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Extract from the Proceedings of the Government of India in the Home Department
(Public),—under date Fort William, the 13th February 1874.

READ the subjoined extracts from a correspondence with Her Majesty's Secretary of State for India on the subject of the holding of land by Government servants in India and of other investments:

Extract, paragraphs 3 to 8, of despatch to the Secretary of State, No. 40, dated the 16th June 1873.

3. The main rule which we propose to alter is that which deals with the holding of land in India by covenanted civilians and by military officers in civil employ. The general rule now is that no such civil officer may hold land within his own Presidency. The correspondence which has only just ended, raised the point whether officers belonging to the Financial Department, who are liable to serve in any Presidency or Province, are debarred under this rule, or under any other, from holding land anywhere in India beyond their own Presidency. And the reply of the Secretary of State, in his despatch

marginally cited,* was that the prohibition (imposed by the general rule above quoted) does not apply to districts in which officers of the Financial Department may be temporarily serving outside the limits of the Presidency to which they were originally appointed. By the wording of this reply the ruling which it conveyed applied only to the case

† No. 21, dated 13th July 1866. of the Financial Department, but the letter† from this Government, which submitted the case, had pointed out that "under the literal terms of the rules it is clear that a Bengal civil servant may ordinarily acquire and hold land in British Burma." And, though the answer from the Secretary of State may be understood to assume that an officer connected with the Local Administration of a Province outside the limits of his original Presidency is forbidden by the spirit of existing rules from holding land within that Province, yet this important construction is not positively laid down either in the despatch from the Government of India, or in the Secretary of State's reply to it. Practically, and especially in delicate and closely-contested cases, a rule is only effective within the range of its literal meaning. And the literal meaning of the general rules which curtail the right of covenanted and commissioned civil officers to acquire land is still only this, that the land must not be within the Presidency to which they were first appointed. Thus an officer who, like an Accountant General, may be sent to serve in any Province or Presidency, or who, like a Secretary to the Government of India or Member of the Supreme Government, may be officially connected with all Provinces is only debarred by the hazard of his first appointment from holding land in one particular Presidency, whether he be actually serving in it or not. Nor is it absolutely certain, according to the letter of the rules (though according to their spirit there may be no doubt), that the present Chief Commissioner and Judicial Commissioner of British Burma, being both Bengal civilians, are incapable of holding land in that Province, which is separate from the Bengal Presidency.

4. We have determined that it is expedient to remove these doubts and inconsistencies by amending the rules, so as to bring them back into direct correspondence with their original objects and motives. The reasons why certain officers in civil employ were forbidden to hold land in their own

Presidency are * (1) because their attention might be diverted from public to private business to the detriment of public business; and (2) because they might use (or be suspected of using) their official influence unduly for their own benefit, and to the disadvantage of others in the management of their estates. But these reasons obviously apply with equivalent force wherever an officer holds land and public office in the same province; wherefore we desire to pass the plain rule that henceforward no officer (covenanted or military in civil employ) shall hold

* See despatch of Supreme Government to Secretary of State, No. 6, dated 2nd April 1860.

land in a Province with the administration of which he is in any manner connected. If this rule is approved, then the aforesaid civil officers will be precluded from taking office which gives any sort of jurisdiction over any part of a Province within which they may hold land, and (conversely) from holding or acquiring land within the territorial limits of the Province in which they may be serving, temporarily or permanently. In fact they must choose, upon any transfer or fresh appointment which raises the dilemma, between holding office and holding land; they cannot hold both in one Province. But we do not wish to give the new rule retrospective effect, or to make it interfere with the right of civil officers to keep land which they have already acquired under the permission given by preceding regulations; though, in the event of promotion to high administrative positions, such officers may be expected to take an early opportunity of conforming to the general rule in force. And it should be here noted that we propose to retain, for the purposes

* Despatch 10th August 1861.

of these rules, the definition of land holding which was framed by Sir C. Wood* whereby it is taken to mean only the acquisition of land intended for cultivation, not of land occupied by buildings for residence. Whether land can be held for commercial speculation is a different question, which we touch upon toward the end of this letter.

5. We are aware that the effect of the broad rule which we have now proposed will be to hamper greatly any safe investment in land in India by officers who are liable to serve in different Presidencies and Provinces. And we admit that it must operate to discourage civil officers generally from making these investments anywhere; for the land must always be held at a considerable distance, and on a precarious tenure, since in these days transfers from one Presidency or Province to another are much less rare than formerly. Nor do we overlook the arguments, often urged heretofore, that there is some actual advantage in associating under due precaution official position with landed interest in the country. But it has long been decided that these considerations are more than counterbalanced by the disadvantages accompanying the possession of land in a Province by officers who belong to its civil administration. This being the case, we feel the necessity of making one plain rule that shall be logical and consistent; and we observe that the extension which we propose to give to the prohibiting rule already in force will only affect comparatively small sections of the whole body of civil officers. That is, it will affect those only who are liable to serve beyond the limits of the Presidency to which they were first appointed; or who may be officially connected with districts beyond those limits. It may, if unreservedly enforced, prevent a member of the Supreme Government from holding any land at all in India; although we do not pledge ourselves to enforce it thus absolutely, or without making special exceptions in cases which are plainly unobjectionable. We propose to bring under the same category with covenanted civilians and military officers in civil employ all persons holding offices ordinarily held by officers of these classes. The amended rule will then run to effect that no such civil officer shall acquire, or continue to hold, land in any Province to which he is temporarily or permanently appointed, or with the administration of which he is concerned. And we intend to preserve unchanged all the other rules which have from time to time been passed in restraint of land-holding by different classes of public servants in various situations.

6. In regard to all investments other than those in land for the profits of cultivation, we have adopted and propose to notify the general principle that servants of Government are expected to abstain from any investment (though of itself unobjectionable) which interests them privately in affairs or undertakings of the kind with which their public duty is connected. The principle is well known, and the reasons for it are obvious; but we have latterly found cause for believing that it should be re-asserted distinctly.

7. We have recently been asked to consider the question of *speculative* investments by public officers, which is on some sides of it cognate to the subject of this letter; but we take it to be on the whole a different matter, requiring different treatment. For although we can frame a precise rule demarcating the limits within which land should or should not be held by public servants, and although it is easy to say that a Financial Officer must

not hold shares in a Bank within his circle, or a Consulting Engineer Railway shares; yet we do not propose to go farther, and to attempt any literal definition of the stage at which the holding of land or other valuable property becomes speculative. We need only remark that while land-holding and other investments are under certain conditions forbidden to public servants as a necessary precaution against evils (one of which is speculation) that may possibly follow, habitual speculation by officials is held by us to be an evil in itself. And we have given notice that we reserve to the Government full power to deal stringently with the practice whenever it appears to prevail.

8. We enclose copies of correspondence with the Government of Bengal*

* From Bengal, No. 1445 G, dated 30th December 1872.
To " " 1495, " 10th April 1873.

upon the advisability of endeavouring to frame a definition of the term which shall include all transactions by a public servant, which a Government may properly disapprove. We are of opinion that no such fixed rule of conduct is really needed, either by Government or by their officers, for their guidance in this matter.

No. 1445 G, dated Calcutta, the 30th December 1872.

From—C. E. BERNARD, Esq., Offg. Secy. to the Govt. of Bengal, Appointment Department.

To—H. L. DAMPIER, Esq., Offg. Secy. to the Govt. of India.

REFERRING to the notification of the Government of India in the Home Department, dated 28th August 1872, and published at page 814 of the *Gazette of India* of the 31st idem, on the subject of prohibiting public officers from engaging in speculations in India, I am directed to submit that the notification seems to the Lieutenant-Governor to put Local Governments in a position from which they may fairly ask to be relieved by a more exact definition as to what are the speculations which public officers may, and what they may not, engage in. I am to point out that it is notorious that, since the publication of the despatch of 1862, very many officers have engaged in what is commonly termed speculation, that is to say, in the days of the company mania they applied for allotments in the shares of many companies, real and bubble; they took shares in tea estates, mines, mills; sometimes they bought and sometimes they sold.

2. The Lieutenant-Governor finds it impossible to draw a line between permanent investments and purchase with a view to re-sale, it being only a question of degree. It can be only said that it was commonly believed that some officers in Calcutta (and it is believed still more in Bombay) went into these things to such an extent that they were commonly spoken of in society as much addicted to speculation. Yet His Honor is not aware that action was taken or precise rule laid down. Such times may recur, and isolated cases probably do occur; many servants of Government still hold shares in many undertakings, public and private, and the Lieutenant-Governor does not know what is to be considered a speculation and what not.

3. There are, moreover, certain public officers who also engage in private business, e.g., law officers, and some as the Administrator General, who apparently have always held themselves entitled publicly to serve as directors of public companies.

No. 1495, dated Fort William, the 10th April 1873.

From—A. C. LYALL, Esq., Secretary to the Government of India.

To—C. E. BERNARD, Esq., Offg. Secretary to the Government of Bengal, Appointment Dept.

I AM directed by the Governor General in Council to reply to your letter No. 1445 G, dated 30th December last, desiring some definition of the term 'speculation' for use in applying the rule which prohibits officers from engaging in it.

2. The question here raised by His Honor points evidently to cases which lie beyond those particular dealings which are already prohibited by rule, such as investment in land within the district to which an officer belongs, connection with the management of any bank or business, and other transactions barred by specific order. His Honor now inquires whether the Supreme Government would lay any formal restriction upon speculative investments generally, so as to regulate precisely what an officer may or may not do.

3. I am to reply that His Excellency in Council would not attempt to shape, for public servants, any such fixed rule of conduct in this matter. If it were possible to devise such a rule, the expediency of doing so would be questionable; for His Excellency believes that, in practice, the spirit of existing orders is beyond mistake,—that it never can be really misconceived by officers in the service, and, therefore, that there can be no practical difficulty about enforcing these orders as they now stand.

4. The Government of India consider that there exists an essential difference between permanent and speculative investments, that the distinction is one of motive, and that the frequency of a man's purchase and sales may be, and usually is, very good evidence of his motive in effecting them. If an officer habitually buys and sells securities of a value notoriously fluctuating, it is clear that he is addicted to speculation, and he thereby undoubtedly lays himself open to the disapproval of Government, which can be expressed in various ways, and in a degree proportionate to the nature of the dereliction. If he engages in such pursuits to an extent which attracts public notice and unfavorable remark, so that his integrity or his application to his public duties is discussed and doubted, then he has given rise to a scandal with which the Government will have to deal.

5. His Excellency believes that these general instructions will be found to govern all the cases to which your letter alludes; and, if so, to those cases they may be applied. In regard to officers whose whole time is not at the disposal of Government, they are not in precisely the same category with other public servants; nevertheless if their behaviour gives rise to scandal, that is, to common rumour that they are in any way making private profit out of the opportunities given by their official position, in that event the Government can of course recognize no difference whatever between these and other servants of the State.

Extract, paragraph 4, of despatch from the Secretary of State, No. 99, dated the 26th August 1873.

I FULLY approve of the orders which have been issued by Your Excellency in Council on the general question of investments by covenanted civilians and military officers in civil employ.

RESOLUTION.

THE Governor General in Council desires that the foregoing extracts be forwarded to the Local Governments and Administrations, for information and for circulation to all officers affected by the present orders, or holding a position in which they are likely to be so affected.

2. His Excellency in Council is pleased to determine, in continuation of preceding orders upon the same subject, that covenanted civil servants, and military officers in civil employ, and all persons holding civil offices ordinarily held by covenanted or commissioned officers of the two classes aforesaid, are prohibited henceforward from acquiring or holding land within the Province with the administration of which they are concerned, whether that connection be permanent or temporary. This order will not necessarily take retrospective effect.

3. With regard to investments of any kind by public servants, it is hereby notified that the rules and general principles contained in the 6th and 7th paragraphs of the despatch to the Secretary of State, and in the enclosures to which they refer, will henceforward be acted upon by the Government, and are to be observed by all officers, of every rank and class, in the public service.

ORDER.—Ordered, that a copy of this Resolution be forwarded to the several Departments of the Government of India, to the Local Governments and Administrations, to the Superintendent of Port Blair and the Nicobar Islands, and to the Director General of the Archaeological Survey of India, for information and guidance.

(True Extract.)

1/ Signed A. C. Lyall.

Secretary to the Govt. of India.

Exd.—A. D.

Order thereon 10 March 1874. N^o 268

Ordered to be communicated to all Departments.

The Notification of the Government of India will be republished from the Gazette of India in the Fort Saint George Gazette.

1/ True Extract/

1/ H. J. Hume

Ag. Chief Secretary.

To The Revenue Department.

" Military Department.

" Public Works Department.

Ex. S. D.

Sub to be published in the Gazette.

10 March 1874

Examine 137a & pto:
Ms 806.
Proc. of Acad. Club. After.

Dates 10: } Donald H.
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Ms 268

Communicating the
Resolution of the Hall of
India on the subject of the
holding of land by British
in India & of other matters
= mss. Ms 95 1874

Donald H.

15. March 174