Proceedings of the Madras Government, Revenue Department,
27th July 1871.

No. 343. Read the following Proceedings of the Board of Revenue, dated 23rd June 1871, No. 2,527:—

Read the following replies of Collectors to Proceedings of the Board of Revenue, dated 7th February 1871, No. 583.

From	Ag. Collr. of	Ganjam,	dated	4th April	1871, No.	384.
,,	,, ,,	Vizagapatam,	,,	25th March	,, ,,	280.
,,	,, ,,	Godavery District,	,,	31st ,,	,, ,,	104.
,,	Offg. ,,	Kistna District,	,,	16th ,,	,, ,,	853.
,,	,, ,,	,,	,,	25th ,,	,, ,,	942.
,,	Collector of	Nellore,	,,	24th ,,	,, ,,	549.
,,	Acting ,,	Bellary,	,,	26th April	,, ,,	157.
,,	Collector of	Cuddapah,	,,	15th May	,, Extra No.	3.
,,	Collector of	Kurnool,	,,	28th Feb.	,, No.	55.
,,	,, ,,	,,	,,	17th March	,, ,,	79.
,,	Acting ,,	Chingleput,	,,	17th April	,, ,,	152.
,,	,, ,,	North Arcot,	,,	28th Feb.	,, ,,	121.
,,	,, ,,	,,	,,	15th March	,, ,,	158.
,,	Collector of	South Arcot,	,,	14th April	,, ,,	99.
,,	,, ,,	Tanjore,	,,	11th May	,, ,,	143.
,,	Acting ,,	Trichinopoly,	,,	27th Feb.	,, ,,	61.
,,	Collector of	Madura,	,,	25th ,,	,, ,,	57.
,,	,, ,,	,,	,,	29th March	,, ,,	97.
,,	,, ,,	Tinnevelly,	,,	13th April	,, ,,	147.
,,	,, ,,	Coimbatore,	,,	29th ,,	,, ,,	124.
,,	,, ,,	Salem,	,,	28th Feb.	,, ,,	588.
,,	Acting ,,	South Canara,	,,	2nd Marc[illegible]	,, ,,	286.
,,	,, ,,	Malabar	,,	22nd Feb.	,,	[illegible]8c.
,,	Commr. of	the Nilgiris,	,,	25th ,,	,, ,,	18.

These letters contain the Collectors' replies to the Board's Proceedings calling upon them to submit their opinions as to the expediency of relieving suits under Regulation VI. of 1831 from Stamp-duty, or of enabling officers acting under it to award costs. They will be submitted to Government with the following remarks.

2. The services performed by the village-officers to prevent the misappropriation of whose emoluments and to secure whose efficiency Regulation VI. of 1831 was passed, are practically State services.

The emoluments attached to the village-offices consist of land, assignments of assessment of land, and other fees.

Neither the offices nor the emoluments attached to them are private property, and they cannot be alienated or encumbered temporarily or permanently at the will of the incumbent.

3. The suits brought under this Regulation are in effect suits relating to rent-free lands held on condition of State service, and are instituted for the purpose of obtaining a formal adjudication on contending claims for the possession of, or succession to, the offices contested by rival claimants on the plea of right by inheritance.

Such suits are adjudicable only by Collectors and their representatives, and an appeal lies to the Board of Revenue, and from the Board to Government, as in the case of any executive order of the local Revenue-officers in matters relating to the public service. There is no provision for awarding costs to the successful party.

4. On the death of a village office-holder it is the duty of the Collector to satisfy himself who has *prima facie* the best right to succeed to the office, and to issue an order accordingly, directing the Tahsildar to place the man nominated (A.) in possession. Suppose that another claimant (B.) addresses the Collector, representing his claim as superior; to this petition B. will have to affix a stamp of 8 Annas under Schedule 2, No. 11 (a), of the Court Fees' Act VII. of 1870. The Collector thereon informs B. that he sees no reason to disturb the original order, and refers B. to institute a suit under Regulation VI. of 1831. If B. does so, he has to present a plaint on a stamp calculated on a sum equal to fifteen times the annual net profits, whether it be land or assignment of land-revenue that he sues for. Dissatisfied with the decree of the Collector, B. appeals to the Board of Revenue; again, he has to pay an institution fee, *ad valorem*, charged on fifteen times the annual net profits, under Schedule 1, No. 1. If B. had appealed against the executive orders of the Collector, rejecting his claim and referring him to the suit under Regulation VI. of 1831, he *might* have obtained a reversal of the Collector's order, and been placed in office on payment of a two-rupee stamp on his petition of appeal to the Board under Schedule 2, No. 11 (b). Looking at the small value of the emoluments attached to the village-offices, especially the lower ones, such as Toty or Talliary, it is clear that, if the above is the correct reading of the Act and Schedules, the institution fee in suits under this Regulation must, in most cases, be absolutely prohibitory, and one or other of the following results must ensue. Either Revenue-officers will practically decide all claims to village-offices by executive orders, or they will refuse to do so as being an evasion of the law, and claimants will be virtually without means of redress: in either case the Regulation itself will become a dead letter.

NOTE.—If it is for the *land* that B. sues, the fee is payable under Regulation VII. of 1870, Section 7, paragraph V. (c.)
If the assessment on land do. do. do., paragraph VII.

5. It was with a view to ascertaining what was the practice generally prevailing in the several districts before and after the introduction of Act VII. of 1870, as well as to elicit the views of the different Revenue-officers on the subject generally, and to ascertain the probable effects of the change in the Stamp laws, that the Board made the reference to Collectors, the replies to which they now proceed to summarise and review.

6. The Acting Collector of Ganjam states that the liability of such suits to stamp-duty has not been enforced in his district, all disputes as to village-officers having been disposed of *summarily*. He adds that, if a formal inquiry is essential (as it no doubt is according to the law), it would be desirable to give Collectors the power of awarding costs. He does not say so directly, but he would evidently approve of the exemption of these summary suits from stamp-duty.

7. The Acting Collector of Vizagapatam says that there can be no doubt of the effect that the levy of stamp-duty has had in diminishing the number of suits under the Regulation and that claimants are debarred from bringing suits owing to their inability to pay the duty. He would have the Collector enabled to award costs, and would have the law of limitation made applicable to them. He gives no decided opinion as to the propriety of exempting them altogether.

8. The Collector of the Godavery District would free them. As he observes the Regulation will have little force in his district, as the Inams of village-officers have been enfranchised, and will really be confined to the poorest classes of village-servants.

9. The Officiating Collector of the Kistna District considers it inexpedient that suits for village-offices and the emoluments thereof should be liable to stamp-duty, and thinks they ought to be looked upon as applications for appointments and made on an eight-anna stamp.

In fact, he would do away with the Regulation altogether and entrust the executive with the power of appointment, subject to the ordinary appeal to the Board.

The divisional officers agree with him generally, and observe that the suits are of a *quasi*-public nature.

10. The Collector of Nellore considers that, as the object of the Regulation is to prevent the misappropriation of emoluments annexed to hereditary offices, it is necessary to exempt them, because otherwise the rightful owners will be deterred from taking advantage of the Regulation, and so the misappropriations will continue and the very object of the Regulation will be defeated.

The majority of opinion in the district is against the award of costs in these suits.

11. The Collector of Bellary is very much opposed to the levy of stamp-duty, but gives no particular reasons. His divisional officers, however (Messrs. Foster and E. Gibson), do not entirely concur with him. Mr. Gibson points out that the Reddy Inams in Bellary are often of enormous extent; that they are held in common by the members of a family who bring suits against each other for possession of fractions; and that, in point of fact, they never do a day's work for the emoluments they enjoy. He admits, however, that the lower class of village-servants are practically debarred from obtaining redress by a suit under the Regulation by inability to pay the institution fee. The Deputy-Collector approves of the levy of stamp-duty in all cases, whilst the Assistant Mr. Weld very forcibly observes that the emoluments are simply payments for services rendered, and clearly distinguishable from private property which absolutely belongs to a person with no obligation attached. He looks upon the making of these appointments as ministerial acts, and infers that the Regulation was passed to ensure a uniform practice in the conduct of the necessary inquiries. He would impose a uniform stamp as on other miscellaneous petitions.

12. The Collector of Kurnool thinks that these suits should be exempt. He gives no reasons.

13. The Collector of Cuddapah and his divisional officers are of the same opinion. Mr. Master suggests that local officers should be empowered to make a preliminary inquiry with a view to discovering if the plaintiff has any *bona fide* claim, and that at any rate stamp-duty should not be leviable at all until it is decided

that he has. He adds the usual arguments against the attempt to prevent vexatious litigation by means of heavy institution fees, and proposes that Revenue-officers should have power to award costs and damages in such cases as a more logical remedy.

14. The Acting Collector of Madras and his subordinates are in favour of charging stamp-duty in certain cases, and think that Collectors should be empowered to give costs by way of putting a stop to vexatious claims. They would also limit the time for bringing such suits to one year from the date of the cause of action.

Mr. Crole gives examples of the way the Act has tended to repress all attempts to assert their rights amongst the lower classes of village-officers, and adds, "it "has, I fear, become notorious among the class interested that the door to justice "in that direction is shut."

15. The Acting Collector of North Arcot (a district where these claims are contested with greater pertinacity than perhaps in any other in the Presidency) writes to the same effect, and points out that the inquiry into them "has a two-fold character"—

(1.) "We have to find out the best claimant in regard to his descent from "the original Mirassidar, and, that being ascertained,

(2.) "Whether that man is, in respect of his educational attainments, the "person most fitted to discharge the duties assigned by Government to the office "he claims. Government therefore, Mr. Whiteside adds, appears thus to be quite "as much interested in the result of the inquiry as the claimant himself, so that, "if the full stamp-duty is levied in every case, persons with *bona fide* claims will "be debarred from coming forward, and the object of the legislature in framing "Regulation VI. of 1831 will be defeated."

16. With regard to this, however, it must be observed that, when a vacancy occurs amongst the village-officers, an inquiry should always be made in the first instance by the Collector in his *executive* capacity to decide who is the fittest person for the vacancy, and it is only after he has made his nomination that any suit can properly be brought, so that it might be urged that the suit is in reality nothing more than an appeal against the summary order of the Collector in his executive capacity, and as such not unfairly chargeable with some institution fee.

17. The Collector of Salem agrees with his Sub-Collector in thinking that these suits ought *not* to be exempt from stamp-duty, but that Collectors should be empowered to award costs.

Mr. Price says that, in his experience, "there is no more vexatious and "groundless form of litigation than these suits under VI. of 1831."

18. The Collector of Coimbatore, on the other hand, is opposed to the levy of stamp-duty, and quotes instances of hardship which have been brought to notice. The Sub-Collector, however, would retain the *ad valorem* rate of fees on suits for possession of office, but would charge suits instituted by persons in office for the emoluments attached to it with a uniform fee of 8 Annas, or else exempt them altogether.

He adds that provision is required for the enforcement of the Collector's decree under the Regulation. The Board consider it sufficient to point out that disobedience to an order lawfully promulgated by a public servant is punishable under the Indian Penal Code.

19. The Collector of South Arcot and his Deputy-Collector consider that these suits should be exempt, because very little of a Revenue-officer's time is taken up in such simple and summary inquiries, and because Government ought to facilitate the settlement of such claims as much as possible, any delay being likely to lead to embarrassments in the conduct of the revenue administration of the country. Mr. Reade adds that, considering the small value of the emoluments in comparison with the services rendered, the arguments against judicial taxation apply with peculiar force to the levy of stamp-duty on suits of this kind.

20. The enfranchisement of the village-service in Inams in Trichinopoly has rendered Regulation VI. of 1831 nearly inoperative in that district. Mr. McQuhae, however, gives his opinion against the imposition of any stamp-duty in such cases, and says the injustice of taxing the village-officer, who claims payment of his salary, is quite clear, and when the claimant seeks to obtain a village-office it is equally unjust to make him pay stamp-duty, for he only holds the office during good behaviour or while his services are required.

21. Regulation VI. of 1831 is also inapplicable to Tanjore, but Mr. Morris expresses himself as generally in favour of exempting suits under it from stamp-duty, believing that the effect of such duty will simply be to make the humble classes affected by it forego their just claims.

22. The Collector of Madura is of the opposite opinion, but would enable Revenue-officers to award costs when a suit is brought on clearly untenable grounds or from improper motives, or where a dismissed office-holder refuses to give up the maniem to his successor. It is evident that this can only apply where the maniem consists of land.

23. The Collector of Tinnevelly and his subordinates are unanimously opposed to the imposition of stamp-duty, and think it a hardship to tax the plaints of individuals claiming Government offices. The Collector would give power to award costs apparently in any case.

24. The Regulation is not in force in Malabar and South Canara, but Mr. Webster is opposed to the levy of stamp-duty. He gives no reasons.

25. The Commissioner of the Nilgiris and his Assistant are of the same opinion. Mr. Galton thinks that merely to enable officers acting under the Regulation to award costs is not a sufficient remedy, because the suits are often brought to recover Inams alienated by a predecessor in office, to which alienation the incumbent was no party, and as the claimant is generally poor, it is a great hardship to saddle him with payment of heavy stamp-duty, even though he may (might?) eventually recover it in the shape of costs. He would also award mesne profits. Mr. Galton further urges that the Law of Limitation should be expressly declared inapplicable to the Regulation on the ground that its very object was to prevent the alienation of emoluments attached to public offices by any means whatever. This has been done by Act IX. of 1871.

26. To sum up these opinions, it may be stated generally that there is an almost unanimous verdict in favour of some kind of summary decision free of

stamp-duty; the most forcible arguments being that the applications for these offices and their emoluments are merely applications for Government service, and are the less properly charged with stamp-duty, because the applicants are, as a rule, hereditarily entitled to them on proof of witness.

27. There is this still stronger argument against the imposition of the full stamp-duty leviable on suits for landed property, that the successful applicant, after paying an enormous institution fee, may be summarily dismissed for inefficiency the very next day. Moreover, it might very plausibly be argued that the appointments for which these suits are brought do not in reality yield any net profits, because the service rendered on account of them, however really incommensurate it may be in many cases (as in Bellary for instance), must always be assumed to be the *exact* equivalent of the emoluments attached to the office.

28. The Board are therefore most clearly of opinion that the first inquiry and decision as to conflicting claims amongst candidates for any village appointment should be entirely free from stamp-duty. Even under the present law stamp-duty ought not to be charged at this stage, for the Collector should invariably make a careful local inquiry in the first instance when choosing a successor on the occurrence of a vacancy, and appoint the person selected in his executive capacity.

29. The more difficult question then arises, whether any objection to such appointment or miscellaneous application for alienated offices and emoluments, when there is no actual vacancy, should be either free from stamp-duty altogether or chargeable at some reduced rate corresponding to the very inferior character of the property acquired, as compared with suits for the absolute possession of land, free from obligations of service.

30. The present law has acted injuriously and has debarred *bona fide* claimants from bringing forward their claims is, the Board think, established from the returns submitted with these Proceedings, even though the Act had not generally been applied up to the end of last year with anything like vigour in every district; and the Board have no hesitation in saying that this, if an established fact, must have an effect on the administration of the country which is much to be deprecated. It will be seen that in the Board's Office, where the Act was properly applied almost from the commencement, out of 100 appeals filed, 93 were returned for want of the proper stamp, and only 5 were disposed of on their merits, a sum of Rs. 43-8-0 having been levied on them as *ad valorem* duty.

31. There can be no doubt, in fact, that the rigorous charge of full duty on the original and appeal petitions would soon have the effect of extinguishing the appeal to the Board which is provided by the Regulation, and this the Board think very undesirable.

32. The Board have now stated at some length what they believe to be the present state of the stamp law as affecting suits under Regulation VI. of 1831. It may be that Government will consider it desirable to refer the matter to their legal advisers for the consideration of this part of the subject, if they see reason to doubt the conclusions of the Board. Should the Government accept the Board's view of the law, they have little doubt that the Government will concur with the

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Board in considering that it is very desirable to apply to the Governor-General in Council to reduce or wholly remit the fees at present payable on suits under Madras Regulation VI. of 1831 in accordance with the provision of the Court Fees' Act.

33. The Board think it would be a sufficient reduction if it were ordered that all applications under Regulation VI. of 1831 whether petitions for executive orders or plaints or memoranda of appeal should be charged with fixed fees under Schedule II. of the Court Fees' Act.

34. Pending the result of this reference to Government all appeals to the Board against decisions under Regulation VI. of 1831 have been detained in the Board's Office. It seemed undesirable to return them with a view to their being presented on the required *ad valorem* stamp; in the event of these appeals being exempted from payment of the fees to which it is at present held they are liable, there would be less hardship in the appellants being subjected to delay than to payment for stamps, the value of which could not hereafter be refunded to them.

No. 344. ORDER THEREON, 27th July 1871; No. 1,309.

Miscellaneous.

As suggested by the Board of Revenue the Government resolve to consult their legal advisers regarding the effect of the Stamp Law on claims arising under Regulation VI. of 1831.

2. Institution Fees under Act VII. of 1870 are calculated on the amount or value of the subject-matter. Claims under Regulation VI. of 1831 are not amongst the expressed exceptions in the Act; but as the emoluments of these village-offices are (Section 2) "inalienable from such offices by mortgage, sale, "gift, or otherwise;" and as by Section 7 the incumbents are summarily removable for incapacity, neglect of duty, and the like; the question arises whether, as observed by the Board of Revenue, such emoluments can be said to have any "value" in the sense of market value at all events.

Proceedings Board of Revenue, 18th July 1868, No. 3,241.

3. The first question therefore is whether institution fees are leviable at all; *secondly*, whether they would be leviable in either or both of the following cases:—

(A).—An incumbent dies, resigns, or is dismissed. Several claimants apply for the office. Is the institution fee to be paid by each?

(B).—The Collector chooses the most eligible candidate, and puts him in possession of the land belonging to the office. By-and-by a fresh claimant, X., seeks to eject him. Is X. to pay institution fees?

4. *Thirdly*, it is stated in some of the District Reports submitted by the Board that "it sometimes happens that, "when a village-servant is dismissed and "another appointed, the former incum-

Deputy-Collector, Nellore.
Acting Sub-Collector, Coimbatore.

"bent declines to hand over the Inam to his successor;" and that "in order to "oust him from the land, the new incumbent has to bring a suit under Regulation

(A). An incumbent dies, resig

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"VI. of 1831." The Board of Revenue have not adverted to the subject, which is obviously a very important one, and the Advocate-General will be requested to state whether this is all the remedy left to the newly appointed office-holder.

(True Extract.)

(Signed) A. deC. SCOTT, Captain, R.E.,
Under-Secy. P.W.D.
for Secy. to Govt.

To the Government Solicitor, for communication to the Advocate-General.
" the Board of Revenue.

P.W. 1309 - 27 July 871
Read Pro - Bd Rev. - 23 June 71
No 2,527

As suggested by the Bd of Rev, the Govt resolve to consult their Legal advisers regarding the effect of the Stamp Law on claims arising under Reg VI of 18

2. Institution Fees under Act VII of 18 are calculated on the amount or value of the subject matter. Claims under Reg VI of 1831 are not among the expressed exceptions in the Act but as the emoluments of these Village Offices are (Sect II) "incalculable from such offices by mortgage, sale, gift or Nuzzur" and as by Sect VI the incumbents are summarily removable for incapacity, neglect of duty & bad life - the question arises whether, as observed by the Bd of Revenue, these emoluments can be said to have any "value", in the sense of market value

~~Reference to the Secretary~~ at all events.

3. The first question therefore is whether Institution fees are leviable at all;

Secondly, whether they are to be leviable in either one or both of the following cases.

(A). An incumbent sued, resists or

Rd. Bd Rev
10 Aug '68
No 3241.

is dismissed. Several claimants apply for the office. Is the distribution fee to be paid by each?

(B) The Collector chooses the most eligible candidate & puts him in possession of the land belonging to the office. Buy & by a first claimant X seeks to eject him. Is X to pay distribution fees?

4. Thirdly. It is stated in some of the district Reports submitted by the Bd that "it sometimes happens that a certain "a village servant is dismissed & another "appointed, the former unwilling to "decline to hand over the Papers to his "successor"; and that "in order to "oust him from the land, the new "incumbent has to bring a Suit under "Reg. VII of 1831." The Bd of Rev have not adverted to the subject, which is strongly a very important one, and the Advocate Genl will be requested to state whether he is able the remedy lefts to be newly appointed Office Holders.

H. 10/7/71

Dy Coll, Bellary.

Asst Coll Cuddapah.

By Collr Gorakhpur Dep 24
for enqr to the Advr Genl.

By Collr Bd Revs

No. 343-344

Govt. of (1871) Madras.

REVENUE.

THE GOVERNMENT SOLICITOR,

&c., &c., &c.

Dated 27th July.

Read. Read.

G. O., 27th July 1871, No. 1,309.

JULY.

Nos. 343 344.

Suits under *Regulation VI. of 1831*.—Question regarding exemption of—from stamp duty, referred to law officers.

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