No. 47. Read the following Proceedings of the Board of Revenue, dated 28th April 1873, No. 667 :—

Read the following letter from R. K. PUCKLE, Esq., Collector of Tinnevelly, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 9th April 1873, No. 181 :—

I HAVE the honour to forward for sanction the answer proposed to the plaint in Suit No. 769 of 1872 on the file of the District Munsif's Court of Tinnevelly in which Tinnevelly Tahsildar is made a defendant.

2. The facts of the case are as under—

An Inamdar fell in arrears and his crops were distrained and sold by the Tahsildar under Section 11 of Act II. of 1864. The lands could not be attached, as they were already under attachment by the Civil Court.

The tenant who cultivated the crop now brings a suit for recovery of the value of his crop, instead of seeking relief by withholding the equivalent in rent now or hereafter due to his landlord as provided in the latter part of the above-quoted section.

3. The date of hearing was fixed for the 7th instant. Application for an extension of two months has been made.

ENCLOSURE No. 1.—Draft Answer.

SUBMITTED for the orders of Government.

2. In this case plaintiff sues to recover Rupees 67-12-0, the value of produce distrained under Madras Act II. of 1864. It was the produce of land under the Court's attachment in execution of a decree and which plaintiff obtained on a lease for four years from the receiver appointed under Section 243, Civil Procedure Code.

3. The Collector observes that, as attachment of the land was precluded by the prior attachment of the Court, the *crop* was distrained. This distinction is not consistent with the opinion* of the late Advocate-General. Mr. Norton considered that when land is attached by a Court in execution of a decree the proceeds of the estate must in the first instance be applied to the liquidation of the execution debt and the Government arrears must for the time being remain unsatisfied. As a remedy for this state of things he suggested an enactment to the effect that the Government demand shall be the first charge on the land, and a corresponding amendment of the Civil Procedure Code.

* G. O., 30th November 1870, No. 1,891.

4. The Board observe that the Sadr Court were of opinion that the Government revenue is the first charge on the land. In reference to a demand made by the Collector for arrears of revenue on the Vassireddy estate then under the Court's attachment, it was held* that by the provisions of the Regulations the

* Sadr Court Procs., 31st May 1833. G. O., 14th June 1833.

public revenue takes precedence of all other demands, and that the lien of the Collector upon any surplus remaining in his hands carried a stronger claim than that of any private creditor. Again, in regard to the rights of Government when a Court attaches the produce of land on which public revenue is due, the Sadr Court held* that Government have a lien on the crop to the full amount of the annual assessment. On the application of the Collector the Courts used to satisfy out of the sale proceeds the Government demand in preference to all other claims, and this practice continued until in 1865 the Board directed the adoption of the course prescribed in Standing Circular No. 267.

* *Vide* Board's Circular Order, 19th April 1855, page 52.

5. The opinion of the Sadr Court was founded on Section 6, Regulation XXVII. of 1802, which provides that the land shall be regarded as the security of the public revenue. This has been superseded by Section 2, Act II. of 1864 (Madras), which is more comprehensive. It provides that the land, the buildings upon it, and its products shall be regarded as the security of the public revenue. It may be objected that there is no provision in the Civil Procedure Code recognizing the prior claim of Government. In regard to this it is to be observed that neither was there anything of the kind in the procedure previous to the passing of Act VIII. of 1859 except the practice of the Courts founded on the Sadr Court's interpretation of the law.

6. If the late Advocate-General's opinion be accepted as conclusive, this suit admits of no defence; but if, as the Board believe, there is still room for doubt this case affords a favourable opportunity of obtaining a judicial decision on two important points, namely:—

(1.) Whether under the law, as it stands, the Government revenue is the first charge on the land and its produce?

(2.) Whether the Court's attachment bars summary process under Act II. of 1864?

On these grounds the Board recommend that the defence of the suit be sanctioned.

No. 48. ORDER THEREON, 12th May 1873, No. 462.

Miscellaneous.

THE Government entertain no doubt as to the competency of Revenue-officers to attach and sell the crops growing on land, the revenue of which has been permitted to fall into arrears. The fact of the land itself being under the Court's attachment cannot affect this right, but the land cannot be sold by the Revenue authorities until the Court's attachment is removed. When this takes place, or when the land has been brought to sale by the Court, and transferred to the purchaser, it will still be liable for any arrears of revenue which may remain unpaid, and may then be sold as pointed out in the Board's Standing Order No. 267.

Proceedings of the Madras Government, Revenue Department,
12th May 1873.

2. The Government sanction the defence of the suit on the usual terms, and approve of the draft answer.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.
,, the Accountant-General.

Exd. F. R. Bantleman.

Head Cazur Cutcherry
Tinnevelly 9th April 1873

No. 181.

From

R. K. Puckle Esquire
Collector

To

J. Grose Esquire
Secretary to the Board of Revenue
Madras.

Sir

I have the honor to forward for sanction the answer proposed to the plaintiff in Suit No. 769 of 1872 on the file of the District Moonsiffs Court of Tinnevelly in which Tinnevelly Tahsildar is made a Defendant.

2. The facts of the case are as under

An Inamdar fell in arrears and his crops were destrained and sold by the Tahsildar under Section XI of Act II of 1864. The lands could not be attached as they were already under attachment by the Civil Court.

The

The tenant who cultivated the crop now brings a suit for recovery of the value of his crop instead of seeking relief by withholding the equivalent in rent now or hereafter due to his landlord as provided in the latter part of the above quoted section.

3. The date of hearing was fixed for the 7th instant. Application for an extension of two months has been made.

I have &c.

(Signed) R. K. Puckle.
Collector.

True copy

J Gole
Secretary.
Board of Revenue.

Enclosure in the
Proceedings of the
Board of Revenue
dated 28th April 1873.

To The Ag. Secretary to
Government
Revenue Department

R 1200/73
Subject

Copy of a letter from the
Collector of Tinnevelly, for-
-warding for Sanction the
Answer proposed to the
plaint in Suit-No. 769 of
1872 on the file of the Dis-
-trict Munsiff's Court at
Tinnevelly.

Revenue Department

9

Proceedings of the Board of Revenue
dated 28th April 1873.

Read letter from the Collector of Tinnevelly dated 9th April 1873 No. 181 forwarding for sanction the answer proposed to the plaint in suit No. 769 of 1872 on the file of the District Munsiff's Court at Tinnevelly.

Submitted for the orders of Government.

In this case plaintiff sues to recover Rupees 67-12-- the value of produce distrained under Madras Act III of 1864. It was the produce of land under the Court's attachment in execution of a decree and which plaintiff obtained on a lease for four years from the receiver appointed under section 243 Civil Procedure Code.

The Collector observes that as attachment of the land was precluded by the prior attachment of the Court the

The Crop was distrained. This distinction is not consistent with the opinion of the late Advocate General, Mr. Norton considered that when land is attached by a Court in execution of a decree the proceeds of the estate must in the first instance be applied to the liquidation of the execution debt and the Government arrears must for the time being remain unsatisfied. As a remedy for this state of things he suggested an enactment to the effect that the Government demand shall be the first charge on the land, and a corresponding amendment of the Civil Procedure Code. The Board observe that the Sudr Court were of opinion that the Government revenue is the first charge on the land. In reference to a demand made by the Collector for arrears of revenue on the Vassireddy estate then

x Government Order 30th Nov 1870 No 1891.

x Sudr Court Pros: 31st May 1833 G.O. 14th June 1833

x Vide Board's Circular Order 19th April 1855 page 52.

under the Court's attachment it was held that by the provisions of the Regulations the public revenue takes precedence of all other demands and that the lien of the Collector upon any surplus remaining in his hands carried a stronger claim than that of any private creditor. Again in regard to the rights of Government when a Court attaches the produce of land on which public revenue is due the Sudr Court held that Government have a lien on the Crop to the full amount of the annual assessment. On the application of the Collector the Courts used to satisfy out of the sale proceeds the Government demand in preference to all other claims and this practice continued until in 1865 the Board directed the adoption of the course prescribed in Standing Circular No 267.

The

The opinion of the Sudr Court was founded on section 6 Regulation 27 of 1802 which provides that the land shall be regarded as the security of the public revenue. This has been superseded by section II Act II of 1864 (Madras) which is more comprehensive. It provides that the land, the buildings upon it and its products shall be regarded as the security of the public revenue. It may be objected that there is no provision in the Civil Procedure Code recognizing the prior claim of Government. In regard to this it is to be observed that neither was there any thing of the kind in the procedure previous to the passing of Acts of 1859 except the practice of the Courts founded on the Sudr Courts interpretation of the law.

If the late Advocate Generals opinion be accepted as conclusive this suit admits of

of no defence but if, as the Board believe, there is still room for doubt this case affords a favorable opportunity of obtaining a judicial decision on two important points viz:-

(1) Whether under the law as it stands the Government revenue is the first charge on the land and its produce?

(2) Whether the Courts attachment bars summary process under Act II of 1864?

On these grounds the Board recommend that the defence of the suit be sanctioned.

/True Extract/

C. Gole
Secretary

To,
The Acting Secretary to Government
Revenue Department
with copy of Collectors letter &
enclosure

C. Manchee
M. Narasimma Chary

Revr 1873 Depch

No. 1200

Proceedings of the
Board of Revenue

Dated 28th April 1873.
Desp.d 28th " — "
Received 1st May —
en 2. 1873

L.C. No 462 — 12th May 1873

Recommending Sanction be granted for defence of Suit No 709 of 1872 in Tinnevelly Dt. Munsif's Court regarding Enquiry of certain lands distrained under Madras Act II of 1864.

1-48

May 1/73

No. 1200

17

No. 462. 12 May 73

The Govt entertain no
doubt as to the competency
of revenue Offices to attach
and sell the crops growing
on land, the revenue
permitted
of which has been allowed
to fall into arrears. The
fact of the land itself
being under the Courts
attachment cannot
affect this right, but
the land cannot be

sold by the revenue
authorities until the
Court's attachment is
removed. When this takes
place, or when the land
has been brought to sale
by the Court, and transferred
to the purchaser, it will
still be liable for any
arrears of revenue which
may remain unpaid,
and may then be sold
as pointed out in the
Board's Standing
Order No 267.

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The Govt sanction
the defence of the suit
on the usual terms,
and approve of the
draft answer

A.P.D.

14 To the Board of Rev. &c
6 - The Recommd Para

Sanctioning Defence
of Sir J. Wolseley's Letter

Enc

Sir Garnet

C 3.[20] May/73 Rec.d 12 May/73