Proceedings of the Madras Government, Revenue Department,
19th February 1873.

No. 128. Read the following letter from the Secretary to the Board of Revenue, to the Secretary to Government, Revenue Department, dated Madras, 21st November 1872, No. 2,243 :—

I AM directed to request that Government will issue orders defining clearly the position of the Board with regard to the institution of prosecutions against Tahsildars and Deputy-Tahsildars.

2. It is provided by Section 167 of the Criminal Procedure Code, and re-enacted by the new Code which comes into force on the 1st January 1873, that—

(1) No judge shall be prosecuted as such Judge;

(2) And no official not removable from his office without the sanction of Government shall be prosecuted as such official,

except with the sanction of Government or some authority empowered by Government to grant such sanction.

3. Further, by the new Code, *all Magistrates* are removable by Government (Section 9) who are to appoint them, so that, while a Tahsildar or Deputy-Tahsildar cannot, after the 1st of next January, be prosecuted for any offence alleged against him as a *Magistrate* without the sanction of Government, or of some authority empowered by Government, he can be so prosecuted as a *Tahsildar* on the motion of the commonest Policeman.

4. It is even doubtful whether the present position of the Board as to Tahsildars is equivalent to an order of Government empowering them to decide the question whether a Tahsildar when offending as a *Judge* shall be prosecuted or not. If the proceeding is authorized by law, and the person before whom it is taken is empowered to decide, such person is a *Judge*, so that a Tahsildar may sometimes act in the capacity of *Judge*, as, for instance, when he is assessing Income-tax.

5. The Board think that the protection against hasty and malicious prosecutions accorded to Tahsildars and Deputy-Tahsildars as Judges is far more necessary to them in the discharge of their invidious duties in the Revenue and Miscellaneous Departments, and that the duty of determining whether they shall be put on their trial or not should be entrusted to the Board of Revenue.

6. The only way in which it could be made illegal for prosecutions against Tahsildars and Deputy-Tahsildars to be instituted without the sanction of the Board would be this: Government must assume in the case of these officers the exclusive power of removal which the new Procedure Code will give them in the case of the very same officers in their capacity of Magistrates, and then authorize the Board to sanction prosecutions against them.

7. But the Board do not think it advisable to surrender the power which they now possess of ordering the dismissal of incompetent or criminal Tahsildars and Deputy-Tahsildars. It is true that an appeal lies to Government against every such order, and that the right of appeal is almost always exercised, so that the power surrendered would be a small matter; but the position which the Board holds as Head of the Revenue Department must be maintained.

8. It will be sufficient if Government issue instructions to Collectors that no prosecution against Tahsildars or Deputy-Tahsildars in any capacity and on any

charge shall be instituted, unless the Board have previously approved of the prosecution and the charge.

9. I am to add that two cases have recently occurred in which the Board have felt the want of this species of authority.

No. 129. ORDER THEREON, 19th February 1873, No. 197.

Miscellaneous.

THE Government concur with the Board that Tahsildars and Deputy-Tahsildars should be protected against hasty and improper prosecutions. It is observed that every Tahsildar and Deputy-Tahsildar in this Presidency is a *Magistrate*, and by the new Code of Criminal Procedure (Section 9) all Magistrates must be appointed, and are removable by the Government. Further, under the provisions of Section 466, an official not removable from his office without the sanction of Government cannot be prosecuted as such official, except with the sanction of Government, or of some authority to which he is subordinate, and whose power to sanction or direct such prosecution the Government shall not think fit to limit or reserve. It is provided, however, that "no such public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty, unless with the sanction of the Government."

2. It is obviously incongruous that a public officer possessing these two jurisdictions should be protected in the discharge of one set of functions only, and in order to protect Magistrates when acting as Tahsildars and Deputy-Tahsildars, the Board propose that general instructions be issued prohibiting the entertainment of complaints of offences committed by such public servants in their capacity of Tahsildar or Deputy-Tahsildar, except with the sanction of the Board of Revenue.

3. The Government are of opinion that a Notification of this kind would be of doubtful legality; but the same object may be attained by formally vesting the appointment of Tahsildars and Deputy-Tahsildars in the Government (as the appointment of these same persons to be Magistrates is now vested), and by declaring that officers of this class shall not be removed from office—in whichever capacity they may have offended—without the sanction of Government. At the same time, to obviate the impression that the Government desire to interfere with the position so long occupied by the Board of Revenue in controlling the nomination by Collectors of Tahsildars, the Government will not receive any nomination which has not the approval of the Board. Hereafter every nomination of any officer to be a Tahsildar and Magistrate, or a Deputy-Tahsildar and Magistrate, must be submitted to Government through the Board of Revenue. In like manner, every report proposing the dismissal of any such officer shall be transmitted to the Board, who will forward to Government those cases only where they consider that the penalty has been justly incurred.

4. In regard finally to the limitation or reservation of the power of the several authorities to whom a Tahsildar and Magistrate or a Deputy-Tahsildar and Magistrate may be subordinate, to sanction or direct the prosecution of an officer

Proceedings of the Madras Government, Revenue Department,
19th February 1873.

of either grade in either capacity, the Government resolve to reserve this power to the Board of Revenue, who shall call for and consider such preliminary inquiry as each case may demand, before passing final orders in the matter.

(True Extract.)

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

To the Board of Revenue.

Exd. F. R. Bantleman.

Protection of Talukdars & Dte Talukdars
against hasty prosecutions.

I proposed that the three members of the Board heartily concurred in the only legal way of doing it is to have Talukdars appointed by Govt - in which case their prosecution for alleged official malpractices will be in administrate, under the Regulations of the Criminal Procedure Code, unless it be sanctioned by Govt, or by the Board - at Govt delegating the authority to the Board.

2. The other members - but to give effect of Talukdars - with the Govt to issue a Proclamation forbidding the prosecution of Talukdars without the sanction of the Board of Revenue. The object of course is that it requires a Govt sanction, not a Proclamation of the Executive Govt, as is sometimes stated.

3. Every Talukdar is to be specially appointed under, every Regulation the Govt - so that practically the Govt will no longer be able to appoint a man to be Talukdar, without first ascertaining

that the same person is considered by Govt fit to be a Magistrate.

The best way wd be to direct Collrs to send up their nominations stating the Talks of wch they wish each person to be Magistrate of such cases as they approve of — as under.

A. B. to be Tahsildar & Magistrate of the third class. The title of Sub Magistrate being confined to the Talk.

C. D. to be Deputy Tahsildar & Magistrate of 2d class of W.

E. F. to be only Deputy Tahsildar without the Bench commence, as is the case now; and the actual appt to be made by Govt, as at present.

No Tahsildar could be promoted & made Tahsildar without the sanction of the Board; & Govt further reserve to themselves the right to delegate this authority to the Board.

No person may be appointed a Magistrate by Govt after this but on the recommendation of the Collr.

I can only say that I have never heard of a case in which the refusal of them has led to any ill effect.

I should be glad to see the Govt of Bombay & the Govts of the other Presidencies take the same step.

Nov. 26th 1856

Nov. The proposed measure is very much needed. W.L.

1797.

Read Letter from the Govt of Fort
Cox 22nd Inst 21st Nov 1797.

The Govt concurs with the Govt that
Talukdars & deputy Talukdars should be
protected against hasty (malicious)
prosecutions. It is reasonable that every
Talukdar & deputy Talukdar in his
Presidency is a Magistrate; and
by the new Code of Crim. Procedure (A. 99)
all Magistrates must be appointed &
can removable by the Govt. Further, by
the provisions of Sect 106, an officer
not removable from his office without
the sanction of Govt cannot be prose-
cuted for such offence, except with the sanction
of Govt, or of some authority to which
he is subordinate, & who has power to
direction or direct such prosecution.
The Govt should not therefore think it necessary
to reserve. It is provided, however that
"no such public servant shall be prosecu-
ted for any act purporting to be done
by him in the discharge of his duty unless
it shall be sanctioned by the Govt"
It is strongly recommended that a
public officer prosecuting for such offence
should be protected in the discharge of one
act of prosecution only, and in order to
prevent Magistrates to their refusing to

Talookdars & deputy Talookdars,
the Bd propose that general instructions
be issued prohibiting the entertain-
-ment of complaints of offences
committed by either such public servants
in their capacity of Talookdars or
Dy Talookdars, except with the
sanction of the Bd of Revenue.

3. The Govt are of opinion that a
rigid application of this kind would be of
useful legality but the same object may
be attained by formally vesting
the appointments of Talookdars &
Dy Talookdars in the Govt (as the
appointment of these same per-
sons to be Magistrates is now
vested), and by declaring that
Officers of this class shall not be
removed from office in which even
capacity they may have offended —
without the sanction of Govt. At the
same time, to obviate the impression
that the Govt desire to interfere with
the powers of Govt. as exercised by the
Bd of Rev in controlling the nomina-
-tion by Collectors of Talookdars, the
Govt will not receive any nomination

proposing the dismissal of
any such Officer shall be
transmitted to the Bd who
will forward to Govt those cases
only where they consider that
the penalty has been justly incurred.

which (is) not [countersigned by the
Bd but by in token of its having] the
approval of the Bd. Thereupon every
nomination of any Officer to be
a Talookdar & Magistrate, or a
Dy Talookdar & Magistrate, must
be submitted to Govt through the Bd
of Revenue. In like manner every report

4. In regard finally to the limitation
or resumption of the powers of the
several authorities to whom a
Talookdar & Magistrate or a Dy
Talookdar & Magt may be entrusted
by sanction or decision the Govt

[illegible] of an Officer of such
grade in either of his capacities,
the Govt prefer to reserve this power
to the Bd of Revenue, who will call
for & consider such preliminary in-
-quiry as each case may demand,
before passing final orders in the
matter.

H.S.
6/6/79.

To the Board of Rev Oudh 20 Feb 1879