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*Proceedings of the Madras Government, Revenue Department,
15th May 1871.*

No. 198. Read the following letter from the Agent of the *Madras Jurist and Revenue Register*, to the Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 8th May 1871 :—

I HAVE the honour to forward accompanying receipt, being the amount of Government subscription for two copies of the *Revenue Register* supplied monthly, amounting to Rs. (20) twenty, in advance, for the year ending 31st December 1871, and to request you will be good enough to order payment of same.

No. 199. ORDER THEREON, 15th May 1871, No. 857.

Miscellaneous.

SANCTIONED.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Acting Secretary to Government.

To the Agent of the *Madras Jurist and Revenue Register*,
,, the Accountant-General.

Exd. F. R. Bantleman.

Revenue Register Office

Foster Press

Madras 8th May 1871

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No. 1.] MADRAS:—MONDAY, JANUARY 16, 1871, [Vol. V.

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MADRAS JURIST AND
REV. REGISTER OFFICE,
15th January 1870.

THE
MADRAS REVENUE REGISTER.

No. 1.] MADRAS:—MONDAY, JANUARY 16, 1871. [Vol. V.

**ARCHÆOLOGICAL REMAINS IN THE
KISTNA DISTRICT.**

Among the studies best fitted to attract the attention and interest of thoughtful men, archæology holds a prominent place. "The proper study of mankind is man," as the old quotation fittingly puts it; man in his relation to his Creator, man in his relation to the creation of which he is the head and lord, man as he was in the past and as he is in the living present. What more natural or reasonable than the desire innate in all men and nations to discover who were their ancestors, where the land of their birth, or who had preceded them in the dim past? We find the early history of all nations veiled in the same hazy mist of ignorance; tradition striving to so arrange the fragments of remembrance accorded her, as to form a coherent story sufficiently gratifying to the national pride, as witness the legends of ancient Rome. At this period of national life any remains of the temples, utensils, &c., of their forefathers become to the young and enthusiastic people objects of deep reverence, if not absolute worship. After a time, when history properly so-called takes the place of mere legendary lore, these remains, no longer blindly adored, present to the national mind a series of problems which,

when solved, throw a significant light over the infancy of the race. Archæological remains are of various kinds; and while some, such as coins or inscriptions, afford exact and reliable information as to dates and events, others, as fragments of ancient temples or broken pottery, &c., only give us general information as to the manners and customs of bye-gone days. Here in India the masses of the people themselves perhaps care but little to have their legends explained, or possibly confuted, by these silent witnesses; but it is a matter of great interest to the curious and knowledge-seeking conqueror, as it will be to savans of all nations, to learn all they can of the various races by which India has successively been overrun, or to gather anything bearing upon the past history of this country. It was probably with some such object that the Government desired and obtained from Mr. J. A. C. Boswell, Collector of the Kistna District, an account of the ancient remains in that portion of the country.

We have been favoured by the Revenue Secretary to Government with a copy of Mr. Boswell's report, in the perusal of which we have been deeply interested. This gentleman evidently brought a well-tutored mind to his task, in the accomplishment of which he displays considerable research. Having with great industry he gained a knowledge

of his subject, he has, with equally good judgment and powers of classification, reduced the mass of his information into a well-arranged paper, in which he divides his subject under nine distinct heads. On each of these classes Mr. Boswell furnishes us with full information, which, for the benefit of our readers, we propose to epitomize as briefly as we can. The nine classes are so arranged as to illustrate the corresponding eras of Indian history. We quote Mr. Boswell's own words:—

I. "Natural caves enlarged by the hand of man, and used as dwelling places probably by the aborigines.

II. Very ancient sculptures of serpents belonging probably to the Takshaks, or Dasyus.

III. Cromlechs, sepulchral tumuli, and stone circles, the remains of the early Scythic or Turanian races before the Aryan invasion.

IV. The rock caves, and temples, and topes of the Buddhist era.

V. The relics of the transition period when Brahminism triumphed over Buddhism, represented by Brahminical sculptures introduced into the old Buddhist caves and sculptured stones taken from Buddhist buildings, and used in the construction of temples to Vishnu and Shiva.

VI. Temples of the Brahminical period, with inscriptions which purport to be from 300 to 800 years old.

VII. Forts illustrating the periods of the Oriya Sovereigns, the Reddy Chiefs, the Rajayanagar or Royalu dynasty, the Mahomedan conquest, the rise of Zemindars, and the power of the Mahrattas and Rohillas.

VIII. The mahals or palaces of Zemindars constructed within the last century.

IX. European remains—Portuguese, Dutch, French, and English."

I. *Aboriginal Caves.*—These caves are, it appears, very numerous in a portion of

the country called the Palnad. Even to the present day these recesses are much venerated by the people. Mr. Boswell mentions one that he visited at Guttikonda, where the late Curnum was, at his own request, buried opposite to the entrance. These caves appear in some places to have been formed by the action of water, a circumstance to be frequently met with in the limestone formations, as we see in Derbyshire and elsewhere. We can readily credit, too, the tales of subterranean passages piercing the limestone for a considerable distance; though we must, with Mr. Boswell, refer the stories of their extending to Benares and Rameishwaram to "local tradition." These caves, several of which Mr. Boswell visited in person, were no doubt originally formed, as before mentioned, by the action of water; but they were most probably subsequently improved and rendered habitable by the aboriginal races of the country. It is very strange how, in all lands, fancy or tradition has woven mystic legends around springs, wells, and caves. In enlightened England, how many simple-minded folk attach an undue importance to the healing or other beneficent properties connected with the "holy well," and ascribe magic virtues to some little mountain stream whose waters were once the solace of saint or anchorite.

II. *Very ancient sculptures of snakes, &c.*—These sculptures Mr. Boswell believes to be of great antiquity, and he ascribes their production to the races who inhabited the country prior to the Scythic or Turanian immigration. These races, he believes, may have been the Takshaks or Dasyus. A most interesting account of these Dasyus is to be met with in "Annals of Rural Bengal" by Mr. Hunter of the Bengal Civil Service. We find them mentioned also in Max Müller's "Lectures on the Science of Language." At page 266, in commenting on the derivation of the term *Aryan*, we

find the following passage:—"Arya is a Sanskrit word, and in the later Sanskrit it means *noble, of a good family*. It was, however, originally a national name, and we see traces of it as late as the law-book of the Mānavas, where India is still called *Āryā-āvarta*, the abode of the *Āryas*. *Ārya-bhumi* and *Ārya-desā* are still used in the same sense. In the old Sanskrit, in the hymns of the Veda, *ārya* occurs frequently as a national name and as a name of honour, comprising the worshippers of the gods of the Brahmins as opposed to their enemies, who are called in the Veda *Dasyus*. Thus one of the gods, *Indra*, who in some respects answers to the Greek Zeus, is invoked in the following words (*Rigvéda*, i., 57, 8), 'Know thou the *Āryas*, O *Indra*, and they who are *Dasyus*; punish the lawless and deliver them unto thy servant! Be thou the mighty helper of the worshippers, and I will praise all these thy deeds at the festivals.' Those *Dasyus* appear from the time of the Aryan invasion to have been their contemned and despised, but no doubt formidable, enemies. Though oppressed and crushed beneath the heels of their proud conquerors, the descendants of these ancient tribes still exist; nay more, they form the peasant class of the country. The chief remains of these primitive people found by Mr. Boswell were ancient sculptures of snakes, which, as he says, are still regarded by the people with much reverence, and, from their being usually found collected around some sacred tree, afford additional evidence of the worship of trees and serpents. Strange that the same superstitions should have swayed the minds both of Druids and *Dasyus*, inhabitants of lands so widely severed in all physical respects!

III. *Scythic remains of sepulture.*—We learn from Mr. Boswell's report that the cairns and cromlechs examined by him in the Kistna District, were very similar to those found in Coimbatore and on the Neilgher-

ries. These strange sepulchres were oblong in shape, sunk below the level of the ground, covered to a considerable depth with sand and stones, the only external sign of them being a large smooth flat stone on the surface of the ground. In some there are several compartments, each of which contains some ashes of human bodies, evidently, Mr. Boswell tells us, burnt prior to interment. Besides these burnt bones are some coins and variously shaped vases, and cups of burnt clay: these vessels do not hold the mortal remains, but seem to have been intended for the reception of food or offerings for the dead. Here again, we see a resemblance to the customs of other semi-savage nations. The North American Indians place food, clothes, and implements of various kinds in the graves of their friends. This custom is prettily referred to by Longfellow in his well-known poem of "Hiawatha," where a messenger from the spirit world tells him—

"Do not lay such heavy burdens
In the graves of those you bury;
Not such weight of furs and wampum,
Not such weight of pots and kettles;
For the spirits faint beneath them.
Only give them food to carry,
Only give them fire to light them."

These *kist-vacns*, as they appear to be called, are of various sizes, and their origin is referred by Mr. Boswell to the Scythian and Turanian races, who were the first immigrants of India, and the first of the successive waves of conquerors who have from time to time subjugated large portions of the land. There is a very curious circumstance revealed by these strange *kist-vacns*; the remains they contain appear to have been first burned, then buried. This Mr. Boswell points out, and adds that no other people in this part of India practised both cremation and interment. These cairns are usually found where there are rude stone circles, such as Mr. Boswell tells

us are noticed by Mr. Fergusson, author of "Tree and Serpent Worship."

IV. *Buddhist remains.*—Of these, Mr. Boswell tells us the most important are the ancient marble sculptures at Amravati, on the Kistna. Here are actually the remains, not merely of a few isolated temples or columns, but of a ruined city. The first discoverer of these remains was a Captain Mackenzie, who visited the spot first in 1797, and again in 1816. He caused drawings to be made of the sculptures, and selected some of the stones to be sent to Calcutta. The next explorer of these hidden treasures was Sir Walter Elliot, who continued the excavation about the year 1840. Some of the sculptures he selected eventually found their way home to England, but not until they had been exposed to the influence of the sun and salt air for fourteen years at Madras; nor did the authorities at the British Museum appear to take much better care of them until they were discovered by Mr. Fergusson, who seems to have known their value, and was competent to unriddle their mystery. He seems to have considered them as portions of three different concentric circles, the inner one of which was ornamented with such fine carving as to resemble the miniature work applied to ivory. Mr. Boswell does not doubt that the stone circles of Amravati are the perfection of the same idea that we see in its crude and embryonic form in the circles of Stonehenge and elsewhere. We find an account of a circle at Stennis in Scotland described in the pages of Hugh Miller. He says of it; "It is considerably more than four hundred feet in diameter; and the stones which compose it, varying from three to fourteen feet in height, must have been originally from thirty-five to forty in number, though only sixteen now remain erect. A mound and fosse, still distinctly traceable, run round the whole; and there are several myste-

rious looking-tumuli outside, bulky enough to remind one of the lesser morains of the geologist. * * * The circle of Stennis was a circle, say the antiquaries, dedicated to the sun. The group of stones on the southern promontory of the lake formed but a half circle, and it was a half circle dedicated to the moon." We cannot help wondering whether Hugh Miller would have found human bones and implements of various sorts had he examined the "mysterious-looking tumuli" near the "standing stones of Stennis." Mr. Boswell gives a long and interesting account of these Buddhist remains at Amravati, partly culled from the pages of "Tree and Serpent Worship" by Mr. Fergusson, and partly the result of his own careful personal inspection. We cannot, however, go further at present into the subject than to mention that what inscriptions were found at Amravati are in the Pali language. Mr. Boswell next mentions some rock caves at Bezwada and Undavalli, which appear to have attracted the attention of Mr. J. Fergusson, when a scientific party were there to witness the solar eclipse in 1868. Some of these caves are still inhabited, for Mr. Boswell found three old people in one, and in another a byrági had lately had his abode. Mr. Boswell also mentions a fine figure of Buddha cut in black stone; it was found buried at the foot of a hill, and is now in the library at Bezwada. There too, are a collection of small figures of Buddhist saints varying from one to two feet in height. "These (says Mr. Boswell) are beautifully executed, and might bear comparison with Grecian or Roman figures for symmetry and design. Most of the figures have the caste thread, and the folds of the dresses are very gracefully represented. Each figure formerly stood on a pedestal of its own; but I am informed that, as these pedestals bore certain characters, probably the names of the saints,

they were sent to Madras to be deciphered. They have never, however, been returned. I presume they are in the Government Central Museum. I would recommend bringing the figures and these pedestals together again. Each figure has a spike below the feet to fit into the pedestal. The features are finely cut, the hair is woolly, and the holes of the ears unnaturally extended and pendant. In one of the images the eyes are of silver. The positions are very natural, easy, and graceful." At Undavalli there are caves and temples; one of these, a four-storeyed one, though of Buddhist origin, has been converted to Brahminical purposes, and is now dedicated to the service of Vishnu.

V. *Relics of the transition period when Brahminism triumphed over Buddhism.*—Mr. Boswell prefaces this portion of his remarks on the archaeology of the district by a brief sketch of the rise of the various sects among the nations of India. He speaks first of two immigrations of Aryans, one of the solar race, and one of the lower race, which latter he considers took place about the thirteenth century B. C. Then, he says, by the third or fourth century before Christ, the Aryan race had become so mixed that they could no longer obey the dictates of the Veda, and, therefore, they acquiesced gladly in the renewal of the Turanian religion under the form of Buddhism. After the seventh century Buddhism declined; Sunkara Charya, the founder of the Shiva faith, had come into existence about the eighth or ninth century A. D., and out of the ashes of Buddhism sprang the Saiva and Vishnuva sects. In the Kristna District Mr. Boswell found many instances of Brahminical sculptures being introduced into Buddhist caves, and of Brahmin temples being partially built of stones taken from Buddhist buildings. In his own words,—“A careful examination of existing temples would lead to the discovery of many ancient relics of

Buddhism; indeed, one comes across them continually, and the transition from the old to the more recent form of faith seems to be very clearly marked on the archaeological remains of this district.”

VI. *Temples of the Brahminical period with inscriptions which purport to be from 300 to 800 years old.*—In connexion with this part of his subject Mr. Boswell mentions two curious facts—first, that many of the older temples which have been abandoned do not seem to be held in any particular reverence by the people; and secondly, that, even where services are still conducted in an ancient temple, the beauty and distinctness of both sculptures and inscriptions are marred by unseemly coats of whitewash and unskilful daubs of oil or vermillion. This is barbarism indeed! We have seen some of the temples of the land carved and ornamented with all the beauty and delicacy peculiar to the Moorish or Arabesque style, and cannot but think that to wilfully spoil such work argues an utter want of art-feeling in the people. There appear to be some fine temples at Mangalagiri, eight miles south of Bezwada, also a ten-storeyed gopuram, a car, and large tank. Mr. Boswell mentions that “some of the carving on the temple car which is kept outside are good, but much of it is abominably disgusting;” further, that the objectionable carvings are evidently the work of less skilful hands. This seems reasonable enough; it is difficult to imagine superior artists perverting their talents to the illustration of immoral, disgusting, or degrading subjects.

VII. *Forts illustrating the periods of the Ooriya Sovereigns, the Reddy Chiefs, the Bejayanagar or Royalu dynasty, the Mahomedan conquest, the rise of the Zemindars, and the power of the Mahrattas and Rohillas.*—The most important forts are said to be at Kondavid, Kondapally, and Bellamkonda. At Kondavid there are three forts of successive periods. The first is situated in a

valley enclosed between two spurs of the hill bearing that name. The outlet of the valley was barred with an embankment. If the popular legend be true, the fate of the inhabitants of this little fastness was tragic enough. The sluice, by which water collected in the valley was to be permitted to escape to the plain below, got out of order and would not act; during the course of a single night so much rain fell that the whole fort was flooded, and every soul within its luckless walls perished. The second fort mentioned by Mr. Boswell is at the top of the hill. It was furnished with two gates—one, considered the original entrance, was called *kattol diddi*; the other, used in later years, was known as *pedda darwaja*. The former was surmounted by a building originally four storeys high, but of these only two are now standing. This fort had some genuine claims to the name, as it commanded an extensive range of country, was loopholed for musketry, had storehouses sufficient to contain considerable stores, and last, but not least, was well supplied with water—the natural springs being husbanded in three large tanks, which led into each other and filled in succession as the water rose. The third of the Kondavid forts is said to owe its origin to Kristna Deva Royalu, who succeeded to the Reddy dynasty, on the death of the last of the race, by cruelly and most treacherously capping the death of the seventy-two Reddy chiefs owning allegiance to their king. Kristna Deva's plan was said to have been the setting up of a new shrine, at the consecration of which the seventy-two chiefs were invited to attend. Thus beguiled from the security of their hill fortress under the pretence of assisting at the consecration rites, each chief was successively conducted into the *antaralikam*, and there noiselessly precipitated into a deep and concealed well. Kristna Deva, however, does not appear

to have had any fancy to succeed to the dominion of the hill fort, for he built a new one on the plain, the remains of which represent the third of the Kondavid forts. This fort, too, Mr. Boswell tells us, was a place of some strength and importance, with paved street, gates, and ramparts. Inside the fort is the temple, at whose inauguration the Reddy chieftains were butchered; and which, we are told, is a fine structure with handsome pillars, presenting in some instances clusters of five together cut out of a single block of stone. Those iconoclasts of India, however, the reckless Mahomedans, who did the same work of destruction here which Cromwell and his Roundheads accomplished in England, desecrated the Hindoo temple, and converted a portion of it into a mosque. In Kondapally there is a fort about ten miles distant from Bezwada; here, too, the vestiges of Mahomedan rule are evident in their deserted musjids, ashur khanas, and burying grounds. Here, too, are found British remains in the shape of deserted barracks and a burying ground. Towards the top of the steep hill are the ruins of an old palace: there are towers and battlements and various other works, which, we are told, completely command the pass. This palace Mr. Boswell found to be purely Mahomedan in its architecture, although the erection of the fort is ascribed to the Reddy chiefs. The fort at Bellamkonda is on the top of a hill; it is fortified, and has granaries, storehouses, and a reservoir for water. Besides these there are forts and remains of palaces, &c., at Vinukonda, Dharamkota, Amravati, Chintapalli, and Gurzalu, as well as in many other parts of the district, which do not call for special mention.

VIII. *The Mahals or palaces of Zemindars constructed within the last century.*—Of these, Mr. Boswell only mentions two; the palace of the ex-Zemindar of Narsarowpet, and the palace of the Devarakota

Zemindar of Sallapalli. These appear to be built in the Mahomedan style, and are adorned with fountains, gardens, and shrubberies, evidently built after the wave of Mahomedan conquest had passed over this part of the country.

IX. *European remains.*—These are naturally neither numerous nor important; the most ancient of them seems to be some mounds called *Frangalu dinne*, being the remains of a town called *Frangulapatnam*, probably erected by Portuguese settlers about the thirteenth century. There are besides some remains of the Dutch in the shape of a burial ground and a ruined chapel. The French, too, have left a graveyard to testify to their brief occupation of Masulipatam from 1753 to 1759. As to the English, they built a fort; but its walls are now levelled to the ground. Sir Charles Trevelyan, in the spirit of the improvements inaugurated by him at the city of Madras, proposed to level these ramparts and to make boulevards and a people's park: the terrible cyclone of 1864, however, prevented the execution of this pleasing design.

Mr. Boswell's paper has deservedly earned the thanks both of the Revenue Board and the Government; and in the name of the thinking public, it may not be out of place for us to express our own sentiments of gratefulness for the task he has accomplished, in his valuable collection of archaeological information connected with the early Aryans and still anterior races of India. All of us have not the opportunity of examining ancient remains for ourselves, nor do we all possess the necessary knowledge and patience to unravel their problems, even if we could see them. We, therefore, are the more indebted to gentlemen who, like Mr. Boswell, at the expense of much fatigue and hardship of administration, explore and interpret these signs for us. It would not, we think, be

amiss for each gentleman entrusted by Government with the duty of preparing District Manuals to include an account of the archaeological remains of their several districts. We are glad to observe that Government have issued instructions to prevent the removal or wanton disfiguration of the figures and inscriptions marking the relics of the Buddhist and Brahminical eras, though we fear that, in these instructions, they calculate a little too much on the popular reverence of the people as a sufficient safeguard against the obliteration of images and similar sculptures.

HIGH COURT—MADRAS.

SCOTLAND, C. J., AND INNES, J.

Attachment of land under decree—Previous transfer of puttah—Possession at date of attachment—Section 246, Civil Procedure Code.

Where A sued to recover certain land attached by B, under a decree of Court, as against C, and it was contended that the land, though standing in the name of C, belonged not to him, but his father A, who had merely, from natural affection, transferred his puttah to his son, but not the land itself—

HELD, that, as, at the time of attachment, the puttah stood in the name of C, and A had failed to prove that he and C were living apart, or that he was holding for C, the transfer to C must be considered as binding and efficient in the absence of evidence to the contrary, and that the land was, therefore, liable to be attached to satisfy the decree against C.

R. A. 62 of 1870. -

Hoossain Khan Sahib and two others v. Abdool Khader Sahib and another.

THIS was a suit to recover certain real property attached by the first defendant in execution of a decree held by him against second defendant in O. S. 36 of 1865, and part of which (plaint Nos. 8 and 9) was purchased by first defendant and the rest by the third defendant, at the Court sale. The plaintiff alleged that he bought the plaint-lands from different owners at several times, varying from twenty-nine to thirty-six years, prior to the institution of the suit; that he dug wells and planted trees in the lands; that twenty-four years

since he transferred the puttah of a portion of the lands to his son (the second defendant), and about six years ago transferred to him the puttah of the remainder, but he contended he never transferred the land. He stated that the sale deeds executed to him for the lands were destroyed when his house was burnt down fifteen years ago. The first defendant alleged that the property belonged to second defendant and not to the plaintiff, who, he admits, is the second defendant's father. First defendant also took exception to the valuation of the wells and trees, which were, he alleged, overrated by plaintiff. The second and third defendants were *ex parte*. The Civil Judge, Mr. Kindersley, was of opinion that the plaintiff had sufficiently established his title. Several witnesses deposed to his having purchased the lands of them at a time when second defendant was a child under 8 years of age. The evidence of these witnesses was corroborated by Exhibit C., which was a cowle granted in 1838 by the Collector to the plaintiff and one Kani Gounden jointly. This document bore out the statement that plaintiff had purchased half these lands from Muthusami Pillay and half from Kani Gounden; it also showed that in 1838 plaintiff held half these lands, at which time second defendant was a minor, only 10 years of age. Defendant's Exhibit I. also tended to strengthen plaintiff's case, for it was a razinamah for a transfer of the puttah of part of the lands in which plaintiff joined. This showed that plaintiff was then a puttahdar of the land, and the transfer of the puttahs to his son's name was doubtless made (as is frequently the case) from affection. The evidence also showed that plaintiff had dug wells in the land; that he had been in possession of it for thirty years; and that he, not second defendant, paid the Government tax on the lands. It was true that plaintiff did not produce the deeds of sale by which he held the lands; but the witnesses deposed to his house having been burnt down fifteen years since, when all his documents were destroyed. The Civil Judge thought that plaintiff had satisfactorily accounted for the non-production of his sale deeds, and that secondary evidence of their contents could be properly admitted. On these grounds the Civil Judge decreed for plaintiff, and threw all the costs on the first defendant, who, he remarked, was the sole cause of the suit. From this decision first defendant appealed on the ground, *inter alia*, that there was no satisfactory evidence of the loss of plaintiff's alleged title-deeds, and, therefore, secondary evidence of their contents should not have been received.

Hindley for appellant.

Rama Row for first respondent.

The High Court delivered the following

Judgment:—27th October 1870.

Plaintiff brought this suit, under Section 246 of the Civil Procedure Code, to obtain the release from attachment of certain lands seized in execution of a decree obtained by first defendant against second defendant (plaintiff's son). The lower Court decreed the restoration of all the lands by first defendant to plaintiff; first defendant appeals as regards two particular plots, numbered 9 and 10 in the plaint. The only point which we have to consider is, whether plaintiff has shown conclusively that these two plots, which we understand correspond to field No. 70 in the Revenue register, were his exclusive property at the time of attachment. And first, as to the documentary evidence. Exhibit C. shows that in 1838 plaintiff and one Kani Gounden were joint owners of these lands. From Exhibit I. we gather that in 1843 these joint owners transferred their right of holding a puttah for the said lands to second defendant, and in 1863-64 we find from Exhibit E. that second defendant continued to hold the puttah in his name, and that plaintiff held a separate puttah for other lands (Exhibit D.) *Prima facie*, therefore, these lands were in second defendant's exclusive possession in 1863; and, as no subsequent puttahs are produced, we may infer that, at the time of attachment, the puttah was still in second defendant's name. Then, how does the plaintiff meet this case? He produces Exhibits F. to K. to show that he paid the kists for the lands which stood in his own name and in his son's name from Fuslies 1270 to 1275, and we must take it that he did so. But this is not inconsistent with possession and enjoyment by the father on behalf of the son, provided that the son lived with the father. It was open to plaintiff to show that second defendant did not live with him, but we can find no evidence on that point. The oral testimony amounts to little more than that the father was looked upon in the village as the owner of the lands. We cannot, upon this evidence, decide that the possession was that of the father and not of the son. The transfer by the father and Kani Gounden in 1843 may have been with a view to defraud the creditors of the father, or it may have been from motives of affection. In either case we must hold the arrangement then made to be valid, and to be still binding on the father in the absence of evidence to the contrary. The decree of the lower Court will be modified so far as it decrees restoration of the lands Nos. 9 and 10 to plaintiff, and the original suit dismissed. The respondents will pay the costs of this appeal, and the parties will bear their own costs in the lower Court.

SCOTLAND, C. J., AND INNES, J.

Inamdars and ryots—Puttahs—Contract—Local usage—Sections 10 and 11, Madras Act VIII of 1865.

In a suit between inamdars and ryots for enforcement of puttahs, the former claimed to have warum both on nunjah and garden, whereas the latter claimed to pay a money-rent on nunjah and a reduced-rent on garden. The Head Assistant Collector decided according to the contract of the parties. The Civil Judge modified his decree. He confirmed the payment of warum on nunjah; but directed that the ryots should pay reduced rent on garden in accordance with that payable in the neighbouring Government garden.

HELD, in special appeal, that, under Section 10, Act VIII of 1865, the proper puttah was to be determined according to the rules prescribed in Section 11; and that, under these rules, there was no reason to disturb the decision in respect to nunjah; but, as there was no evidence of contract or local usage in respect to garden, the rent payable was to be fixed according to the rates prevailing in the neighbouring lands.

S. A. 515 of 1869.

Mahasingavastha Aiyar and another v. A. Gopalaiyan and twenty-one others.

S. A. 582 of 1869.

A. Gopalaiyan and fifteen others v. Mahasingavastha Aiyar and another.

THESE were two special appeals against the decree of the Civil Court of Trichinopoly in R. A. 10 and 15 of 1868 modifying the decision of the Acting Head Assistant Collector in Summary Suit 3 of 1867. The Acting Head Assistant Collector had directed the defendants to receive puttahs from, and execute muchilkas to, plaintiffs, according to which the plaintiffs were to receive half *warum* for the nunjah, and Rupees 21-9-4 per cawny for the garden cultivation. From this decision both parties appealed; defendants, on the ground that they should pay a money-rent, not *warum*, on the nunjah, and should pay only Rupees 11-4-0 per cawny on the garden cultivation. Plaintiffs, on the other hand, based their appeal on the ground that they were entitled to *warum* on the garden as well as on the nunjah land. The Civil Judge, Mr. Cadell, was of opinion that, as regarded the nunjah land, the Acting Head Assistant Collector had decided rightly; but that, as to the garden land, defendants were entitled to share in the benefits conferred by Government in the late re-assessment of the district; and that as, in the terms on which the inam was given, this right was carefully restricted, there could be no hardship to the plaintiffs, who were the inamdars. The Civil Judge accordingly modified the decision of the Acting Head Assistant Collector as to the garden lands, and

directed that the garden *teerwah* should be Rupees 11, or what, on examination of the rates paid in surrounding villages for the same lands, should be found to be the exact *teerwah* on this kind of cultivation. From this decision both parties appealed to the High Court.

In S. A. 515 of 1869, *Mayne and Strinavasa Charry* for plaintiffs; *Miller and Parthasaradhy Iyengar* for defendants.

In S. A. 582 of 1869, *The Advocate-General and Mayne* for plaintiffs; *Miller and Parthasaradhy Iyengar* for defendants.

The High Court delivered the following

Judgment:—28th October 1870.

In S. A. No. 515 of 1869.—This is an appeal arising out of a suit by plaintiffs, as inamdars, to compel the acceptance of puttahs, under Madras Act VIII of 1865, stating the rent for the garden and nunjah lands held by the defendants at a *warum* rate. The Acting Head Assistant Collector, before whom the case was originally heard, decided, in accordance with the admissions of the defendants, that a *warum* rent was payable for the land under nunjah cultivation, but that a fixed *teerwah* of Rupees 21-9-4 per cawny was the proper rate of rent for the land under garden cultivation, his decision on the latter point being founded apparently upon, as he considered, the contract between the parties proved by the receipt marked A. and the other similar receipts adduced in evidence by the defendants. In the cross appeals by the plaintiffs and defendants from that decision, the Civil Court modified it by ordering the fixed *teerwah* to be reduced to Rupees 11, "or what, on examination of the rates paid in surrounding villages for the same lands, may be found to be the exact *teerwah* on this kind of cultivation," and otherwise confirmed the decision. The ground of the modification appearing from the Court's judgment is that the defendants were not liable to pay more for garden cultivation than the reduced rate assessed by the Government for similar land under the recent survey of the district. From the order of the Civil Court the plaintiffs have brought the present special appeal, and the substantial objection relied upon by the appellants is that the reduced assessment on garden cultivation which the Government had thought proper to make is not binding upon them, and that they are entitled to *teerwah* at the rate adjudged by the Head Assistant Collector, the same having been the rate hitherto paid by the defendants as evidenced by the receipts in evidence.

Section 10 of Madras Act VIII of 1865 requires that the question, what puttah ought to be offered and accepted, shall be decided in the mode prescribed in Section 11 for determining the rates of rent. That mode consists of a series of rules having operation in consecutive order. First, effect is required to be given to the express or implied contract of

the parties; secondly, if no contract exists, then it must be ascertained whether an assessment has been made in the fields under a survey made previous to the 1st January 1859, and, if so, that assessment is to be accepted as the proper rate of rent; thirdly, if the case falls within neither of those rules, then the clearly ascertained general local usage must govern the decision, and, should there be no ascertainable local usage, the rent must be fixed "according to the rates established or paid for neighbouring lands of similar description and quality." These imperative rules are declared unqualifiedly to be applicable "in the decision of suits involving disputes regarding rates of rent, which may be brought before Collectors under Sections 8, 9, and 10." In the present case, therefore, the decision must be governed by them. We can give no effect to the argument of the Advocate-General that hardship will result to the plaintiffs and other private proprietors by their being compelled to submit to whatever reductions may, from time to time, be made in the rates of rent for the lands of the Government; nor, indeed, are we prepared to say that any real prejudice is likely to arise, seeing that there is a provision in the section securing to either party the right to claim payment of rent in kind, according to the *warum*, instead of the rent determined according to the above rates; or, if the *warum* cannot be ascertained, such rent as appears to be just, having reference to any increase in the value of the produce or the productive power of the land, produced otherwise than by the agency, or at the expense, of the ryot.

Applying, then, the provisions of Section 11, it is clear that the proper rent must be determined according to the rates established or fixed for neighbouring lands of a similar kind. The receipts acted upon by the original Court do not, it appears, relate to the rent of the lands now in dispute; they are, therefore, no proof of a contract as to such rent between the parties, and there is nothing in evidence to bring the case within the second clause of the section, or to show the existence of a general local usage as to the rates of rent. As, from the terms of the decree of the Civil Court, it cannot be said that the proper amount of the rent has been adjudged in accordance with the section, it becomes necessary to require a finding on the issue. "What is the proper rate of rent for the garden lands held by the defendants according to the rates established or paid for closely neighbouring lands of similar description and quality?"

In S. A. No. 582 of 1869.—No ground has been shown for disturbing the decree of the Civil Court as to the rent payable for the nunjah lands. And, upon the other question as to the proper rate of rent for the garden lands, the judgment of the Court in the cross special appeal, No. 515 of 1869, is decisive, and must be followed.

SCOTLAND, C. J., AND HOLLOWAY, J.

Zemindar—Agraharamdar—Rent—Instalment—Form of receipt—Prescription.

Where a Zemindar demanded a certain rate of rent and the agraharamdars objected, on the ground that they had always paid a smaller sum, and where the Civil Judge found that they were liable to pay a larger rent than that admitted by them, because that amount was noted in their receipts as first instalment—

Held that, notwithstanding the employment of these words, as it appeared from the evidence that the Zemindar had never exacted more than the sum admitted by the defendant, he was not entitled to recover more.

R. A. 7 of 1869.

Bachupalli Basviah Naidu Gauru v. Vencutacharu and nineteen others.

R. A. 9 of 1869.

T. B. Kupacharu and two others v. Bachupalli Basviah Naidu Gauru.

THESE were cross appeals. The suit was brought by the Rajah of Calastry, in the name of his servant Bachupalli Basviah, Tahsildar of Pamur, one of the taluks of which the zemindary of Calastry is composed. The suit was laid in the Civil Court of Nellore for the recovery of a certain rate of rent for one-third of the village of Kancheruvu, held by the defendants, the agraharamdars. The plaint set forth that one-third of this village is in the Calastry Zemindary, and that it was given by the rajah's ancestors to the ancestors of the defendants as an agraharam at 96 Rupees per annum, at which rate arrears to the extent of Rupees 1,722-9-9 had accumulated. All the defendants, with the exception of the tenth, who was but an agent of some of the others, enjoyed the entire village as agraharamdars. The other two-thirds belonged to the jaghiredar of Udiagiri, on whom the land had been bestowed by the ancestors of the Calastry Rajah in return for assistance rendered in subjugating and annexing to the zemindary the lands of the Poligar of Sectarampuram and Pamur. The jaghiredary lapsed to Government in 1810. It was asserted that the rajah's ancestors fixed a rent of 2½ pagodas, or 96 Rupees at 4 Rupees a pagoda, on the one-third of the village retained by them, and this rate of rent the present rajah claimed with Rupees 1,722-9-9 as arrears. The defendants answered that the rent payable by them on the one-third of the agraharam belonging to the Calastry Zemindary was not more than Rupees 33-5-4. They asserted that the whole village had been granted to them by the then possessor (the Poligar of Sectarampuram and Pamur) on a rent of 100 Rupees per annum; that this rent had not been raised by the zemindary of Calastry when he annexed the village to his zemindary;

and that, therefore, they were not liable to pay more than one-third of 100 Rupees, or Rupees 33-5-4, on the one-third of the village retained by the Calastry Zemindars, the Government also, to whom the remaining two-thirds had lapsed, not requiring them to pay more than two-thirds of the 100 Rupees fixed for the entire village. The first point decided by Mr. Cockerell, the Civil Judge, was that the rajah was entitled to claim arrears of rent for a period not further back than three years. The next point for consideration was, what was the rate which the rajah was entitled to claim. On this point the Judge thought the evidence showed that the one-third of the village belonging to Calastry bore originally a rent of 66 Rupees and odd according to Mr. Collector Stratton's report, and he was more particularly of this opinion because the plaintiff referred to the report as accurately describing the state of things existing at the time, and that the Zemindar had never lowered this rent. Had he lowered it, defendant would not, the Judge argued, have suffered the words "for the first instalment" to creep into their receipts. "Why should there be these words," he continued, "if the 33 Rupees, for which amount the receipts are, was the whole yearly rent? But, on the other hand, there is nothing to show that the Zemindar ever raised the rent to 90 and odd Rupees. My view is that the Zemindar has always actually maintained the rent at 66 Rupees and odd; but has, for a good many years, every year thought proper, having collected half of it, not to press for the remainder. There is nothing to show he has in any year formally abandoned the uncollected half, therefore it seems to me he has now a right to recover a rent of Rupees 66-10-8 for the last three years, which are admittedly in arrear. Mr. Cockerell accordingly found that the rajah was entitled to rent on one-third the village at the rate of Rupees 66-10-8 per annum, and decreed him three years' arrears.

Both parties appealed. The Zemindar contended that he was fully entitled to rent at the rate of 96 Rupees a year as claimed in his plaint. The agraharamdars contended that they were only liable to pay Rupees 33-5-4.

Sloan for the rajah; Srinavassa Charry and Rama Row for the agraharamdars.

The High Court modified the decision of the Civil Judge for reasons given in the following

Judgment:—21st September 1870.

These are cross appeals by the Zemindar seeking that the rent be declared to be Rupees 96, and by the tenants seeking that it be declared Rupees 33-5-4. There is not a shadow of ground for the contention of the Zemindar, and his appeal (7 of 1869) must be dismissed.

His own plaint distinctly avers a payment in two kists (in accordance with the custom of the

country), and it is not pretended by either side that the kist is other than Rupees 33. With respect to the claims of the agraharamdars, there is evidence that for a long series of years no more than Rupees 33 have been exacted. This is confirmed by the report of Mr. Stouhouse after the two-third share had lapsed to the Government. He states that there had been an arbitrary increase by the jaghiredar, and suggests the reduction of the Government demand to Rupees 66, the rate at which the Zemindar was taking rent for his share. This is certainly evidence that as long ago as 1840 the rent paid was Rupees 33-5-4. The Collector, who recites the contents of the original grant, further states that Rupees 100 was the original beriz of the whole until the arbitrary increase. On the other side there is the account of Mr. Travers, of course extracted from the records of the Zemindar, stating the rent at the rate fixed by the Civil Judge. In further support of the Civil Judge's view there are the receipts given which recite this payment as for the first instalment, a phrase necessarily implying another to follow. Applying to the language of this receipt the custom of the country, the natural conclusion would be that of the Civil Judge if the evidence stood alone. Here, however, setting off Mr. Stratton's account against Mr. Stouhouse's report in 1840, we have the unquestionable fact remaining that there is literally no evidence of the exaction of any other rent than Rupees 33-5-4. This is in itself the very strongest evidence of the amount really due, and of the construction put by the party mainly interested upon the grant. It seems to us that this evidence ought to prevail, not being counterbalanced by the opposing evidence to which we have adverted. We think that the decree of the Civil Judge should be modified by decreeing rent for the three years at the rate of Rupees 33-5-4. The costs of both these appeals and of the suit in the Court below should be paid by the plaintiff.

SHORT NOTE OF MADRAS CASE.

SCOTLAND, C. J., AND HOLLOWAY, J.

Arrears of pension due to a deceased Zemindar not liable to be attached in satisfaction of decree against heirs.—This was an application to the Small Cause Court at Chittoor for an order to direct the Deputy Collector in charge of the Treasury to pay to the motioner (decreeholder in Suit 113 of the Court) the sum of Rupees 447-11-2; being arrears of pension due to one Sharfoomissah, deceased. The motioner had obtained a decree in Suit 113 for Rupees 447 against the heirs and representatives of the deceased Sharfoomissah, and this decree directed that execution should be taken out against

the parties; secondly, if no contract exists, then it must be ascertained whether an assessment has been made in the fields under a survey made previous to the 1st January 1859, and, if so, that assessment is to be accepted as the proper rate of rent; thirdly, if the case falls within neither of those rules, then the clearly ascertained general local usage must govern the decision, and, should there be no ascertainable local usage, the rent must be fixed "according to the rates established or paid for neighbouring lands of similar description and quality." These imperative rules are declared unqualifiedly to be applicable "in the decision of suits involving disputes regarding rates of rent, which may be brought before Collectors under Sections 8, 9, and 10." In the present case, therefore, the decision must be governed by them. We can give no effect to the argument of the Advocate-General that hardship will result to the plaintiffs and other private proprietors by their being compelled to submit to whatever reductions may, from time to time, be made in the rates of rent for the lands of the Government; nor, indeed, are we prepared to say that any real prejudice is likely to arise, seeing that there is a provision in the section securing to either party the right to claim payment of rent in kind, according to the *warum*, instead of the rent determined according to the above rates; or, if the *warum* cannot be ascertained, such rent as appears to be just, having reference to any increase in the value of the produce or the productive power of the land, produced otherwise than by the agency, or at the expense, of the ryot.

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Arrears of pension due to a deceased Zemindar not liable to be attached in satisfaction of decree against heirs.—This was an application to the Small Cause Court at Chittoor for an order to direct the Deputy Collector in charge of the Treasury to pay to the motioner (decreeholder in Suit 113 of the Court) the sum of Rupees 447-11-2; being arrears of pension due to one Sharfoomissah, deceased. The motioner had obtained a decree in Suit 113 for Rupees 447 against the heirs and representatives of the deceased Sharfoomissah, and this decree directed that execution should be taken out against

the property of the deceased. With reference to a notice issued from the Court of Small Causes, under Section 237 of the Civil Procedure Code, for the attachment of the above-mentioned arrears, the Deputy Collector informed the Court that Government had, in their Order dated 19th June 1869, No. 1,751, declared that the arrears in question were subject to the ordinary rules of Mahomedan inheritance. Section 3, Regulation IV of 1831, as amended by Act XXIII of 1838, protected grants of this description from attachment and sequestration in satisfaction of a decree or order of Court. The Acting Judge was, however, of opinion that that provision was not intended to protect the estate of a deceased pensioner. The following question was, therefore, referred to the High Court, "Whether arrears of yeomiah pension, due to the estate of the deceased Yeomiar, were subject to attachment and sequestration in satisfaction of a decree of Court." The High Court answered this reference in the following words:—"We think the present case is not distinguishable from the case reported in IV Madras High Court Reports, page 277; and, following the decision in that case, we hold that the arrears of pension due to the deceased pensioner are not subject to attachment in satisfaction of the plaintiff's decree."—*Referred Case 33 of 1870.*—8th July 1870.

HIGH COURT—CALCUTTA.

JACKSON, L. S., AND GLOVER, J. J.

Haridas Nandi (defendant), v. Jadunath Dutt (plaintiff).*

Right of way—Easement—Limitation Act XIV of 1859.

A right of way over the land of another must be kept up by constant use. After a discontinuance of such use for a period of six years, no suit can be brought to re-establish it.

Baboo Koma Kant Sein for the appellant.

Baboo Boikanto Nath Paul for the respondent.

THE facts of the case sufficiently appear in the judgment of the Court, which was delivered by JACKSON, J.—It appears to me that the decision of the lower Appellate Court in this case was erroneous, and that it is much to be lamented that the careful and well-considered decision of the Munsiff was reversed.

The plaintiff, it seems, had purchased a dwelling-house which formerly belonged to one Jaykisto Nandi, a relative of the defendant. Jaykisto Nandi having died, his widow sold the house, which appears to have remained unoccupied for the space of six years. The plaintiff has now discovered that the defendant is building a privy which

crosses a pathway leading to a tank, which had formerly been used by the female members of Jaykisto's family; and he brings his suit, asking for possession of the pathway and for the pulling down of this construction erected by the defendant.

The Munsiff took evidence and went to the spot, and he ascertained that the pathway in question lay over ground belonging to the defendant; that in the lifetime of Jaykisto, and, after his death, in the time of his widow, the members of both families had been accustomed to use this pathway and a *khirkee*, or private door, communicating therewith; but that, for some years since Jaykisto's widow had left the place, this pathway had not been used by any person residing in that house. He found that the land belonged to the defendant, and, considering that by six years' non-user the plaintiff had lost the right to claim that easement, he dismissed the suit so far as it related to the pathway, but he ordered the defendant to pull down the privy, on the ground that it was a nuisance, an inconvenience to the plaintiff, and likely to interfere with his occupation of his own purchased premises.

The plaintiff did not appeal from that part of the decision by which the land was found to be the property of the defendant; but he appealed on the ground that his non-user for six years did not deprive him of the right to the pathway. On that the Subordinate Judge states, "I think a portion of the lower Court's decision is incorrect and erroneous, for the existence of a pathway in the place of the disputed pathway, the use whereof is contested, has been admitted by all parties as well as by the lower Court on personal observation by the lower Court. That only defendant and not plaintiff used this pathway, defendant has failed to satisfy the Court by any particular evidence. Besides, I see no law providing that the non-user of a pathway for six years shall destroy the right to use it. And, as regards the judgment of the lower Court holding the privy to have been unjustly made by defendant on that pathway, no appeal has been taken on this point."

Now, that which the Munsiff found was not that the previous occupants of the house purchased by the plaintiff had a right of way over the land in question, but that, when that house was occupied by a family nearly related to that of the defendant, the members of both families were accustomed to go over that path. This, it seems to me, is far from implying the right of way claimed by the plaintiff, and in this point of view the observation made by the defendant's vakeel is not altogether out of place, viz., that the widow of Jaykisto did not affect to convey to the plaintiff any such easement as this right of way in question. Presumably, I think it was a license given to the family of Jaykisto by reason of their relationship to the defendant. But, whether this be so or not, it seems to me that a right of the description claimed by the plaintiff, viz., of passing freely over the land of the defendant, is one which requires to be kept up by constant use, and, if the plaintiff discontinues the use of such right, if there were any, for the space of six years, I think he is not in a position to maintain a suit to re-establish it.

I think, therefore, that the decision of the Munsiff in this case was reasonable and right,

and that the Subordinate Judge has reversed it on insufficient and invalid reasons. I think the decision of the lower Appellate Court must be set aside with costs.—22nd June 1870.—*V. Bengal Law Reports, Ap., p. 66.*

[Appellate—Civil.]

COUCH, SIR R., Kt., C. J., AND HOBHOUSE, SIR C. P., Bart., J.

Karunakar Mahati (defendant), v. Niladhro Chowdhry (plaintiff).*

Mokurrari istimrari puttah—Perpetual lease—Regulation XIV of 1812.

A zemindar in the district of Cuttack granted the following lease:—

"In the *chawd-nak* 1236 Amli, 17th day of the month of Brisa, Sri Hari Chuckerbutty grants to Nared Manti this *istimrari* (permanent) puttah. For that I execute *istimrari* puttah of my *Khaddigi Ayma* in *Mauza Bhimpur*. Jote land measuring four bigas, being previously to this in our occupation; you will cultivate and cause to be cultivated hereafter. Mokurrari (fixed) rent at Rupees 8-12-0 Sicca, you will pay from year to year. In case of flood or drought you will be allowed a reduction of rent according as such reduction will be allowed to others. To this Hari Chuckerbutty assents." A subsequent purchaser of the zemindary right obtained a fresh settlement of the zemindary under Government. The son and grandson of the grantee held successively under the lease.

In a suit by the zemindar against the holder for enhancement of rent, HELD that the puttah was a hereditary lease fixing the rent in perpetuity, and that it was binding on the representatives of the grantor.†

This was a suit for obtaining a kabuliat at an enhanced rate of rent.

The defendant set up in his written statement that he held the land under an *istimrari* puttah, and, therefore, was not liable to pay rent at an enhanced rate.

The following is a translation of the puttah from the original Oorya:—

"In the *chawd-nak* 1236 Amli, 17th day of the month of Brisa (Taurus), Sri Hari Chuckerbutty grants to Nared Manti this *istimrari* puttah. For that I execute *istimrari* puttah of my *Khaddigi Ayma* in *Mauza Bhimpur*. Jote land measuring four bigas, being previously to this in our occupation, you will cultivate and cause to be cultivated hereafter. Mokurrari rent at Rupees 8-12-0 Sicca you will pay from year to year. In case of flood or drought you will be allowed a reduction of rent according as such reduction will be allowed to others. To this Hari Chuckerbutty assents."

The Deputy Collector held that the puttah was valid; that, under the terms thereof, the tenure had been created *istimrari* (permanent), and the

rate of rent *mokurrari* (fixed); and that, therefore, the defendant was not liable to pay rent at an enhanced rate. He dismissed the plaintiff's suit.

On appeal the Judge found that the puttah relied upon by the defendant had been granted in 1236 (1829) to the grandfather of the defendant; that the lands had been held under it; that the term "*istimrari*" was used in the puttah, but that this could not protect the tenure from enhancement, as none of the lands in Orissa were permanently settled, and, therefore, no perpetual lease could be legally granted, and that all inferior leases terminated with the termination of the engagements for those lands with Government; that, in the wording of the puttah, there was no provision made for the lands being heritable; that the puttah was not granted from father to son, but merely to the grantee; and that, as the engagement between the Government and the former proprietors of the land terminated at the end of 1274 (1867), and as a fresh engagement had been entered into from the commencement of 1275 (1868), and as the present proprietor (the plaintiff) had purchased the lands in 1274 (1867), the puttah was not binding on him longer than 1274 (1867). He accordingly held that the tenure was liable to enhancement, and reversed the order of the lower Court.

The defendant appealed to the High Court.

Baboo Mahendra Lal Mitter (for the appellant) contended that the terms of the puttah clearly conveyed an hereditary and a permanent interest; that the words "*istimrari*" and "*mokurrari*" used in the puttah signified such a right, and cited *Mussamut Lakhu Kowar v. Roy Harikrishna Singh*;* that, even if there be any doubt as to the construction of the puttah, the fact of the tenure descending from father to son, from generation to generation, without any variation of rent, was strong evidence of its hereditary and permanent character (*Baboo Gopal Lal Thakoor v. Teluck-chunder Rai*;† *Raja Satyasaran Ghosal v. Mahesh Chandra Mitter*);‡ that, even if the grantor's puttah settled with Government for a limited period, he could not, on that ground, repudiate his own act, and annul the puttah which he himself had granted, on the ground that he had no right to grant the same; that the words of the Regulation XIV of 1812, that any such grant shall be "null and void," mean that it shall be null and void as against Government or any person claiming through Government (*Mutty Lal Sen Gynwal v. Deshkar Roy*;§ *Ranee Surnomoyee v. Maharajah Sutteeschunder Roy Bahadoor*);||

Baboo Tarakanath Sen for the respondent contended that, under Section 3, Regulation XIV of 1812, the puttah was null and void; that the grantor had no power to grant a lease beyond the period for which he himself had obtained a settlement under Government. He had no power, under the law, to fix the rent beyond his own term, and any infringement of the law renders the act void. Under its terms the puttah was not a perpetual lease; and, as a fresh settlement had been entered into by the present proprietor with

* Special Appeal, No. 3,027, of 1869, from a decree of the Judge of Cuttack, dated the 20th September 1869, reversing a decree of the Deputy Collector of that district, dated the 20th July 1869.

† See *Kailash Chandra Roy v. Hiralal Seal*, 2 B. L. R., A. C., 93.

* 3 B. L. R., A. C., 226.

† 10 Moore's I. A., 191.

‡ 2 B. L. R., P. C., 27.

§ Case No. 1,116 of 1862; December 14th, 1867.

|| 10 Moore's I. A., 123.

* Special Appeal, No. 294, of 1870, from a decree of the Judge of East Burdwan, dated the 11th December 1869, reversing a decree of the Munsiff of that district, dated the 29th July 1869.

[January 16, 1871.]

Government, the act of his vendor could not be binding on him.

The judgment of the Court was delivered by Couch, C. J.—In this case, in the puttah itself, the parties to it describe it as an istimrari puttah, and its terms are, "In future you shall cultivate the lands, and a mokurrari rent of Rupees 8-12-0 every year you shall pay," followed by a provision for a remission in case of drought or flood. If the intention of the parties that the puttah should be perpetual is not sufficiently shown by the use of the word "istimrari," the puttah may be explained by what has been done under it, and the fact that the land has been allowed to descend from the defendant's grandfather to his father, and from him to the defendant, shows that it was intended to be hereditary, although it contains no words to that effect, and the Judge was wrong in laying any stress upon that omission.

The principle that the absence of words importing the hereditary character of the tenure may be supplied by evidence of long and uninterrupted enjoyment, and of the descent of the tenure from father to son, was laid down by the Privy Council in *Baboo Gopal Lal Thakoor v. Teluckchunder Rai** and in *Raja Satyasaran Ghosal v. Mahesh Chandra Mitter†*. In both those cases the enjoyment had been much longer than in the present; but the word "istimrari" had not been used as it is here. That word shows an intention that the lease should be perpetual; and, if it were so, the hereditary character would follow from it. In *Mussanut Lalchu Kowar v. Roy Harikrishna Singh‡* it was held that the words "mokurrari" and "istimrari" in a puttah must be taken in themselves to convey an hereditary right in perpetuity.

The objection that the rent is not fixed, because there is a provision for a remission, is of no weight, nor can the plaintiff, because there has been a new settlement, say that he is not bound by the puttah. The new settlement has been made with him as representing the holder under the former settlement, and he cannot take the benefit of that representation without taking the burden also. He must, like any other heir, be bound by the acts of the ancestor from whom he derives the estate.

But it was also objected that this puttah was rendered null and void by Regulation XIV of 1812, Section 3, and upon this point we took time to consider our judgment. By that Regulation it is provided that (Section 2) "no zemindar or other proprietor of land in the Ceded and Conquered Provinces shall grant leases or fix the rent of any land tenure for a term exceeding ten years, or if the term of his own engagement with Government be less than ten years, extending beyond such less term;" (Section 3) "any evasion of this prohibition by entering into separate engagements or leases to take effect successively, or by dating an engagement or lease on a day other than that on which it was actually executed, or by any other device, shall be considered as an infringement of it; and every lease or engagement fixing the rent, which has been, or shall be, concluded or granted in opposition to this prohibition, is declared to be null and void."

* 10 Moore's I. A., 191.

† 2 B. L. R., P. C., 27.

‡ 3 B. L. R., A. C., 226.

Now, it is a rule that the preamble of a statute may be resorted to in restraint of the generality of the enacting clause, when it would be inconvenient if not restrained. The allowing the grantor of a puttah at any time, no matter how long after it was granted, to avail himself of this Regulation to nullify his deliberate act, is, we think, an inconvenience which justifies our resorting to the preamble of the Regulation. That says, "Whereas it is enacted by Section 2, Regulation V of 1812, that proprietors of lands shall be competent to grant leases for any period which they may deem most convenient to themselves and tenants, and most conducive to the improvement of their estates; and whereas Regulations IX and X of 1812 contain rules under which the settlement which had been made in perpetuity in the Ceded and Conquered Provinces, with the reserve of the approval of the Honourable the Court of Directors, is subject to considerable modifications and restrictions; and whereas these rules consequently create a necessity for limiting the power granted by Section 2, Regulation V of 1812, as above noticed; The following rules have been enacted to be immediately in force in the Ceded and Conquered Provinces, including the territory ceded by His Highness the Peishwa in Bundelcund, the District of Cuttack, and the pergunnahs formerly dependent on that district, but now annexed to the Zillah of Midnapore."

The reason for making the Regulation is the necessity created by the rules in Regulations IX and X of 1812, and the term of ten years is fixed upon, as the settlement then in force was for ten years. When the period of the settlement had been extended, we find Regulation XIV of 1812 modified accordingly by Act XVI of 1812. The proper construction of the Regulation seems to be that the lease was to be null and void as against the Government, but not as against the lessor.

The decision of the Privy Council in *Ranesurnomoyee v. Maharajah Sutteeschunder Roy Bahadur** was upon this principle, and the case of the Statute of 1st Eliz., c. XIX, s. 5, referred to in the judgment, is closely applicable to the case now before us. The words of that statute are "shall be utterly void and of none effect to all intents, constructions, and purposes;" and it was held that "the lease or grant is not void or voidable by the Bishop himself who made it, but remains good against him during such time as he continues Bishop;" and the reason given is, "because such leases or grants were good at the common law, and the statutes were made only for the benefit of the successors, that they should not be bound by those acts of their predecessors which might turn to their prejudice and disadvantage; but not to give the Bishop himself power to avoid or derogate from his own acts, which would be against all rules, both of law and equity, and, therefore, was not within the meaning of the said statutes; for then he would be empowered by Act of Parliament to do wrong to other persons, which it cannot be presumed the Parliament intended to allow."—*Dacon's Abridgment, Title Leases and Terms for Years, II.*

We are of opinion that the Judge was wrong in reversing the decision of the Deputy Collector who had held the puttah to be valid, and that

* 10 Moore's I. A., 123.

[January 16, 1871.]

the Judge's decision must be reversed, and the respondent must pay the costs of this appeal and of the appeal in the lower Appellate Court.

Judgment reversed.—8th July 1870.—V. Bengal Law Reports, p. 652.

PHEAR AND MITTER, J. J.

Mahomed Ali and others (plaintiffs), v. Jugal

Ram Chandra (defendant).*

Right of way—Questions of fact.

THIS was a suit to enforce a right of way over the land of the defendant.

The defendant denied the existence of any right of way over his land.

The Munsiff found from the report of the Ameen that there were traces of a road over the plaintiffs' land, and, from the evidence of witnesses (one of whom had deposed to the effect that the plaintiffs had used the road for eight or ten years; another, that it had been used for ten or eleven years; and a third, that it had been used for fourteen years), that the plaintiffs had used the road for a period of fourteen years previous to the defendant's obstruction to such user. He accordingly passed a decree in favour of the plaintiffs.

On appeal the Judge found that the land in dispute had been settled with the defendant by the Government in 1867; that there was no reservation of any right of way in such settlement; that, previous to such settlement, the land had remained unassessed waste land, of which the Government was the sole proprietor; that the public are generally allowed by Government to use these lands, while they remained unassessed, to cut timber and collect jungle product. He held that such use could not confer a prescriptive right; and, even if it did, the silence of the plaintiffs at the time of the settlement raised a presumption that they had not used the lands long enough to raise such a right. He accordingly dismissed the plaintiffs' suit.

The plaintiffs appealed to the High Court.

Baboo Kaliprasanna Roy for the appellants.

Baboo Taraknath Sen for the respondent.

The judgment of the Court was delivered by PHEAR, J.—We think that there is no error of law in the judgment of the lower Appellate Court.

That Court was called upon by the plaintiffs to declare that they had a right of way over certain lands belonging to the defendant, and the plaintiffs supported their claim of right by certain evidence of user.

The Court below has refused to infer from that evidence that the plaintiffs have the right which they claim. It does not appear to us that the Judge made any error of law in refusing to draw that inference.

As far as we can see, the evidence of user was in its character very indefinite. There was very little, if anything, to show that it was user as of right against the defendant and his predecessors in the possession of the land. Indeed, according to the case of both parties, such user as had taken place appears, for a considerable portion of the time at least, to have been a user by passing

* Special Appeal, No. 458, of 1870, from a decree of the Deputy Commissioner of Cachar, dated the 18th December 1869, reversing a decree of the Munsiff of that district, dated the 7th September 1869.

and re-passing over waste and jungle lands which nobody had any interest in disputing.

There was also evidence which tended to rebut the presumption as to the right which might possibly be justifiable upon the user alone, and the lower Appellate Court drew attention to that evidence, and argued from it that the plaintiffs never had, in fact, the right which they claim.

We do not, in dismissing this appeal, say that, had the lower Appellate Court, in its discretion and on a full view of the evidence on the record, come to the opposite finding to that at which it has come, that finding would necessarily have been bad in law.

Several cases have been cited to us in which this Court has declined to interfere with findings of fact which have been come to by Courts of regular appeal upon certain evidence of user. But this Court has never yet undertaken to say that user of a specified kind must necessarily in law lead to the inference that the party who has enjoyed that user had a right of way. In all cases where a right of way comes in question, and the party claiming the right supports his claim by evidence of user only, the Court, which is the judge of fact, must satisfy itself as best it can upon that evidence, having regard to all the circumstances under which the user took place, whether or not the user was founded on actual right. The guiding principle to be observed is that open user of another person's land for the purposes of a road or pathway, if continued without interruption for a long time, and not shown to be attributable to permission or sufferance on the part of the owner, properly induces the presumption that the user was of right. The only other alternative would be that each passing and re-passing was a trespass, and the law will rather presume that acts, such as these constantly repeated for a considerable length of time before all the world, are rightful than that they are wrongful.

The sooner it is understood that these questions are substantially questions of fact to be determined upon the evidence furnished by the litigants, the better it will be for the interests of the parties to these suits.

We dismiss this appeal with costs.—13th July 1870.—*Idem*, Ap., p. 84.

HIGH COURT—N. W. PROVINCES.

[Appellate Jurisdiction.]

TURNER, OFFG. C. J., AND TURNBULL, OFFG. J.

Misjoinder—Right of re-entry—Lapsed holding—Zemindar—Ouster.

A suit to recover possession as cultivators brought by two plaintiffs, whose holdings, although originally one, have for a long time been separated and held separately, will be dismissed for misjoinder.

Where the right to re-enter accrued to defendant at the end of the preceding agricultural year, the ouster of plaintiffs in November is not illegal.

A zemindar is not bound to proceed under Section 25 of Act X of 1859, or to bring a suit for plaintiffs' ouster.

Section 25 of Act X of 1859 enables a zemindar to apply to the Collector for aid in the ouster of a tenant, but does not make it "incumbent" on him to do so.

A zemindar, if he can do so without provoking a breach of the peace, is entitled of his own accord to resume possession of a lapsed holding.

S. A. No. 677 of 1870.

Girwur and Hurphool (appellants), v. Syud Nyaz Ali (respondent.)

This was a special appeal against the decree of Mr. J. B. Ironside, Judge of Agra, in Appeal Suit No. 714 of 1869.

Jowala Pershad for the appellants, the plaintiffs.

Pearcy Mohun, Zahoor Hossein, and Ali Humed for the respondent, the defendant.

This was a suit, under Clause 6, Section 23 of Act X of 1859, to recover the occupancy of certain lands, and, amongst other things, defendant had pleaded a misjoinder of parties, and which objection was again raised by him under Section 343 of Act VIII of 1859 upon the hearing of this appeal. The Court of first instance decreed the claim in part, and the lower Appellate Court reversed such decree, whereupon this appeal was presented.

The Court delivered the following judgment:—

We are by no means satisfied with the finding of the lower Appellate Court on the merits, and, had it been incumbent on us to deal with that Court's judgment only, we should have found it necessary to remit one or more issues for more perfect investigation.

It would appear that in 1868 the now plaintiffs had acquired a right of occupancy in their holdings, and it is not shown that the zemindar had any reasonable prospect of success in the suits he then instituted against them to oust them. The Judge infers, from the circumstance that the zemindar withdrew the suits, that some change must have been agreed to as an inducement to the zemindar to consent to withdraw the suits. This inference is hardly legitimate unless it be shown that there was reasonable probability that the claims made in the suits would be decreed.

Although from the circumstance that the now plaintiffs paid the larger portion of the costs in the former suits it may fairly be argued on the part of the zemindar that they apprehended that his claims would be decreed, and that, consequently, it was in accordance with probability that they should come to terms, yet, regarding

them as ignorant and unlettered men, we should have desired that the Judge should have more closely looked to the circumstances under which the solehnamahs were put in, and should have determined more distinctly that no fraud had been perpetrated on them, the now plaintiffs, in reference to the execution of documents depriving them of a right which there seems little doubt they possessed.

With these observations we turn to the objection taken under Section 318, that the plaintiffs ought not to have joined in the present suit. This objection is, in our judgment valid, and it is to be regretted that, although taken in the lower Courts, it was overruled by the Judge. According to the plaintiffs' own showing, the holdings, although originally one, have for a long time been separated and held separately, and, therefore, separate suits should have been instituted for their recovery by the persons respectively entitled to them. Further, it is evident that Hurphool, who has transferred all the residue of his holding to Rampershad, cannot maintain a suit at all.

We are, therefore, compelled to dismiss the suit for misjoinder; but at the same time we observe that this judgment will not preclude the plaintiffs Girwur or Rampershad from taking such further proceedings as they may be advised to assert their rights.

We notice several errors in law in the judgment of the Court of first instance. In the first place there is the ruling that Hurphool was entitled to sue, and that one suit could be brought in respect of both holdings. This, as we have above stated, was erroneous. Then the Deputy Collector ruled that the plaintiffs could not be ejected in November. If, as the defendant alleges, the right to re-enter had accrued to the defendant at the end of the preceding agricultural year, ouster of the plaintiffs in November was not illegal. Lastly, the Deputy Collector considered that the defendant was bound to have proceeded under Section 25, Act X of 1859, or to have brought a suit for the plaintiffs' ouster. This is not so. Section 25 enables a zemindar to apply to the Collector for aid if he desires assistance in the ouster of a tenant, but it does not make it *incumbent* on him to do so. Nor is it necessary that, if he does not apply to the Collector, he should bring a suit. A zemindar, if he can do so without provoking a breach of the peace, is entitled of his own accord to resume possession of a lapsed holding.

We make these observations for the future guidance of the Deputy Collector.

The appeal is dismissed with costs.—2nd August 1870.—II. N. W. Provinces Reports, p. 306.

SPANKIE, J., AND TURNBULL, OFFG. J.

Co-sharers in villages—Association of strangers—Pre-emption.

Where two co-sharers entitled to pre-emption in certain villages, associated strangers with them in the purchase of such villages and other landed property—

HELD that they must be regarded in the light of total strangers in respect of the whole of the property included in the sale-deed, and that a note at the foot of the sale-deed mentioning the interest severally purchased by each of the vendees will not entitle them to retain the shares respectively purchased by them.

S. A. No. 657 of 1870.

Guneshee Lal and others (appellants), v. Zaraut Ali and others (respondents.)

This was a special appeal against the decree of Mr. M. B. Thornhill, Judge of Saharunpore, in Appeal Suit No. 475 of 1869.

Adjoodhya Nath for the appellants, the defendants.

Pearcy Mohun and Sumee-oolah for the respondents, the plaintiffs.

The particulars of this suit will appear from the following judgment:—

This is a suit to enforce the plaintiffs' right of pre-emption in respect of certain shares in Mouzah Chilkana, Mouzah Bawanheri, and Arazi Toufir, and to set aside a deed of sale of the share in question executed by the defendants, Mahomed Hossein and Ali Buksh, in favour of the other defendants.

The sale-deed is dated 9th May 1869, and conveys the rights and interests of the vendors in the several estates, to the extent respectively specified in the deed, to the vendees collectively for a sum of Rupees 3,000.

The plaintiffs are sharers in all the three villages, and claim the right, both under the provisions of the Mahomedan law and the special conditions of the wajib-ool-urz or administration papers of the different villages. They contended that they had fulfilled all the requirements of the law in demanding the purchase from the vendors, which was refused, and that, although Guneshee Lal, one of the vendees, is a shareholder in Chilkana and Bawanheri, he has no interest in Toufir, and, the other vendees being strangers altogether, he has, by associating them in the purchase together with himself, forfeited any right which he might otherwise have had as a sharer in the two first-named villages, and is not in a position to contest their claim.

Other pleas were also urged which it is unnecessary here to consider.

The defendants in reply contended that the claim was opposed to the terms of the wajib-ool-urz, which contained no clause respecting the right of pre-emption; that the plaintiffs were not related by descent from a common ancestor to the vendors, and, therefore, had no title; that the defendants, vendees, being (with exception to one, viz., Amir-oon-Nissa) Hindoos, the Mahomedan law did not apply to them; that Guneshee Lal and Sant Lal, two of the vendees, were also co-sharers; and, therefore, had equal rights with the plaintiffs; that plaintiffs had not fulfilled the necessary preliminary conditions of immediate demand and affirmation by witness of their intention to purchase; and that the sale had been openly made to the vendees after the vendors had for two years endeavoured to find a purchaser but failed.

The first Court found on all the issues raised on these pleas against the defendants, and decreed the plaintiffs' claim, and the lower Appellate Court has affirmed the judgment.

We are of opinion that the judgment is a right and proper one, and is not open to any of the objections taken to it in special appeal.

With reference to the first plea, we hold that there has been no misconstruction of the terms of the wajib-ool-urz of Mouzah Chilkana.

It is true that the first part of the clause relating to transfers and alienations by sharers of their rights (paragraph 6), provides that, if a sharer wishes to sell his share, his "brother" shall be first entitled to the option of buying, and, on his refusal, then others of his co-sharers related to him by descent from common ancestor "*ek jaddi*" shall have the option; and the lower Appellate Court has found that the plaintiffs, who have failed to prove their descent from a common ancestor with the vendors, cannot be classed as "*ek jaddi*" relations. Still it does not necessarily follow that they are, therefore, altogether excluded from the privilege of claiming pre-emption on the refusal of the two classes to whom the first preference is given, and that they have no preferential right over utter strangers. The whole context must be taken together; further on, accordingly we find a provision that, in the event of any dispute arising regarding the price, it shall be settled by arbitration; and the clause then goes on to provide that if "*any of the brotherhood*" refuse to purchase at the price fixed by the arbitrators, the sharer desiring to sell shall then have power to make the transfer to a stranger.

The plaintiffs, though not "*ek jaddi*," are co-sharers in the same puttah with the vendors, and we think that the terms of the wajib-ool-urz are sufficiently wide to admit them to the right of pre-emption in preference to a stranger. We, therefore, reject this plea.

The second plea is of no force. The real objection urged is not that the wajib-ool-urz of Toufir contains no provision for pre-emption upon which the plaintiffs could rest a claim, but that the wajib-ool-urz has not been produced in evidence in the case. It is sufficient to observe that it *was* produced; but was erroneously filed in the record of another case between the same parties, and of a similar nature to this suit. It distinctly gives the right of pre-emption to all sharers after an offer has been made to near relatives and been refused by them, and the plaintiffs are clearly entitled to enforce the right.

The third plea cannot be sustained, and is not pressed in argument.

The fourth plea would have been a good plea if the sale-deed had been executed in favour of Guneshoo Lal and Sant Lal only, and if they had also been sharers in Mouzah Toufir, as well as in Chilkana and Bawanheri; but they have no interest in Toufir, and, having associated strangers with them in the purchase, they have lost their right, and must be regarded in the light of total strangers in respect of the whole property included in the sale-deed. The question of preferential right, therefore, between them and plaintiffs does not arise.

It is urged that there is a specification at foot of the sale-deed of the interest severally purchased by each of the vendees, and that, therefore, the two defendants, appellants, Guneshoo Lal and Sant Lal, at least are entitled to retain the shares respectively purchased by them; but we do not attach any weight to this plea, for the entry of the detail was manifestly made solely for the convenience, and by agreement of the vendees, *inter se*: it is no part of the contract of sale between them and the vendors, and in no way concerns the latter.

The sale is on the part of the vendors made to all the vendees of the rights specified, jointly and collectively, for one integral sum as the consideration for the whole, and it, moreover, includes rights in one village in which the two abovenamed defendants have no share or interest whatever, and no equal right of pre-emption, consequently, to set up against the plaintiffs.

The plea is, moreover, inconsistent with the appellants' own previous plea, that all the properties were sold as one, without the consideration for each being specified; which, although of no value as against the claim of the plaintiffs, who have rights of pre-emption in all three villages, is of weight against the appellants, of whom all but two in one portion of the property, and all without exception in the remaining portion, are strangers.

The fifth objection has, we consider, been fully met and properly disposed of by the Judge, who has shown good and sufficient grounds for holding that the wajib-ool-urz was prepared

with the knowledge and consent of all the sharers, and that the defendants are bound by its conditions.

The remaining pleas also fail. As to the sixth, both the lower Courts have found upon the evidence before them that all that was necessary on the plaintiffs' part in respect of the prompt assertion of their right of pre-emption and intention to purchase was done; and we agree with the lower Appellate Court that in a case of this nature a strict compliance with the rigid forms of the Mahomedan law was not required.

The last plea is irrelevant, seeing that the claim is not based only on the provisions of the Mahomedan law but upon the conditions of the wajib-ool-urz; and, even if it were not irrelevant, it would be bad in law, and could not be admitted.

If this view we affirm the judgment of the Court below, and dismiss this appeal with costs and interest at six per cent.—17th August 1870.—*Idem*, p. 343.

OFFICIAL PAPERS.

INAM LANDS—SUB-DIVISION OF JOINT LIABILITY IN SMALLER INAMS.

Proceedings of the Madras Government, Revenue Department, 6th December 1870.

Read the following Proceedings of the Board of Revenue, dated 11th September 1870, No. 5,715:—

Read the following replies from Collectors to Board's Proceedings, dated 3rd April 1868, No. 2,482.

From Acting Collector, Ganjam, dated 21st September 1869, No. 958.

From Acting Collector, Vizagapatam, dated 4th October 1869, No. 115.

From Acting Collector, Godavery District, dated 20th January 1869, No. 8, recorded in Board's Proceedings, dated 16th February 1869, No. 1,015.

From Officiating Collector, Kistna District, dated 1st November 1869, No. 322-E.

From Acting Collector, Nellore, dated 17th September 1869, No. 1,891.

From Acting Collector, Bellary, dated 20th January 1869, No. 12, recorded in Board's Proceedings, dated 26th May 1869, No. 3,703.

From Acting Collector, Cuddapah, dated 21st December 1869, No. 207.

From Acting Collector, Kurnool, dated 14th September 1869, No. 317.

From Acting Collector, Madras, dated 8th April 1870, No. 113.

From Acting Collector, Salem, dated 29th September 1869, No. 230.

From Acting Collector, North Arcot, dated 22nd September 1869, No. 280.

From Acting Collector, South Arcot, dated 23rd September 1869, No. 216.

From Acting Collector, Tanjore, dated 14th September 1869, No. 202.

From Acting Collector, Trichinopoly, dated 24th September 1869, No. 228.

From Officiating Collector, Madura, dated 20th November 1869, No. 348.

From Acting Collector, Tinnevely, dated 3rd May 1869, No. 180.

From Acting Sub-Collector in charge of Coimbatore, dated 2nd July 1870, No. 157.

From Acting Collector, South Canara, dated 29th April 1868, No. 426, recorded in Board's Proceedings, dated 26th May 1868, No. 3,850.

From Officiating Collector, Malabar, dated 13th September 1869, No. 246.

These letters will be submitted to Government with reference to Government Order, 18th October 1867, No. 2,451, paragraph 10.

2. They relate to the advisability of extending the orders authorizing the sub-division of the joint liability on account of Government quit-rent in whole inam villages to the case of inams less than a whole village.

3. The Collectors almost unanimously report that very little advantage has yet been taken of the orders on this subject regarding whole inam villages, while, with the exception of the case in Bellary, noticed in the Proceedings of the Government noted in the margin, no application has been made to sub-divide any inam less than an entire village in any district, and several Collectors have in consequence declined to give an opinion.

4. Mr. Boswell sees no objection to the extension of the privilege proposed, and deprecates any reservation in respect to ultimate joint responsibility as unnecessary and repressive. He would limit the sub-division to survey fields; but does not state whether these are conveniently arranged and sufficiently small in his district. The Collector of Nellore takes the same view with regard to the desirability of the measure and the limit of sub-division.

5. The Collector of Kurnool is in favour of the measure; the Collector of Trichinopoly likewise supports it as a convenience to the Inamdars, though somewhat troublesome to the Revenue authorities; and the Collectors of Madura and Malabar see no objection to it.

6. Mr. Pochin did not consider the extension advisable, as it would necessitate large registration and increase the work of the Revenue Department.

7. The Collector of North Arcot, observing that advantage is not taken of the existing permission to divide entire villages, whether arising from imperfect knowledge of the terms of the Government order, or distrust or dislike of its terms, considers that further extension would be premature until there is some manifestation of public feeling on the subject; on the same score the Collector of South Arcot considers that no occasion has arisen for extending the facility; and the Collector of Tanjore sees no good in offering the contemplated indulgence, inasmuch as the offer is not likely to call forth proposals in respect to minor inams which are not made in respect to entire villages.

8. The Board are of opinion, on general considerations, that every facility should be given to convert joint properties into private estates. There need be no hesitation on the ground of insecurity being caused to the revenue when it is duly apportioned by public officers, for the demand, based on the ancient assessment, of which the highest is a moderate share, is in every case very small in comparison with the value of the land.

9. The Board accordingly resolve to recommend Government to authorize Collectors to give notice that the Circular Order No. XV. of 1868 will be extended to the case of inams less than an entire village.

10. The Board believe that the sub-division of an entire inam village is much more difficult than the sub-division of an inam of less extent. The interests are more numerous, and there is greater inequality in the existing apportionment of the demand. On the other hand, facilities for sub-division will be appreciated and taken advantage of much more frequently in the case of minor inams.

Order thereon, 6th December 1870, No. 1,950.

The Government adopt the Board's proposal in paragraph 9 of the above Proceedings, and authorize them to instruct Collectors that the rules for the sub-division of enfranchized joint tenure inam villages may be applied to cases of similar inams of less extent than an entire village. The Board will consider and report whether it is necessary to fix any other limitation as to the minimum of sub-division than what the rules already prescribe.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

DISTRICT ROAD FUND BUDGET, 1871-72.

Proceedings of the Madras Government, Revenue Department, 16th December 1870.

Read the following Proceedings of the Board of Revenue, dated 6th December 1870:—

Agreeably to the instructions conveyed in paragraph 1 of the Government Order, dated 16th

March 1869, No. 711, the Board resolve to submit their General District Road Fund Budget for the ensuing official year 1871-72, compiled from the Collectors' original Budgets, which have already received the approval of Government.

2. Part I. of the Budget contains 194 items, with an aggregate allotment of Rupees 13,71,430.

3. With reference to paragraph 1 of the Government Order, dated 23rd November 1870, No. 1,848, the Collector of Salem was requested, in consultation with the Superintending Engineer, to revise his Budget, and submit, at an early date, a fresh one for approval.

4. It will be observed that Part I. of the North Arcot Budget has been revised, as directed in the Government Order, dated 28th November 1870, No. 1,875.

5. Part II. contains 732 items, with a total allotment of Rupees 9,49,970.

6. Abstract Statement No. 1 exhibits in one view the districtwar particulars of the estimated receipts and charges of the District Road Fund. The total available assets of the Fund are Rupees 30,58,860, inclusive of the anticipated balance on the 1st April 1871. The proposed expenditure amounts to Rupees 29,30,480 as shown below, leaving an unappropriated balance of Rupees 1,28,380 at the close of the year:—

	Rs.
By Public Works Department. { Original works ...	12,76,580
Repairs ...	7,13,390
Total...	19,89,970
By Revenue Department. { Original works ...	94,850
Repairs ...	2,36,580
Total...	3,31,430
Reserve, at ten per cent on the estimated receipts of the year ...	2,42,750
Tools and Plant. { P. W. Department ...	22,900
Rev. Department..	3,200
Public Works Executive Range Establishment ...	90,120
Travelling allowance to Local Fund Overseers and Maistries ...	22,290
Establishment of Lascars to Overseers and Maistries ...	5,570
Do. an account of ferries and tolls on Bridges ...	3,860
Do. kept in Collector's office ...	7,540
Do. in the Board's office...	4,460
Contingent charges. { P.W. Department. ...	3,650
Rev. Department.	3,780
Cost of Public Works supervision, at ten per cent on the estimated expenditure to be incurred by that department ...	1,98,960
Grand Total...	29,30,480

7. Statement No. 2 shows the districtwar particulars of the estimated receipts and charges

on account of funds other than the district road. An abstract is given below:—

	Balance.	Estimated charges of the year.	Total.	Expected receipts of the year.	Balance expected at the beginning of the year.
	Rs.	Rs.	Rs.	Rs.	Rs.
Jungle Conservancy Fund ...	1,07,870	1,62,470	2,70,340	1,50,410	1,19,930
Cattle Pound do. ...	77,010	1,18,670	1,95,680	1,33,670	62,010
Public Bungalow do. ...	13,090	24,060	37,150	23,610	13,540
Endowment do. ...	57,870	2,80,210	3,38,080	2,11,750	1,26,320
Nanal Grass do. ...	6,010	13,800	19,810	11,240	8,570
Irrigation Cess Fund in Trichinopoly, Madura, and Coimbatore ...	19,600	25,700	45,300	25,300	20,000
Canal Fund in Chingleput ...		48,900	48,900	47,200	3,700
Total...	2,81,450	6,73,810	9,55,260	6,01,190	3,54,070

8. The detailed Jungle Conservancy Fund Budget of expenditure for 1871-72 will be submitted to Government on the receipt of some of the District Budgets which are still wanting.

9. In paragraph 12 of their Order, dated 15th June 1870, No. 1,040, the Government of India desire that the charges for pensions, conservancy, and lighting, and investments in Government securities should be exhibited separately in the Local Fund Budgets.

10. With regard to pensions it was ruled by Government that the sums payable each year should be provided in its Budget; but, as the Road Fund Establishment has only recently been organized no provision is now needed under this head.

11. The conservancy of the principal towns of the several districts is looked after by the Municipi-

palities of those towns. Provision for works of Miscellaneous Public Improvements, such as digging and clearing tanks and sinking wells for drinking purposes and removing prickly-pear, is, however, made in the Road Fund Budget for a few districts, conditionally on the people interested in those works contributing an equal sum, in accordance with the Standing Order No. XXX, published at page 16 of the Board's Circular Orders.

12. As respects the cost of lighting, there is but one item shown in Part II. of the Road Fund Budget of the Chingleput District, i. e., lighting the Marmalong Bridge at an annual cost of Rupees 200, and this provision is made with reference to paragraph 3 of the Government Order, Revenue Department, dated 11th May 1864, No. 810.

13. There is no occasion for investments of Local Funds in Government securities, and, therefore, no charge is necessary on that account.

Order thereon, 16th December 1870, No. 2,041.

The District Road Fund Budgets of the several districts for 1871-72 having already received the approval of Government, the General Budget lists and abstract statements now submitted by the Board will be transferred to the Public Works Department.

2. The total assets of the Road Fund for the next year are estimated at Rupees 30,58,860 inclusive of the probable balance of Rupees 6,31,360 at the close of the current year, and the following table shows at one view the proposed expenditure of Rupees 29,30,480:—

Items.	To be spent by the Public Works Department.	To be spent by the Revenue Department.	Total.
	Rs.	Rs.	Rs.
New Works ...	12,76,580	94,850	13,71,430
Repairs ...	7,13,390	2,36,580	9,49,970
Establishment ...	3,16,940	15,860	3,32,800
Tools and Plant ...	22,900	3,200	26,100
Contingent charges ...	3,650	3,780	7,430
Total...	23,33,460	3,54,270	26,87,730
Reserve...			2,42,750
Grand Total...			29,30,480

3. The estimates (receipts and charges) on account of the other Local Funds noted below are passed.

	Probable balance at the beginning of the year.	Probable receipts during the year.	Total amount available.	Proposed expenditure.
	Rs.	Rs.	Rs.	Rs.
Jungle Conservancy Fund ...	1,19,930	1,50,410	2,70,340	1,62,470
Cattle Pound do. ...	62,010	1,33,670	1,95,680	1,18,670
Public Bungalow do. ...	13,540	23,610	37,150	24,060
Endowment do. ...	1,26,320	2,11,760	3,38,080	2,80,210
Nanal Grass do. ...	8,570	11,240	19,810	13,800
Irrigation Cess Fund in Trichinopoly, Madura, and Coimbatore ...	20,000	25,300	45,300	25,700
Cochin's and Sadras Canal Fund ...	3,700	45,200	48,900	48,900

SEASON REPORT.

REMARKS ON THE SEASON.

NORTHERN SECTION.—Unusually heavy rains fell in all the districts of this section. Several tanks breached, and large tracts of country were flooded. There was considerable loss of property.

Ganjam.—The Ganjam river was in heavy fresh, and the high road alongside of it was impassable for three days from submersion. A large dhony in the dock of Calingapatam was wrecked, and four hamlets sustained great damage from the heavy floods. The swarms of locusts which infested the crops were disappearing. Horsegram and niger were sown, and raggy, ganjala, and black gram were harvested; the out-turn was below the average.

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Public Bungalow	13,090	24,060	37,150	23,610	13,540
Endowment	57,870	2,80,210	3,38,080	2,11,750	1,26,320
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(True Extract.)
(Signed) W. HUDLESTON,
Secretary to Government.

[January 16, 1871.]

Vizagapatam.—The transplantation of paddy, green gram, *oolundu*, tobacco, and chillies was completed. The general inundation of the fields was injurious to the growth of standing crops.

Godavery.—The crops in Godavery were destroyed by the heavy rains. Owing to the heavy freshes in the Yeleru river and the numberless tanks which breached in every direction, several houses in towns and villages were either swept away or blown down.

Kistna.—In Kistna, such of the crops as were harvested before the heavy rains set in yielded a good out-turn. The condition of standing crops, excepting some in the Delta taluks, was anything but satisfactory. The continuous downpour in some of the taluks brought down to the ground several mud houses.

Nellore.—The freshes in the Pennair river in Nellore were so heavy that water rose 12½ feet above the crest of the anicut. *Iswarakorra* and some of the dry grains were sown, and further preparations for raising wet and dry crops were in progress. Some of the standing crops were reported to have suffered from the excess of rains. *Indigo* and *korra* were cut in parts of the district.

Prices declined in all the districts except Vizagapatam, where they were almost stationary.

Cholera, which existed only in Godavery and Kistna, had considerably abated, and fever, except in the last-named district, was of limited prevalence.

Cattle disease was general owing to the heavy rains.

CEDED DISTRICTS.—The rainfall in Cuddapah was unprecedentedly heavy. In Bellary and Kurnool it was pretty abundant.

Cuddapah.—The very violent floods in the Cheyar river in Cuddapah were the cause of a terrible railway accident, which occurred on the 21st October, at the approach to the Nundal station. Of nineteen passengers, including the driver and firemen who were travelling in the train, eight were swept away and drowned. Considerable progress was made in the cultivation of dry and wet crops, and most of them were in good condition. *Paddy*, *indigo*, *raggy*, *sujja*, and *korra* were harvested, but their out-turn was below half the average yield owing to the damage done by the heavy rains.

Bellary.—In Bellary freshes came down, and most of the rivers and tanks generally received large supplies. Pasture was abundant.

Kurnool.—In some taluks of the Kurnool District cultivation was thrown back owing to the heavy rains. The grains generally cultivated were *paddy*, *white jonna*, *horsegram*, and *wheat*. *Yellow jonna*, *korra*, and *sujja* were cut.

Prices fell.

Fever was generally prevalent. Small-pox and dysentery were confined to a few localities in Cuddapah.

Cattle suffered from *murrain* in Kurnool, *sarku* in Cuddapah, and *moosara* in Bellary. In the two latter districts Dr. Thacker's medicines were largely distributed, and his mode of treatment was adopted, but was less successful than usual.

EAST CENTRE.—Heavy and abundant rains fell in these districts.

Madras.—There was a copious fall of rain in this district during the month. All the tanks are full. The price of some sorts of grain have fallen. During the month small-pox and fever prevailed.

Chingleput.—Tanks received full supplies, and some of them breached. The large Cholavaram Tank in the Ponneri Taluk was full to overflowing, and the bund was in a dangerous condition. Some of the crops in the Sydapet, Chingleput, and Ponneri Taluks were submerged and destroyed. In other parts they were in good condition. *Indigo*, *raggy*, *sambah*, and *kar* were being harvested.

North Arcot.—The rivers in this district were in flood for several days. A large number of tanks had breached, and measures were being taken to restore them. Standing crops were in excellent condition, and there was further cultivation during the month. *Paddy*, *raggy*, and *gingelly-oil seeds* were harvested; the returns were highly satisfactory.

South Arcot.—There was an extensive cultivation of both wet and dry grains, and the standing crops were thriving well. *Indigo* and *kar paddy* were being harvested. High freshes came down the Pennair river, and tanks received good supplies.

Prices declined, excepting that of *wheat*, in North and South Arcot.

Fever existed in all the districts, and cholera in North and South Arcot. The mortality from these causes, however, was not great.

Cattle suffered from disease, and in North Arcot alone more than 370 animals perished.

CAUVERY.—The rainfall was copious in Trichinopoly and partial in Tanjore.

Tanjore.—The cultivation of both wet and dry grains was progressing. The standing crops in Pattukottai Taluk suffered from insufficient rainfall, and in Sheally from submersion, several tanks having breached. In other parts of the district they were flourishing. *Kadupukar*, *cumboo*, *raggy*, &c., were being harvested; the yield was expected to be a good one.

Trichinopoly.—In Trichinopoly freshes were frequently received in the rivers, and irrigating channels and tanks were full. *Kar paddy*, *cumboo*, and *raggy* were being harvested. Standing crops were in a flourishing condition.

There was a slight fall in the prices.

Public health was good. Cattle were free from disease.

SOUTHERN SECTION.—The rainfall in this section was scanty.

Madura.—In Madura dry grains were sown, and *nunjah* lands were being prepared for wet

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cultivation. The dry crops already raised were suffering from the insufficient rainfall. *Raggy* crops under wells were being harvested.

Tinnevely.—The *pesanam* cultivation was in progress all over Tinnevely. *Kar paddy* crops were harvested, and the yield was below the average. Tanks received moderate supplies.

Prices were stationary.

Fever and cholera were prevalent to a small extent.

Cattle preserved good health.

WEST CENTRE.—The rainfall was good in Salem and partial in Coimbatore.

Coimbatore.—The cultivation of *paddy* and some of the dry grains had commenced in Coimbatore, and all descriptions of standing crops were faring well. *Cumboo*, *samai*, *raggy*, and *curuway paddy* were harvested during the month.

Neilgherries.—On the Neilgherries, *koraly*, *coffee*, and *potatoes* were in good condition. *Samai*, *raggy*, and *keeray* had been reaped.

Salem.—Tanks in Salem generally received good supplies. There was an extensive cultivation of *paddy* and the dry grains, and the crops were reported to be in good condition. 1,311 acres of land were cultivated with *cotton*, and 748 acres with *indigo*. The plants were thriving. It is reported that two elephants, together with a young

one, descended into the country bordering on the Javjee Hills, in the Tripatore Taluk, and destroyed crops.

Prices fell, excepting that of second sort rice, in Coimbatore.

Fever and cholera were here and there prevalent in Coimbatore and Salem. On the Neilgherries public health was good.

In the Ahtoor Taluk of the Salem District, and the Sattiamungalum Taluk of the Coimbatore District, cattle suffered from disease.

WEST.—There was a fair and even considerable fall of rain in this section.

South Canara.—The first crop rice in South Canara, which had slightly suffered from the heavy rains, was harvested, and yielded a fair out-turn. The cultivation of *suggi* or second crop rice was in progress.

Malabar.—In Malabar, the sowing of the second or *magaram* crop had been completed.

Prices fell in South Canara, and, in the prospect of further supplies being brought into the market, indicated a tendency to decline still more. In Malabar prices remained stationary.

Cholera, small-pox, and fever slightly affected public health.

Cattle suffered from disease in parts of South Canara.

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 1870, Fusly 1280.

DISTRICTS.		PRICES OF GRAIN AND SEA SALT.												RAINFALL.				
		2nd sort Rice.		2nd sort Paddy.		Cholum.		Raggy.		Horse Gram.		Sea Salt		Northern Sec- tion.	Southern Sec- tion.	Eastern Sec- tion.	Western Sec- tion.	Average.
		Fusly		Fusly		Fusly		Fusly		Fusly		Fusly						
		1279	1280	1279	1280	1279	1280	1279	1280	1279	1280	1279	1280					
Northern Section.	Ganjam.....	299	262	119	104	115	160	137	118	282	185	319	316	10.90	18.40	14.70	13.90	14.40
	Vizagapatam.....	403	301	172	123	100	171	183	136	225	176	294	316	28.20	14.80	18.30	20.80	20.52
	Godavery.....	282	227	127	101	151	123	151	119	228	167	263	276	11.48	23.96	19.34	13.27	17.01
	Kistna.....	371	321	160	140	185	180	195	154	275	184	352	353	7.70	5.80	14.02	4.57	8.02
Ceded Districts.	Nellore.....	362	298	174	143	155	199	140	155	250	223	300	295	13.34	11.43	13.51	12.25	12.63
	Cuddapah.....	425	377	194	180	176	187	167	170	214	221	310	367	7.50	12.75	16.88	8.84	11.50
	Bellary.....	356	377	143	164	124	161	107	138	153	181	378	439	5.50	9.25	7.30	4.25	6.57
	Kurnool.....	416	400	184	181	156	195	153	172	233	233	350	372	6.50	6.68	5.78	2.64	5.39
East Centre.	Madras.....	462	320	210	121	195	177	230	154	255	191	300	278	15.06	4.30	15.19	11.30	11.46
	Chingleput.....	469	332	218	149	261	205	233	174	298	243	292	299	13.60	13.20	7.20	10.30	11.07
	North Arcot.....	349	309	179	129	159	134	176	135	217	171	279	308	10.15	5.37	13.71	14.65	10.97
	South Arcot.....	435	283	188	119	233	130	204	111	264	176	308	332	10.53	3.83	6.26	5.40	6.50
Cauvery.	Tanjore.....	350	236	155	116	215	115	148	107	250	182	288	301	8.25	10.34	6.70	8.95	8.56
	Trichinopoly.....	389	238	188	127	202	126	173	104	232	163	303	322	5.53	6.10	2.32	2.31	4.07
	Madura.....	418	316	212	163	162	143	170	160	201	177	315	348	2.50	2.65	3.31	1.10	2.39
	Tinnevely.....	421	405	196	185	232	210	188	184	237	241	326	355	7.10	2.24	6.95	3.82	5.03
Southern Section.	Coimbatore.....	452	384	217	181	266	212	210	171	259	181	381	383		4.40	10.10	6.03	8.09
	Neilgherries.....	610	640	...	...	267	267	246	229	320	216	457	457	8.31	7.91	10.11	10.10	16.65
	Salem.....	388	294	172	129	196	136	165	124	200	134	326	352	20.50	17.30	12.80	16.0	16.65
	South Canara.....	470	331	173	143	...	...	260	209	324	252	267	295	15.04	12.93	15.30	17.13	15.10
West....	Malabar.....	388	333	175	158	...	...	172	311	232	334	317						

Statement of Cotton and Indigo Cultivation with their Market Prices for the Month of October 1870, Fuly 1280.

DISTRICTS.	COTTON.					INDIGO.				
	Fuly 1279.		Fuly 1280.		Market rate of clean cotton per Canly of 500 lbs.	Fuly 1279.		Fuly 1280.		Market rate of Caste Indigo per Maund of 25 lbs.
	Extent.	Assess. ment.	Extent.	Assess. ment.		Extent.	Assess. ment.	Extent.	Assess. ment.	
1	2	3	4	5	6	7	8	9	10	11
1 Ganjam ...	Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
2 Vizagapatam ...	6,201	12,444	8,503	11,207	129	39	39	3	19,981	63
3 Godavary ...	9,105	16,104	4,721	12,104	149	601	2,812	2,021	19,981	43
4 Kistna ...	2,623	3,960	1,627	3,415	119	1,317	1,301	711	1,763	38
5 Nellore ...	122,451	1,00,633	173,291	2,31,702	112	12,369	31,707	31,036	60,721	33
6 Cuddapah ...	12,123	14,391	13,422	14,111	141	85,919	81,112	47,391	98,658	40
7 Bellary ...	26,676	40,797	21,206	27,570	109	5,701	16,202	879	2,805	70
8 Kurnool ...	433,656	4,46,280	321,760	3,31,111	114	9,405	13,272	6,201	11,629	48
9 Madras ...	267,202	2,97,959	178,121	2,06,513	123	20,718	91,315	31,379	99,635	40
10 Chingleput ...	1	1	2	3	135	3,019	8,720	2,267	22,903	45
11 North Arcot ...	1,142	2,240	1,906	3,295	121	6,105	11,075	12,260	25,758	33
12 South Arcot ...	1,273	2,387	2,401	2,431	121	21,275	4,913	31,091	1,15,210	25
13 Tanjore ...	409	2,387	4,012	7,431	121	3,57	9,6	1,001	2,217	11
14 Trichinopoly ...	4,113	4,501	3,452	2,629	121	116	310	179	1,186	40
15 Madurai ...	8,156	14,512	41,519	3,561	121	50	117	51	86	31
16 Tinnevely ...	40,712	41,005	23,091	11,057	121	49	71	57	70	31
17 Coimbatore ...	56,390	49,052	75,183	27,136	121	1,366	6,212	1,219	10,393	35
18 Salem ...	7,958	11,371	7,203	19,891	197	13,761	3,27,170	2,31,638	4,72,413	...
Total...	1,000,119	11,40,769	685,016	10,36,294	...	...	...	...	...	...

REVENUE BOARD OFFICE,
MADRAS, 22nd November 1870.CIRCULAR ORDER OF THE BOARD
OF REVENUE.No. XIII. OF 1870.
STANDING No. 198-1.

AMENDMENTS IN ABKARRY FORMS.

The following alterations are to be made in the Abkarry forms, given in Standing Orders Nos. 195 and 196—

I. *Advertisement*, (Standing Order No. 195).—In Clause II, after "subject" enter "to the orders of the Board of Revenue and." In Clause VIII, after "toddy" enter in brackets "or to palm juice)." To Special Condition 5, add "or to any European vagrant under escort of the Police." In Special Condition 10 strike out the last clause, because it seems to indicate that the owners of palm trees may not sell unfermented palm juice without a license. Add a 16th Clause to the following effect, "that the renter shall cause his shopkeepers to use any measures that may be sanctioned by law as standard measures."II. *License to Abkarry Renters*, Form A. (Standing Order No. 198). To Clause 5 add "or to any European vagrant under escort of the Police." In Clause 7 strike out the last sentence beginning with the words "the owners of such trees." Clause II, after "toddy" enter in brackets "(fermented palm juice)."III. *Renters' Engagement*, Form B.—Make similar corrections in Clauses 5, 7, and 11.(Signed) J. GROSE,
Acting Secretary.IV. *Shopkeepers' License*, Form C.—Strike out the words from "forthwith" to "re-call," both included.V. *Shopkeepers' Engagements*, Form D.—The following new clause should be introduced between the second and third, and should begin thus:—"To fix in a conspicuous part of the front of my shop a signboard, on which my name and the price of the liquor sold by me shall be legibly inscribed." After "duty" in Clause 8 enter "or to any European vagrant under escort of the Police."VI. *Distillers' License*, Form E.—Strike out the words from "if" to "re-call," and also the word "forthwith."VII. *Manufacturers' License*, Form H.—In the title, insert the words "Arrack or" before "Toddy."VIII. *Liquor License*, Form I.—After "toddy" add in brackets "(fermented palm juice)." To Condition No. 3 add "or to any European vagrant under escort of the Police without the consent of the escort."IX. *Hotel License*, Form K.—Similar additions to be made in Conditions 1 and 2.X. *Sub-Renters' License*, Form N.—Correct Clauses 4, 6, and 10 as shown above.XI. *Sub-Renters' Engagement*, Form Z.—Correct Clauses 4, 6, and 10 in the same way.

(A true Extract.)

(Signed) J. GROSE,
Acting Secretary.

MISCELLANEOUS.

THE STANDARD OF LIVING IN INDIA.

II.

We stated in our last issue the grounds upon which we estimate that the total harvest of cereals in India must suffice to provide for at least 2 lbs. of grain per head of population per day independently of the surplus produced for export and a supply of seed corn for the next harvest. Within the last few days we have received from Nagpore Captain Forsyth's report of the new land revenue settlement of British Nimar, and find that it contains an incidental corroboration of our estimate. Captain Forsyth states that "the main article of

"food in Nimar is jowaree (millet), of which "about 3 lbs. is the daily ration of an able-bodied "man," and that "an average of 2 lbs. of grain "per diem for each soul of the population will "certainly not be an excessive allowance."

As we made no allowance in our estimates for any consumption of grain by cattle, nor for losses in the food stores of the country by mildew and vermin, nor for surplus provision against years of famine, we are satisfied that, if we err at all in assuring that the harvest amounts to 2 lbs. per head per day, we err on the side of moderation. In a recent issue of the *Gazette of India* it is enacted that the daily allowance on boardship of each adult emigrant from India shall be as follows:—

		lbs. oz. dr.	
Grain ...	Rice ...	0 20 0	Urthur Dhol = $\frac{1}{3}$ Gram " = $\frac{1}{4}$ Kalie " = $\frac{1}{2}$ Moong " = $\frac{1}{3}$ of the total quantity.
	Flour ...	0 16 0	
	Dhol. { For rice-eaters ...	0 6 0	
Oil ...	" flour- " ...	0 4 0	Half an ounce extra allowance of ghee to each adult for every day that dried fish is supplied.
	Ghee.. { For rice-eaters ...	0 1 0	
	" flour- " ...	0 1 8	
Meats, &c. ...	Mustard Oil ...	0 0 8	In lieu of preserved mutton. { To be supplied at scale rate—dried fish for two or three weeks, fresh mutton (sheep) one week.
	Preserved mutton ...	0 2 8	
Vegetables... {	1 oz. pumpkins or yams.	0 5 0	In lieu of fresh potatoes a sufficient quantity of preserved potatoes to allow 2 oz. twice a week to each adult, or about five weeks' supply at scale rate.
	2 oz. Potatoes.	0 5 0	
	2 oz. Onions.	0 5 0	
Curry-stuffs, &c. ... {	Garlic ...	0 0 0	Or, in lieu of firewood, its equivalent in coal for half the quantity.
	Mustard ..	0 0 0	
	Chillies ...	0 0 0	
	Black Pepper ...	0 0 1	
	Coriander Seed ...	0 0 2	
	Turneric ...	0 0 4	
Narcotic ... {	Tamarind ...	0 0 8	One gallon.
	Salt ...	0 0 8	
	Prepared Tobacco ...	0 0 7	
	Leaf ...	0 0 3	
Water ... {	Firewood ...	2 0 0	One gallon.
	Water ...	...	

We have here, no doubt, a standard of living somewhat beyond the means of the masses in India; but we adduce it to show that the ration of cereals alone is 26 ounces per day. The dry provision for bad weather, when cooking is impossible and people are reduced to living on grain alone, is as follows:—

	lbs. oz. dr.
Best coarse Biscuit	36 0 0
Choorah ...	4 8 0
Gram ...	3 8 0
Sugar ...	2 0 0

is usually eaten with salt.
used with biscuit and choorah.

This allowance, 46 lbs., is held to be sufficient for

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eighteen days, a daily ration of 2½ lbs. of flour. In the last *Statistical Reporter* we gave the result of some interesting experiments made about twenty years ago in Bengal by Dr. Bedford, with a view to ascertain what the people will really eat when food is provided for them without stint. According to these experiments their consumption was found to be as follows:—

	Coolies.		Ryots.		Hindoos.		Musulmans.		Hindoos.		Musulmans.	
	Hindoos.	Musulmans.	Hindoos.	Musulmans.	Hindoos.	Musulmans.	Hindoos.	Musulmans.	Hindoos.	Musulmans.	Hindoos.	Musulmans.
Rice	34½ oz.	36 oz.	34½ oz.	36½ oz.	34½ oz.	36½ oz.	34½ oz.	36 oz.	34½ oz.	36½ oz.	34½ oz.	36 oz.
Dholl	8 "	6½ "	8 "	6½ "	8 "	6½ "	8 "	6½ "	8 "	6½ "	8 "	6½ "
Salt	½ "	½ "	½ "	½ "	½ "	½ "	½ "	½ "	½ "	½ "	½ "	½ "
Fish	2 "	2 "	2 "	2 "	2 "	2 "	2 "	2 "	2 "	2 "	2 "	2 "
Meat	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "
Spices	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "
Vegetable	6½ "	6½ "	6½ "	6½ "	6½ "	6½ "	6½ "	6½ "	6½ "	6½ "	6½ "	6½ "
Milk	2 "	2 "	2 "	2 "	2 "	2 "	2 "	2 "	2 "	2 "	2 "	2 "
Oil	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "	1 "

These experiments seem to be conclusive. They were made with great care by six darogahs in different stations, and the uniformity of the returns gives them a claim to be relied upon. In every case we find the consumption of rice and dholl alone to have been nearly 43 ounces per day! besides vegetables, fish, &c. Where, therefore, the people, as in the Central Provinces, are living in the midst of coarse plenty, it is plainly impossible to estimate the consumption at less than 2 lbs. per head per day. We attach some importance to the establishment of this fact, because it supplies us with a test—rough it may be, but summary and decisive—as to the value of our Settlement Officers' estimates of the annual harvests of the country. In the *Statistical Reporter* for December we purpose to give some further details upon this subject of interest. We may remark here that there is a general tendency, if we mistake not, to under-estimate the quantity of food men will consume when free from all anxiety as to the means

of procuring it. Mr. Macgregor, British Consul at Elsinour, tells us that the Danish farm labourer makes five meals a day, and that the following quantities of food are usually allowed to male farm servants per month:—

Bread	60 lbs.
Potatoes	1 bushel.
Groats	10 lbs.
Beans	4 "
Meat	30 "
Salt Herrings	2 "
Saltfish	60 quarts.
Beer	ad libitum.
Milk	ad libitum.

Such a consumption seems almost incredible; but Mr. Macgregor is declared to be an intelligent and careful observer. The diet amounts to about 5 lbs. of solid food per day, two quarts of beer, and milk *ad libitum*. It is to be hoped the peasantry of Schleswig-Holstein will be as comfortably provided for under the Prussian as they were under Danish rule.

If now we estimate the population of British India at 150 millions—according to the latest statistics the estimate is 143,157,634—and the consumption of cereals at 2 lbs. per head per day, and assume that the price of food throughout the country during the last two years had been upon the average as low as 20 seers per Rupee, it is plain that the harvests must at least have been of the following value:—

	Rs.
150,000,000 × 2 lbs. × 365 ÷ 40 lbs. =	2,74,00,00,000
Add Exports	50,00,00,000
Seed Corn one-seventh	40,00,00,000
Vegetables, Condiments, Spices, &c.	...
Crops of Sugarcane, Tobacco	...
Fodder for Cattle	...
Clothing of the People	...

Now, although this calculation is very rough, and greatly below, as we are sure, the real value of the harvest—as, for instance, who can calculate the value of the coconut harvest of India—it proves conclusively, which is all we want, that the land revenue is a mere pittance of the produce of the soil. We have repeatedly stated our conviction that it does not amount to one-thirtieth! The margin that lies between our assessment of £21,000,000 a year and the £500,000,000 of the harvest goes into the pockets of the agriculturists. The true rent of the land can hardly be less than £50,000,000 to £100,000,000 sterling, and it is to the State rights in this fund that we must look for our future revenues.—*Indian Economist*, 15th November 1870.

[January 16, 1871.]

ACT OF THE GOVERNMENT OF INDIA.

ACT No. VII. OF 1870.
THE COURT FEES' ACT, 1870.

CHAPTER I.

Preliminary.

1. This Act may be called "The Court Fees' Act, 1870."
- It extends to the whole of British India; and it shall come into force on the 1st day of April 1870.
2. On and after that day, the enactments mentioned in the first part of the third schedule hereto annexed shall be wholly repealed, and the enactments mentioned in the second part of the same schedule shall be repealed to the extent specified therein.

CHAPTER II.

Fees in the High Courts and in the Courts of Small Causes at the Presidency Towns.

3. The fees payable for the time being to the Clerks and Officers (other than the Sheriffs and Attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by Statute 24 and 25 Vic., Chapter 104, Section 15, or chargeable in each of such Courts under No. 11 of the first, and Nos. 7, 12, 14, 16, 20, and 21 of the second, schedule to this Act annexed; and the fees for the time being chargeable in the Courts of Small Causes at the Presidency Towns and their several offices; shall be collected in manner hereinafter appearing.

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction; or in the exercise of its extraordinary original criminal jurisdiction; or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a Division Court,

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

As Courts of reference and revision, or in the exercise of its jurisdiction as a Court of reference or revision; unless, in respect of such document, there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

5. When any difference arises between the Procedure in case of difference as to necessity or amount of fee, or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the Taxing Officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the First Judge of such Court.

The Chief Justice shall declare who shall be Taxing Officer within the meaning of the first paragraph of this section.

CHAPTER III.

Fees in other Courts and in Public Offices.

6. Except in the Courts hereinafter mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless, in respect of such document, there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.
7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—
- (i.) In suits for money (including suits for damages or compensation, or arrears of maintenance, or of annuities, or of other sums payable periodically)—according to the amount claimed:

(ii.) In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

(iii.) In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint:

(iv.) In suits—
(a.) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

(b.) to enforce the right to share in any property on the ground that it is joint family property.
(c.) to obtain a declaratory decree or order, where consequential relief is prayed,

(d.) to obtain an injunction,

(e.) for a right to some benefit (not herein otherwise provided for) to arise out of land, and
(f.) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought, and the provisions of the Code of Civil Procedure, Section 31, shall apply as if, for the word "claim," the words "relief sought" were substituted.

(v.) In suits for the possession of land, houses, and gardens—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(a.) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—ten times the revenue so payable:

(b.) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid;

and such revenue is settled, but not permanently—

five times the revenue so payable:

(c.) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and net profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such net profits:

but where no such net profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood:

(d.) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned—the market-value of the land:

Provided that in the territories subject to the Governor of Bombay in Council the value of the land shall be deemed to be—

(1.) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to five times the survey assessment;

(2.) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey assessment; and

(3.) where the whole or any part of the annual survey assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted:

Explanation—The word "estate," as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor, or a farmer, or ryot shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue.

(e.) where the subject-matter is a house or garden—according to the market-value of the house or garden:

(vi.) In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v. of this section) of the land, house, or garden in respect of which the right is claimed:

(vii.) In suits for the interest of an assignee of land revenue—fifteen times his net profits as such for the year next before the date of presenting the plaint:

(viii.) In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest:

(ix.) In suits against a mortgagee for the recovery of the property mortgaged, and in suits by a mortgagee to foreclose the mortgage,

or, where the mortgage is made by conditional sale, to have the sale declared absolute—according to the principal money expressed to be secured by the instrument of mortgage:

For specific performance—

(a.) of a contract of sale—according to the amount of the consideration:

(b.) of a contract of mortgage—according to the amount agreed to be secured:

(c.) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:

(d.) of an award—according to the amount or value of the property in dispute:

(xi.) In the following suits between landlord and tenant:—

(a.) for the delivery by a tenant of the counterpart of a lease,

(b.) to enhance the rent of a tenant having a right of occupancy,

(c.) for the delivery by a landlord of a lease,

(d.) to contest a notice of ejectment,

(e.) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and

(f.) for abatement of rent—

according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

9. If the Court sees reason to think that the annual net profits or the market-value of any such land, house, or garden as is mentioned in Section 7,

Power to ascertain net profits or market-value.

paragraphs 5 and 6, have, or has, been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

10. (i.) If, in the result of any such investigation, the Court finds that the net profits or market-value have, or has, been wrongly estimated, the Court, if the estimation

has been excessive, may, in its discretion, refund the excess paid as such fee; but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or net profits been rightly estimated.

(ii.) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

(iii.) Section 180 of the Code of Civil Procedure shall be construed as if the words "the market-value of any property or" were inserted after the word "ascertaining," and as if the words "or annual net profits" were inserted after the word "damages."

11. In suits for mesne profits or for immovable property and mesne profits, or for an account, if the profits or amount decreed are, or is, in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid.

If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

12. (i.) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit:

[January 16, 1871.]

(ii.) But, whenever any such suit comes before a Court of Appeal, Reference or Revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of Section 10, paragraph ii., shall apply.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Court of Civil Procedure, is ordered to be received, or, if a suit is remanded in appeal, or any of the grounds mentioned in Section 351 of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

15. Where an application for a review of judgment is admitted, and Court reverses or modifies its former decision on ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Collector so much of the fee paid on the plaint or memorandum of appeal, as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, Clause (b) or Clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. When any appeal is presented to a Civil Court, not against the whole of a decision, but where respondent takes objection to only against so much thereof as relates to a portion of the subject-matter of the suit, and, on the hearing of such appeal, the respondent takes, under Section 348 of the Code of Civil Procedure, an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to.

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, Section 9.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence for which Police Officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of 8 Annas, unless the Court thinks fit to remit such payment.

19. Nothing contained in this Act shall exempt or render the following documents chargeable with any fee:—

- (i.) Power of attorney to institute or defend a suit when executed by an Officer, Warrant Officer, Non-Commissioned Officer or Private of Her Majesty's Army not in civil employment.
- (ii.) Declarations mentioned in Section 118 and Section 164 of the Code of Civil Procedure.
- (iii.) Written statements called for by the Court after the first hearing of a suit.
- (iv.) Plaint presented to a Military Court of Requests and petition for execution of a decree of such Court.
- (v.) Plaints in suits tried by Village Munsiffs in the Presidency of Fort St. George.

January 16, 1871.]

- (vi.) Plaints and processes in suits before District Panchayets in the same Presidency.
- (vii.) Plaints in suits before Collectors under Madras Regulation XII of 1816.
- (viii.) Probate of a will, letters of administration, and certificate mentioned in the first schedule to this Act annexed, No. 12, where the amount or value of the property in respect of which the probate, or letters, or certificate shall be granted does not exceed 1,000 Rupees.
- (ix.) Application or petition to a Collector or other officer making a settlement of land revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land, or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.
- (x.) Application relating to a supply for irrigation of water belonging to Government.
- (xi.) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land revenue by a person holding under direct engagement with Government land of which the revenue is settled but not permanently.
- (xii.) Application for service of notice of relinquishment of land or of enhancement of rent.
- (xiii.) Written authority to an agent to distrain.
- (xiv.) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.
- (xv.) Bail bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.
- (xvi.) Petition, application, charge, or information respecting any offence, when presented, made or laid to, or before, a Police Officer, or to or before the Heads of Villages or the Village Police

- (xvii.) Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.
- (xviii.) Complaint of a public servant (as defined in the Indian Penal Code), a Municipal officer, or an officer or servant of a Railway Company.
- (xix.) Application for permission to cut timber in Government forests, or otherwise relating to such forests.
- (xx.) Application for the payment of money due by Government to the applicant.
- (xxi.) Petition of appeal against the chauthdārī assessment under Act No. XX of 1856, or against any Municipal tax.
- (xxii.) Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.
- (xxiii.) Petitions presented to the Special Commissioner appointed under Bengal Act No. II of 1869 (to ascertain, regulate, and record certain tenures in Chota Nagpore).
- (xxiv.) Petitions under the 14 and 15 Vic., Chapter 40 (*An Act for Marriages in India*), Section 5, or under Act No. V of 1852, Section 9.

CHAPTER IV.

Process Fees.

20. The High Court shall, as soon as may be, make rules as to the following matters:—

(i.) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction:

(ii.) the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offence for which Police Officers may arrest without a warrant; and

(iii.) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

All such rules, alterations, and additions shall, after being confirmed by the local Government and publication of rules. sanctioned by the Governor-General of India in Council, be published in the local official *Gazette*, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A table in the English and vernacular languages, showing the fee chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

22. Subject to rules to be made by the High Court and approved by the local Government and the Governor-General of India in Council, every District Judge and every Magistrate of a district shall fix, and may, from time to time, alter the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil Jurisdiction of the High Courts of Judicature) shall be deemed to be subordinate to the Court of the District Judge.

23. Subject to rules to be framed by the chief Controlling Revenue Authority and approved by the local Government and the Governor-General of India in Council, every officer performing the functions of a Collector of a district shall fix, and may, from time to time, after the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

24. Every process served or executed under this chapter shall be held to be a process within the meaning of Section 188 of the Code of Civil Procedure, and of Section 2 of Act No. XXIII of 1861 (to amend Act VIII of 1859).

CHAPTER V.

Of the mode of levying fees.

25. All fees referred to in Section 3 or Collection of fees chargeable under this Act shall be collected by stamps.

26. The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Governor-General of India in Council may, by notification in the *Gazette of India*, from time to time direct.

Rules for supply, number, renewal, and keeping accounts of stamps. 27. The local Government may, from time to time, make rules for regulating—

(a.) the supply of stamps to be used under this Act,

(b.) the number of stamps to be used for denoting any fee chargeable under this Act,

(c.) the renewal of damaged or spoiled stamps, and,

(d.) the keeping accounts of all stamps used under this Act:

Provided that, in the case of stamps used under Section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official *Gazette*, and shall thereupon have the force of law.

28. No document which ought to bear a stamp under this Act shall be of any validity, unless, and until, it is properly stamped.

But if any such document is through mistake or inadvertence received, filed, or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

29. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

[January 16, 1871.]

Such officer as the Court or the head of the office may, from time to time, appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head, so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

Miscellaneous.

31. (i.) Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which Police Officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to re-pay to the complainant the fee paid on such application or petition.

(ii.) In the case mentioned in Section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to re-pay to the complainant the fee, if any, paid by the latter for the examination.

(iii.) When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to re-pay such fees to the complainant.

(iv.) All fees ordered to be re-paid under this section may be recovered as if they were fines imposed by the Court.

32. The Code of Civil Procedure, Sections 303 and 302, shall be read as if, for the words "stamp duty" and "stamps," the words and figures "fees chargeable under the Court Fees Act, 1870," were substituted; Section 371 of the same Code shall be read as if, for the words "a stamp of the value," the words "the

payment of the fee," were substituted; and Section 373 of the same Code shall be read as if, for the words "on a stamp paper of the value," the words "and shall be chargeable with the fee," were substituted; and as if, for the words "for the stamps," the words "the fees," were substituted.

And the Indian Income-tax Act, Section 20, shall be read as if, for the words "the value of the said stamp," the words "the fee on the petition," were substituted.

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in Section 4 or Section 6 shall be deemed to prohibit such filing or exhibition.

34. In the General Stamp Act, 1869, Section 48 shall be read as if, for the words and figures "Act No. XXVI of 1867 (to amend the law relating to Stamp Duties)," the words and figures "The Court Fees Act, 1870," were substituted.

35. The Governor-General of India in Council may, from time to time, by notification in the *Gazette of India*, reduce or remit fees, in the whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed, and may, in like manner, cancel or vary such order.

36. Nothing in Chapters II. and V. of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

[The Schedules will appear in our next issue.]

N. B.—No BROKEN PERIODS allowed between the 1st January and the 30th June, and the 1st July and the 31st December.

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