector's information.

No. 2.

Term of imprisonment of Judgment debtors fixed by Rent Court.

On reference to Government, it has been held that the Rent Courts have the power, under Section 93 of Act X of 1859, of fixing the term of imprisonment of judgment-debtors, and that its exercise is, under the provisions of that Section, rendered compulsory.

This ruling should be observed so long as it be not opposed to any decision of a competent Judicial Court.

Board to Government,
No. 3169B, dated 15th
June, 1867. Legal Re-
membrancer to Govern-
ment No. 1164, dated
16th July, 1867. G. O.
No. 821T, dated 21st
September, 1867.

Copies of the corres-
pondence on the subject
marginally noted are
published below.

From T. B. Lane, Esq., Secretary to the Board of Revenue, L. P., to the Officiating Secretary to the Government of Bengal.—No. 3169B, dated Fort William, the 15th June, 1867.

LAND REVENUE.
(Rent Suits.)

SIR,

In January, 1867, the Officiating Commissioner of A. GROTE the Rajshahye Division and V. H. SCHALCH, Esqrs. addressed the Board, at the instance of the late Officiating Collector of Moorshedabad, in regard to a difference of opinion which existed between the Collector and the Commissioner in the reading of Section 93 of Act X of 1859.

2. Mr. Campbell, the late Commissioner, held that "a judgment-creditor can keep his debtor in jail as long as he wishes by paying his diet expenses provided the term of imprisonment does not exceed the maximum period fixed in Section 93 of Act X, and that the Collector has no option in the matter."

3. The Collector, however, taking the opposite view, urged "that the Court is not bound to award the full punishment." He considered the measure of punishment to be optional with the Court: thus, for instance, "if the decree be for Rupees 10, the Court might order two months' imprisonment instead of three," and so on. Mr. Robinson, at present Officiating as Commissioner, places the same interpretation on the law. He reads the sentence,

"shall send him to the Civil Jail, there to remain for such time as shall be directed by a warrant," as decidedly leaving the period of punishment optional with the Court.

4. On receipt of the reference from Rajshahye, the Board consulted the Commissioners of the other Divisions in the Lower Provinces generally, as to the practice in their respective Divisions of awarding sentence of imprisonment under the Section referred to. From the replies received, it appears that the majority of the Commissioners and local officers agree in the opinion expressed by Mr. Robinson, as to the discretionary power vested in the Collector. Among the Commissioners Colonel Dalton alone coincides with Mr. Campbell.

5. The above correspondence has, however, brought to light the fact, that a contradictory practice largely prevails throughout the Lower Provinces, and in some cases in the same District, in regard to the manner of applying Section 93 of Act X.

6. The Members of the Board are at issue as to the interpretation of the law. Mr. Grote agrees with Mr. Campbell, considering that the phrase "such time as shall be decided by a warrant" is left indefinite, in order to meet the alternative maximum periods specified further on in the Section. The use of the expression "full punishment" by Mr. Robinson seems to Mr. Grote to account for his different view of the true question raised before the Collector on the arrest of a judgment-debtor in execution of a decree. The debtor, on being arrested, is required to do one of three things; he must deposit the money in Court, or arrange with his judgment-creditor, or satisfy the Collector that he cannot pay. In the latter case the Collector appears to have discretion not to imprison him at all, but if the Collector is not satisfied that the debtor has no present means of paying, he is then bound to give the creditor the benefit of the full pressure which the restrictions of the Section allow him to apply. Mr. Robinson, on the other hand, thinks that the Collector is then to decide what term of imprisonment, within the prescribed limit, should be awarded to the debtor for his inability to pay. The imprisonment contemplated in Section 145, referred to by his colleague, is, Mr. Grote remarks, a true punishment for a clearly defined offence.

7. Mr. Schalch, on the other hand, considers that the wording used in the Section, viz., such term as plainly "shall be directed in the warrant," leaves it to the deciding officer to exercise his discretion in defining the term of imprisonment in default of payment. Contrasting the phrases here used "shall not exceed three or six months, or two years," with the wording of other parts of the law, this view appears to him indisputable. For instance, in Section 145 the phrase used is, "shall order him to be imprisoned in the Civil Jail for six months," thus leaving no discretion to the Collector in fixing the term of punishment. Had the intent of Section 93 been similar, it is reasonable to presume that a similar phraseology would have been introduced.

8. It will also be observed that in the latter part of Section 93, "a person arrested under a warrant, issued in a decree for the delivery of papers or accounts, may be committed to the Civil Jail, there to remain for such term, not exceeding six calendar months, as the Collector shall direct." Here the Collector is clearly allowed a discretion;

and there seems no reason why, if a discretion be given in the case of non-delivery of papers, it should be withheld in the case of the judgment-debtor.

9. To Mr. Schalch the purport of the law appears to be to give in all cases a discretion to the Collector, so that he may determine the period for imprisonment in accordance with the degree of criminality, or the means of meeting the demand of the debtor, and thus prevent unfair pressure or vindictive oppression on the part of the creditor.

10. I am accordingly desirous to submit the matter for the decision of Government.

From F. R. COCKRELL, Esq., Superintendent and Remembrancer of Legal Affairs, to the Junior Secretary to the Government of Bengal.—No. 1164, dated the 16th July, 1867.

SIR,

I HAVE the honor to acknowledge the receipt of your letter No. 2693, dated 4th instant, requiring me to submit my opinion on the reading of Section 93, Act X of 1859.

2. The procedure of Act X 1859 was framed in accordance with the provisions of the Bill "for the more easy recovery of small debts and demands" beyond the jurisdiction of the Presidency Small Cause Courts, which was settled in Council in June, 1855, but never became law; and with the provisions of the existing Civil Procedure Code.

3. The expression in Section 93, Act X, in regard to the proper interpretation of which there has been such difference of opinion amongst officers concerned in the administration of the law, is taken almost verbatim from Section 78 of the Bill referred to, and that Section again is, so far as the subject-matter of the present correspondence is concerned, substantially the same as Section 60, Act IX of 1860, which regulates the procedure of the Presidency Small Cause Courts.

4. For ready reference and comparison, I subjoin in juxtaposition so much of the corresponding Sections of these several enactments as relate to the present question:—

Act X of 1859, Section 93.	Bill for the recovery of small debts, &c., Section 78.
The Collector shall send him to the Civil Jail, there to remain for such time as shall be directed by a warrant addressed to the Keeper of the Jail, unless he shall, in the meantime, pay the full amount, or furnish such security as afore-said. Provided that the time for which shall not exceed three calendar months, when the amount decreed, exclusive of costs, does not exceed Rupees 50, or six calendar months when such amount does not exceed Rupees 500, or two years in any other case.	The Court shall send him to the Civil Jail, there to remain for such time as shall be directed by the warrant, unless he shall, in the meantime, pay the full amount specified therein, or the full amount decreed, exclusive of costs, does not exceed Rupees 50, or six calendar months in any other case.

The Bailiffs of the Court shall be empowered to take and convey him to any prison, there to remain for such time as shall be directed by the warrant, not longer than six calendar months, or until he shall sooner perform the order of the Court.

Act VIII of 1859,
Section 273.

A defendant shall be released at any time on the decree being fully satisfied, or at the request of the person at whose instance he may have been imprisoned, or on such person omitting to pay the allowance, as above directed. No person shall be imprisoned on account of a decree for a longer period than two years, or for a longer period than six months, if the decree be for the payment of money not exceeding Rupees 500, or for a longer period than three months, if the decree be for the payment of money not exceeding Rupees 50.

5. The Provisions of the three first Sections distinctly prescribe the action of the Court before which the arrested debtor is brought in determining the question of his incarceration, and the period for which it is to be in force, whilst those of the last cited Section (278 of the Civil Procedure Code) assuming the discretionary power of the Court to commit the debtor to prison (unless he has shown that he is entitled to exemption from this liability in the mode prescribed in the preceding Sections of the Code, and in Section 8, Act XXIII of 1861,) lay down, in common with the other Sections quoted, the extreme limit to which the imprisonment imposed by the Court may extend in each case, and the conditions under which the imprisonment so imposed may be curtailed.

6. It appears to me that there is nothing in these provisions of the law which will support the principle contended for by Messrs. Campbell and Grote. The provisions of the Civil Procedure Code nowhere dictate the absolute imprisonment of the debtor, or acknowledge the power of the creditor to its enforcement; it is left entirely to the discretion of the Court, and the only distinction between the procedure laid down for the Rent Courts and the Small Cause Courts of the Presidency Towns, and for the ordinary Civil Courts in regard to imprisonment in execution of a decree is, that in the former cases it is imperative on the Courts to fix the period of the debtor's incarceration, whilst in the latter case the determination of the period of such imprisonment, subject to certain specified limits, is optional.

7. On the question raised in this correspondence, I am of opinion, therefore, not only that the Rent Courts have the power, under Section 93 of Act X, of fixing the term of imprisonment of judgment-debtors, but that its exercise is, under the provisions of that Section rendered compulsory.

From the Officiating Under Secretary to the Government of Bengal, to the Officiating Secretary to the Board of Revenue, L. P.—No. 821T, dated Gowhaty, the 21st September, 1867.

SIR,

I AM directed to acknowledge the receipt of your letter No. 4602B, dated the 21st ultimo, and in reply to state, for the information of the Board, that

the Lieutenant-Governor concurs in the opinion of the Legal Remembrancer as to the interpretation of Section 93 of Act X of 1859. At the same time, I am to observe that it is not competent to the executive Government to give a decision on such a point, as requested in your letter No. 3109 of the 15th June last.

No. 3.

Form of License Tax Statistics.

To meet the wishes of Government for further particulars in connection with the operation of Act XXI of 1867 in the L. P., the Board have prescribed a revised Form of the Return No. VIA, in which District Officers are requested to furnish to this Office the License Tax Statistics complete for each month from the commencement.

2. The Superintendent of Stationery has been directed to supply each Officer, at once, with 25 copies of the revised Form; and no delay should occur in the submission of the revised Returns of each District up to October, 1867.

REMARKS ON THE SEASON.

NORTHERN SECTION.—There was a copious fall of rain in all the Districts comprised in this Section.

In Ganjam, the standing *paddy* and other crops promised an abundant harvest.

In Vizagapatam, the rice crops were very promising. Dry crops, such as *Gingely*, *Cumboo* and *Raggy*, were being reaped. *Horse-gram* and *Cholum* were being sown.

In the Godavery District, the transplantation of *paddy* was completed. The portion of the crop transplanted late in the season had suffered from blight in some Taluqs. The *black paddy* which was cutting yielded but an indifferent return, as the crop had been injured by excessive rain. *Sugar-cane* and other garden products were thriving. *Cotton* cultivation was progressing. The later dry crops, such as *Horse-gram*, *Green-gram*, *Lamp-oil seed*, &c., were being sown.

In the Kistna District, the early dry crops of *Sujja*, *Kora* and *Gidda Jonnah*, were reaped. The staple, *Jonnah*, was affected by the excessive rain, which had, however, been beneficial to all other descriptions of crops. *Cotton* and *Indigo* were thriving.

In all the Taluqs of Nellore, *Horse-gram*, *Oil-seed* and *Raggy* were cultivated. The existing crops, promised well, though in a few places they were reported to have suffered slightly from blight. *Nellarari* and *Sujja* were being reaped in some Taluqs. The cultivation of *Cotton* and *Indigo* commenced in parts of the District.

Prices in this Section, except in Nellore, where they were stationary.

Small-pox and fever were more or less prevalent, and cholera also appeared in some parts of the Kistna District.

Cattle suffered from disease.

CEDED DISTRICTS.—Rain had fallen in these Districts, and the tanks, generally, had received a moderate supply.

In Cuddapah, the cultivation of lands of all descriptions was in progress, and the growing crops were in good order. Garden and dry crops were harvested in several Taluqs.

In Bellary, agricultural operations were in active progress. *White Cholum*, *Cotton* and *Bengal-gram* were sown in several places. The early dry and wet crops were being reaped. Some *Cotton* was exported to Madras and other places.

In Kurnool, *Horse-gram*, *Bengal-gram*, *Wheat* and *Cotton* were sowing. *Yellow Jonnah*, *Korra* and *Indigo* were harvested, but they had suffered from blight in some places.

Prices were falling in these Districts.

The general health was good, though there were a few cases of fever in some localities.

Cattle were generally healthy.

EAST CENTRE.—The rain-fall was tolerable in this Circle, except in Madras where its want was much felt.

In Madras, *Sumba* and *Kar* were being cultivated. *Raggy* was harvested in a few villages. The standing crops were in a good state.

There were slight freshes in the principal rivers of North Arcot, and the tanks and channels dependent on them received a tolerable supply. *Kar*, *Sumbah* and *Sugar-cane* were cultivated in wet, and *Cholum*, *Cumboo*, *Veragu* and other grains in dry land. The standing crops were generally thriving, though some of the dry crops had suffered from blight in some Taluqs. *Sumbah*, *Raggy*, *Cumboo* and other grains were harvested, and the average out-turn was fair.

In South Arcot, most of the tanks dependent on river channels received a full supply. *Paddy* cultivation was still carried on in parts of the District, and all the standing crops were doing well.

There was no preceptable fluctuation in prices in this Circle.

Fever and small-pox prevailed in parts of North and South of Arcot, and in the latter District cholera also appeared. In parts of Madras small-pox prevailed to some extent.

Cattle were not entirely free from disease in this Circle.

There was a copious fall of rain throughout this Circle.

In Tanjore, the season was, on the whole, prosperous. The *Sumbah* cultivation was nearly completed, and the *Kar* crop harvested. The standing crops were in good order.

In Trichinopoly, all the irrigating channels, dependent on the Cauvery and Coleroon, had had a fair supply. The second crop *Pishanum* and *Curuvai paddy* in wet, and *Horse-gram* and grains in dry lands, were being cultivated. *Kar Paddy* and *Cumboo* were harvested, and *Indigo* cultivated to a small extent in one Taluq.

Prices fell considerably in Tanjore, but only slightly in Trichinopoly.

The general health of this Circle was good, though there were a few cases of cholera, small-pox and dysentery in parts of Tanjore.

SOUTHERN SECTION.—There was a good fall of rain in this Section, especially in Tinnevely, where the fall was almost continuous for ten days.

In Madura, both the dry and wet crops were being cultivated. All the standing crops, as well as *Cotton* and *Indigo*, looked well.

In Tinnevely, heavy freshes came down the rivers, and several tanks were breached. The *Kar Paddy* in the Eastern Taluqs was harvested, and the *Pishanum* crop had been generally planted. All the standing crops were flourishing.

Prices fell considerably in Tinnevely, but the fall in Madura was slight.

The public health was generally good in these Districts.

WEST CENTRE.—There was a tolerably good fall of rain throughout this Circle.

In Coimbatore, the cultivation of *Sumbah Paddy* was carried on under the Cauvery, Bowany, Amravutti and Noel channels. The *Kar* crop under the Bowany was about to be harvested. *Cholum*, *Horse-gram*, *Cumboo* and *Cotton* were cultivated in parts of the District. *Raggy* was partially harvested. All the standing crops were doing well.

In Salem, every description of dry and wet grain was cultivated, and the standing crops were in a flourishing condition. *Kar*, *Raggy*, *Cumboo* and *Cholum* were being harvested in all the Taluqs. *Cotton* and *Indigo* were in a favorable condition, and the former had been picked in several localities.

Prices slightly fell in this Circle.

Fever, to a certain extent, affected the public health in parts of this Districts.

WEST.—In South Canara, the 1st rice crop was harvested throughout the District, and the yield was decidedly good. The 2nd rice cultivation had commenced, and the crops were doing well.

The effects of the good season on the cultivation and crops in Malabar was decidedly felt. Prices had much fallen in this Circle.

The sanitary condition of Malabar was good. Fever, which had been raging in South Canara, almost entirely disappeared though small-pox was reported to have shown itself in some localities.

Cattle were generally healthy.

Average Bazaar Prices of Grain and Salt, per Madras Garce, and Rain Report of all the Districts of the Madras Presidency, for the month of October 1867, Fasli 1277.

PRICES OF GRAIN AND SEA SALT.														RAIN-FALL.					
DISTRICTS.	Rice, (2nd-sort.)		Paddy, (2nd-sort.)				Raggy.		Horse Gram.		Sea Salt.		Northern Section.	Southern Section.	Eastern Section.	Western Section.	Average.		
	Fasli.		Fasli.		Fasli.		Fasli.		Fasli.		Fasli.								
	1276	1277	1276	1277	1276	1277	1276	1277	1276	1277	1276	1277							
Northern Section.	Ganjam ..	534	218	212	91	369	136	262	119	414	153	274	326	13.30	10.90	11.50	8.90	11.10	
	Vizagapatam.	475	186	199	79	249	110	280	87	302	127	283	297	4.60	8.00	25.10	11.00	12.20	
	Godavery ..	416	195	193	91	237	110	238	104	338	116	252	241	7.09	9.72	9.36	6.36	8.13	
	Kistna ..	436	334	202	152	240	206	213	154	362	182	320	268	6.73	11.28	6.02	5.03	7.26	
Ceded Districts.	Nellore ..	438	369	209	168	281	213	250	177	423	247	261	260	9.12	7.45	12.86	5.66	8.77	
	Cuddapah ..	613	455	297	218	382	250	379	244	595	257	371	332	2.90	4.05	4.65	1.50	3.27	
	Bellary ..	844	436	335	202	596	216	515	209	827	248	490	465	3.42	3.67	3.00	7.72	4.45	
	Kurnool ..	671	438	299	195	437	187	398	165	613	219	428	324	7.17	2.29	6.81	4.18	5.11	
East Centre.	Madras ..	607	412	277	177	359	251	340	242	506	311	262	267	...	...	...	...	...	
	North Arcot.	610	362	268	158	435	268	318	212	579	262	242	252	2.90	5.00	2.00	2.20	3.02	
	South Arcot.	607	351	255	150	248	200	310	205	477	248	269	264	6.60	3.86	8.55	6.77	6.45	
	Tanjore ..	606	340	233	151	362	190	324	191	496	265	234	251	4.97	3.56	1.95	6.90	4.35	
Cauvery.	Trichinopoly.	739	437	353	194	400	217	326	188	536	257	288	298	16.21	8.57	10.37	10.62	11.44	
	Madura ..	791	509	370	248	505	248	454	240	567	294	306	277	9.26	7.40	4.08	5.40	6.53	
	Tinnevely ..	634	407	308	192	445	205	394	201	532	304	302	285	10.29	8.25	16.77	17.21	13.13	
	Coimbatore...	730	457	333	208	549	243	449	212	750	253	370	341	9.00	6.01	5.71	4.00	6.20	
West Centre.	Salem ..	680	415	313	187	442	244	392	239	567	239	317	307	8.10	7.15	6.03	6.30	6.89	
	South Canara	580	275	236	134	...	...	481	253	495	252	246	254	2.47	4.50	9.80	9.05	6.45	
	Malabar ..	559	338	254	190	...	...	437	263	643	283	301	295	5.53	5.52	7.20	6.10	6.09	

STATEMENT of Cotton and Indigo cultivation, with their Market prices, for the month of October 1867, Fasli 1277.

DISTRICTS.	COTTON.				Market-rate of cleaned Cot- ton per Candy of 500 lbs.	INDIGO.				Market-rate of cake Indigo per maund of 25 lbs.
	Fasli 1276.		Fasli 1277.			Fasli 1276.		Fasli 1277.		
	Extent.	Assess- ment.	Extent.	Assess- ment.		Extent.	Assess- ment.	Extent.	Assess- ment.	
1	2	3	4	5	6	7	8	9	10	11
	Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1 Ganjam...	5,568	11,245	6,215	10,595	140	50	50	40	46	50
2 Vizagapatam. ...	18,968	54,895	15,286	33,932	123	2,086	13,345	2,277	13,340	35
3 Godavery ...	3,928	9,490	2,387	5,630	97	80	161	215	417	43
4 Kistna...	79,009	1,08,021	1,50,999	2,10,273	81	7,456	14,614	8,200	15,941	45
5 Nellore...	23,267	23,833	23,827	25,147	114	14,244	30,698	11,445	23,943	44
6 Cuddapah ..	52,133	65,264	54,830	70,774	100 to 200	9,871	43,182	14,006	60,312	50 to 60
7 Bellary...	2,21,835	2,24,789	2,85,418	3,03,002	88	182	162	814	1,162	58
8 Kurnool ...	1,61,262	1,74,729	2,44,264	2,06,928	88	1,568	5,747	5,416	12,612	58
9 Madras ..	21	35	9	13	109	4,075	11,118	3,853	8,353	42
10 North Arcot ...	1,864	4,229	1,617	3,763	140	6,110	12,880	10,621	22,222	50
11 South Arcot ...	18,270	42,400	10,186	22,079	100	23,472	57,578	31,444	54,394	34
12 Tanjore...	759	1,029	1,508	1,562	145	303	1,250	780	2,439	12
13 Trichinopoly ...	50,717	68,415	47,884	61,673	120	10	11	20	25	20
14 Madura ..	41,989	75,171	4,955	6,398	100	20	28	30	47	37
15 Tinnevely...	46,207	46,419	26,036	26,418	90	38	59	45	171	31
16 Coimbatore. ...	40,306	35,999	57,186	51,933	90					24
17 Salem.....	7, 60	11,076	11,755	16,810	180	470	1,186	988	2,659	42
Total ..	7,53,253	9,57,039	9,44,362	10,56,950		70,035	1,92,069	90,196	2,23,058	..

Revenue Board Office, Madras; 21st November 1867.

R. A. DALYELL, Secretary.

MADRAS.

ACT No. VII of 1867.

An Act to consolidate and amend the laws relating to the levy of Port-dues and fees at Ports within the Presidency of Fort Saint George.

WHEREAS it is expedient that the laws relating to the levy of Port-dues and fees at Ports within the Presidency of Fort Saint George,

under the provisions of Act XXII of 1855 (for the regulation of Ports and Port-dues), should be consolidated and amended; It is enacted as follows:—

1. Act VII of 1855 (for the levy of Port-dues and fees at Ports within the Presidency of Fort Saint George), Section IV of Act XIX of 1860 (to amend Act XXII of 1855 and Act VII of 1858), Act IV of 1861 (for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort Saint George), and (Madras) Act I of 1862 (for the levy of Port-dues in the Port of Ganjam) are hereby repealed.

2. The Ports within the Presidency of Fort Saint George shall be divided, for the purposes of this Act, into two groups, namely, the Eastern group comprising the Ports named in Schedule A, and the Western group comprising the Ports named in Schedule B, annexed to this Act.

3. Port-dues shall be chargeable in the several Ports named in the Schedules A and B and in any Port to which this Act may hereafter be extended, at other than coasting vessels entering port.

Port-dues on sea-going vessels of 15 tons and upwards, hereafter be extended, at other than coasting vessels entering port.

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sea-going vessel of the burden of fifteen tons and upwards, other than vessels employed in the coasting trade, when such vessel shall enter any of the said Ports.

4. Port-dues shall be chargeable as aforesaid in respect of vessels not being Steamers employed in the coasting trade, at rates equal to one-half the rates chargeable in respect of other vessels.

5. No coasting Steamer having paid Port-dues at any Port shall be required to pay Port-dues again at the same or at any other Port of the same group within thirty days. No coasting vessel other than a coasting Steamer shall be required to pay Port-dues at the same Port more than once in sixty days. No vessel other than a coasting vessel or a coasting Steamer shall be required to pay Port-dues at the same Port more than once in ninety days.

6. Any Steamer engaged in the coasting trade, when it shall enter any of the Ports of the Eastern and Western groups as contained in Schedules A and B, shall pay the highest rate of Port-dues leviable at any Port of such group and an addition of half of such highest rate.

7. Provided that, as regards the levy of Port-dues and fees, the Ports of Calicut and Beypore shall be treated as one and the same Port; every vessel in respect

the levy of of Port-dues. of which such dues and fees shall have been charged and taken at one of the said two Ports, being exempted from the charge on entering the other Port.

8. No vessel entering any of the Ports named in the Schedules A and B and leaving the same within forty eight hours without discharging or taking in any passengers or cargo, shall be charged with any Port-dues.

9. When any vessel enters any of the said Ports, being driven in by stress of weather, or in consequence of having sustained damage, or into Port by stress of weather, for any other reason, and remains in such Port for more than forty-eight hours, but does not take in or discharge passengers or cargo (with the exception of such unshipment and re-shipment as may be necessary for the purpose of repair), the Port-dues chargeable in respect of such vessel shall be at a rate equal to one-half the rate prescribed by the preceding Sections of this Act.

10. In any of the said Ports a fee according to the scale hereinafter mentioned may be charged for measuring any vessel, (that is to say)—

Under 50 tons..... Rs. 7
50 tons and under 100 tons..... 11
100 tons and under 150 tons..... 15
150 tons and under 200 tons..... 19
200 tons and under 250 tons..... 23
250 tons and under 300 tons..... 27
300 tons and upwards..... 30

11. For the purposes of Section 44 of Act XXII of 1855, the several Ports comprised in the Schedules A and B shall be regarded as one Port; and the sums received on account of Port-dues at the several Ports named in the said Schedules, shall form a Fund which shall be termed the Madras General Port Fund.

12. All sums received on account of Port-dues at any of the Ports comprised in each of the groups specified above, shall be available for the payment of all such expenses as are described in Section 44 of the said Act XXII of 1855, incurred on account of any of the Ports in the said groups.

13. Provided always, that such balance as may remain after payment of such expenses may be temporarily invested in such manner as the Government of Fort Saint George may from time to time direct.

14. It shall be lawful for the Government of Fort Saint George, by Notification in the Official Gazette, from time to time, to declare the rate of Port dues chargeable under Section 3 of this Act at the several Ports named in Schedules A and B, and to add to the said Schedules, the name of any Port situated within the territories of the Government of Fort Saint George, and to extend the provisions of this Act to such Port.

15. This Act shall come into operation from and after the date of its first publication in the Fort Saint George Gazette; provided that in respect of any Ports to which, under the preceding Section, this Act may hereafter be extended, or of any change in the rate of Port-dues in any existing Port, it shall not be brought into operation until sixty days after the Government of Fort Saint George shall have published a Notification in the Official Gazette, in pursuance of Section 42 of Act XXII of 1855, declaring the rates at which Port-dues and fees shall be levied in such Ports.

16. A Coasting Vessel shall mean any vessel which it any Port shall discharge cargo exclusively from or take in cargo exclusively for, any Port on the Continent of India or in the Island of Ceylon.

17. This Act shall be read with and taken as part of Act XXII of 1855.

18. This Act may be cited for all purposes as the "Madras Port-Dues Act of 1867."

19. This Act may be cited for all purposes as the "Madras Port-Dues Act of 1867."

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cyclones, but they occur with sufficient frequency to make it imperative on those who are responsible for India, now to devise and generously carry out such a system as will prevent famine so far as it is in man's power to do so, or mitigate such calamities when they cannot be altogether prevented. In the first of the five famines in Madras previous to 1866, that of 1782, rice was sold at from 2½d. to 1½d. a pound. In 1807, the next famine, the price was 1½d. to 1d.; in 1824 from 2½d. to 1½d.; in 1833 from 2½d. to 1½d.; and in 1854 grain was four times the usual price. The worst of these calamities seems to have been the Guntoor famine of 1833, when, it is estimated, the mortality was 150,000 out of 550,000, or nearly as great as in Orissa last year. In the first famine the local Government fixed the price of food and in the second they imported it. In the last three cases they adhered strictly to what in India is believed to be the teaching of political economy. In 1866 we know that the only two persons in the Presidency who were not political economy made from the first, were Lord Napier and Mr. Forbes of Ganjam; that relief operations were not properly organized till July, and that full advantage of them could not be enjoyed by the people in some districts till September or October from difficulties of organization caused by the previous delay. Next to Ganjam the central district of Bellary was most affected. Mr. Dalrymple starts us by the quiet confession that the pressure of famine must, directly and indirectly, have caused nearly 200,000 deaths throughout the Presidency. Taking the average of the whole Presidency the death rate was just doubled during the six famine months of 1866. That rate may not be absolutely certain, but it is comparatively reliable, the mortality of one half-year being quite as accurately ascertained as that of the others. The total mortality caused by the famine of 1866 was hardly under a million and a half—

Madras	200,000
Orissa and Hill Tracts	900,000
Behar	135,676
Chota Nagpore and the rest of Bengal	262,391

1,498,267

These figures, be it remembered, are taken from official reports after detailed enquiry on the spot, with the exception of 150,000 which we have assumed as the mortality of the extensive Hill Tracts of Orissa, a figure probably below the truth. The mortality from the greatest of all record Indian famines, that of 1769-70 in Bengal, has been estimated at three millions or a fifth of the population. So far as Orissa alone is concerned that of 1866 was more intense, the Commissioners admitting the mortality to have been at least a fourth. The population affected by the famine of 1866 was about 20 millions. Mr. Dalrymple states the cost of relief in Madras at £49,869 in food and £70,000 in Public Works, or about £120,000 in all, exclusive of "large remissions of revenue and advances" the amount of which he does not state. Of this sum the Madras public subscribed £20,900. Adding these figures to the mere cost of relief in Orissa, Behar and Lower Bengal, we have a total of £493,000 spent in 1866. This must be doubled for 1867. The largest number fed in any one day in Madras was 100,353 from 457

relief houses. The relief must have been much more effectual than in Orissa where the highest number was 129,305; in Behar it was 37,329. We thus learn that at one time, between August and October 1866, so many as 266,993 men, women and children were daily fed by public charity, in all Eastern India. In one word, in the year 1866 a million and a half of human beings died of famine, and a quarter of a million were daily fed for months at a cost of half a million sterling. The famine in 1867 in Orissa has not added many to the lists of mortality, but it must have caused an expenditure of more than a quarter of a million. And all this independent of the remission of Government revenue, in the present, and the future restriction of cultivation, and therefore revenue, by the death of so many of the agricultural and laboring population.

Truly, whether we look at the periodicity, the mortality or the cost of famines in India, the subject of their prevention and mitigation must be grappled with in the broadest and most earnest spirit by the Government. Mr. Dalrymple is so well satisfied with the Ryot warce system that we are not surprised at his silence on the subject of the influence of land tenures on famines, to which Colonel Baird Smith attached so much importance. But Mr. Grigg, in his Report on the famine in Ganjam, looks on this question, and we think justly, as very important; while the Orissa Report discusses it as not second to any in the prevention and mitigation of famine. Apart from this omission, Mr. Dalrymple's suggestions are full of urgency. They refer almost entirely to irrigation. He asserts that we have allowed the old works to fall into disrepair, and that the crops are now short of what were formerly reaped. He would carry out that financial decentralisation in public works at least, which we recently discussed, in a way hardly so objectionable as Colonel Strachey's. He proposes to create a fund for repairing local irrigation works by crediting to each Government ten per cent. of the revenue from irrigated lands, while all new works would be carried out from loans as has recently been determined. He would go farther and organized a system of lands improvement advances, similar to that formerly adopted in Scotland and Ireland. He asserts that such a concession would be accepted as a very great boon by the landholders of Madras, who cannot obtain money under twelve per cent, otherwise. We recently advocated a similar system of making advances for well irrigation in districts where canals are not required. The existing *tuccavee* system all over India affords a basis for the experiment. The subject is one well worthy of Mr. Massey's study—no less than those Agricultural Savings Banks of which we have heard nothing since the last financial statement. Whatever plan, or plans, be resolved on, the famine of 1866 has surely secured this result—a determination by means of roads and canals, the extension of statistical enquiry and the adaptation of administrative establishment to the character of the people, to do all that man can do to anticipate the periodical scarcity of food in India. More radical and effectual, and therefore more slowly working preventives we believe to be, vernacular education and the creation of agricultural capital by an enlightened land system. But for these, we fear, we must wait yet longer.—*Friend of India.*

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1. For the Editor of the Madras Register 3^d July/68.
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