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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

REVENUE DEPARTMENT

G.O. No. / B.P. No.	639	Press. / Mis.
Dated	2-5-1878	197 :

Not to be folded or roughly handled

Archives I—5,806—24-2-78.

639

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

2nd May 1878, No. 639.

Read the following paper:—

No. 9. From ERNEST BARCLAY, Esq., Government Solicitor, Madras, to C. G. MASTER, Esq., Secretary to Government, Revenue Department, Fort St. George, dated 21st January 1878, No. 34.

I HAVE the honor to acknowledge receipt of the Order of Government, dated 16th November 1877, No. 3,255, together with its enclosure, requesting the Acting Advocate-General's remarks relative to the question raised by the Superintendent of Government Farms, Madras, in the 189th paragraph of his Annual Report of the above Farms for the year ending 31st March 1876.

2. I submitted the matter for the consideration of the Acting Advocate-General, and I now forward herewith a copy of his remarks and return the printed copy of the Annual Report forwarded to me for reference.

OPINION.

WITH reference to the Order of Government, dated the 16th November 1877, No. 3,255, Revenue Department, upon paragraph 189 of the report of Mr. Robertson's tour in the Coimbatore District, touching the condition of ryots and the powers which the law gives to creditors to enforce the payment of debts, I have to state that the law of debtor and creditor is the same in the case of ryots as in that of other debtors, and the remedies of the creditor against the ryot are of the same kind as the remedies which every creditor has to compel payment of his debt. The ryot borrows money upon a contract to repay the same with such interest as is agreed upon, and as security for the payment of the debt the ryot mortgages his interest in his land. If the debt is not paid, the creditor sues the ryot for the debt, and asks that in default of payment at a time to be fixed by the Court, the ryot's interest in the property mortgaged may be sold, and the proceeds carried to the credit of the debt. This is done, and if the proceeds are insufficient to pay the debt the balance continues to be a judgment debt, in respect of which the creditor has the ordinary rights of a judgment creditor, which are to attach and sell any other property of the debtor and to arrest him if the debt be not satisfied.

2. By the new Code of Civil Procedure no debtor can be kept in Jail for a longer period than six months, and every debtor upon his arrest may give notice that he intends to apply to be made an insolvent, and he will be entitled to his discharge upon complying with the requirements of the Code, one of which is that all his property shall pass to a receiver for his creditors.

3. The remedy by foreclosure of a mortgage is one not practised in the mofussil, and in England it is optional with the mortgagee to resort to it. How far it is expedient to interfere by legal enactment in favor of particular classes of indebted persons by curtailing the ordinary powers of creditors to enforce their demands, or by limiting the amount of interest which may be required, is a wide question upon which differences of opinion will probably always exist. The tendency of legislation in this country has been to favor freedom of contract and uniformity in the law of debtor and creditor, and this is probably the wisest course to pursue, though it no doubt entails suffering and hardship to an undue extent in certain cases.

(Signed) P. O'SULLIVAN,
Acting Advocate-General.

4th January 1878.

No. 10. From J. W. HANDLEY, Esq., Government Pleader, Madras, to C. G. MASTER, Esq., Secretary to Government, Revenue Department, dated 14th March 1878, No. 43.

WITH reference to paragraph 12 of the Proceedings of Government, Revenue Department, noted in the margin, requesting remarks from the Advocate-General and myself upon the subject of the law of debtor and creditor as affecting the cultivator class in India, discussed in paragraph 189 of the Farm Superintendent's Report, I have the honor to submit the following observations.

G.O., 16th November 1877, No. 3,255.

2. There is no doubt much truth in Mr. Robertson's remarks as to the general indebtedness of the ryot-class and the exactions practised upon them by money-lenders; but I think he is in error in supposing that this state of things is in any way due to the law of mortgage in force in this country or the practice of the Courts in enforcing mortgages. There is really no substantial difference between the law and practice of the Courts on this subject here and that prevailing in England, unless it be that decrees for foreclosure, which are now seldom made by the English Courts where a sale is practicable, are almost unknown here except in suits for redemption, where the decree sometimes is for payment of the mortgage debt within a certain time and in default for foreclosure. The decrees made by the Courts here in suits by a mortgagee to enforce his mortgage are almost always that the mortgage debt be recovered from the mortgagor and by sale of the property mortgaged. By English law the mortgagee is allowed to recover any deficiency after sale of the mortgaged property from the mortgagor personally, the mortgage being considered a collateral security for the debt, and the same is true of pawns. Of course, it would be possible by the contract of mortgage to provide that the creditor shall look only to the property mortgaged for payment of his debt; but unless the parties choose to do this, the effect of the contract is to create a debt with its ordinary incidents with the addition of a further security in the shape of a charge upon specific property.

3. In my opinion one of the principal evils affecting the class of small land-holders and cultivators in their dealings with money-lenders has been, not the nature of their contracts or the rate of interest, both of which the law has, I think, wisely left to the will of the contracting parties; but the hurried and enforced way in which sales of land in execution of decrees have been carried out, and this, it may be hoped, will be to a great extent remedied by the provisions of the new Code of Civil Procedure Act X of 1877. In my own experience I have noticed, and have little doubt, that others with a much wider experience would confirm me that in suits of small amount, whether for enforcement of mortgages or for mere personal debts, the lands of the debtor when sold in execution have fetched only a fraction of their real value, and have generally been purchased by the judgment creditor. This, I suppose, is due to the fact that these sales are often made in out-of-the-way places and by the officials of the lower subordinate Courts, who are often themselves under the influence of the creditor, which is, of course, used, when he is the intending purchaser, to hurry on the sale as much as possible and keep off all other possible purchasers. In this way I have no doubt the lands of the cultivators have to a large extent passed into the hands of the money-lenders, and the former have become mere tenants, and, in fact, not much better than slaves of the latter. The new Code provides (Section 294) that the decree-holder shall not, without the express permission of the Court, bid for or purchase the property sold. This provision, if carefully worked by the Courts, will, I think, be very useful in preventing the evils alluded to above.

4. Another useful provision of the new Code is that in Section 305 for postponement of the sale of lands if the judgment-debtor can satisfy the Court that there is a reasonable prospect of his being able to raise the amount of the decree by mortgage or lease or private sale of the same or any other immovable property of his. This section, however, apparently does not apply to sales of mortgaged lands ordered by the decree to be sold.

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5. Further protection to judgment-debtors against the evils of enforced sales of their lands is afforded by the provisions of Sections 320 to 327 of the new Code which empower the local Government to transfer to Collectors within certain areas and in certain cases the execution of decrees for the sale of lands or of decrees in which such sales may be ordered, and upon such transfers give large powers to the Collectors in the way of fixing a reserved price, postponing sales, &c., in the case of money-decrees, raising the decree amount by letting or mortgage, or by managing the lands themselves. Section 326 gives similar powers to the Collector under the sanction of the Court in certain cases even where the Government has taken no action under the provisions of the previous section. The extent to which these provisions shall be carried into effect will no doubt require the serious consideration of Government. On the one hand, it would, of course, be inexpedient to add too much to the already heavy duties of Collectors by burdening them with the execution of decrees to any very large extent, while, on the other hand, there are doubtless many cases in which the interference of the Collector, under these sections, will save the impoverished debtor from much loss and misery.

6. Lastly, there are the provisions of Chapter XX of the new Code by which insolvent judgment-debtors can obtain a general discharge under certain conditions; a privilege which has hitherto been limited to the Presidency Town.

7. Thus recent legislation has done something to improve the position of the honest, but unfortunate debtor, and to prevent the law from being used, as it too often is, as an engine of oppression by the rich against the poor.

No. 11. ORDER THEREON, 2nd May 1878, No. 639.

Miscellaneous

THESE papers will be communicated to the Board of Revenue with reference to paragraph 12 of G.O., 16th November 1877, No. 3,255.

2. The Government are not at present prepared to take action under Section 320 or 327, Civil Procedure Code.

(True Extract.)

(Signed) C. G. MASTER,
Secretary to Government.

To the Board of Revenue.
" the Government Solicitor.
" the Government Pleader.

Exd. F. R. Bantleman.

Govt. of [illegible] Madras.

REVENUE.

To

THE BOARD OF REVENUE,

&c., &c., &c.

Dated May 1878.

Rect.

Read.

G.O., 2nd May 1878, No. 699.

MAY.
Nos. 9—11.

Relief afforded to Indebted Ryots by the New Civil Procedure Code.—Communicating to the Board of Revenue papers from the Law officers on the subject of—, and observing that the Government are not at present prepared to take action under Section 259 of the Civil Code.

No. 34.

Madras, 21st January 1878.

From

Ernest Barclay
Government Solicitor
Madras

To

C. G. Master Esqre
Secretary to Government
Revenue Department
Fort St. George.

Sir,

1. I have the honor to acknowledge receipt of the Order of Government dated 16th November 1877, No. 3255, together with its enclosure requesting the Acting Advocate General's remarks relating to the question raised by the Superintendent of Government Farms, Madras in the 189th para. of his annual Report of the above Farms for the year ending 31st March 1876.

2. I submitted the matter for the consideration of the Acting Advocate General and I now forward herewith a copy of his remarks and return the printed copy of the annual Report forwarded to me for reference.

I have the honor to be,
Sir,
Your most Obedient Servant,
Ernest Barclay
Government Solicitor.

Revenue 1878. Dépt.
Copy
No 2207
of
Minutes
of the Board
of
Revenue
for the Year
1878.

Dated 21st
Read 23rd January
1879.

No 34.
Enclosures 2 / 1 /

Forwarded copy of
Mr. Nelson's Report on the
Ground Rent Question
with the Proceedings
thereon.

Read the following Report from the Special Commissioner for the Inam Settlement, dated the 18th December 1878, on the subject of the Ground Rent question, with the Proceedings of Government thereon, dated the 16th November 1877, No. 3255, and the Proceedings of the Board of Revenue dated the 12th December 1877, No. 2207, and the Report of the Collector of Madura, dated the 28th November 1877, No. 2578, and the Report of the Collector of Coimbatore, dated the 21st November 1877, No. 2578.

Read also the following Minutes by the Members of the Board:

Minute by the President.

I have carefully considered the Report of Mr. Nelson, and the Proceedings of Government and the Board of Revenue thereon, and the Reports of the Collectors of Madura and Coimbatore, and I am of opinion that the Ground Rent question is one which requires the most careful consideration before any decision is arrived at. The Ground Rent question is not a new one, but has been under discussion for many years, and has been the subject of many Reports and Proceedings. The Ground Rent question is one which affects the interests of a large number of people, and it is necessary that the decision arrived at should be one which will be satisfactory to all parties concerned. The Ground Rent question is one which affects the interests of a large number of people, and it is necessary that the decision arrived at should be one which will be satisfactory to all parties concerned.

Opinion.

With reference to the Order of Government dated the 16th November 1877 No. 3255, Revenue Department upon paragraph 189 of the report of Mr. Robertson's tour in the Coimbatore District touching the condition of ryots and the powers which the law gives to Creditors to enforce the payment of debts I have to state that the law of debtor and Creditor is the same in the case of ryots as in that of other debtors and the remedies of the Creditor against the ryot are of the same kind as the remedies which every Creditor has to compel payment of his debt. The ryot borrows money upon a contract to repay the same with such interest as is agreed upon, and as security for the payment of the debt the ryot mortgages his interest in his land. If the debt is not paid the Creditor sues the ryot for the debt and asks that in default of payment at a time to be fixed by the Court, the ryot's interest in the property mortgaged may be sold and the proceeds carried to the credit of the debt. This is done and if the proceeds are insufficient to pay the debt the balance continues to be a judgment debt in respect of which the Creditor has the ordinary rights of a Judgment Creditor which are to attach and sell any other property of the debtor

and

and to arrest him if the debt be not satisfied.

By the new Code of Civil Procedure no debtor can be kept in Jail for a longer period than six months and every debtor upon his arrest may give notice that he intends to apply to be made an insolvent and he will be entitled to his discharge upon complying with the requirements of the Code, one of which is that all his property shall pass to a Receiver for his creditors.

The remedy by foreclosure of a mortgage is one not practised in the Mofussil and in England it is optional with the Mortgagee to resort to it. How far it is expedient to interfere by legal enactment in favour of particular classes of indebted persons by curtailing the ordinary powers of creditors to enforce their demands, or by limiting the amount of interest which may be required, is a wide question upon which differences of opinion will probably always exist. The tendency of legislation in this country has been to favour freedom of contract and uniformity in the law of debtor and creditor and this is probably the wisest course to pursue though it no doubt entails suffering and hardship to an undue extent in certain cases.

/Signed/ P. O'Sullivan
Actg. Advocate General.

Madras, 4th January 1878.

/True Copy/

Ernest Barclay

Government Solicitor

Enclosure in Letter
from the Government
Madras to the Secretary
to the Government of India
Revenue Department
No 43 dated 21st March
1878 Vol 34.

Received
Rec 29 March 1878

No 43

3

Madras 63 7

14th March 1878

From

J. W. Handley Esqre

Government Pleader

Madras

To C. G. Master Esqre

Secretary to Government

Revenue Department

Sir,

G.O. 16 Nov 1877 No 3255

With reference to para 12 of the Proceedings of Government Revenue Department noted in the margin, requesting remarks from the Advocate General and myself upon the subject of the law of debtor and creditor as affecting the Cultivator Class in India, discussed in para 189 of the Farm Superintendants' Report, I have the honor to submit the following observations

2. There is no doubt much truth

truth in Mr. Roberts's remarks as to the general indebtedness of the ryot class and the exactions practised upon them by money lenders, but I think he is in error in supposing that this state of things is in any way due to the law of mortgage in force in this country or the practice of the Courts in enforcing mortgage. There is really no substantial difference between the law and practice of the Courts on this subject here and that prevailing in England, unless it be that decrees for foreclosure, which are now seldom made by the English Courts where a sale is practicable, are almost unknown here except in suits for redemption, where the decree sometimes is for payment of the mortgage debt within a certain time and in default for foreclosure. The decrees made by the

the Courts here in suits by a mortgagee to enforce his mortgage are almost always that the mortgage debt be recovered from the mortgagor and by sale of the property mortgaged. By English law the mortgagee is allowed to recover any deficiency after sale of the mortgaged property from the mortgagor personally, the mortgage being considered a Collateral Security for the debt, and the same is true of pawns. Of course it would be possible by the contract of mortgage to provide that the creditor shall look only to the property mortgaged for payment of his debt, but unless the parties choose to do this, the effect of the Contract is to create a debt with its ordinary incidents with the addition of a further Security in the shape of a Charge upon Specific property.

J. M.

3. In my opinion one of the principal evils affecting the class of small landholders and Cultivators in their dealings with money lenders has been, not the nature of their contracts or the rate of interest, both of which the law has, I think, wisely left to the will of the contracting parties, but the hurried and enforced way in which sales of land in execution of decrees have been carried out, and this it may be hoped will be to a great extent remedied by the provisions of the new Code of Civil Procedure Act X of 1877. In my own experience I have noticed, and have little doubt that Settlements with a much wider experience would confirm me, that in suits of small amount, whether for enforcement of mortgages or for more personal debts, the lands of the debtor

when sold in execution have fetched only a fraction of their real value and have generally been purchased by the Judgment Creditor. This I suppose is due to the fact that these sales are often made in out of the way places and by the officials of the lower subordinate Courts, who are often themselves under the influence of the Creditor, which is of course used, when he is the intending purchaser, to hurry on the sale as much as possible and keep off all other possible purchasers. In this way I have no doubt the lands of the Cultivators have to a large extent passed into the hands of the money lenders and the former have become mere tenants and in fact not much better than slaves of the latter. The new Code provides (Section 294) that the

the decree holder shall not, without the express permission of the Court, bid for or purchase the property sold. This provision, if carefully worked by the Courts, will I think be very useful in preventing the evils alluded to above.

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5. Further protection to judgment debtors against the evils of

enforced sales of their lands is afforded by the provisions of Sections 320 to 327 of the new Code which empower the local Government to transfer to Collectors within certain areas and in certain cases the execution of decrees for the sale of lands or of decrees in which such sales may be ordered, and upon such transfer give large powers to the Collectors in the way of fixing a reserved price, postponing sales &, in the case of money decrees, raising the decree amount by lease or mortgage or by managing the lands themselves. Section 326 gives similar powers to the Collector under the sanction of the Court in certain cases even where the local Government has taken no action under the provisions of the previous Sections. The extent to which these provisions shall be carried into effect will

no

no doubt require the serious consideration of Government. On the one hand it would of course be inexpedient to add too much to the already heavy duties of Collectors by burdening them with the execution of decrees to any very large extent, while on the other hand there are doubtless many cases in which the interference of the Collector under these sections will save the impoverished debtor from much ~~misery~~ misery and misery.

6. Lastly there are the provisions of Chapter XX of the new Code by which Insolvent Judgment debtors can obtain a general discharge under certain conditions, a privilege which has hitherto been limited to the Presidency Towns.

7. Thus recent legislation has done something to improve the position of the honest but unfortunate debtor & to prevent the law from being used, as it too often is, as an engine of oppression by the rich against the poor.

I have the honor to be
Sir
Your most obedient Servant

W Hamilton

Government Pleader

639/78

Revenue 1878 Deptt.

From No 1170.
The Govt Pleader
Karachi

To The Secy to Govt
Revenue Dept:
No 639 - 8th January 1878

Dated 14th March
Rec'd 15th ——— do
No 43

Report of Farm
Superintendant.
Offering observations
on certain remarks
in a/c Law of
debtor & Creditor
as affecting the
Cultivator Class.

No 10

R.C. 29-4-78. R 1-5-78.
C 9/4/78. R 18/4/78 R.C. 25-4-78 R 29-4-78

Coll. No. 18/Box 2/Folder 4.78

planters from causes which affect rates of interest generally - with special security here in consequence of the constant heavy drain of money by taxation

The difficulties of the Indian tenantry and small Ryots does not lie in these matters - where they operate they are Beck. the cause lies in the heavy rent-charge against his land thereby creates where he is a Ryot - and the rack rent imposed on him, where he is a tenant

639/14 tenant - and this is a much more difficult matter to deal with. But the abuse of the Native Bankers is utterly undeserved and in fact merely begs the question.

1874 WR

639/15

For orders

Hon. Sol. Solicitor d: 21st Jan. 78 No 34.
Forwarding Advocate General's opinion.

— Sol. Member d: 14th March 78 No 43

These are the
Copies of the Law
Officers of Sol. to
the reference made
to them on the
Observations & Remarks
as to the indebtedness
of Oyol & the powers
of Mortgagees.
They confirm the
Remarks of Government
that Accent
Legislation has

* para 12 J.C. 16th Nov: 77 No: 3255.

@ para 189 of his Commissioners Report

25-4-78. R. 29-4-78. R. c. 29-4-78. R. 1-5-78.

imprisoned the
position of the bankrupt
& of together with
that of other debtors.
No debtor can
now be kept in
Jail for a longer
period than six
months – Bankrupt
judgment debtors
in the hospital
can now obtain
a general discharge &
a decree holder
cannot now
without permission
of the court bid for
or purchase the
property sold.

Vide Civil Procedure Code § 342.
Only for a sum not exceeding Rs 50 or 6 six weeks imprisonment is allowed.

Chapter XX

§ 294

§ 320 - 327. 639/16

Nothing has been done towards working these sections by Handley's para 5.

Lastly the Local Govt can transfer to Collectors the execution of decrees for the sale of lands or of decrees in which such sales may be ordered under certain limitations. When the Civil Procedure Bill was under discussion these sections conferring this power of transfer were pressed & objected by this Govt but it appeared that they were specially introduced

† See G.O. 8th March 76 No 435 (Judicial)

† but see paragraph 5 of the G.O. The remarks there seem to refer to this section. The Law as it stands differs materially from the Bill

in respect to the point noticed in clause 3 Laws 5 G.O. 8/3/76

See page of the Introduction to the accompanying Code of Civil Procedure

The Sections are only meant to work Drills - Blank Large & Small Summaries have been saved 1874 1881

to the view to extend the process of transferring land & that some such provision had already been inforced in the Parish of Pointe a Caillat Parishes.

639/17

I am directed by anything from com[missioner] Rice & others to the Rev. Bd. of Ed. to forward the P. C. Rod- Each Election Returns of Land in Lots. Directed to be generally applied by this Board according to the Parishes comprised in each

Rev. Dept.

639
R

No. 629

Proceedings of the Madras Government
Under date the 2 Dec 1878

Read the following

From the Government Select
Madras, dated 21st January
1878, No. 31.

From the Government Select
Madras, dated 11th March 1878
No. 43 - regarding relief afforded to indebted Ryots by the New Civil Procedure Code

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These papers will be communicated to the Board of Revenue with reference to para. 12 of G.O. 16th November 1877 No. 3255.

2. The Government are not at present prepared to

For orders

Law officers
Remarks as to
relief afforded to
indebted Ryots
by the new Civil
Procedure Code

No. 629

R.C. 29-4-78. R. 1-5-78
C. 17/4/78 R. 18/4/78 R.C. 25-4-78 R. 29-4-78

question in the following application, or in any other for Fasli 1287 which may be presented before the 1st July 1878, when the Civil Procedure Code will come into force.

27.4.78

take actions under Section
220 or 327 Civil Procedure
de...

No 5

Ken Kompromise Ko
Sec. 6 of Ko Interpretation
Ord. Ko Ko Ko Ko
procedure Ko Ko Ko
actions under Sec. 220
Ko