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MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 846 Press
~~Mis.~~

Dated 21-4- 1879.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

21st April 1879, No. 846.

No. 211. READ THE FOLLOWING PAPER :—

Proceedings of the Board of Revenue, dated 5th October 1878, No. 2,710.

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, Madras, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 17th September 1878, No. 111 :—

I HAVE the honor to reply to the reference by Board's Proceedings noted in the margin on the subject of the right to attach for arrears of revenue lands already under attachment by a Civil Court.

2. I agree with the Acting Collector of Madura that the distinction made by the late Government Pleader, Mr. Dale, between attachments by Civil Courts before and those after judgment in this respect is not a satisfactory solution of the question. The provision of the Civil Procedure Code, that attachments before judgment shall not affect the rights of persons not parties to the suit, can of course only mean that it shall not affect those rights even to the extent to which they would be affected by attachment after judgment, and therefore affords no help in the determination of the question how far the rights of persons not parties to the suit, and among them those of Government for realization of its revenue, are affected by attachment after judgment. To determine that question we must look to the provisions of the Code as to the effect of attachment in execution of decrees, and there does not appear to me to be any thing in those provisions interfering with the powers of attachment and sale of land for arrears of revenue given to Government by Act II of 1864. The effect of attachment is declared by Section 276 of Act X of 1877 to be that "any private alienation of the property attached whether by sale, gift, mortgage, or otherwise, shall be void as against all claims enforceable under the attachment." The "private alienation" referred to is of course an alienation by the judgment-debtor. The form of attachment given in the fourth Schedule, No. 141, shows this, for it is addressed to the defendant and prohibits *him* from alienating the property. The attachment does not therefore, I think, invalidate any alienations by persons other than the judgment-debtor of any interest they may have in the lands attached, much less does it affect the right of Government to enforce the primary lien which the law gives them upon the land for arrears of revenue, by the process provided by law. All that the Civil Courts attach and sell is, as pointed out by the Collector, the right, title, and interest of the judgment-debtor in the land, and that is subject to the prior claim of Government upon the land itself for arrears of revenue.

3. There is one difficulty that presents itself to my mind in the above view and that is, that Act II of 1864 speaks of attachment and sale not of the land in respect of which an arrear of revenue is due, but of "the defaulter's land," and it may be said that the land is not the defaulter's in all respects after attachment by a Civil Court. I take it however that what is meant by the Act to be attached and sold is the land in respect of which the arrear is due and on which the revenue is by law charged, but it is a pity that this was not more clearly expressed.

4. On the whole, therefore, I think that the attachment of land by Civil Court, whether before or after judgment, does not affect the power of the Collector to attach and sell the land for arrears of revenue. The Collector should however.

I think, be very careful that his proceedings do not clash with those of the Civil Court or cause loss to judgment-creditors or purchasers. As notice of an attachment by a Civil Court must be fixed up in the Collector's office, he will always be aware of its existence, and if any arrear is then due on the land, he should, I think, communicate the fact to the Civil Court and should do the same with regard to any attachment subsequently made by him for realization of arrears. If this is done, I do not see how any collision between the Civil Courts and the Revenue authorities can ever occur, or how anybody can be injured by the Collector's acts. Without some such precautions, judgment-creditors may lose by attaching property hopelessly encumbered by arrears of revenue when other unencumbered property might be available and purchasers at Court sales may also suffer loss.

SUBMITTED to Government with copy of Board's Proceedings, dated 11th July and 20th August 1878, Nos. 1,924 and 2,349, with reference to G.O.s., dated 30th November 1870, No. 1,891, and 18th April 1871, No. 694.

2. The only way to get the point satisfactorily settled is to bring the question to the test of a judicial decision; to this end the Board propose to cancel Standing Order XXXVII of 1866, and to inform Collectors that they are at liberty in realizing arrears of revenue to attach the defaulter's lands notwithstanding that they have been previously attached by a Civil Court after judgment, observing the formalities suggested by Mr. Handley in paragraph 4 of his letter, so as to avoid any unseemly collision.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

ENCLOSURE No. 1.

Proceedings of the Board of Revenue, dated 11th July 1878, No. 1,924.

Read the following letter from H. J. STOKES, Esq., Acting Collector of Madura, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 20th June 1878, No. 221.

I HAVE the honor to ask your attention to Board's Standing Order No. 267-1 on the subject of realization of arrears due on lands when under attachment by order of a Civil Court. In this Standing Order it is laid down that, though not debarred from attaching land already under attachment by a Civil Court before judgment, Revenue Officers are debarred if the attachment has been made by the Civil Court after judgment.

2. This order, the reasons for which I cannot understand, was based on an opinion of Mr. Dale, Government Pleader, who apparently did not consider the question very thoroughly. He thought that as Section 89, Act VIII of 1859 (Section 489, Act X of 1877, with a slight modification), provided that attachments before judgment should not affect the rights of persons not parties to the suit, Revenue attachments of lands so attached could be made; but that if the Civil Court had attached after judgment, Revenue Officers could not attach. He does not seem to have given any reasons for the latter part of this opinion; but I suppose the argument was that as attachments before judgment were specially declared not to affect the rights of strangers to the suit, and as no such declaration had been made with regard to attachments after judgment, the latter must be held to affect such rights. This may be true, but the question is what those rights are which are thus affected; and whether an attachment after judgment will debar another attachment by another authority.

3. The manner in which attachment after judgment once affected the rights of persons not parties to the suit was chiefly by giving priority to the most alert attachers of several decree-holders (Sections 270, 271, Act VIII of 1859). It also placed the goods or land attached in the custody of the law, and so far affected rights of strangers as to make it necessary for any claimants of the property to come forward and urge their claims. Further, it deprived the owner of the attached property of the right of dealing with it in any way, and may so be held to have affected the rights of holders of liens on the property and intending purchasers. These are, I think, the chief ways in which attachment after judgment under Act VIII of 1859 affected strangers; and its effect differed from that of attachment before judgment only in respect of the priority which I have mentioned, and which was not conceded to an attacher before judgment over an attacher after.

4. Under the Act (X of 1877) now in force priority is abolished, and all attachers share ratably in the attached property on its sales. An attachment before judgment is still declared (Section 489, Act X of 1877) not to affect the rights, existing prior to the attachment, of persons not parties to the suit; and it is not a little difficult to determine what kinds of rights are thus protected; and how, not being affected by attachment before, they would be by attachment after judgment. I conceive that it chiefly refers to the case mentioned in the latter part of the section, of a decree-holder who wishes to attach and sell the property already attached by the plaintiff before judgment. His rights are not affected. The meaning of the first part of the section may also perhaps be that the attachment shall not be held to cause dispossession, so that limitation may not begin to run against a claimant.

5. But whatever the intent of this doubtful provision may be, it is, I think, clear that the rights specially protected from being affected by attachment before judgment are only such rights as would be affected by attachment after judgment; and that we are not to assume that all rights whatever existing in strangers to a suit, and not affected by attachment before judgment, must necessarily be affected by attachment after.

6. To settle precisely the meaning of Section 489 it would be necessary to determine what the rights of strangers are which are affected by attachment after judgment; but it will be sufficient for my purpose to point out that there is nothing in the Code limiting the rights of attachment existing in other authorities of lands already attached by a Court. Provision is made in Section 285 for cases in which attachments are made of the same property by several Courts of different grades; and if a Subordinate Court may attach property already under attachment by a Superior Court, I think it follows that a wholly external and separate authority invested with legal power to attach, such as a Revenue Official is, can attach property under attachment by a Civil Court. At any rate there is no provision in the Code of Civil Procedure to prevent him; and the existence of a paramount claim over land by Government for the revenue thereof seems to me to involve the right of sale after attachment without respect to the claims of persons who may have attached in execution of a decree.

7. The manner in which attachment of immovable property is to be made by Civil Court is prescribed in Section 274, Act X of 1877. It is by order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift or otherwise; and there is a provision that when the property attached is land paying revenue to Government, a copy of the order is to be fixed up in the office of the Collector of the district. This order is directed to the judgment-debtor and to persons wishing to receive the property from him. It does not in any way concern the Collector, whose interference indeed seems to be specially invited by the provisions requiring a copy of the order to be affixed in his office, when the land attached is land paying revenue to Government.

8. I may mention that the rule in the Bombay Presidency is that the claim of Government to revenue has precedence over any other debt, demand or claim whatsoever, whether in respect of mortgage, judgment, decree, execution, attachment or otherwise howsoever.

9. It would always be open to any attaching decree-holder to release the attachment by the Collector by paying the arrears due.

10. Mr. Fane in his letter of the 5th June 1866, quoted in the Board's Proceedings, No. 5,193, of the 27th July of that year, has pointed out the importance of the settlement of this question. I need not therefore say more than that its importance has since then in no way diminished, and that it is still very desirable that every impediment to the speedy realization of arrears of revenue should be got rid of.

As the question is one of considerable importance, the Board resolve to refer it to the Government Pleader for an expression of his opinion.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

ENCLOSURE No. 2.

Proceedings of the Board of Revenue, dated 20th August 1878, No. 2,349.

Read the following letter from H. J. STOKES, Esq., Acting Collector of Madura, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Shembaganar, 7th August 1878, No. A.O.:-

In continuation of my letter, No. 221, dated 20th June 1878, I have the honor to observe that I omitted to bring to notice an important distinction, which may materially affect the

question to be settled. What the Civil Courts attach is the right, title, and interest of the person in the land attached, and this is all that they sell when it is necessary to proceed to sale. But what Revenue Officers attach is not the right, title, and interest of any one in the land, but the land itself, and this it is which they sell irrespective of all incumbrances. Hence it follows that the two authorities can never conflict in attachment, as they do not attach the same thing. If it ever happens that the Revenue Officers attach more land than is sufficient to meet the demand for arrears, the excess is paid over to the defaulter, and this excess represents the defaulter's right, title, and interest.

COMMUNICATED to the Government Pleader in continuation of Board's Proceedings, dated 11th July 1878, No. 1,924.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

No. 212.

ORDER THEREON, 21st April 1879, No. 846.

Land Revenue, No. 7.

THE correctness of the opinion of Mr. Dale on which the Board's Standing Order No. 37, of 1866, was based appears at least open to question. The Board's proposal to cancel that order and to draw up a revised one is therefore approved, but before it is issued it should be sent to the Government Pleader for transmission to Government, with his remarks, for approval.

2. The revised order should point out to Collectors clearly that they have the same authority to attach and sell lands and the crops standing on them, for arrears of revenue, after their attachment by a Civil Court as before it; what the Civil Courts attach and sell being only the right, title and interest of the judgment-debtor in the lands and crops, while the Revenue authorities sell the land itself and the crops standing on it.

(True Extract.)

(Signed) J. H. GARSTIN,
Acting Secretary to Government.

To the Board of Revenue.
„ the Government Pleader.

Exd. W. H. French.

7/2/40 II

Board's Standing Order No. 37 of 1866.—
Approving the Board's proposal to cancel — and
to draw up a revised one, in connection with the
subject of the right to attach for arrears of
revenue lands already under attachment by a
Civil Court, with remarks.



7th April 1879

APRIL
Nos. 211-212.

G.O., 21st April 1879, No. 816.

Dated April 21st.
Printed May 8th.

THE BOARD OF REVENUE,
Secy. Acy. Acy.

Original ✓
Govt. of 1879
REVENUE.

No. 1,924.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 11th July 1878.

Read the following letter from H. J. STOKES, Esq., Acting Collector of Madras, to
C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated
20th June 1878, No. 221 :—

I HAVE the honor to ask your attention to Board's Standing Order No. 267-1 on
the subject of realization of arrears due on lands when under attachment by order of
a Civil Court. In this Standing Order it is laid down that, though not debarred from
attaching land already under attachment by a Civil Court before judgment, Revenue
Officers are debarred if the attachment has been made by the Civil Court after
judgment.

2. This order, the reasons for which I cannot understand, was based on an
opinion of Mr. Dale, Government Pleader, who apparently did not consider the question
very thoroughly. He thought that as Section 89, Act VIII of 1859 (Section 489, Act
X of 1877, with a slight modification) provided that attachments before judgment
should not affect the rights of persons not parties to the suit, revenue attachments of
lands so attached could be made; but that if the Civil Court had attached after judg-
ment, Revenue Officers could not attach. He does not seem to have given any reasons
for the latter part of this opinion; but I suppose the argument was that as attach-
ments before judgment were specially declared not to affect the rights of strangers to
the suit, and as no such declaration had been made with regard to attachments
after judgment, the latter must be held to affect such rights. This may be true, but
the question is what those rights are which are thus affected; and whether an attach-
ment after judgment will debar another attachment by another authority.

3. The manner in which attachment after judgment once affected the rights of
persons not parties to the suit was chiefly by giving priority to the most alert attachers
of several decree-holders (Sections 270, 271, Act VIII of 1859). It also placed the
goods or land attached in the custody of the law, and so far affected rights of strangers
as to make it necessary for any claimants of the property to come forward and urge
their claims. Further, it deprived the owner of the attached property of the right of
dealing with it in any way, and may so be held to have affected the rights of holders
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its effect differed from that of attachment before judgment only in respect of the prio-
rity which I have mentioned; and which was not conceded to an attacher before
judgment over an attacher after.

4. Under the Act (X of 1877) now in force priority is abolished, and all
attachers share rateably in the attached property on its sales. An attachment before
judgment is still declared (Section 489, Act X of 1877) not to affect the rights, exist-
ing prior to the attachment, of persons not parties to the suit; and it is not a little
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ceive that it chiefly refers to the case mentioned in the latter part of the section, of a
decree-holder who wishes to attach and sell the property already attached by the
plaintiff before judgment. His rights are not affected. The meaning of the first
part of the section may also perhaps be that the attachment shall not be held to cause
dispossession, so that limitation may not begin to run against a claimant.

5. But whatever the intent of this doubtful provision may be, it is, I think,
clear that the rights specially protected from being affected by attachment before judg-
ment are only such rights as would be affected by attachment after judgment; and

that we are not to assume that all rights whatever existing in strangers to a suit, and not affected by attachment before judgment, must necessarily be affected by attachment after.

6. To settle precisely the meaning of Section 489 it would be necessary to determine what the rights of strangers are which are affected by attachment after judgment; but it will be sufficient for my purpose to point out that there is nothing in the Code limiting the rights of attachment existing in other authorities of lands already attached by a Court. Provision is made in Section 285 for cases in which attachments are made of the same property by several Courts of different grades; and if a Subordinate Court may attach property already under attachment by a Superior Court, I think it follows that a wholly external and separate authority invested with legal power to attach, such as a Revenue Official is, can attach property under attachment by a Civil Court. At any rate there is no provision in the Code of Civil Procedure to prevent him; and the existence of a paramount claim over land by Government for the revenue thereof seems to me to involve the right of sale after attachment without respect to the claims of persons who may have attached in execution of a decree.

7. The manner in which attachment of immovable property is to be made by Civil Court is prescribed in Section 274, Act X of 1877. It is by order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift or otherwise; and there is a provision that when the property attached is land paying revenue to Government a copy of the order is to be fixed up in the office of the Collector of the district. This order is directed to the judgment-debtor and to persons wishing to receive the property from him. It does not in any way concern the Collector, whose interference indeed seems to be specially invited by the provisions requiring a copy of the order to be affixed in his office, when the land attached is land paying revenue to Government.

8. I may mention that the rule in the Bombay Presidency is that the claim of Government to revenue has precedence over any other debt, demand or claim whatsoever, whether in respect of mortgage, judgment, decree, execution, attachment or otherwise howsoever.

9. It would always be open to any attaching decree-holder to release the attachment by the Collector by paying the arrears due.

10. Mr. Fane in his letter of the 5th June 1866, quoted in the Board's Proceedings, No. 5,193, of the 27th June of that year, has pointed out the importance of the settlement of this question. I need not therefore say more than that its importance has since then in no way diminished, and that it is still very desirable that every impediment to the speedy realization of arrears of revenue should be got rid of.

As the question is one of considerable importance, the Board resolve to refer it to the Government Pleader for an expression of his opinion.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

To the Government Pleader, with copy of Board's Proceedings,
dated 6th October 1866, No. 7,166.

Copy to the Collector of Madura.

Exd. A. Grubert.

S. J. S. S.

See No 2

No. 2,349.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 20th August 1878.

Read the following letter from H. J. STOKES, Esq., Acting Collector of Madura, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Shembaganur, 7th August 1878, No. A-O :—

In continuation of my letter, No. 221, dated 20th June 1878, I have the honor to observe that I omitted to bring to notice an important distinction, which may materially affect the question to be settled. What the Civil Courts attach is the right, title, and interest of the person in the land attached, and this is all that they sell when it is necessary to proceed to sale. But what Revenue Officers attach is not the right, title, and interest of any one in the land, but the land itself, and this it is which they sell irrespective of all incumbrances. Hence it follows that the two authorities can never conflict in attachment, as they do not attach the same thing. If it ever happens that the Revenue Officers attach more land than is sufficient to meet the demand for arrears, the excess is paid over to the defaulter, and this excess represents the defaulter's right, title, and interest.

COMMUNICATED to the Government Pleader in continuation of Board's Proceedings, dated 11th July 1878, No. 1,924.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

To the Government Pleader.
Copy to the Collector of Madura.

Exd. A. Grubert.

1878.
Board of Revenue,
MADRAS.

PROCEEDINGS, 11th JULY 1878, No. 1,924.

Encl.

So 21-4-79 v. 846.

Received

Per 17/5/78

JULY.
No. 1,924.

Arrears of Revenue — due on lands already under attachment by order of a Civil Court — Referring to Government Pleader for opinion letter from Collector of Madura on the subject of realization of —

For orders.

Board's proceedings—

- (1) Dated 5th October 1878 No. 2710
- (2) " 20th August 1878 No. 2349
- (3) " 11th July 1878 No. 1924
- (4) and Cognate papers.

It is submitted that the Law (Act X of 1877) has already definitively settled the important and long discussed question raised in the marginal noted papers, and evidently the provision of the Act directly bearing on the point has been overlooked by the different authorities who have taken part in the present discussion; for, Section 295 of the Act dealing with the proceeds of execution sales lays down—

"Nothing in this Section affects any right of the Government".

This clause occurs under the heading—any money loaned or advanced by the Government.

I think the argument in the note to the enclosed is a fair & well expressed one in the opinion of the Government. Before orders are issued.

Why again?

* wide last clause.

My own view is that no attachment or sale can override the claims of Govt. & Government arrears.

1878.
Board of Revenue,
MADRAS.

To
THE GOVERNMENT PLEADER.

Dated August 20th.

Printed 27th.

Recd.

Dec 4/78

PROCEEDINGS, 20TH AUGUST 1878, No. 2349.

821-4-79 of 326.

AUGUST.

No. 2349.

Arrears of Revenue — due on lands already under attachment by order of a Civil Court. — Communicating to Government Pleader letter from Collector of Madurai on the question of realization of —.

head "general rules" under
"Sale and delivery of property"
subordinate to "execution of
decrees" Chapter X, and
appears to be the result of the
previous discussions on the
subject in this Presidency and the
ultimate reference to the Govern-
ment of India by letter dated
9th February 1872 no. 18 L. D.

This letter with its enclosures
was considered by the Imperial
Legislative Council in framing
The Civil Procedure Bill No III
-vide para 1 of the debates and
the schedule therein referred to.

In laying down the law on the
subject of "payment out of assets
in execution of a decree", the
Select Committee observed—
"we have expressly saved the
rights of the Crown, and we
have declared that if any of
such assets be paid to a person

arising from the law
on account of the law
itself it is declared
by law &c. together
with the crops & the
buildings on it. The
law for the public
interest (the 2. Act of 1874
provides that the title
of the Act is intended to allow
his not giving claims
for arrears &c."

* The Gazette of India Extra-
ordinary of 12th March 1875
part 4.

inform intending
purchasers of the
primary claims of the
law. The law can
be not in execution
for a decree. No. 18.
unlawful - cannot be paid

It is not valid to
the State claim -
I think the Bill
should be amended
perhaps a new
one issued as proposed

* Note C. O. 8th March 1876
no. 435 J. D.

in the note. The law
has been known
since discussed first.
The H. F. High Court
requested & I saw
a letter from the
Equity of the law
as regards to a
particular case.
The law is

of long standing
it is well understood by the
only but at the same time
it is not a new thing - 2

not entitled to receive them, the
rightful owner may compel
a refund" Section 305 of the
Bill accordingly provides—

"Nothing in this Section affects
any right of the Crown" &c.
In commenting on Bill No.
III, the Honble Mr Cunningham
then Advocate General in Madras
observed—

"Section 305-paragraph 4-Will
it not be far better to say what
the rights of the Crown are in
such a case. I am sure I do
not know, nor do I believe that
any one knows what they are
in India". In remarking upon
the same section, Mr Farr the
District Judge of Zimwelly questions
"What are the rights of the Crown"
here spoken of? It is a mis-
application of terms to apply
this to the Collections of the assess-
ment - vide note on Section 270,
where he says as follows.

"Section 270 - It is important

that the Manager or the Court should be authorized to pay the rents and taxes due on the land which is being administered. The error of the old Code seems here repeated of allowing the receipts to be paid only to the decree amount. It is true that the "rights of the Crown" are reserved by Section 305 in assets of sale; it is more important that they should be here. No decree holder without such a provision readily agrees to the purchase being paid; he wants all he can get quickly."

Section 270 here referred to, does not exist in that shape in the present Act of 1877, but is embodied in Section 503 chapter XXXVI. "Appointments of Receivers."

Under this Section, the Receiver or Manager is to pass his accounts at such periods and in such form as the Court directs "and

pay the balance due from him thereon as the Court directs."

Further Section 504 provides — "if the property be land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the Management of the Collector, the Court may appoint the Collector to be receiver of such property."

These sections taken in connection with the proviso of Section 295 ante probably sufficiently protect the interests of Government.

The Select Committee's Report on Bill no IV and debates thereon have very interesting discussions on executions of decrees closely allied to the present question, though not directly bearing upon it. Section 295 of Bill no IV corresponds with Section 305 of Bill no III, and is finally

Vide Supplement to the 7th George Gazette of 17th Oct. 1836
attached in two places in the Vol. here introduced.

adopted in Feb. 5 of 1877.

All that remains to be done in the matter therefore, seems to be to Cancel the Board's Standing Orders on the subject which are inconsistent with the above provisions of the Law, and to draw the prominent attention of the District Officers to them by a fresh order clearly laying down the procedure for their future guidance. It may be well to draw the attention of Collectors to Section 238 of the Act which gives them ample opportunity for knowing which land is going to be attached. If the land to be attached is of a Secondary or Proprietary ^{tenure} ~~land~~, the register referred to in the Section will be in the Collector's ^{Office} ~~Office~~, otherwise in the Tahsildar's Office. In the former case, revenue process for arrears usually issues from the Collector's Office and in the latter case from the Tahsildar's Office.

It is also necessary to state that the Collector or the Tahsildar, as the case may be, can take the necessary steps to recover the Government dues, if any, in proper time.

The difficulty in regard to crops however, does not seem to be at an end. Revenue holders usually wait till the crops are cut and gathered and then get them attached. The crops being answerable for the Government arrears as the land itself, and the procedure under Act II of 1864 in regard to moveable property being simpler, the revenue authorities also often attach the same property ^(the crops) either knowingly or through ignorance of the previous civil attachment. Sometimes the revenue holders get the crop attached ^{or simultaneously with} after the revenue attachment. In such cases, the question is - which attachment should prevail and how are the Government dues to be

so that the Collector or the Tahsildar, as the case may be, can take the necessary steps to recover the Government dues, if any, in proper time.

The difficulty in regard to crops however, does not seem to be at an end. Revenue holders usually wait till the crops are cut and gathered and then get them attached. The crops being answerable for the Government arrears as the land itself, and the procedure under Act II of 1864 in regard to moveable property being simpler, the revenue authorities also often attach the same property ^(the crops) either knowingly or through ignorance of the previous civil attachment. Sometimes the revenue holders get the crop attached ^{or simultaneously with} after the revenue attachment. In such cases, the question is - which attachment should prevail and how are the Government dues to be

secured without unnecessary complications. There are now several independent authorities, armed with legal powers, who can attach the same property for different purposes. Consequently there are no less than 72 different phases of attachments and sales which are clearly described (by the District Sheriff of Vancouver) in a tabular form printed at the end of G.O. 8th March 1876 no 435 J.D., and many of which require different treatment and ^{probably} special legal provision. But the difficulties in regard to immovable property are not alluded to in the present correspondence and may perhaps be overlooked now, although they must crop up sooner or later.

X. Civil Courts } ^{memos in diff-}
 } ^{-rent suits of same}
 } ^{Courts as -}
 Criminal Courts -

Land laws under Act III of 1865
 Rev. Officers under Act II of 1864.

X. Violation the Act of Sheriff's
 Memorandums which
 explains these difficulties.

the immovable
 property is the security
 for the Revenue - ^{land}
 mortgages - ^{and}
 standing crops - ^{and}

The question raised is an
 important one is clearly &
 forcibly treated by the
 Col. of Langue, Mr. H. St. John.
 There seems to be no doubt

that Mr. Dale's opinion
 was wrong & that land
 may be attached by the
 Rev. authorities for
 arrears of revenue as
 readily after a judgment
 in respect of them by a
 Civil Court as before.
 as Mr. St. John points out
 the Rev. authorities sell
 the land - the Civil Court
 the right, title & interest
 of the judgment debtor
 therein - so that there ought
 never to be any conflict
 of attachments.

The 13th proposal to
 cancel the standing
 order No. 37 of 1866, which
 merely embodies Mr. Dale's
 opinion, should be at
 once given effect to - &
 the objection to a
 notice of attachment
 given by the Rev. author-
 ities being given to the
 Dist. Court & the Court
 of the Sheriff within whose
 jurisdiction it is situated,
 if the Courts act reciprocally,
 that is, if notice

begin by the Div. ^{of} ~~the~~
Municipal Courts to the
Collector and Tahildar
relative to any Court order
issued of land situated
in the Taluk of the latter
Office. Notice to
the C.O. alone with of
little use since the
assessments are made
of Tahildars.

The B. might I think
be directed to draw out
a fresh S. embodying
the position of that Office
in the matter
laying down clear rules
for their guidance,
the High Court might
be wiser to direct that
all Court attachment
proceedings of land
shall always be given
of the attaching Court
to the Tahildar of the
Taluk where the land
is situated as well
as to the Collector.

30/1/29 J.A.G

W. A. ...
... ..

Civil Proc. Code
+ under Sec 652. Such rules
shall be strictly in accordance
with the spirit of the ~~last~~ last
para of Sec. 274 which requires
a copy of the civil Court order
of attachment to be affixed to
the Collector's Office when the
land attached is ~~payable~~
to Govt. -

Under Act II of 1864 (Madras)
the attachment has to be affixed
on the land & in the Gazette. But
the Govt. can direct it to be
concorded to the civil Court having
jurisdiction also.

Handwritten notes in the left margin of the top page, including "C. A. Galton" and other illegible scribbles.

Handwritten notes in the left margin of the bottom page, including "C. A. Galton" and other illegible scribbles.

No. 2,710.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 5th October 1878.

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, Madras, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 17th September 1878, No. 111:—

I HAVE the honor to reply to the reference by Board's Proceedings, noted in the margin on the subject of the right to attach for arrears of revenue lands already under attachment by a Civil Court.

11th July 1878, No. 1,924.
20th August 1878, No. 2,349.

2. I agree with the Acting Collector of Madras that the distinction made by the late Government Pleader, Mr. Dale, between attachments by Civil Courts before and those after judgment in this respect is not a satisfactory solution of the question. The provision of the Civil Procedure Code, that attachments before judgment shall not affect the rights of persons not parties to the suit, can of course only mean that it shall not affect those rights even to the extent to which they would be affected by attachment after judgment, and therefore affords no help in the determination of the question how far the rights of persons not parties to the suit, and among them those of Government for realization of its revenue, are affected by attachment after judgment. To determine that question we must look to the provisions of the Code as to the effect of attachment in execution of decrees, and there does not appear to me to be any thing in those provisions interfering with the powers of attachment and sale of land for arrears of revenue given to Government by Act II of 1864. The effect of attachment is declared by Section 276 of Act X of 1877 to be that "any private alienation of the property attached whether by sale, gift, mortgage, or otherwise, shall be void as against all claims enforceable under the attachment." The "private alienation" referred to is of course an alienation by the judgment-debtor. The form of attachment given in the fourth Schedule, No. 141, shows this, for it is addressed to the defendant and prohibits *him* from alienating the property. The attachment does not therefore, I think, invalidate any alienations by persons other than the judgment-debtor of any interest they may have in the lands attached, much less does it affect the right of Government to enforce the primary lien which the law gives them upon the land for arrears of revenue, by the process provided by law. All that the Civil Courts attach and sell is, as pointed out by the Collector, the right, title, and interest of the judgment-debtor in the land, and that is subject to the prior claim of Government upon the land itself for arrears of revenue.

3. There is one difficulty that presents itself to my mind in the above view and that is, that Act II of 1864 speaks of attachment and sale not of the land in respect of which an arrear of revenue is due, but of "the defaulter's land," and it may be said that the land is not the defaulter's in all respects after attachment by a Civil Court. I take it however that what is meant by the Act to be attached and sold is the land in respect of which the arrear is due and on which the revenue is by law charged, but it is a pity that this was not more clearly expressed.

4. On the whole, therefore, I think that the attachment of land by a Civil Court, whether before or after judgment, does not affect the power of the Collector to attach and sell the land for arrears of revenue. The Collector should however, I think, be very careful that his proceedings do not clash with those of the Civil Court or cause loss to judgment-creditors or purchasers. As notice of an attachment by a Civil Court must be fixed up in the Collector's office, he will always be aware of its existence, and if any arrear is then due on the land, he should, I think, communicate the fact to the Civil Court and should do the same with regard to any attachment subsequently made by him for realization of arrears. If this is done, I do not see how any collision between the Civil Courts and the Revenue authorities can ever occur, or how anybody can be injured by the Collector's acts. Without some such precautions, judgment-creditors may lose by attaching property hopelessly encumbered by arrears of revenue when other unencumbered property might be available and purchasers at Court sales may also suffer loss.

SUBMITTED to Government with copy of Board's Proceedings, dated 11th July and 20th August 1878, Nos. 1,924 and 2,349, with reference to G.Os., dated 30th November 1870, No. 1,891, and 18th April 1871, No. 694.

2. The only way to get the point satisfactorily settled is to bring the question to the test of a judicial decision; to this end the Board propose to cancel Standing Order XXXVII of 1866, and to inform Collectors that they are at liberty in realizing arrears of revenue to attach the defaulter's lands notwithstanding that they have been previously attached by a Civil Court after judgment, observing the formalities suggested by Mr. Handley in paragraph 4 of his letter, so as to avoid any unseemly collision.

(A true Copy and Extract.)

Acting Secretary.

To the Secretary to Government, Revenue Department,
with copy of Board's Proceedings, dated 11th July 1878,
No. 1,924, and 20th August 1878, No. 2,349.

Copy to the Government Pleader.
 „ „ Collector of Madura, with copies of G.Os., dated
 30th November 1870, No. 1,891, and 18th April 1871, No. 694.

[illegible]

Board of Revenue,
MADRAS.

1878.

282/758

Reverend Sir,

THE SECRETARY TO GOVT.,

REVENUE DEPARTMENT,
 &c., &c., &c.

&c., &c., &c.

Dried October 5th.

Printed 12th.

Received

PROCEEDINGS, 5TH OCTOBER 1878, No. 2,710.

2nd 28/10/78.
OCTOBER.

No. 2,710.

Lane—already under attachment by a civil Court.—Submitting to Government papers on the subject of attachment of —for arrears of revenue, and proposing to cancel Standing Order XXXVII of 1866, and to inform Collectors that they are at liberty in realizing arrears of revenue to attach defaulter's lands, notwithstanding that they have been previously attached by a Civil Court after judgment.

Col 84-1-21 (Office) 12/19

Well an ordinary

C. 1: Sub 77 REB-4-79.