

Spencer Co. N.C.
Dated 10/10/1911
1911

would be to place the assessment of these at } but half the amount stated by the
Zemindar. These lists are to some extent in- } complete, as they were unable in some
stances to obtain the attendance of the M } assadars. On the whole, allowing
for cases in which it may not be advisable to } impose the full sist at once, I think

that an increase of about Rs. 2,000 can be made to the income of the estate by dispensing with the services of the Mokassadars and re-imposing an equitable assessment. The services are in some instances the obligation to maintain a body of Peons, in other instances to provide supplies and coolies.

5. Section 32 of Act II. of 1864 enables the Collector to declare null and void all leases of land at a lower rate than the usual rates of assessment, unless made for certain purposes therein specified; but I am not clear that, under the circumstances of the present attachment, I am empowered to proceed under this Section, and I request the instructions of the Board on the subject.

As the estate is not under the Court of Wards, I see no other law but the one above referred to, which would enable the Collector to resume the alienations.

The Collector reports that after paying Peishcush, Road Cess, and a suitable sum for the maintenance of the Zemindar of Pachipenta and his son, the surplus revenue of the attached estate will be only Rs. 178.

2. The arrears of Peishcush now due to Government amount to Rs. 3,245.

3. It is clear that this state of things cannot be allowed. Either the estate or a portion of it must be sold, or the revenue must be improved, or the allowances paid to the family must be reduced.

4. The estate was attached because the Zemindar kept purposely falling into arrears in order that the estate might be sold portion by portion, that he might purchase the villages sold under a fictitious name, and that he might thus alienate the estate from the lawful heir in favour of the children of his second and favourite wife.

5. This intention to preserve the state for the heir will, of course, be defeated if it has to be brought to the hammer.

6. It has been suggested that the revenue can be improved by resuming the alienations made by the Zemindar's father, which include land assessed at Rs. 11,195, which now pays a quit-rent of Rs. 924 only.

7. Out of this extent, land assessed at Rs. 5,985, and paying a quit-rent of Rs. 454, was granted for subsistence and charity. The Zemindar might have resumed it when he succeeded to the estate in 1846, but now he is barred by the Law of Limitations. It is evident that the Collector cannot interfere in these cases.

8. But the rest of the Inams, including land assessed at Rs. 5,210, and paying a quit-rent of Rs. 470, are Service Inams. The law seems to be that "possession for any number of years not as owner, but as a compensation for services rendered from time to time runs no bar to the re-occupation of land by the proprietor on the services ceasing to be performed." Accordingly directly the services now rendered by these Mokassadars are dispensed with their claim to hold their land on favourable rates will be terminated. Under Section 32, Madras Act II. of 1864, the Collector may declare that leases at rates lower than the usual rates null and void as against him, and a leaseholder is left to find a remedy in the ordinary tribunals. The Board is of opinion that the Collector may safely act under this Section as far as regards the Service Inams, since the Inamdars, after their services have been dispensed with, as they must be by a formal notice, will

have no *locus standi* in the Courts. The Government Pleader will be requested to advise on this point.

9. If this can be done the surplus, according to the Collector's estimate, will be Rs. 2,178, and there will be no need to reduce the allowances of the family.

No. 239. Proceedings of the Board of Revenue, dated 9th November 1870, No. 6,179.

Read again Board's Proceedings, dated 25th July 1870, No. 5,026.

Read also the following letter from the Government Pleader, to the Acting Secretary to the Board of Revenue, dated 23rd September 1870.

Dated 25th July 1870, No. 5,026.

With reference to the Board's Proceedings noted in the margin, I have the honour to submit the following opinion.

2. The question referred to me is whether in the Pachipenta Zemindari, now under attachment for arrears of revenue, certain Service Inams, granted by the father of the present Zemindar at low quit-rents, can be resumed by the Collector under Section 32 of Madras Act II. of 1864, and assessed at the usual rates. I am of opinion that the Section in question does empower the Collector to act as proposed, but I feel considerable doubt on the subject, and I do not quite concur in the reasoning by which the Board arrive at the same conclusion.

3. It appears to me that the questions, whether the Zemindar can resume, and whether the Collector can do the same, are perfectly distinct, and depend upon entirely different considerations. Whether the Zemindar can resume alienations made by his father depends upon whether they are such as to bind the estate, and whether he takes steps so to do within the period prescribed by the Limitation Act. Whether the Collector can set aside such alienations depends upon whether the case falls within the terms of Section 32 of Act II. of 1864, and, if so, whether the alienations are "engagements made collusively with a view to defeat or delay the effect of the attachment," or "leases of land at a lower rate than the usual rate of assessment," and not made *bona fide* for any of the purposes specified in the Section.

4. The most doubtful point in the whole question to my mind is the preliminary one as to the application of the Section to the case of Inams created not by the present Zemindar, but by his father or ancestors. Does the Section apply only to engagements and leases made by the person who is the landholder at the time of attachment. The words are very ambiguous, and the question is, therefore, a doubtful one; but, on the whole, I incline to the opinion that the Section has not such a limited application. The words are broad enough to include the case of engagements, and leases made by former landholders, and the object of the Section, viz., the protection of the revenue, seems to require that they should do so. The use of the word 'landholder' instead of 'defaulter,' by which the landholder against whom the attachment is made, is designated in the other Sections, seems also to favour this view.

5. Another question, also somewhat doubtful, is whether Inam grants, where a quit-rent is reserved, come within the description of "leases at a lower rate

*Proceedings of the Madras Government, Revenue Department,
18th March 1871.*

than the usual rate of assessment." I can find no decisions on the point. In my own opinion the description does apply. The reservation of a rent constitutes a tenancy, and the fact of its being a permanent tenancy does not, I think, alter the case. Permanent grants at a low quit-rent have been held in many cases to be leases, and therefore not alienation within the meaning of Regulation XXV. of 1802, and they can hardly be any other than leases, because they are made for the support of charities or the performance of services.

6. Assuming then the Section to apply, I cannot see that the nature of the consideration for the favourable assessment imposed upon these Inams affects the question under discussion, unless that consideration was of the nature specified in the Section, and neither the performance of services nor the support of charities is of that nature. The charitable Inams, if leases at all, are clearly "leases at a rate lower than the usual rate of assessment," and in my opinion the Service Inams are equally so, for I do not think the value of the services can be taken into account in considering the question, the object of the Section being the protection of the revenue, which does not profit by the Services, and the words of the Section pointing to the same conclusion.

7. It follows from the above view that, if the Section applies at all, all the Inams, whether Service or otherwise, are equally resumable under it by the Collector, provided, of course, they were created since the permanent settlement. As the Inamdars, should they dispute the revised assessment, would have to come to Court as plaintiffs, the Limitation Act would not avail them, but even if it did, I think under Section 17 of that Act the right of Government would not be barred.

8. In the view I have taken of the question, it is unnecessary to consider whether long undisturbed possession of a Service Inam would not be a bar to its resumption by merely putting an end to the services by which it is held. I may observe, however, that I doubt the soundness of the rule of law as stated in paragraph 8 of the Board's Proceedings. It is certainly so laid down by Mr. Macpherson in his opinion on the Civil Procedure Code, on the authority apparently of some decision of the Bengal Sadr Court. The same doctrine appears to have been assumed, though I can find no express decision on the point, by the Madras Sadr Court, (see No. 6 of 1821, Select Decisions, page 284; No. 91 of 1851, Sadr Report, 1853, page 295,) but I doubt very much whether it would be followed in the present day. In a Bengal case, *Rajah Nilmonnee Singh Deo v. Sheo Tewarce* (Weekly Reporter, 1864, page 324,) noted at page 721 of the recently published Digest of High Court Decisions by Messrs. Cowell and Woodman, a decided opinion to the contrary appears to have been expressed by the Court, though the point was not actually decided. Upon general principles, it appears to me that there is no sound distinction between a tenure by payment of rent and one by service, in this respect, and that the latter can no more be determined by dispensing with the services, than could the former by dispensing with the rent. Of course, by special custom such a distinction might exist, but it would lie upon those alleging such a custom to prove it.

9. From the above remarks it will be seen that I do not regard the question as by any means free from doubt, and should it be determined to act under the Section with regard to all or any of these Inams, it is to be expected that Suits will

*Proceedings of the Madras Government, Revenue Department,
18th March 1871.*

be brought by the Inamdars to contest the legality of the Collector's acts, and thus the question will receive judicial determination.

By Government Order, 25th May 1869, No. 1,471, Government directed the Board to assume the management of the Pachipenta estate, with the view partly to realize arrears, but principally to preserve the estate for the next heir.

2. The allowances to the Zemindar and his son have been fixed on a moderate scale, and cannot well be reduced. The annual surplus, after paying these allowances and the Government dues last Fasil, was only Rs. 178. The arrears now due to Government amount to Rs. 3,245.

3. It is clear that the estate has been ruined by unauthorized alienations. Whilst the present demand is only Rs. 5,252, it is stated that Inams, assessed at Rs. 11,195, have been alienated without the consent of Government, and without registration at a quit-rent of Rs. 924, or, in other words, two-thirds of the revenue has been sacrificed.

4. If these Inams, or most of them, are fully assessed, the Government arrears will be paid off in a few months, and the estate will be left in a flourishing condition. The management of the estate will then have to be relinquished, and the Zemindar must be put in possession. He may afterwards try to dismember his estate by transfers legally registered, if he chooses to do so; but he will have to effect his object in so public a manner that his son will be able to obtain what protection the law can give him.

5. The Board are of opinion that if the law allows it, the Inams should be fully assessed, in order, *first*, to restore an almost ruined estate; *second*, to secure the Peishcush; and, *third*, to enforce the principle which seems to be often overlooked in Zemindari tracts that alienations like these are absolutely null and void.

6. The Board having fully considered the subject and consulted the Government Pleader are of opinion that a resumption or full assessment of the Inams can be legally carried out and successfully defended in the Courts of law. Section 32, Act II. of 1864, gives a Collector power during the attachment of an estate to cancel leases of land at a rate lower than the usual rates of assessment, and if the position of the Collector in this case is contested (*vide* Board's Proceedings, 20th May 1868, No. 3,756), or if the owners of the Inams reclaim their status when the attachment ceases, a good defence is afforded by Sections 8 and 12 of Regulation XXV. of 1802, which, it was ruled by the High Court in Regular Appeal No. 23 of 1865 (Volume 3, High Court Reports, page 5), made unauthorized alienations absolutely null and void.

7. The Board propose, therefore, to instruct the Collector to assess fully all subsequent Inams unless he sees fit to recommend leniency in any special case; but before doing so, as the course thus taken may involve Government in some amount of litigation, they resolve to submit these Proceedings for their orders.

No. 240.

ORDER THEREON, 18th March 1871, No. 476.

Land Revenue.

THE Government observe that by Section 12, Regulation XXV. of 1802, proprietors of permanently settled estates

Proceedings of the Madras Government, Revenue Department,
18th March 1871.

are declared incompetent to make any appropriations of land by which it may be intended to exempt such lands from bearing their portion of the public tax on the whole estate, unless the consent of Government shall have been previously obtained for the purpose.

2. Section 13 declares that even after such consent the proprietor of the estate is still liable to pay to Government such assessment of revenue as may be fixed on such appropriated lands by the Collector.

3. The Government Pleader states that permanent grants at a low quit-rent have been held in many cases to be *leases*, and therefore not *alienations* within the meaning of Regulation XXV. of 1802, but he does not cite any cases, and therefore the Government are unable to refer to them. They can, however, readily conceive that in many instances the ruling would be perfectly equitable, without yielding the position that each individual case must be judged on its own merits.

4. To adopt the ruling literally as quoted in its widest possible interpretation would be to relinquish all security for the public dues from permanently settled estates, for there would be nothing to prevent a Zemindar from alienating his entire estate at a nominal quit-rent, which the Government would be bound to recognize in case of default and attachment as a bar against enforcing the original full demand on the land. They cannot, therefore, but assume that the rulings to which the Government Pleader alludes must have had reference to such perfectly legitimate transactions, as permanent leases at low fixed rents, to encourage the reclamation of waste land, or the clearing of jungle, which are calculated to improve and not to weaken the security for the State revenue. They cannot suppose that the reservation of a quit-rent of, say, one Anna in a permanent lease of land, properly assessed at Rs. 500, would legitimate a transaction which would be absolutely void *ab initio* if the one Anna were not reserved.

5. They are, therefore, of opinion that unauthorized alienations on an inadequate quit-rent (all the circumstances of the transaction being considered) are, under Regulation XXV. of 1802, not good as against Government or against any successor of the Zemindar making them, and even in the case of such Zemindar himself the Government are disposed to think that Section 12 would afford a sufficient answer to any Suit brought to enforce specific performance of the agreement to alienate the land, although it might not relieve him from liability to equivalent damages.

6. In accordance with these views, the Government consider that they are perfectly at liberty to bring up to their proper assessment all land in the Pachipenta Zemindari now under attachment, which has been either fraudulently or recklessly rented below that standard, in the direct exercise of the powers conferred by Section 32, Madras Act II. of 1864, which declares that leases of land in attached estates, at rates lower than the usual rates of assessment, and not given for certain specified purposes are not binding on the Collector until established by regular Suit.

7. The Government are also unable to accept the doctrine that service tenures cannot legally or equitably be modified when the service is no longer required. Stated broadly, the doctrine would invalidate probably one-half at least of the Inam settlements which have been made in this and other parts of India; but if

Proceedings of the Madras Government, Revenue Department,
18th March 1871.

the Government, which were competent to establish the service tenure, are competent to modify it, *a fortiori* the Zemindar who was not competent to make it cannot, together with his successors, be held bound by it for all time to come.

8. The immemorial general custom and practice of the country might be pleaded in bar of any such claim. It would be for the opposite party to establish the contrary in the particular instance.

9. The occupation right is in no way affected by the principles now laid down. The Government would greatly regret any measure which should tend to weaken those rights in Zemindaries.

10. The Government, therefore, concur in opinion with the Board that the proposed measure for securing the public revenue from the Pachipenta estate is a legitimate and proper application of the powers conferred, and limitations prescribed by the law; and they desire that the Collector be instructed to carry it out with due discretion and a careful regard to the probable result, in the event of the estate being released from attachment at an early date and restored to the present proprietor. It seems, however, desirable that in every case he should place on record the established liability of the several tenures, irrespective of the unauthorized alienation, whether he deems it advisable to enforce such liability to its full extent, or to recommend a modified demand.

(True Extract.)

(Signed)

W. HUDLESTON,

Secretary to Government.

To the Board of Revenue.

„ the Government Pleader.

Exd. F. R. Bantleman.

215 March 1871

No. 476-

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 18th March 1871.

Read the following letter No: of

the Board of Revenue.

Requesting orders for levy-
ing full assessment on certain
Anoms in Pachipenta zemindary
now under attachment for arrears of
revenue in Vijagapatam District as
were alienated subsequently to passing
of Regulation XXV of 1802.

(A.E. 9th Novr 1870 No. 6,579)

The Gov^t please
that by Sec. 12, Regⁿ 25 of 1802,
Proprietors of permanently set-
tled estates are declared in-
competent to make any
appropriations of land which
it may be intended to exempt
such lands from bearing their
portion of the public tax on
the whole estate, unless the
consent of Gov^t shall have been
previously

J.P.

N.
B.A.

previously obtained for the purpose.

2. Sec. 13 declares that even after such consent the proprietor of the estate is still liable to pay to Govt. such an assessment of revenue, as may be fixed on such appropriated lands by the Collector.

3. The ^{Report} Govt. ~~Director~~ states that permanent grants at a low quit rent have been held in many cases to be leases, and therefore not alienations within the meaning of Regn. 25 of 1802, but he does not cite any cases and therefore the Govt. are unable to refer to them. They can however readily conceive that in many instances the ruling would be perfectly equitable, without yielding the position that each individual case must be

be judged on its own merits.
4. To adopt the ruling literally, as quoted, in its widest possible interpretation, would be to relinquish all security for the public dues from permanently settled estates, for there would be nothing to prevent a zemindar from alienating his entire estate at a nominal quit rent, which the Govt. would be bound to recognise in case of default and attachment, as a bar against enforcing the original full demand on the land. They cannot therefore but assume that the rulings to which the Govt. ^{Director} ~~Director~~ alludes must have had ~~the~~ reference to such perfectly legitimate transactions ~~imposed~~ as ^{fixed} leases at low permanent rents to encourage the reclamation of waste land, or

the clearing of jungle, which are calculated to improve and not to weaken the security for the State revenue.

They cannot suppose that the reservation of a quit rent of (say) one anna in a permanent lease of land properly assessed at Rs. 500 would legitimate a transaction which would be absolutely void ab initio if the one anna were not reserved.

5. They are therefore of opinion that unauthorised alienations on an inadequate quit rent (all the circumstances of the transactions being considered) are under Regn 25 of 1802 not good as against Govt or against any successor of the zamindar making them, and even in the case of such zamindar himself the Govt are disposed to think that Sec. 12 would afford

afford a sufficient remedy to any suit brought to enforce specific performance of the agreement to alienate the land, although it might not relieve him from liability to equivalent damages.

6. In accordance with these views, the Govt consider that they are perfectly at liberty to bring up to their proper assessment all land in the Pachipenta Zamindari now under attachment which has been either fraudulently or recklessly rented below that standard, in the direct exercise of the powers conferred by Sec. 32, Madras Act 2 of 1864 which declares that leases of land in attached estates at rates lower than the usual rates

of appointment and not given
for any specified purposes
are not binding on the Collector
until established by regular
suit.

The Govt are also in-
capable to accept the doctrine
that service tenures cannot
legally or equitably be modified
when the service is no longer
required. Stated broadly, the
doctrine would invalidate
probably one half at least of
the former settlements which
have been made in this and
other parts of India, but
if the Govt which was
competent to establish the
service tenure is competent
to modify it, a fortiori the
Zemindar who was not competent
to make it, cannot together
with his predecessors be held
bound by it for all time to come.

8. The immemorial
custom and practice of the
Country might be pleaded in
support of any such claim. It
would lie for the opposite
party to establish the contrary
in the particular instance.

9. The occupation right
is in no way affected by
principles now laid down. The
Govt would greatly regret any
measure which should tend
to weaken those rights in
the hands of
Zemindars.

10. The Govt therefore
concur in opinion with the
Board that the proposed
measure for securing the
public revenue from the
Pachisenta estate is a
legitimate and proper application
of the powers conferred, and

imitations prescribed by the
law, and they desire that the
Collector be instructed to carry it
out with due discretion and
a careful regard to the probable
result in the event of the
estate being released from
attachment at an early date
and restored to the present
proprietor. It seems however
desirable that in every case
he should place on record
the established liability of the
several tenants, in respect
of the unauthorised alienation
whether he deems it advisable
to enforce such liability to
its full extent, or to recom-
mend a modified demand.

L.R.

14 Feb 1871

3 Copies to the Govt Pleader

Ho. Secy

Proceedings of the Madras Government, Revenue Department,
18th March 1871.

No. 241. Read the following Proceedings of the Board of Revenue, dated 27th
February 1871, No. 879:—

as per No. 241 of 1871

the Board of Revenue.
the Accountant-General.

d. F. R. Bantleman.

this case.
ernment.

imitations prescribed by the
law, and they desire that the
Collector be instructed to carry it
out with due discretion and
a careful regard to the probable

results
estate
attach
and re
prop
District
he sh
the 25th
General
of the
whether
to en
its fu
mend

No 2381240

10/18/1871
5/10/54
8743/22

Collector's Office
in District of
Madras
14th Dec 1871

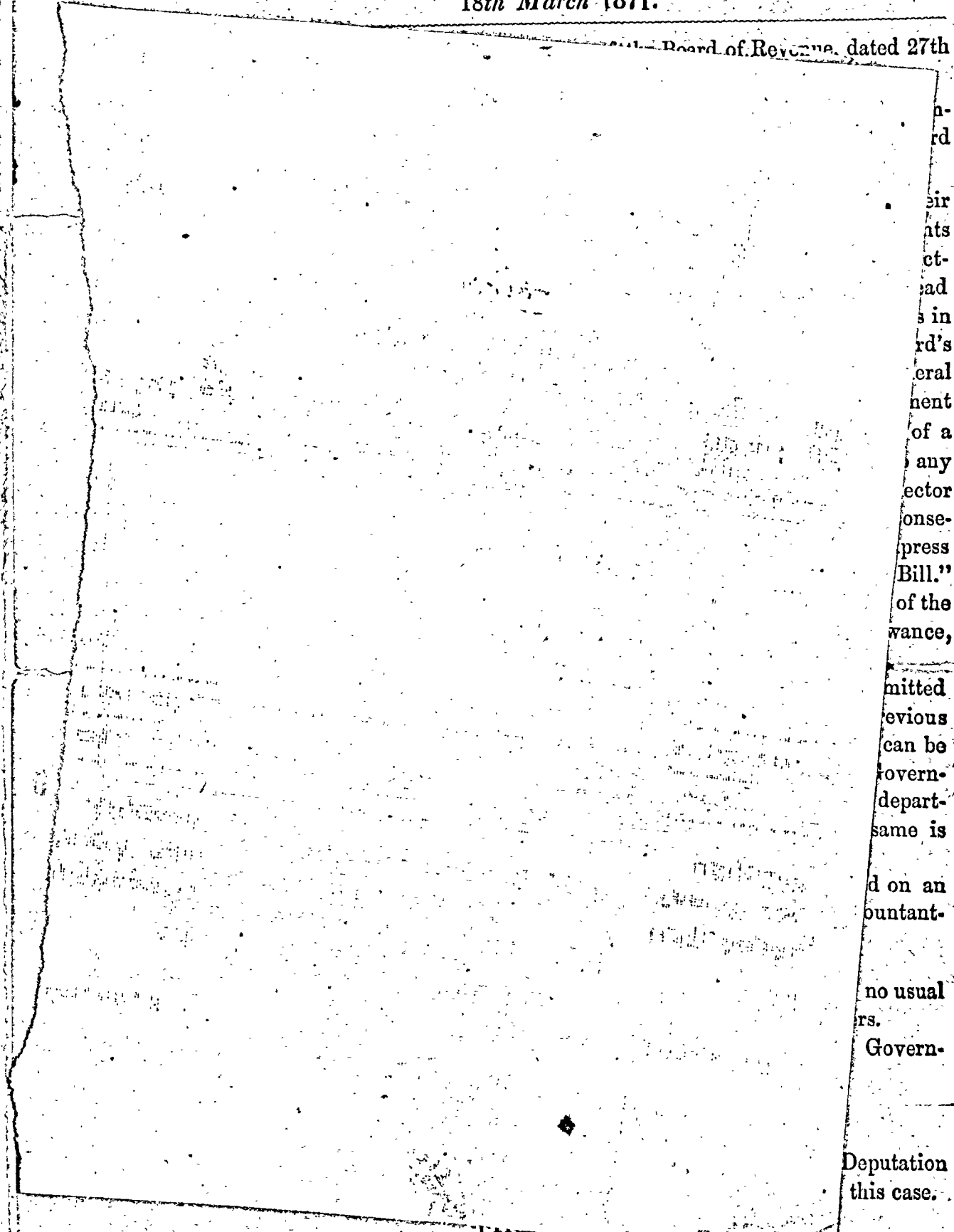
14 Lokabepur Desh

3 Copies to the Govt Plea

14/12/71

Proceedings of the Madras Government, Revenue Department,
18th March 1871.

Board of Revenue, dated 27th



n-
rd
air
nts
ct-
ad
s in
rd's
eral
ment
of a
any
ector
onse-
press
Bill."
of the
wance,

mitted
vious
can be
govern-
depart-
same is

d on an
ountant-

no usual
rs.
Govern-

Deputation
this case.

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue.
,, the Accountant-General.
Exd. F. R. Bantleman.