

(1) Number of pages 62
(2) Date of repair 25-9-44
(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. <i>2</i> 104	Press <i>P</i> ~~Mis.~~
Dated 28.1.1880.	

Not to be folded or roughly handled

Minerals - Govt right to

GOVERNMENT
REVENUE
DEPARTMENT.

28th January 1904.

No. 296. READ THE FOLLOWING PAPER:—

Proceedings of the Board of Revenue 11th December 1879, No. 3,309.

ABSTRACT.—Communicating to all Government Order regarding reservation of Government rights to Minerals, and requesting Government Solicitor to report what modification of the form of indenture under Waste Land Rules is required to reserve the rights to the State.

No. 297. ORDER THEREON, 28th January 1880, No. 104.

Miscellaneous.

Government of India clearly is to reserve the of waste land *hereafter* given for cultivation, although they consider that when *past*, the claim cannot be asserted against land obtained under the Waste Land Government of India as expressed in despatch of 1st September 1879 to the for further report on the case of ryots.

2. The Government are also of the despatch regarding the inclusion of temporarily settled estates is much with the revision of assessment in Ryotwar permanent settlement as supposed by the Government in this. All evidence seems to point to a right in the State to a share in the profits from minerals as much as from crops where not expressly ceded.

3. Practically the point is of little importance. If the asset has not been developed it can scarcely be valued. If it has been so, the valuation is only another form of taking a royalty on minerals worked, which the Government consider perfectly legitimate.

This, however, is a very different matter from asserting the State's proprietary right in all minerals in existing holdings.

(True copy)

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

To the Board of Revenue.

Exd W. H. French.

130 Copies.

23-7-98
 8-6-79
 27-8-10
 18-1-17
 5-8-17
 23-11-25 II ✓

Government Rights to Minerals.—In reference to Revenue Board's Proceedings requesting Government Solicitor to report what notification of the terms of indenture under Waste Land Rules is required to reserve this — the Government consider that the intention of the Government of India is to reserve the rights of the State in minerals in all cases of waste land hereafter given for cultivation; and stating, with observations, that they see no objection to this in principle.

C. N. 1386/80

Recd. 11/11/1880
 District P. & M. Secy.
 B. A.

REVENUE
 THE BOARD OF REVENUE
 104
 28-1-1880

PROCEEDINGS OF THE DEPARTMENT OF
 AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Law and practice as to mineral rights. [Pros. No. 28.]

LAW AND PRACTICE AS TO MINERAL RIGHTS.

[Progs. Nos. 26 to 37.]

Office Memo. No. 289B-C, dated Simla, the 16th August 1871. [No. 26.]
 From—Captain R. B. PEMBERTON, R. E., *Asst. Secy. to the Govt. of India*, P. W. DEPT.,
 To—The Secretary to the Government of India.

With reference to memorandum No. 39, dated 11th instant, from the Department of Agriculture, Revenue and Commerce, in connection with the subject of law and practice as to mineral rights, the undersigned is directed to state that, in the opinion of this Department, the law is uncertain as to Government rights, or at all events that it should be made clearer.

No. 4154, dated Bombay Castle, the 26th August 1871. [No. 27.]
 From—The Hon. F. S. CHAPMAN, *Chief Secretary to the Government of Bombay*,
 To—The Secretary to the Government of India.

In reply to your letter No. 41 of the 14th instant, I am desired to state that hitherto no mines have been opened in this Presidency, and that there is consequently no local law or practice bearing on the subject.

2. In the opinion of His Excellency in Council, the lessee of a mine might be authorized by law to obtain a right of way over surface property in the manner provided by the Land Acquisition Act (No. X of 1870).

No. 2714-11, dated Bangalore, the 31st August 1871. [No. 28.]
 From—Captain T. G. CLARKE, *Offg. Secy. to the Chief Commissioner of Mysore*,
 To—The Secretary to the Government of India.

By direction of the Chief Commissioner, I have the honour to acknowledge the receipt of your letter No. 48 of the 14th instant, and to submit the following remarks relative to the points upon which the Government of India have therein called for information.

2. Up to the present time no mines have been discovered to exist either in Mysore or Coorg, and consequently no occasion has as yet arisen for determining the rights of the State in respect of such property. For a similar reason, no information can be afforded as to the law or practice in regard to the grant of access to mines over land which is private property.

3. The Chief Commissioner entertains no doubt, however, that, under the tenure generally prevailing in this province, no difficulty could occur in establishing the claim of this State to the mineral products of the soil where they have not been expressly granted away, and in assigning, if necessary, to others a right of access to mines over occupied lands.

4. Except in certain tracts of the Nagar and Ashtagram Divisions, the lands generally are held on the ryotwari tenure, under which the ryots possess only "the right of occupancy." That right is hereditary, and is recognized as a permanent one, so long as the prescribed and customary rent continues to be paid. It is held further that, when land falls out of cultivation, the right of the cultivator ceases and reverts to the State. In practice, however, the ryot is at liberty to transfer his land by sale or otherwise, and the rights of the Government are not enforced except to the extent of appropriating land for public purposes, when, in every case, suitable compensation is fixed and paid. It is evident, I am to observe, that, under these conditions of tenure, no claim can be urged on the part of the occupants of Government lands to that which lies below the surface, nor would any obstacle arise to the means of giving access to mines over land of the same description.

5. With regard to rights of property of a mere absolute character, such as exist, to a comparatively small extent, in the few jagheers and inam villages granted in former times, as well as in those parts of country referred to in paragraph 4, the Chief Commissioner conceives that, while no private rights can prevail over those of the Government in respect to minerals below the surface, excepting where special grants have been made to this effect, the provisions of the Land Acquisition Act (No. X of 1870) might be availed of to obtain means of access to mines which are the property of the State over land which is private property.

PROCEEDINGS OF THE DEPARTMENT OF
AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Pro. No. 29.]

Law and practice as to mineral rights.

No. 29.] No. 30, dated Haidarabad Residency, the 7th October 1871.

From—Captain R. BULLOCK, *Officiating 2nd Assistant Resident, Haidarabad,*
To—*The Secretary to the Government of India.*

I AM directed to reply to your letter No. 49, dated 14th August 1871, regarding the right of Government to mines.

2. In Berar the theory that Government is landlord has always been held, and has never been disputed. It is based on long precedent. Even when giving land on inam, the gift has only been understood to extend to the usufruct of the land, and not to anything below the surface.

3. This theory has been applied to quarries, and even to reserving to Government the right of permitting a farmer to build his house on his farm.

4. Up to the present time, as there have been no mines worked in Berar, the question has not risen in that form. But if it were to arise, the Resident has no doubt of the right of Government to everything below the soil.

5. As regards access to mines, there having been no precedents as far as the Resident is aware, no practice exists. But in the analogous cases of rail and other roads, the Government has always taken up the necessary land, deducting the rent of so much land as has been taken up for public purposes from the holders' revenue demands. In 1868 the Great Indian Peninsula Railway Company applied for a concession of land to obtain access to a quarry by a tramway, which was granted to them on these terms—compensation at an equitable rate fixed by the tehsildar being given for growing crops. More recently all lands required by Government have been taken up under the Land Acquisition Act (No. X of 1870).

6. The Resident thinks the procedure laid down by this Act sufficiently protects the interests both of Government and of the landholder.

7. The replies of the Commissioners, East and West Berar, to the references made to them on the subject, are forwarded for information.

No. 2975, dated Akola, the 23rd September 1871.

From—*The Officiating Commissioner, West Berar,*
To—*The 1st Assistant Resident, Haidarabad.*

In acknowledging receipt of your letter No. 771 of the 5th instant, I have the honour to forward copy of a circular issued in February 1868 in this division, with the concurrence of the Resident, as conveyed in your docket No. 373, dated 12th February 1868. Under this circular, all mines not expressly granted away belong to the State.

2. The circular, however, does not dispose of the Government right of access to mines over lands which are private property, and I am not aware that any rules have been promulgated on the subject in Berar, but it is understood that Act X of 1870, the Land Acquisition Act, would enable Government to enter on any land whatsoever. I speak as regards Berar, where it is believed that in all rent-free grants the usufruct only of the land was assigned.

Circular No. 22, dated Akola, the 11th August 1869.

From—A. C. LYALL, Esq., *Commissioner, West Berar,*
To—*All Deputy Commissioners, West Berar.*

THE subjoined Notification, promulgating the reservation by the State of the right to quarry or to disturb the surface soil of land in Berar, was issued in February 1868 under the sanction of the Resident. It is now circulated in printed form with Maratha translation.

2. The order has been drawn up in wide and general terms so as to retain to the Government the power of interfering wherever the surface soil should be disturbed. In provinces where whole villages engage with the State, the solidarity of the whole area makes the State indifferent as to the use to which any particular field may be put. But in Berar the Government leases out *fields*, and must look after its tenants carefully, or they may ruin the farm and at no time would it be necessary to interfere, except when the probability of damage might be plain, because, as a general rule, the State cannot lose by allowing occupants to turn their land to its most profitable use. But it may be well that the Government should keep in hand the same power which all prudent landlords reserve; indeed, I believe that some order of the Government of India already exists, by which building on assessed land without permission is prohibited.

56—Minerals and Geological Survey

PROCEEDINGS OF THE DEPARTMENT OF
AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Law and practice as to mineral rights.

[Pros. No. 30.

3. It is scarcely possible to guard against injurious excavation, except by ordaining that no excavation shall be begun without authority.

Dated, Akola, the—July 1869.

NOTIFICATION—By A. C. LYALL, Esq., *Commissioner, West Berar.*

THE settlement gives possession of the surface soil of the land assessed, subject to the payment of revenue. But the occupant is not permitted to destroy the productive powers of the soil, and the prior right to all valuable things below the surface belongs to the State. If any person desires to open a quarry or mine on any land, occupied or unoccupied, within the Haidarabad Assigned Districts, or to disturb or disfigure the soil permanently for any purpose except agricultural improvement, he must apply to the revenue authorities for permission. The revenue authorities will take such measures as may be necessary for securing the land revenue, or for realizing to the State its fair share in enhanced profits from the discovery of valuable minerals.

No. 2087, dated Oomraotee, the 19th September 1871.

From—Captain W. NEMBARD, *Commissioner, East Berar Division,*
To—*The 1st Assistant Resident, Haidarabad.*

I HAVE the honor to acknowledge your letter No. 770, dated 5th instant, with enclosure, on the above subject, and in reply to state—

1st.—That in the Assigned Districts the right of Government to quarries and to minerals, and indeed to anything beneath the surface of the land, has been repeatedly asserted, and has never been disputed by any one. It is true that for good reasons we have foregone the royalty on stone quarried in Berar, nevertheless the right of Government to such royalty is well acknowledged. If any doubt on the subject existed, it was finally set at rest by the Notification issued by the Resident with your letter No. 374, dated 7th February 1868, in which the following sentence occurs:—"But the occupant is not permitted to destroy the productive powers of the soil, and the prior right to all valuable things below the surface belongs to the State."

2ndly.—No mine has yet been worked in this Division, but the theory is that as Government have the right to all quarries and valuables beneath the surface, so have they the right of excess thereto. I repeat that this is the theory, but I cannot find any actual warrant for it. Practically no difficulty need ever arise, for if, for instance, it were necessary to sink a coal shaft in the middle of a ryot's field, and if he objected to give up a strip of land for a road, he receiving compensation for the same, we have only to take up the strip under the Land Acquisition Act for a public purpose, and thus obtain access to the shaft.

2. In the Central Provinces the Government right to minerals and quarries, and in fact to everything beneath the surface, as well as the right of access thereto, was publicly notified years ago.

3. Whereas in the Assigned Districts the State has reserved its right to all valuables beneath the surface, I do not see what is to prevent its assigning away its right to any person it chooses.

No. 2133-202, dated Nagpúr, the 10th October 1871.

[No. 30.

From—J. W. NEILL, Esq., *Offg. Secy. to the Chief Commissioner, Central Provinces,*
To—*The Secretary to the Government of India.*

I AM desired by the Officiating Chief Commissioner to acknowledge the receipt of your letter No. 46 of the 14th ultimo, and to offer the following remarks on the questions raised in paragraph 4.

In the Central Provinces, in the absence of any express law on the subject, the Administration has invariably acted on the assumption that all mines, not expressly granted away, belong to the State. It having been taken for granted that the land in India belongs to the State, it necessarily followed that all minerals lying below the soil were also State property, and thus the instructions issued by the Lieutenant-Governor, North-Western Provinces, in letter No. 173A, dated 30th November 1853, for the guidance of

Minerals and Geological Survey—57

PROCEEDINGS OF THE DEPARTMENT OF
AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Pros. No. 80.]

Law and practice as to mineral rights.

officers engaged on the Revenue Settlement of the Sagar and Narbada Districts, printed at

* 24.—The property in quarries and mineral products will remain vested in the Government, and a right of access to any spot, with a right to all aids and incidents necessary to working where the Government may desire to open a mine or quarry, will form an express reservation in all engagements.

taining the principle accepted by Government. The paragraph containing these instructions is quoted on the margin.*

2. There probably can be little doubt as to the right of the Government to have access

(b). What has been the law of practice in regard to access to mines over land which is private property? Does Government theoretically or practically possess such a right, and can it assign such right to others?

be the practice in other parts of India, in the Central Provinces it will be seen, from the above-quoted settlement instructions, that in all grants of land by the Settlement Officers acting on the part of the Government, the right of access on the part of Government to, or the right to open a mine or quarry on, such property, has been specially reserved. The wording of the reservation in the "Wajib-ul-urz" or administration paper of every village recorded at the last settlement is as follows:—

"(13.)—The Government has the right of property in all quarries and mines and of access to any spot, with a right to all aids and incidents necessary to the proper working of such quarries and mines."

This special stipulation in all the settlement engagements would seem therefore to place the matter beyond doubt, and the transfer of such right to a private individual or Company would appear to be only the necessary complement of the right which Government had reserved to itself at the settlement. In the engagements with the Narbada Coal and Iron Company and with Mr. Knowles, this right of transfer has been exercised with all due regard to the rights and interests of persons holding property in the surface soil; licenses having been granted to mine, dig and search for coal "without disturbing the beneficial occupation of any person or persons whomsoever, who may from time to time be in the occupation of any parts of the surface of the land hereinafter mentioned, and without interfering with, or in any manner affecting, any rights in or to the said surface;" a clause being also added, which runs—"and will or shall make fair compensation to any owners, tenants or occupiers of any part of the surface of the lands, and to any other person or persons whomsoever for any damage, loss or injury which may be sustained by them or him in consequence of the said mining operations or works * * * so far as such owners, tenants, occupiers or other persons shall be entitled to such compensation." Similarly, the Mayo Colliery and the pit and Warora in the Chanda district are on malguzari land, but Government has without any question entered on the land, and erected and constructed the necessary buildings and works.

It is only in private estates held by purchase under the waste land sale rules that this right has been specifically parted with, and the deed of sale conveying the land conveys also "all rights of forest pasturage, mines, fisheries and all other the proprietary right and interest of the said Secretary of State in Council in and over the soil of the said lands." Sales of this character are, however, now stopped in these Provinces by order of the Government of India, and should sales be resumed under amended rules, it will be possible to reserve to Government all rights in mines in the same manner as these have been reserved in malguzari land.

3. In reference to paragraph 5 of your letter under reply, I am to say that it might be advisable to affirm by a legislative enactment the rights which Government now considers itself possessed of, and at the same time lay down clearly and distinctly the manner in which it shall be lawful to Government, or to any one to whom Government may assign its right, to enter upon any land for the purpose of opening up or working a mine, and the nature of compensation to which the owners of the land shall be entitled. This would probably set all doubts finally at rest without introducing any innovation into the practice which has hitherto been followed.

No. 31.]

No. 4787, dated Lucknow, the 2nd December 1871.

From—Captain N. M. T. HORSFORD, for Personal Assistant to the Commissioner, Oudh,
To—The Secretary to the Government of India.

In reply to your letter No. 45, dated 14th August last, calling for information on the law and practice regarding mineral rights, I am desired by the Officiating Chief Commissioner to submit the following observations.

58—Minerals and Geological Survey

PROCEEDINGS OF THE DEPARTMENT OF
AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Pros. No. 31.]

Law and practice as to mineral rights.

2. The Government in Oudh has not acted on the principle that all mines not expressly granted away belong to the State, for the reason that no mines have been discovered in the Province. Whether the Government possesses the right to all minerals may be questioned, except where, in disposing of waste-lands and other State property, it has specially reserved it. The present waste-land rules reserve to Government the right to mines, &c., which some of the earlier rules did not secure. The very fact of its having been found necessary to make a special reservation of these rights in later rules must tell against the theory that the right to the minerals is in all cases distinct from the right of, and does not belong to, the proprietor of the surface soil.

3. For the same reason there has been no practice in regard to access to mines over land which is private property. The law on this subject was discussed so long ago as 1865. It was then pointed out by the Home Secretary in a note attached to Proceedings of the Government of India (Home Department), No. 2092, dated 19th September 1865, that, according to the existing English law, a right of entry for the purpose of working reserved minerals does not follow as a matter of course from the right to the minerals. The law does not appear to have been altered since then.

4. And as regards the enquiry whether it is necessary to amend the existing law, and what direction such amendment should take, I am to express the Officiating Chief Commissioner's general concurrence in the views expressed by Mr. Wingfield in paragraphs 10, 12 and 13 of his Secretary's letter to Government, No. 496, dated 5th February 1866, copy of which is appended for ready reference.

5. But in point of fact it would appear that there is at present no substantive law to amend. The Chief Commissioner apprehends, however, that, under both Mahomedan and Hindoo law, the Government is entitled, if not to the whole of, at least to a share in, the products of a newly discovered mine. Sir George Couper is in camp, and has not a treatise to refer to, but if this surmise be correct, he sees no reason why the principle should not be asserted by legislative enactment, except with regard to land already in the possession of European grantees to which perhaps, the principles of English law, whatever they may be, should be held applicable.

6. It may be, as suggested by Sir Charles Wingfield, that we could always secure entry on the land above a mine by taking it under Act VI of 1867. But if a law is to be passed, the Officiating Chief Commissioner thinks the right of entry should be expressly provided for. If it be right that the State can claim to share in the produce of a mine, it cannot be right that it should be debarred from the privilege and at the pleasure of the owner of the land above. The Officiating Chief Commissioner presumes we are acting as a native ruler could and would have done; and to admit the ruler's right to the produce of a mine, and at the same time to allow the owner of the land beneath which it lies, to debar him from the exercise of the same, and by prohibiting him from entering on it, is an aspect in which the case would hardly have presented itself to the mind of an Akber, and would certainly appear supremely ridiculous to the native mind at large.

No. 496, dated Lucknow, 5th February 1866.

From—The Secretary to the Chief Commissioner of Oudh,

To—The Secretary to the Government of India, HOME DEPARTMENT.

I have the honour to acknowledge the receipt of your docket No. 2097, dated 19th September last, calling for the Chief Commissioner's opinion regarding the expediency of making alteration in the existing rules for the disposal of waste-lands.

2. In reply, I am directed to forward to you, for submission to His Excellency the Governor General in Council, copies of the letters noted in the margin, from the financial Commissioner, with their enclosures, and to state that the

No. 161, dated 29th January 1866.
No. 167, dated 30th January 1866.

Chief Commissioner agrees with the Financial Commissioner in thinking that no opinion can be pronounced at present, on the working of the rules now in force, because they have been in operation for so short a time. Extensive sales under the Secretary of State's rules did not take place till about a year ago. Before that time, the great majority of grantees held on the Chief Commissioner's rules, which gave rent-free possession for 12 years, with assessment at half assets on the expiration of that period.

3. On the first question,* to which attention is particularly directed in the Government Resolution, the Chief Commissioner certainly thinks the option should be given to all persons desirous of acquiring waste-lands to obtain them either on lease or by purchase outright. This modification of the existing rules would permit persons of limited means, but with all other qualifications for useful settlers, to become possessed of waste-lands. It seems, however, indispensable that the lease should contain conditions

* Whether it should or should not be left entirely optional to persons wishing to acquire lands; whether they will do so by purchasing the fee-simple, or by taking the lands on lease on favourable terms, and subject to re-assessment at the end of the term?

Minerals and Geological Survey—59

for bringing a certain proportion of the culturable area under cultivation within a specified period of time; otherwise, as apprehended by Mr. Saunders, persons may take a lease with the sole view of making as much money as they can by the sale of firewood and timber and then throw it up.

4. The rules issued by the Chief Commissioner in 1860 provide for this contingency, as they require one-fourth of the culturable area to be brought under cultivation by the 6th year of rent-free possession, and one-half by the 12th. The Chief Commissioner does not consider the term of rent-free possession too long with reference to the situation and climate of the remaining waste-lands in Oudh and the time required to settle a resident population on them.

5. The Chief Commissioner would maintain these rules for those who prefer to take leases, only enlarging the meaning of the term cultivation so as to include plantation of mulberry and dhak trees for the rearing of silkworms and the lac insect, and thus satisfy an objection raised by an enterprising grantee of the Mahomdee District, Mr. Connors. And to meet the case of those grantees who apply themselves to raising the more costly—and the Chief Commissioner may perhaps say exotic—productions such as tea, coffee, chinchona, the area of which must be comparatively limited, the Chief Commissioner would allow one acre of such cultivation to reckon as five of the ordinary crops of the country.

6. On the second question* put by the Government, the Chief Commissioner is disposed to think that, when liberty to purchase waste-lands was first accorded, no objection would have been made to a moderate quit-rent in some parts of the country, say, of from eight annas to one rupee per acre, never liable to increase and susceptible of redemption at the market price of Government securities; but the time has, he thinks, gone by for such a stipulation which would now be regarded as a retrograde measure, nor is the advantage to be derived from it very manifest; for, as a general proposition, it may safely be affirmed that land liable to a quit-rent is not so valuable a property as land absolutely rent-free, and consequently must command a lower price in the market. It is true, as shewn by the recent sales in Oudh, unforeseen and exceptional causes may induce a very great fluctuation in the prices realised at auction and sales, and therefore instances might occur of land subject to a quit-rent fetching a better price than similar land rent-free; but in a course of years the average price of the latter must, the Chief Commissioner apprehends, materially exceed that of the former.

7. The Chief Commissioner is aware that in the Neilgherry hills land is sold subject to a quit-rent of two rupees an acre, but land there is bought in small allotments, and is devoted to the production of the most valuable crops, such as tea, coffee, chinchona, which, if they succeed, yield a very large profit.

8. In Oudh, on the other hand, the cultivation must mainly be of the ordinary kind; and, considering the very low rents that must be asked to induce cultivators in those thinly populated regions to take waste-land, the Chief Commissioner thinks very few of the present grantees would have agreed to pay eight annas an acre quit-rent, or if they had agreed would have been able to pay it. He believes that the native proprietors in those parts never demand rent for waste-land till after the first or even second year of occupation, and he knows that Maharajah Jung Bahadoor, on the cession by our Government of the ancient Goorkha possessions below the hills, offered land rent-free for three years to any person who would take it.

9. The Chief Commissioner doubts, too, if it is quite correct to call receipts from auction sales of waste-land a fitful and precarious source of revenue, for the proceeds are invested in Government securities, and are not available for current expenditure.

10. Regarding the third point* the Chief Commissioner agrees with the Financial Commissioner in thinking it quite reasonable that Government should reserve its right to mineral products. There seems little probability of any being discovered in the alluvial plains of Oudh, where the waste-lands mainly lie. The question therefore does not much concern this province, but it may have important bearings in the mountainous parts of India. The rights should, the Chief Commissioner thinks, be unconditionally reserved, because no revenue might be derived from a royalty where the owner is too poor, ignorant, or apathetic to develop the source of wealth that lies in his land, or he may prefer to keep it locked up; for even supposing him to be alive to his own interests, he may think them better served by being paid not to work his mines by the owner of neighbouring ones. The Chief Commissioner believes such cases of competitors being bought off are not of unfrequent occurrence in England. At the same time he is decidedly of opinion that the option of working the mineral products should be given

60—Minerals and Geological Survey

to the holder of the land, provided he possesses the means, the Government limiting its interest to the levy of a royalty, but reserving the power to exercise its right should the owner of the land fail in the undertaking from any cause whatever. The only object that the Government has is not to suffer the resources of the country to be neglected and be lost to the community. If individuals are able and ready to develop them, the Government should give them every facility to do so.

11. On this principle the Government has, the Chief Commissioner believes, always acted. It retired from tea cultivation, river steam navigation, and the business of carriers as soon as it found private enterprise ready to take its place.

12. The right of entry should be reserved, unless it is thought to be sufficiently secured by Act VI of 1857, which would always give the Government power to take up land to provide access to its mines.

13. Mr. Bayley's definition of minerals might be adopted, but the exception should, the Chief Commissioner thinks, include not only kunkur building and limestone, but also saltpetre and salt, for the owner of the land should not be debarred the liberty of manufacturing the former article under the provisions of the law on the subject, and it is a possible contingency that the private manufacture of salt may be again permitted under license, as it has been before in some parts of the country.

14. The reports of the different officers and grantees notice other points in the existing rules, on which the Chief Commissioner will briefly give his views.

15. The Chief Commissioner agrees with the Financial Commissioner that no cause is shewn for reducing the interest on the unpaid part of the purchase-money below the present rate of 10 per cent. The natural course of things is for a purchaser to pay at the time he buys, and the permission to pay in equal instalments extending over 10 years is an indulgence to him which may not unreasonably be accompanied by the charge of a high rate of interest. Creditors are now empowered by law to charge 12 per cent. interest if a debt is not liquidated

* NOTE.—Vide Act 32 of 1839.

within the term appointed.* If no interest is charged, the land is virtually granted on a lease at a certain annual rent terminating in 10 years, when the land becomes rent-free. The Chief Commissioner apprehends that high interest is charged to induce prompt payment. The rich man will naturally prefer to pay at once to save the interest, and all ground of complaint will be cut from under the feet of the poor one by the option given him under the amended rules to take the land on lease instead of buying it. The obstacle to him, as the Financial Commissioner truly observes, is not the interest, but the purchase-money itself.

16. Mr. Saunders complains much of the present rule, which provides for the commutation of grants on the old rules into fee-simple on the average of sales, and the Financial Commissioner seems to think he has reason on his side. The Chief Commissioner's views on the point coincide with theirs. The rule is capricious and unfair in its operation, both to the Government and grantee, for it makes one man pay unduly high, another unduly low, for much the same sort of land in different districts, and even in the same district, for the average being struck on all sales will vary with every successive sale. The Chief Commissioner may here recall to the recollection of the Government that in July 1864† he pointed out this defect in the rules, and recommended the adoption of a uniform rate of commutation, as in the Assam rules, on a scale graduated according to the length of possession under the old rules.

17. The Chief Commissioner does not feel called on to express his views on the controversy between Mr. Tucker and the Financial Commissioner, as to whether Government or the owner in fee-simple is likely to prove the better landlords, as it is quite apart from the object of the present enquiry. His views on the relations of the proprietors and tillers of land, and the course the Government should take in regard to them, are perfectly well known. He may observe, however, that the person who takes waste lands can always defeat any attempt of Government to restrict his right to make what arrangements he pleases for its cultivation by evicting his cultivators before they shall have remained in possession sufficiently long to acquire a legal right of occupancy, or by inserting a condition in their leases that they have no claim whatever beyond the period for which they run, and recent events have placed the grantees fully on their guard on this point.

No. 878, dated Lahore, the 7th December 1871.

[No. 32.

From—C. M. RIVAZ, Esq., Offg. Under Secretary to the Government of the Panjáb,
To—The Secretary to the Government of India.

In reply to your letter No. 44, dated the 14th August 1871, calling for information relative to the law or practice regarding mineral rights in the Panjáb, I am directed to forward copy

Minerals and Geological Survey—61

PROCEEDINGS OF THE DEPARTMENT OF
AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Pros. No. 32.] Law and practice as to mineral rights.

of a letter from the Financial Commissioner on the subject, and to state that His Honour the Lieutenant-Governor agrees in the views therein expressed.

No. 778, dated Lahore, the 29th September 1871.

From—E. O'BRIEN, Esq., *Officiating Secretary to Financial Commissioner, Panjáb,*
To—*The Officiating Secretary to the Government of the Panjáb.*

IN reply to your No. 541 of the 28th August last, forwarding copy of a letter No. 44 of 14th August, from the Government of India, regarding the law and practice as to mineral rights in the Panjáb, I am directed by the Financial Commissioner to state as follows.

2. Under the Sikh Government the land revenue assessment was a share of the agricultural produce of the land, and where valuable minerals, such as iron or salt, were found on any land, the State either reserved the right to them in its own hands, or leased the right of working them separately.

3. In Gurgaon, at the former settlement made under the orders of the Government, North-Western Provinces, the right of working alimentary salt from brine obtained from wells was not reserved, but was given up to the proprietors of the soil. In the Salt Range the mines were held and worked by the Sikh Government.

4. Wherever valuable minerals were known to exist, special provision as to their reservation was made at settlement, or the right of Government to such minerals has been asserted in some form or other, or has been maintained in practice. The alum mines of Kalabagh and the saltpetre works over the Panjáb generally are instances of this.

5. The reason for this is that the owners of the soil, with whom the settlement is made, are owners for purposes of cultivation, and are not, and never have been, owners of the land in the sense of the English idea of ownership.

6. The right of access to mines has not been questioned in practice so far as the Financial Commissioner is aware. The question has never, he thinks, arisen in the Panjáb.

7. If mining has to be conducted in lands occupied for cultivation, or in waste land included in the boundaries of a village regularly settled, the course which should be taken is, the Financial Commissioner thinks, to compensate the owner for the loss of actual or potential cultivating rights in the lands so occupied, before making grant to a third person.

8. In all leases of waste land made since 1868, the right of Government to all minerals has been expressly reserved.

No. 33.] No. 2040A, dated Camp Mutound, the 21st December 1871.

From—C. A. ELLIOTT, Esq., *Offg. Secretary to the Govt., North-Western Provinces,*
To—*The Officiating Secretary to the Government of India.*

I AM directed to acknowledge receipt of your letter No. 43, dated 14th August last, on the subject of the right of Government to mines or mineral products.

2. His Excellency the Governor General in Council desires to be furnished with information as to—

(1).—How far the Government of these provinces has acted on the principle that all mines, when not expressly granted away, belong to the State, and on what grounds Government has so acted?

(2).—What is the law with respect to access to such mines, whether Government possesses the right of access and can assign it away?

(3).—Whether the law should be amended, and how?

3. In reply, I am to forward, for the information of His Excellency in Council, copy of a letter* from the Board of Revenue, North-Western Provinces, on the subject, and to invite attention to the Minutes by Sir William Muir, then Senior Member of the Board, dated the 14th May 1864, and the Honourable Mr. Drummond, late Lieutenant-Governor of these provinces, forwarded with letter No. 1237A, dated the 5th October 1864, and to the orders of the Government of India in the Home Department, as communicated in letter No. 5994, dated the 1st December 1864.

4. I am to say that the Lieutenant-Governor concurs in the view expressed by the Board. In the orders of the Supreme Government above quoted, it was held that the right of Government to subterranean products could not exist in ordinary settled estates without special reservation, and that as it was believed that no such reservation had been made in

62—Minerals and Geological Survey

PROCEEDINGS OF THE DEPARTMENT OF
AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Law and practice as to mineral rights.

[Pros. No. 33.

these Provinces, the ownership of the proprietor must be deemed to extend to all beneath the surface. In the case of estates not under permanent settlement, however, His Excellency the Governor General in Council considered that Government had a right to reserve its *lien quoad revenue* on all such products, and therefore directed the entry in the settlement engagements for the permanent settlement, which it was then proposed to make, of a clause reserving those rights of revenue. This condition was accordingly ordered by the Board in their Circular No. 1, dated 12th January 1865 (copy annexed), to be entered in all engagements for settlements taken in perpetuity, and it is now also entered in engagements for temporary settlements.

5. In the case of waste lands, where they are Government property, no question as to the proprietary right can arise. Where they were alienated under Lord Canning's rules, all rights in mines were explicitly made over to the purchasers.

6. No custom or law exists by which right of access could be claimed to a spot where mineral wealth may hereafter be discovered. In such a case, if Government desired to work the mine, the required amount of land would have to be taken up under Act X of 1870. If a Company desired to work it, they would have to make private arrangements with the proprietors of the surface.

7. The Lieutenant-Governor agrees with the Board that there is no necessity for any change in the existing law.

8. With reference, however, to their remarks on the general bearing and importance of the question, it may not be impossible that large stores of mineral wealth may hereafter be found, both in the ranges of Vindhya hills on the south, and in the Himalayan ranges on the north. The greater part of these areas has come under temporary settlement, and the rights of Government to a share (as revenue) in the mineral produce will be preserved there by the stipulation contained in the revenue engagements.

9. I am to add that on the merits of the question of the right of Government, apart from the decision contained in Home Department No. 5994, dated the 1st December 1864, the views of Sir William Muir remain as in 1864, *viz.*, that Government might fairly have asserted its right to all *subterranean* mines and quarries to the exclusion of those lying immediately below the surface; but His Honour assumes that part of the question to be no longer open to discussion.

No. 1139, dated Allahabad, the 22nd November 1871.

From—A. COLVIN, Esq., *Secretary to the Board of Revenue, North-Western Provinces,*
To—*The Officiating Secretary to the Government, North-Western Provinces.*

I am directed by the Board of Revenue to acknowledge the receipt of the orders of Government, No. 1397A, dated 4th September last, Revenue Department, requesting opinion on the following questions raised by the Government of India:—

I.—How far this Government has acted on the principle that all mines, when not expressly granted away, belong to the State, and on what grounds Government has so acted?

II.—What has been the law or practice in regard to access to mines over land which is private property? Does Government theoretically or practically possess such a right, and can it assign such a right to others?

III.—The necessity of amending the existing law and the direction which such amendment should take.

9. In reply, I am desired to state that the first two points will be found discussed in Sir William Muir's note, dated 14th May 1864, sent to Government with Board's No. 325, dated 18th May; Mr. Drummond's minute, without date, forwarded with Government order No. 1236A, dated 5th October 1864, and Government of India orders No. 5994, dated 1st December 1864, in consequence of which Board's Circular No. 1, dated 12th January 1865, issued.

3. The Board of 1864 were of opinion that the right to the surface soil carried no right to mines, or to any other subterranean product except those which lie within the upper stratum of soil. They held that "it would be politic, and in the interests of the public, to reserve to Government the sole and exclusive title to all mines of metal and coal which Government would then be free to farm or lease on any term that might be deemed best."

4. The zemindar should, of course, be secured from unnecessary intrusion, and his title admitted to full compensation for any loss occasioned by the opening up of mines or quarries, and this might be done by requiring a procedure to be followed in each case of lease, or authority to work analogous to that prescribed for the taking up of land for public works under Act XXII of 1863.

Minerals and Geological Survey—63

5. Mr. Drummond disagreed, thinking the right to all subterranean products went with the land, "*Cujus est solum ejus est a calo usque ad centrum.*"

4. The Government of India were of opinion that, where the surface land has been declared to be private property, the ownership extends to all beneath the surface, unless some special and distinct reservation to that effect has been made, which was believed not to be the case in the North-Western Provinces. Under the ruling the Government cannot, in the absence of all reservations, claim any share in the produce of mines, &c., under the current (IX of 1833) settlements.

7. The right, it was directed, should be in future reserved, and a clause to that effect entered in the settlement papers, before a permanent settlement was sanctioned.

8. The Board accordingly ordered that a condition should be inserted in all engagements taken for settlements in perpetuity, providing that the Government reserves its lien *quoad* revenue on the produce of any mines which may at the time be known to exist, or which may subsequently be discovered in the estates to be settled. Government would reserve the option of claiming a share of the produce of such mines as revenue. The reservation is accordingly inserted in all engagements taken at revision of the IX of 1833 settlement.

9. In waste lands the absolute right of Government to mineral products was to be carefully preserved and recorded. The following stipulation is entered in the indentures connected with the grant of waste lands:—"Except and always reserved out of these presents, all rights of proprietors, &c." (See rules of procedure in respect of the sale of unassessed waste-lands in the North-Western Provinces, published by Government, North-Western Provinces, under date 9th May 1865.)

10. This disposes of the first question. As to the second, it is believed that no mines, with the exception of those in Kumaon, exist, and these, Mr. Drummond notes, have been specially treated, Government reserving and using its full rights. The lien which Government has reserved it, has of course the power to transfer.

11. With regard to the third question, it would appear that a Company wishing to work a coal mine might apply, under Part VII (Sections 46 *et seq.*), to obtain possession of the site of the mine and of the land which would form the approaches to it. There is not, in the opinion of the Board, any necessity for amending the existing law.

12. All sewae collections recognized at time of settlement are guaranteed to the proprietors by Section IX, Regulation X, 1825. But mines could scarcely be included under seer, nor has any such recognition been made of them by Settlement Officers.

Circular from W. C. PLOWDEN, Esq., Secy. to the Board of Revenue, North-Western Provinces,—No. 1, dated Allahabad, the 12th January 1865.

UNDER instructions from Government, the Board of Revenue are pleased to issue the following directions in reference to the reservation of the right of Government to mines at the coming permanent settlement.

2. A condition should be inserted in all engagements taken for settlements in perpetuity, providing that the Government reserves its lien (*i. e.*, its lien *quoad* revenue) on the produce of any mines which may at the time be known to exist, or which may subsequently be discovered in the estates to be settled; the Government will reserve the option of claiming a share of the produce of such mines as revenue.

3. In the settlement of land, the proprietary right in which clearly belongs to the State, as in the case of waste lands, the absolute right of Government to mineral products should be carefully reserved and distinctly recorded in the settlement papers, in order that the Government may be at liberty to assert that right when necessary, and to make such terms in reference to the mines as may be best for its own interests consistently with fair and liberal dealing.

No. 34.] No. 69, dated Fort St. George, the 11th January 1872.

From—W. HUDLESTON, Esq., Secretary to the Government of Madras,

To—The Secretary to the Government of India.

In reply to your letter No. 40 (Minerals), dated 14th August 1871, asking how far this Government has acted on the principle that all mines belong to the State, and what has been the practice in regard to access to mines over private land; also whether necessity exists for

64—Minerals and Geological Survey

altering the existing law, and the direction which such change should take, I am directed to state that this Government has always acted on the principle that, except in regard to Government waste, the Government does not possess any exclusive right in minerals, and that no reservation of right of way over private lands as means of access to mines has been at any time made or claimed.

2. This Government is not of opinion that any change is called for in the law affecting this subject, the Land Acquisition Act appearing to confer all the powers which it can properly be desired to exercise in the matter.

Précis of papers regarding leases of the right to collect and work minerals. [No. 35.]

LEASES OF MR. HEATH.—In 1833 Government authorized Collectors to receive applications from Mr. Heath for leases of the right of raising iron and chrome ores on favourable terms, provided they were not inconsistent with the usages and customs of the country, and would not interfere with the rights and privileges of the natives.

2. Accordingly, applications were submitted by Mr. Heath for leases of the exclusive right to and in all iron and chrome ores within the district of Salem, and all iron ores in the districts of Coimbatore, South Arcot, Malabar and Canara, together with the privilege of entering all waste-lands within these districts, and raising and taking such ores therefrom.

3. In disposing of these applications Government observed that the royalty being in consideration of the paramount and seigniorial rights of Government, should be paid on all ores whether raised from Government lands or from lands belonging to zemindars or other landholders.

4. They further observed that it was to be distinctly understood, with respect to all lands not being the property of Government, that the privilege granted by the lease was merely a permission to enter into agreements with the proprietors of such lands for the right to raise and take away ores therefrom, and was not to be construed as conferring such right without the consent of the proprietors.

5. In view to guarding the existing rights of natives, it was resolved to secure to them, by a proviso in the lease, the privilege of raising and taking away ores, for the use of their own furnaces within their respective districts, or in any other district where they might carry on the manufacture of iron on their own account. The draft leases were to be modified accordingly.

6. Leases were issued bearing date the 18th April 1834 granting the exclusive right to raise iron ores in the districts noted in the margin, and chrome ore in Salem on Government waste-lands, and on the lands of zemindars, poligars and other landholders, on special agreements being entered into with them by the lessee. The leases contained the following among other conditions:—

- | | |
|-------------|--------------|
| Malabar. | Salem. |
| Canara. | South Arcot. |
| Coimbatore. | |
- (1).—That all existing rights and privileges enjoyed or used by the natives residing in, or holding lands within, the said districts, of raising and taking away ores for the use of their own furnaces within such district, or in other districts where they may have hitherto carried on the manufacture of iron on their own account, are reserved and to remain secure to them.
 - (2).—That no land within the said limits which may have been at any former time brought under cultivation is to be entered upon for the purpose of raising the said ores without the written assent of the merassidars of the village.
 - (3).—The royalty to be paid on the pig iron produced from the ores raised, whether the same be raised and taken from lands now or hereafter belonging to Government, or from lands belonging to zemindars, poligars or other landholders, on special agreements entered into with them.

7. In respect to lands not being the property of Government, the privilege granted by the lease was merely a permission to enter into such agreements with the proprietors of the lands for the right to raise and take away the ores therefrom, and was not to be construed as conferring such right without the consent of the proprietors.

8. All doubts arising as to whether the land belongs to Government or to individuals, and all differences arising between the lessee or those employed by him, and the landholders or ryots, were to be settled by the Collector, subject to an appeal to the Board of Revenue.

9. INDIAN IRON AND STEEL COMPANY.—A few years afterwards Mr. Heath formed a Company called the Indian Iron and Steel Company, of which Messrs. G. Norton and T. M. Lane

were the Directors in Madras. Certain modifications of the old leases were proposed. In Board's Proceedings, 15th October 1840, regard to these, the Board, in writing to Government, observed with respect to clause 1, paragraph 2 of the ore lease proposed by the Directors, that the clause as framed by the Board reserved to natives the right of raising and taking ores for the manufacture of iron on their own account in their own furnaces not only where such manufacture has hitherto been carried on, but also wherever it may be hereafter carried on. The clause as altered by the Directors required the consent of Government for the latter purpose. The Board were of opinion that such restriction would be injurious to the industry of the Salem District.

The Board conceived that the modification proposed by the Directors was founded on the following grounds, which they regarded as invalid, viz.:—

1st.—That as Government retain a right and interest in the ores in lands permanently settled under Regulation XXV of 1802, natives could not raise and take away the ores without the consent of Government.

2nd.—That the right of natives to take ores for furnaces already established was an existing right, and therefore reserved under the present leases, the right to take ores for furnaces to be hereafter established was not an existing right without the express consent of Government, and therefore did not come under the rights reserved by the old lease.

With regard to the first point, the Board conceived that if from time immemorial the natives of the country had enjoyed the privilege of raising and taking ores from such lands, the Government could not, without passing a law, interfere to abolish or abridge such privilege.

10. In regard to the second point the Board were of opinion that the customary right in question was not to raise and take ore to be smelted in any particular furnaces, but for their own use in whatever furnaces it might suit them to smelt it.

11. With regard to the rights conveyed by clause 1, the Board observed that they were (1) to receive iron and chrome ores from natives having a right to raise and take them for their own use; (2) to enter by their own people and raise and take those ores. The lands on which these rights were to be exercised were of three descriptions, viz.:—

(1).—Lands, the property of Government.

(2).—Lands held by proprietors under Regulation XXV of 1802.

(3).—Lands held by private proprietors, but not under Regulation XXV of 1802.

12. In the first description of lands, Government can of itself, and without the concurrence of any other party, do whatever is requisite and can lawfully be done to secure the Company the exclusive enjoyment of both the rights in question.

13. In the second description of lands they can do the same as regards the former of the two rights, but the concurrence of the proprietors and ryots is necessary in order to the Company entering by themselves or their agents and raising and taking away ores.

14. In the third description of lands, chiefly in Malabar and Canara, but including inam lands in other districts, if Government have any right or interest in ores at all, it must be as lords paramount of the soil. Under this assumption, Government in lands of the second and third descriptions can of itself do what is required and can legally be done to secure to the Iron Company the exclusive right of receiving iron and chrome ore from natives who have the right to raise and take it for their own use, but the consent of the proprietors is necessary to their entering and taking it by their own people.

Under these views, the Board submitted modified drafts of leases proposed to be granted to the Iron Company.

15. The Directors of the Company having consented to accept the leases as modified, Government directed* the issue of new leases on the surrender of those previously granted to Mr. Heath.

* Extract Minutes of Consultation, 31st August 1841.

16. The new leases were issued in the names of Messrs. G. Norton and T. M. Lane, and conveyed the exclusive right to receive iron and chrome ores produced in waste-lands, the property of Government, and also on lands belonging to zemindars, mootahdars, or other landholders holding lands under Regulation XXV of 1802, from such natives as had customarily entered by themselves or agents or others employed by them, and raise and take away ores from waste-lands, the property of Government, and also from lands not the property of Government on special agreements with the proprietors, provided—

1st.—That nothing in the lease should be understood to convey the right of entering and raising ores from any land not the property of Government without the previous written consent of the proprietors of those lands.

2ndly.—That no land cultivated at any former period was to be entered upon for the purpose of raising ores without the written assent of the merassidars of the village and of other ryots having an interest therein, and in the case of land, the property of Government, without the consent of Government obtained through the Collector.

3rdly.—That nothing in the lease should affect any existing rights and privileges heretofore enjoyed by natives residing in or holding lands within the district, of raising and taking away ores for the use of their own furnaces within the district, or within any other district where they may have hitherto carried on, or may, with the consent of Government, hereafter carry on the manufacture of iron on their own account.

17. The prescribed royalty was to be paid on the iron and chrome ore raised on land belonging to Government and from lands belonging to zemindars, mootahdars or other landholders holding lands under Regulation XXV of 1802, on agreements entered into with them. In the leases for Canara and Malabar no mention is made of Regulation XXV of 1802.

18. EAST INDIAN IRON COMPANY.—In 1857 a new Company, called the East Indian Iron Company, was formed. On the surrender of the former leases and on payment of £10,000 a new lease was issued to the new Company. The lease granted the exclusive right to dig for, seek, win, and work iron ore on all Government waste-land in the districts noted in the margin. Also a similar right as to chrome ore in Salem and Coimbatore. Also the exclusive right to purchase and receive from

Salem.	Coimbatore.
Malabar.	South Arcot.
Canara.	

such natives as had customarily had enjoyed, or used the privilege of raising and taking ores for their own use, the iron in the aforesaid districts and the chrome ore in Salem and Coimbatore, which might be found on Government waste-land. Also a similar right as to the iron and chrome ore formed on lands belonging to zemindars, mootahdars or other landholders holding lands under Regulation XXV of 1802. Together with full and free liberty, power and authority to enter upon the said waste-lands, and take the ore therefrom and also from lands not the property of Government upon special agreement with the proprietors of the lands. Provided that nothing in the lease should be construed or taken to grant the right of entering any lands not the property of Government, or of raising or taking away ores from such lands without the previous consent in writing of the proprietors of these lands. Provided also that no land which shall have been brought into cultivation or converted to uses connected therewith at any period prior to any entry or intended entry by the said Company, shall be entered upon for the purpose of raising ores without the written assent of the merassidars of the village and of other ryots having an interest therein, and in the case of land belonging to Government, without the consent of Government obtained through the Collector. Provided also that nothing in the lease shall affect any existing rights and privileges heretofore enjoyed or used by natives residing in or holding lands within the said districts of raising and taking ores for the use of their own furnaces within such districts, or within any other district where they may have hitherto carried on, or may, with the consent of Government first obtained, hereafter carry on the manufacture of iron or chrome on their own account.

19. The prescribed royalty was to be paid on the ores produced from Government land and lands belonging to other parties.

20. In 1865 Mr. Sterne applied to Government for a monopoly of the right to dig, search and mine for gold and other metals within such district as he might select.

Government expressed their willingness to permit Mr. Sterne to search for gold in any Government land in the Presidency and not to grant permission to any other applicant to prosecute any similar search in the same district in which Mr. Sterne might be working. Beyond this they were not prepared to go.

21. The Madras Government in 1865 consulted the Government of India as to Mr. Sterne's application and in regard to the general question of encouraging efforts to find gold in India.

In reply, the Government of India said they saw no objection to dealing with Mr. Sterne's application as a special case. As regards the general question, the Government of India were of opinion that it would be premature to lay down general rules for dealing with the matter until gold was discovered in such large quantities as to attract a numerous body of foreign gold-diggers. Should there be any probability of such a successful result from Mr. Sterne's researches, the Madras Government were requested to consider at once what arrangements would be most suitable to the circumstances of this Presidency, and to the position of Government, as the owners of the soil, whenever the property is not vested in private individuals. They observed that the latter circumstance would seem to give Government a complete right either to reserve the right of working gold-fields to the State, or to permit their working by private parties under such rules as would give the State a reasonable share of the produce.

Pros. No. 35.]

Law and practice as to mineral rights.

22. Upon this Government informed Mr. Sterne that they were willing to grant him a monopoly for ten years of the gold and other metals in such area of Government waste-land, not exceeding 2,000 acres, in one or more blocks of not less than 500 acres each, as he might select, on condition of his paying a royalty of 5 per cent. on the produce.

23. In 1868 Messrs. Dymes and Co., instructed by Mr. Sterne, addressed Government, stating that Mr. Sterne was unable to point out any block of land on which he was likely to succeed, and requesting permission to work in the beds and adjacent banks of such rivers as he might select by way of experiment. Messrs. Dymes and Co. offered to guarantee on behalf of Mr. Sterne that he would in no way interfere with or disturb the irrigation of the country, and that in working the adjacent banks, private land would not be entrenched on unless brought by him, or with the permission of the land-owner. Government declined to comply with this request.

24. In 1867 Mr. DeClossets applied to Government (1) for a grant, for a certain number of years, of the privilege of working iron ore by European process, in the district of Madras, or at least in the country within a radius of twenty-five miles around Fort Saint George; (2) to allow him in free lease, for mining and smelting operations, some plots of waste lands within the said limits.

25. This application was referred for the opinion of the Board, who in reply stated that it would not be advisable to accede to Mr. DeClossets' proposal, which was a monopoly of the ore itself and the privilege of working it. Among other things they observed that it was probable that much iron was worked by natives in the district selected, and that it did not appear equitable that these persons should be shut out by the grant of exclusive privileges to one individual. The third member dissented.

26. Upon this Government informed Mr. DeClossets that they were not prepared to concede to any individual or body of individuals the exclusive privilege of working the iron ores in Government waste within an extended range, but that they would be prepared to consider definite applications to raise and smelt ores in a particular limited locality.

27. In 1868 Mr. DeClossets again addressed the Board asking them to re-consider their decision on the following grounds, viz.:—

(1).—That his undertaking would not interfere with the native iron making, but on the contrary would benefit the natives by giving them remunerative work.

(2).—That without a privilege it would be impossible to raise the capital or form a Company. He therefore requested—

(a).—Permission to raise and collect iron ore on Government waste within the limits of the Madras District.

(b).—A privilege of ten years for smelting and working iron ore by the European process within the same limits.

28. The Board requested Mr. DeClossets to state whether, by the use of the words "permission" and "privilege," he contemplated the *exclusive* permission and privilege; whether he had already collected any ore in Madras, and in so doing had been impeded or taxed.

29. In reply, Mr. DeClossets stated that he had already collected ores without impediment or the demand of any tax, and that he did not think it necessary to demand any lease or grant for collecting ores, wishing only to share with others the privilege of collecting ores free of tax. As to the second demand, Mr. DeClossets explained that he sought the *exclusive* privilege for ten years of smelting ores by the European process. With regard to this the Board observed that the Government had no more power to grant the *exclusive* right of using the European process of iron-making than the *exclusive* right of making cloth by the European process. Government approved of the Board's Proceedings.

Government Order, 10th August 1868.

30. The Secretary of State also expressed his approval.

Government Order, 21st January 1869.

31. In 1868, Mr. Campbell, through Messrs. Parry and Co., applied to Government for the grant of a lease of certain waste-lands, in the districts of Cuddapah and Nellore, supposed to contain copper, on the terms agreed upon in 1834.

32. Government declined to entertain any application based on terms offered thirty-four years previously, and which had been allowed to become inoperative, nor were they disposed to concede to any individual or body of individuals, the exclusive privilege of working the copper ores in Government waste-land throughout an extended range. They would, however, con-

Law and practice as to mineral rights.

[Pros. No. 35.

sider any definite application to raise and smelt the ores in a *particular limited locality*. It was to be understood that Government would not undertake to oust any occupying ryots to make way for mining operations. Any such removal should be a matter for private arrangement between the parties.

33. Mr. Campbell then applied for a lease for twenty-one years, of the privilege of working the copper lands in the district of Nellore on the following among other conditions, viz.:—

(1).—That Government do not undertake to oust any occupying ryots for mining operations, such removal being matter of private arrangement between the parties.

(2).—That Government would confirm any leases obtained from zemindars or others of the right of mining for copper ores provided the terms thereof be conformable to the Government regulations.

34. Government informed Mr. Campbell that they were not prepared to grant the exclusive privileges desired by him over such an extended area as an entire district, but recognizing the difficulty of defining these more narrowly, the particular locality in which he desired to work, they would allow him a year to "*prospect*" the ground, after which they would entertain an application in the terms of his letter for the lease of the mining rights over such reasonable area of land at the disposal of Government as he might then be able to indicate with precision. Government could not, however, undertake to *confirm* leases by zemindars as desired. Such confirmation would have no legal force, and was in no way necessary to give validity to transactions otherwise within the competency of the parties.

Government Order, 15th September 1863.

35. Mr. Campbell accepted the offer of Government, but there is nothing to show what was afterwards done in the matter.

Government Order, 22nd January 1869.

36. The Secretary of State intimated his approval of the mode in which Mr. Campbell's application had been dealt with.

37. In 1868 Mr. Richardson applied for a five years' lease at Rs. 100 a year of acres 116 in the Cuddapah District, registered in the Pymash account as "Diamond Mines." On enquiry it was found that acres 47 were held on puttah.

38. The Board saw no objection to grant the lease applied for so far as unoccupied land was concerned, but they could not recommend the disturbance of occupation of the land in possession of the ryots. They observed that the fact of these mines having so long remained unworked seem to remove them from the category of lands referred to by the Secretary of State in his despatch of the 8th January 1866, No. 1, for which leases were not to be granted. They also remarked that Mr. Richardson was at liberty to buy out the puttahdars if he could come to terms with them.

Government Order, 28th April 1869.

39. Government sanctioned the grant of the lease as recommended by the Board.

40. With their Proceedings, dated 4th October 1864, Government sent to the Board certain papers obtained from the Bombay Government, and requested the Board to frame and submit a set of rules applicable to the circumstances of this Presidency, laying down the terms on which grants of lands should be made for mining purposes.

Government Order, 4th October 1864.

41. In 1865 Government forwarded to the Board for report, after communication with the Collectors, certain observations of the Government of India in regard to suggestions made for modifying the rules for the sale of waste-lands and the redemption of the land revenue.

Government Order, 9th October 1865.
Board's Proceedings, 21st October 1865.

Among the questions raised was the following, viz., whether in disposing of waste-lands, either by sale or by lease, Government should or should not reserve a right to minerals that may be subsequently discovered, and, if so, to what minerals. This question, it was observed, might be regarded under two heads—(1) whether there should be an absolute reservation of *property* in the mineral products of the soil, or (2) whether the right of exacting royalty merely should be reserved?

42. In favor of reserving absolutely to Government the entire right to mineral products, it was remarked that the following reasons were sometimes urged, viz.,—If the owner of the surface hold also the proprietary right in minerals, whether absolutely or subject only to the payment of a royalty, it lies entirely with him whether they shall be worked or not, that is to say, that he has the power of preventing the working of minerals, however necessary to the requirements of the State and to the industry and prosperity of the country, and at the same time of withholding from Government the revenue which it would derive if entitled to a royalty on mineral products. And it is argued that this is a question which should not be

Pros. No. 35.]

Law and practice as to mineral rights.

left to settle itself by the mere force of self-interest, because it may very likely happen that the owner of the soil has no capital or no energy to work the valuable ores which lie dormant beneath its surface, and may yet be unwilling to allow them to pass into other hands from prejudice or personal feeling. A long memorandum by the Secretary to the Government of India, on the expediency of reserving to the State a right to mineral products, accompanied the Resolution of the Government of India.

43. In reply, the Board stated, in regard to the suggested reservation by Government of a right to minerals, that they were decidedly

Board to Government, 5th May 1866. opposed to any such restriction on the rights of property conveyed by the grant of land. They were convinced that it is inexpedient and impolitic. They observed that it is not to be believed that prejudice can long oppose, to the owners' detriment, the working of valuable minerals, and that it is certainly only in the case of decidedly valuable ore that Government could desire to interfere; while, on the other hand, the reservation must unquestionably lessen the value of property, and introduce an element of uncertainty into landed tenure which it is most desirable to avoid.

44. A light royalty on the net profits of superior mineral workings they regarded as unobjectionable.

45. In disposing of this question the Government of India observed as regards a special reservation by Government of a right to share in the mineral wealth of waste-lands which are sold, the Governor General in Council is of opinion that such a course, with respect to lands sold for the purpose of being brought into cultivation, would be inexpedient and impolitic. His Excellency in Council thinks that such lands, if purporting to be sold in fee-simple, should be sold absolutely, with no other reservation of right than that which the State may be able to claim in the way of royalty from mines discovered on land which is private property. Waste-lands that have been ascertained beforehand, or which are strongly believed to contain mineral wealth, should not be either sold or leased as waste-land for agricultural purposes, but should form the subject of special agreement.

No. 19 of 1867.

46. To this effect Board's standing Circular No. 151-3 was issued.

47. As the order of Government calling for a set of rules laying down the terms on which grants of land should be made for mining purposes, the Board wrote to say that they presumed that no reply was called for since the Government of India had, in their order, dated 15th March 1867, concurred in the opinion that any reservation by Government of a right to minerals was inexpedient and impolitic.

48. The Board's proceedings were recorded by Government, with the remark that the question had been disposed of by the Government of India in the order quoted by the Board.

49. In their proceedings of the 26th September last, the Board asserted the principle which appears to have been followed throughout in these cases, viz., that Government would be willing to grant specified blocks of waste land on lease for the purpose of mining speculation, but that they could not grant exclusive privileges with regard to large tracts of country or even a whole talook.

Extract from the Proceedings of the Government of Madras in the Revenue Department,—dated the 11th January 1872.

READ the following papers:—

No. 40, dated Simla, the 14th August 1871.

From—A. O. HUME, Esq., C.B., Secretary to the Government of India,
To—The Secretary to the Government of Madras.

It was proposed in a recent case of the grant of a license to mine for coal to attach to such grant the condition that the license should in no way interfere with any rights in or to the surface of the tract included within his license, and should make his own arrangements with the owners and occupiers of the surface soil, in order to obtain access to the coal and facilities for efficiently working it.

2. Upon this the Secretary of State made the following observations:—

Para. 4.—“From this it would appear that, although the Government is exclusive owner of all minerals below the surface, and can convey to whom it will the power of working those minerals, still the right so conveyed can be virtually cancelled wherever the surface is private property, and the owner thereof chooses to deny access to what lies below the surface.

70—Minerals and Geological Survey

Law and practice as to mineral rights.

[Pros. No. 35.

Para. 5.—“If this be really the present state of the law, it plainly requires to be amended to the extent of making it obligatory to owners of surface land, on receipt of adequate compensation from lessees of the minerals below, to afford them full facilities for getting at the minerals.”

Para. 6.—“What, however, is no less essential is, that a native land-owner should not be left to settle as he best may with a European lessee, the terms of compensation for the latter's entrance on his property. In such a transaction natives will be at a great disadvantage unless some direct Government agency interposed first to ascertain and record, and subsequently to defend their rights, and I am anxious that the expediency of making provision for these purposes should be considered.”

3. Search among the records of the Government of India has not discovered sufficient to enable the Governor General in Council to come to a decision on the questions here raised. The cases involving these questions which have actually occurred are few in number and confined to the Central Provinces.

4. I am, therefore, to request that His Excellency the Governor in Council will favour the Government of India with information on the following points:—

(a).—How far, in fact, Government has in Madras acted upon this principle that all mines, when not expressly granted away, belong to the State, and on what grounds Government has so acted?

(b).—What has been the law or practice in regard to access to mines over land which is private property? Does Government theoretically or practically possess such a right, and can it assign such a right to others?

5. The Governor General in Council will also be glad to receive an expression of His Excellency's opinion as to the necessity of amending the existing law, and the direction which such amendment should take.

Dated the 24th August 1871.

Endorsed by the Madras Government.

REFERRED to the Board of Revenue for their remarks.

No. 4837, dated Madras, the 24th November 1871.

From—The Acting Secretary to the Board of Revenue, Madras,
To—The Secretary to Government of Madras.

In reply to endorsement, Government order, dated 24th August 1871, forwarding a letter from the Secretary to the Government of India in the Department of Agriculture, Revenue and Commerce, “regarding the law and practice as to mineral rights,” &c., I am directed to submit the enclosed *précis* of correspondence on the subject for the information of Government.

2. From this it may be gathered (a) that the Government of Madras have always acted upon the principle that, except in Government waste, to which no classes of the community have, by custom or otherwise, any claim, the State has no right whatever to the produce of mines. The principle has always been affirmed that the grant of land, either under a zemindari sanad or an ordinary ryotwari putta, conveys all the right, title and interest which the Government was itself possessed of in such land, subject only to the payment of assessment; and (b) no reservation has ever been made of a right of access to any supposed mines. Nor is there any reason whatever for considering that Government, either theoretically or practically, possess any right of access to mines not expressly provided for when the land is given on putta.

3. The Board have already laid their views on a cognate subject before Government (by whom they were forwarded to the Government of India) in Proceedings No. 3183, dated 5th May 1866, and the Government of India at that time expressed their approval of them.

4. The queries (a) and (b) in paragraph 4 of the letter being thus disposed of, the Board pass to the consideration of the question raised in paragraph 5.

5. They gather that the Supreme Government has come to the conclusion (acting, of course, on proper legal advice) that the Crown is the exclusive owner of all minerals below the surface throughout British India. As already observed there has been no such understanding in this Presidency; but owing to the limited extent to which the question has been raised, it cannot be said that a legislative declaration of the Crown's rights in this respect would be attended with any practical inconvenience in Madras. It would be necessary, of course, for the Crown in granting licenses for working its minerals to compensate the surface owners who would be disturbed by the intended operations, but for this the “Land Acquisition Act”

E

Minerals and Geological Survey—71

PROCEEDINGS OF THE DEPARTMENT OF
AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Pros. No. 37.]

Law and practice as to mineral rights.

lately passed appears to provide, or could easily be shaped so as to provide, a suitable procedure. The Board would deprecate litigation between the licensee and the surface owner.

Order thereon by the Government of Madras, No. 68, dated the 11th January 1872.

The above papers will be communicated to the Government of India, with reference to Mr. Secretary Hume's letter, dated 14th August 1871, No. 40 (Minerals).

2. The Government concur in the conclusions at which the Board have arrived, except in so far that they are of opinion that any assertion of an exclusive right by Government in all minerals below the surface would be an invasion of the private rights of landholders, and would excite much dissatisfaction if it ever was acted on beyond the limits of what is termed Government waste.

No. 36.]

No. 407—5, dated Rangoon, the 23rd March 1872.

*From—C. B. COOKE, Esq., Offg. Asst. Secy. to the Chief Commr., British Burma,
To—The Under Secretary to the Government of India.*

I AM directed to acknowledge the receipt of your letter No. 47, dated the 14th August 1871, calling for information on certain points regarding the granting away of mines and access to mines over land which is private property.

2. In reply, I am to say that in British Burma, Government has acted upon the principle that all mines, when not expressly granted away, belong to the State. The grounds on which this has been done are, that Government has the right of property in all land in this province, and that a very small portion of the lands has come as yet under cultivation, more especially in localities where there are mines.

3. The question of access to mines over land which has become private property, has never arisen in British Burma, neither for many years to come is any such question likely to arise.

4. The Officiating Chief Commissioner is of opinion that where any difficulty of this sort occurs, it should be open to Government to take up the land as if it were required for a public road, compensation being awarded in the same manner.

No. 37.

No. 2233, dated the 6th June 1872.

*From—H. L. DAMPIER, Esq., Secretary to the Government of Bengal,
To—The Secretary to the Government of India.*

I AM directed to acknowledge the receipt of your letter No. 42, dated the 14th August last, and subsequent reminders, calling for information on certain points in connection with the law and practice regarding mineral rights in Bengal.

2. In reply, I am directed to forward herewith copy of a letter from the Board of Revenue, together with a note drawn up by Mr. F. Millett in the year 1842, on the subject of the right of Government to mines in certain lands in Pachete in the Chota Nagpore Division. The Board's report very clearly exhibits the state of the questions on which information is required. The fact is, that till the last few months, nothing has been expressly reserved for Government: on the contrary, as will be seen from the Board's *resumé*, all discussions have generally ended in the abandonment of the claims of the public, and the concession of the rights, claims or demands of individuals.

3. This practice seems to have culminated in the year 1861 (*vide* paragraph 24 of Board's letter), when the Government of India of that time went so far as to rule, in addition to the established doctrine, that Government had no right in permanently-settled estates, that it should refrain from enforcing its demands for revenue on account of the produce of coal mines in all other estates; and consequently in a settlement then in progress in the coal tract of Ranee-gunge, the coal was not even treated as an asset of the estate.

4. Probably nothing can be done as regards permanently settled estates. But the Lieutenant-Governor is inclined to think that in the ghatwallee and other service tenures, which constitute much of the western coal and iron country, the claims of Government might have been pushed more than they were. Only the other day an enormous sum of money was paid to a small holder of this kind of tenure for a piece of land otherwise valueless, which was

72—Minerals and Geological Survey

PROCEEDINGS OF THE DEPARTMENT OF
AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Law and practice as to mineral rights.

[Pros. No. 37.

required for the East Indian Railway at Kurhurballee, and practically, except in a few rare cases, the Government has not pushed the matter.

5. It will be seen that of late some attempt has been made to reserve public rights in the few cases in which there have been opportunities of so doing. Also some very wide leases in Assam, by which Government was deprived even of the use of its own coal, for its own steamers have, it is understood, been forfeited. Further inquiry will be made regarding the Palamow case, alluded to in the Board's letter, where the original right of Government seems to have been clear.

6. It will be observed that the question of access has not often arisen, but if the minerals are reserved, the right of access should certainly be reserved.

7. On the whole question it does not seem to His Honour at all probable that much that is effectual can be done without an amendment of the law. If such an amendment be undertaken, the Lieutenant-Governor would be inclined to reserve the right of Government to all minerals, except where that right had been granted away, leaving to individuals to prove either an express grant, or so wide a recognition of the rights of property as would include the minerals.

No. 16A, dated 9th January 1872.

*From—D. J. MCNEILE, Esq., Offg. Secy. to the Board of Revenue, L. P.,
To—The Secretary to the Government of Bengal, Revenue Department.*

I AM directed to acknowledge the receipt of your docket No. 3212, dated the 25th August, calling for a report, at the instance of the Secretary of State and the Government of India, with special regard to the following points:—

1st.—How far in fact Government has in Bengal acted upon this principle, that all mines, when not expressly granted away, belong to the State, and on what grounds Government has so acted?

2nd.—What has been the law or practice in regard to access to mines over land which is private property? Does Government theoretically or practically possess such a right, and can it assign such a right to others?

2. With regard to the first question, one of the most important papers, so far as can be ascertained in this office, is the report by Mr. F. Millett, dated 26th March 1842, regarding the right of Government to mines in certain lands in Pachete, forwarded to the Sudder Board of Revenue by Government with letter No. 517, dated the 25th April 1842. This note appears to have met with the approval of Government so far that the views therein expressed as to the rights of Government have been adopted by the Government in Bengal ever since.

3. The member in charge directs me to forward a copy of this report for easy reference.

It will be seen that Mr. Millett discusses fully the questions—
Cons., 8th July 1845, No. 1. (1.) Has the Government the proprietary right in mines situated in permanently-assessed estates of zemindars? This he answers unhesitatingly in the negative. Next, as a branch of this inquiry, can Government levy an increased revenue from such estates, on account of the proceeds of mines, which he decides in paragraph 12 against Government, unless such right was distinctly reserved at the time of the settlement? (2.) Whether in a ghatwallee tenure the proprietary right in mines would vest in the Government, the zemindar, or the ghatwal—a question which he decides unhesitatingly against Government, and somewhat hesitatingly in favour of the zemindar,—a question, however, which has only an indirect bearing on the present inquiry.

4. Government in forwarding this report asked the Sudder Board to report on "the rights of parties in similar tenures in other parts of the country."

The Board accordingly addressed the Commissioners of Bhaugulpore and Cuttack, and after receiving their replies, informed Government that as they had supplied Mr. Millett with every document in their office in any way bearing on the subject, they were sensible that they could furnish nothing in addition to what was contained in his note, but had referred to the local authorities to ascertain whether the paikan lands of Midnapore, or the ghatwallee tenures of Bhaugulpore, could supply precedents. Their reports, however, gave no useful particulars on the points under consideration, and the Board therefore apprehended that no further information was obtainable.

5. The doctrine contained in this note, which seems to have been hitherto invariably accepted, forms in itself a conclusive answer to the first point, so far as regards all permanently-settled estates in Bengal, and it only

Cons., 18th July 1843, Nos. 29-31.

Minerals and Geological Survey—73

Pros. No. 37.]

Law and practice as to mineral rights.

remains to inquire; (a) whether the proprietary right vests in Government in estates in permanently-settled districts, of which Government is the zemindar; (b) whether the proprietary right vests in Government in districts not permanently settled; (c) whether Government can claim any extra revenue, when *now* re-assessing temporarily settled estates.

Cons., 6th April 1847, No. 67.
6. In regard to the first question (a) the discussion about the rights of the Palamow jagheerders is to the point. Palamow is an estate which was sold for arrears of revenue and purchased on behalf of Government in 1813. In 1857 the Commissioner of Chota Nagpore desired to be informed whether it is was then considered expedient to assert the right of Government over mines found within the limits of the Palamow jagheerders, adding that, under the orders of Government, dated 25th October 1827, the question was left open and remained still undecided. The matter came under consideration in consequence of the jagheerders having granted leases of certain coal mines in Palamow to the Bengal Coal Company, though Government had not admitted their right to grant such leases. As to the right of Government, the Commissioner was of opinion that if it was asserted it could not be successfully contended against, because, as auction purchasers, it was not incumbent on Government to uphold the under-tenures in Palamow. Government had, it is true, admitted the rights the dependent proprietors had acquired from the Rajah, but the jagheerders could claim no more than the rights so acquired. In the orders of Government 1827 above referred to, the principle laid down for the guidance of the local authorities was as follows:—

“With respect to the assessment of jungle and *mineral* products separately from the general settlement for the revenue of cultivated land, this question must depend on what may be found to be the understood practice of the pergunnah. If the jagheerders and others, or the residents in khalsa villages, have a definite interest in the circum-jacent jungle, or in the iron mines of his jagheer, it would obviously be inexpedient to interfere with this directly or through the Government farmer; but if the items have always been separate, there can be no reason for not continuing the reservation of them, and for that purpose leaving the interest for a term of years in farm.” There was nothing on record, the Commissioner asserted, to shew how the investigation was carried out, but practically the decision had been given in favour of Government, as the right of using the *assun* tree for the tussur silk-worm,* the right of collecting and preparing *kuth* or catechu, and the right of iron-smelting, had been separately taxed on behalf of Government ever since, and in doing so Government simply kept up a right always exercised by the rajah zemindars of Palamow. It was true that there was no mention of coal, but it was a fair inference that had the Rajah known of its existence and value, he would have assessed it as he had assessed iron. On the question of the expediency of asserting the right of Government, the Commissioner was of opinion that it was necessary to conciliate the jagheerders who had great local influence, and secure their support, if coal was to be worked successfully; and he would therefore recommend that, while asserting its indisputable right over the mines, Government should categorically assert its attention of not interfering with the action of the jagheerders.

* Koa.
7. The Board in addressing Government concurred in the views expressed by the Commissioner, but the then Lieutenant-Governor saw no sufficient reason for the Government to abandon its undoubted right to a share in this important property, and directed a re-consideration of the subject, with a view to the suggestion of some unobjectionable mode of securing for Government a percentage on the value of the coal produced from the mines in question, due regard being had to the custom and practice in other parts of British India.

Cons., 3rd November 1858, No. 94.
Cons., 24th December 1858, No. 4.
Cons., 5th July 1859, Nos. 67 and 68.
8. In May 1859 the Board, in reply to Government orders, relative to the imposition of an assessment on coal mines in Palamow, reported that the Rajharra mines, of which the Bengal Coal Company held leases from the proprietors of the soil, were the only ones then being worked; and that in consideration of the losses of the Company, the difficulties of their position, and the great advantage likely to be derived from bringing the coal into the market, they would exempt the Company from all taxation on the coal for ten years from 1st May 1860, and would levy a royalty of one per cent. on the estimated value of the coal at the pit's mouth till further orders, or for a certain specified period. The Board also concurred with the coal authorities that no demand could be made on the ilkadars for a portion of the rent paid to them by local speculators.

9. The Government in reply took up the general question of mining leases both in Chota Nagpore and the Sonthal Pergunnahs. The principle was laid down that a tax on

Law and practice as to mineral rights.

[Pros. No. 57.]

minerals raised, and a rent or royalty drawn from them by their owner, must not be founded, and the doctrine contended for by Mr. Millett was definitely adopted. “In the permanently-settled provinces it was beyond doubt that the representatives of those with whom the settlement was made are the owners of the minerals, wherefore in settled estates in those provinces no other party can draw rent in any form or under any name from mines, excepting under their authority; and as the land tax is fixed in such estates, Government can impose no additional land tax, whether on account of the minerals or on account of any other assets. As to a tax on coals, such a measure would require a law, and assuredly the Lieutenant-Governor will not move the Legislative Council to pass a law for such an object.”

10. This discussion continued for some time longer between Government, the Board, and the Legal Remembrancer, but the question at issue was the precise effect of the lease given to the jagheerdar—a question which has but little bearing on the general principle under discussion. It may be assumed, as the conclusion practically adopted in regard to this correspondence, that the Government as zemindar undoubtedly had originally the proprietary right to the mines, and the only question was whether, by its own action or that of its predecessor, it had divested itself of this right. This question is still under discussion, as recently the mines at Rajharra have been re-opened, and the local authorities have suggested the publication of a declaration of the seigniorial rights of Government in those mines. At the present moment an answer is being awaited from the Commissioner as to the issue of certain suits regarding the right of Government to *koa* and *kuth*, which were disputed, the result of which will have, it is supposed, some bearing upon the interpretation of the jagheerdaare tenure.

11. It may, however, in the opinion of the member in charge, be regarded as the accepted doctrine in Bengal that, when the Government is the zemindar, it holds the proprietary right in mines, unless it has in any way parted with it.

12. The next question is the nature of the Government right to minerals in those districts of the Lower Provinces which have not been permanently settled, and here again the case of waste-lands must be carefully distinguished from those under regular settlement. The following is an outline of the correspondence bearing on this question.

13. In 1847 the Commissioner of Assam requested orders as to whether, in making a grant of waste lands in the Luckimpore district, there should be any reservation for Government of the right to the minerals which the grant was supposed to contain, as well as of the right of access thereto. Government ruled in reply that it would be proper to reserve to the State in the grant in question, and in any other grants of land in Assam similarly circumstanced, “a right to impose a separate rent on the mines included in the land, whenever, under the ordinary terms of the grant, an adjustment or re-adjustment of rent may be liable to take place. Such rent of mines, however, was not to be imposed unless the grantee shall have previously so worked the mines as to render them capable of yielding a rent in addition to fair mining profits.”

14. In the case of the Terap coal mines, the question at issue was substantially the same. In June 1863 the Commissioner of Assam reported that the lease of the Terap coal mines would terminate in the following

January, and suggested that the right to work them should be sold by auction under certain conditions, one of which was that a royalty of one anna per maund should be paid to Government for all coal sold. The Board, in sending up the proposition to Government, said that they did not approve of many of the Commissioner's conditions. They proposed to forego all claims to royalty, and to offer the mines at a yearly rental for a term of years, without any further conditions, to free public competition. On this Government called for further information, especially *whether the*

mines were situated in a Government estate. The Commissioner replied that “if by a Government estate be meant a mehal, the regular settlement of which is periodically made under our revenue system, then the mines certainly are not so situated, but they lie unquestionably within British territory.” He added that those in the neighbourhood put forward no claim to these mines. In November 1863, Government issued orders, laying down the conditions on which the mines at Terap or elsewhere in Assam should be leased, and clearly assumed an unrestricted proprietary right in the mines. And now under the *ad interim* waste-land rules, published on the 23rd August 1871, the local authorities are required to reserve all lands known to contain valuable minerals.

15. A separate discussion has taken place regarding the right of Government to mineral deposits in the Khasi and Jynteah Hills. It appears from a narrative addressed to the Court of Directors that, in accordance with the recommendation of the local authorities, the Lieutenant-

Pros. No. 37.]

Law and practice as to mineral rights.

Mines in the Khasi and Jynteah Hills.

Governor had directed the issue of a proclamation asserting the sole right of Government to all minerals in the above-named hills. The Court of Directors approved of this step, and as a matter of policy pointed out the expediency of purchasing the mining rights of the hill chiefs, in order to prevent the indiscriminate assignment for long terms, and on inadequate rents, of tracts which hereafter become of great value. Orders having been issued accordingly, Mr. Allen, Member of the Board, reported that almost all the Khasi chiefs, sirdars, and headmen, appeared to be unwilling to dispose of their mining rights to Government, but that he believed that most of them would consent to lease to Government on fair terms such of their mineral tracts as were not already under lease to private individuals. He accordingly recommended the taking of perpetual leases on condition that the owners should receive from Government a moiety of whatever rent or revenue Government might be able to realize from the minerals.

Progs., 27th September 1858, No. 5.

Cons., 7th May 1859, Nos. 3 and 4. Government approved of this proposal, and the local authorities received instructions accordingly.

16. The following is an extract from one of the agreements given by a Khasi chief on his election:—"I hereby add my agreement to the cession by my predecessors of the lime, coal, and minerals within my estate, on condition of receiving half the profits arising from their sale, lease, or other disposal, and on the same terms to the cession also such waste-lands, being lands at the time unoccupied by villages, cultivation, plantations, orchards, &c., as may be required to be sold as waste-lands."

17. From Mr. W. J. Allen's report on the Khasi and Jynteah Hills, pages 64 and 65, it appears that on the 20th April 1848 perpetual leases were taken of the Cherra mines from the Rajah of Cherra Poonjee, and the Byrung mines from the sirdars of that village, on condition that Government was to pay a royalty of one rupee for every 100 maunds of coal quarried and removed from the mines, and that the Khasias of Cherra and Byrung Poonjees were to be permitted to work these beds on their own account. In Appendix No. 4K of the report is a translation of an agreement given to the British Government by the wahadadars, or chiefs of Cheyla Poonjee in 1829, the second condition of which is "that from the limestone situated on the banks of the Bogah river in our territory, we agree to allow the Government always to remove gratis as much as they require in any locality selected by their officers, but it is not to be taken from any other place."

18. A discussion directly in point occurs in connection with the recent case of Progs., 24th January 1871, No. 285. Mr. S. M. Sarkies, regarding a lease of the lime quarry of Malai Chamut Poonjee. The Board addressed the Commissioner of Assam as follows:—

"In the remarks on paragraph 9 of the petition, you state that 'it is the practice of each succeeding Rajah of a Khasi State to grant an agreement to Government, ceding to it minerals and waste-lands.' Again, in the remarks on paragraph 15 you say that 'such property is invariably surrendered to Government.' The Board wish to know whether this is a practice which can be enforced, that is, whether Government can insist on such practice being adhered to; and if you think that the Government has such a right, they desire that you will state your reasons for such opinion, and why, if Government can of right claim sary provision before entering into possession." In reply, the Commissioner referred to the correspondence above alluded to, adding that the arrangement of ceding the minerals and wahadadars of Cheyla, declined to enter into the engagement, preferring to administer their own affairs in this respect; but that in the case of almost every other estate and community it had been carried into effect.

19. It would seem from the above that the Government does not claim the proprietary right in the Khasi Hills, but the matter came again before the Lieutenant-Governor, and formed the subject of express comment in the orders No. 3671 of the 28th September last. The Government letter repudiates the right of a Khasi chief to alienate lands, mines, &c., in perpetuity, as being only a life-office holder. It may be inferred from this letter that the view of the Lieutenant-Governor is that the right in perpetuity vests in the paramount authority, that is, the British Government, though limited by the customary life interest of the chief for the time being, and the precise extent of the relative rights of the Government and the chiefs, may be perhaps treated as still not finally settled in the Khasi Hills. On the other hand, in Jynteah, speaking of the Lakadong coal mine, Mr. W. J. Allen reports, as not open to question; that it is the property of Government as the ruler of the Jynteah Hill territory.

20. The member in charge is of opinion, therefore, that in waste-lands and in outlying conquered provinces, the Government may safely lay claim to proprietary rights, and has in fact consistently done so, though in such territories as the Khasi or Garo Hills other rights

76—Minerals and Geological Survey

Law and practice as to mineral rights.

[Pros. No. 37.

have to be fully considered before this claim can be asserted unrestrictedly. The question of the right of Government never seems to have been raised in the case of any regularly-settled estate in a temporarily-settled district; but it may, the member in charge thinks, be safely assumed that in such cases the proprietary right vests in the zemindar, and the only question which could be open to contention is, whether at a re-settlement increased revenue could be demanded on account of the produce of mines. This is identical with the third question (c), though the discussions to be referred to have all reference to temporarily-settled estates in permanently settled districts; and though it is not precisely the question asked by Government, which is restricted merely to the proprietary right, it is intimately connected with it.

21. In the Board's rules regarding settlements, it is laid down that when there are minerals, the rents of mines existing at the time of settlement, and those only, are to be treated as an asset. In 1850 the Commissioner of Jessore came up, with reference to the settlement of Rughoonath Chuck, in Bancoorah, stating that the value of the land would in all probability be much enhanced in a few years from the development of its mineral resources. It appears that the land had been resumed as invalid lakhiraj, and Messrs. Erskine and Company, who were in possession, filed pottahs granted them by the putnee talookdar of the lakhirajdar, and by ryots, which conveyed the rights of a ryot with permission to mine, lead the coal, &c. These deeds, however, were granted after the resumption, and the Board ruled that the settlement should be made at half rates, all the lands within the limits of the mehal, both crop-growing and those let for mining purposes, being first assessed at the prevailing pergunnah rates. It was added that the right of Government to tax the produce of the mines independently of the land tax must be expressly reserved. In another case, however, in 1859, the Commissioner of Burdwan inquired whether, in a resumed lakhiraj tenure, which appear to contain coal, there should be any reservation of the right of Government to any minerals found there-after in the soil. The Board replied that there should be no such reservation in the permanent settlement of the mehal, but that it should be settled under the terms of the permanent settlement as an independent talook. There being thus two conflicting rulings, the Commissioner of Burdwan referred the matter in July 1859, when the Board confirmed the orders of 1850, and directed that in future settlements, temporary or permanent, the right of Government to all mines should be expressly reserved.

22. In December 1859 a reference was made to Government as to which ruling of the Board was correct, that of 1850 or that of 1859. The Lieutenant-Governor (Cons., 24th February 1869, No. 31) carefully distinguished between the right of the Government to reserve a right to increase the jumma at any future time, by the addition of an assessment on account of the rent that may hereafter be derived from minerals, and the right to include rent now actually derived from minerals as part of the assets or produce of the land on which the revenue should be fixed. His Honour decided unhesitatingly against any power of reservation, but in favour of including all produce in the assets on which the revenue was to be based, his words being "that the rent of mines, existing tangibly and definitely at the time of settlement should be treated as an asset of the estate to be settled in the calculation of jumma." In consequence of this ruling the Board cancelled their circular orders* No. 310, dated 12th August 1859, and issued a circular order No. 347 of 1st June 1860, in accordance with the orders of Government.

23. In this decision Mr. Millet's report was again referred to as an undoubted authority on the question of proprietary right in mines, and this ruling, combined with that of the Supreme Government in the beginning of 1866 (Board's circular order No. 6 of January 1866), which would limit the calculation apparently to the rent tangibly and definitely existing at the time of resumption, may be safely assumed as an acknowledged exposition of the Government rights in regard to resumed lakhiraj lands.

24. This was in fact definitely stated in respect to an application made by the Bengal Coal Company in 1861 (Consultations, 29th January 1861, No. 56), and it was therein stated that in "estates which had been permanently settled, the Government was barred from demanding any more revenue on account of coal, and the Governor General in Council thought it should refrain from enforcing its demand for revenue on account of the produce of coal mines in

Minerals and Geological Survey—77

Pros. No. 37.]

Law and practice as to mineral rights.

all other estates." In consequence of these orders, the Commissioner of Burdwan was requested to instruct the Collector of Burdwan to relinquish the right of the Government to treat coal as an asset of mehal Ranee-gunge in the settlement on which he was then engaged.

25. In permanently-settled districts it seems, therefore, Government has abandoned all right ever to levy additional revenue for mines in temporarily-settled estates, of which it has not purchased the proprietary right; though in temporarily-settled districts it seems that rent of mines, existing definitely and tangibly at the time of settlement, might be included as an asset.

26. It remains to answer the second question of Government in regard to the law or practice as to the access to mines on land which is private property. It will be seen that in Bengal the right of property has been held to extend indefinitely downwards as well as upwards, and consequently the proprietary right in the mines and to the surface have usually vested in the same person. The only case in which this would not follow would be where Government, being the proprietor, had alienated the surface without including in the alienation the right to mines—a question which was indirectly discussed in the Palamow correspondence. The Advocate General was, in the course of that discussion, requested to draw up a form of lease of mines for general adoption, and he drew up a separate form for cases where Government was the proprietor of the surface as well as of the mines, and for those cases when it had a clear right to let mines and minerals, but not an undoubted right to the soil. In this latter case the Advocate General recommended a license to be granted instead of a lease (Cons., November 1861, No. 16). The leading feature in the terms recommended was that full compensation must be given to all surface proprietors for any injury sustained by them in consequence of such works.

27. This cannot be said to throw any light, except negatively, on the practice in regard to access to mines, and it cannot be ascertained that the question has been satisfactorily discussed. The member in charge is of opinion that in the rare cases in which Government, after divesting itself of the proprietary right in the surface, has reserved its right in mines and minerals, it would have no alternative to enforce its right of access to the latter, unless this right was also reserved, except that of taking up the necessary strip of land under the Land Acquisition Act.

Report by Mr. F. Millet.

Dated the 26th March 1842.

From—F. MILLET, Esq.,

To—The Secretary to the Government of Bengal, JUDICIAL DEPARTMENT.

I HAVE the honour to acknowledge the receipt of Mr. Deputy Secretary Young's letters, Nos. 1318 and 1477, dated respectively the 24th August and 28th September 1841, forwarding correspondence from Major J. R. Ouseley, the Commissioner in Chota Nagpore, relating to the coal mines in certain ghatwallee lands in Pachete, and requesting my opinion on the points therein discussed.

2. The questions involved in these papers may be thus stated—

(1).—Has the Government the proprietary right in mines situated in permanently assessed estates of zemindars?

(2).—Has the Government the proprietary right in the coal mines in certain ghatwallee lands in Pachete; or is this right vested in the zemindar; or have the ghatwallees any title or interest in them?

3. In regard to the first question, it appears to me that Government can have no right of ownership in mines situated in lands the property of others.

According to the Mahomedan law "a mine is a constituent part of the land in which it lies, and as such, upon a transfer by sale of the land, the mine becomes the property of the purchaser." It is the law of England also that ores or mines in the soil of a subject belong to the proprietor of the soil, excepting mines of gold and silver, which belong to the Sovereign by prerogative; though it may happen that the right to the minerals and the fee-simple of the soil are in different persons either by reason of a special exception in case of conveyance, or from other particular cause.

4. But there is another question which arises out of this part of the subject which has not been adverted to, viz., whether the Government is entitled to any portion of the produce of mines situated as above in the shape of revenue?

78—Minerals and Geological Survey

Law and practice as to mineral rights.

[Pros. No. 37.]

5. By the Mahomedan law the Sovereign is entitled to a fifth of the produce of mines discovered in kheraj lands, which is distinct from the kheraj or land tax, and according to the same law separate treasuries should be established for the reception of the different branches of revenue; but the practice of the Mahomedan Government in this country does not appear to have been in conformity with the law on this point. "Summarily," says the author of *Ayeen Akberry*, "the quit-rent is called *mdl*, the taxes on manufactures *jehat*, and all other imposts, one in general, named *Syar jehat*." The point of importance to be ascertained is how the constitutional right of the Government to a portion of the produce of mines was affected by the great measure of the permanent settlement.

6. I can find no mention of the produce of coal, iron or indeed of any mines in the general discussions which took place at the period of the settlement; nor, perhaps, is this surprising, considering the little notice they had then attracted; but there is evidence to show that at the date of dewanny grant the Government share of the produce of mines was incorporated with the "mal" or land tax.

7. Mr. J. Grant describing the territorial abwabs brought to the public account as *kifayat* or profits by Cassim Ullee Khan, thus speaks of the result of the Nawab's financial operations, under the head of "Kifayat Hustabood" on the revenue of the district of Beerbhoom:—

"Accordingly the militia establishment was in great part reduced, and the assigned lands resumed by Government, which together with the result of a local scrutiny into the yearly receipts of rent from the ryots throughout the rest of the district, enabled the souldahdar to form an equitable standard for the future assessment of the whole territory, on the prescribed and only solid foundations of a proper settlement, technically understood by the word *hostabood*, indicating a comparative view of former and actual sources of gross revenue, * * * and if a larger increase of annual income might have been expected from the old rated lands, chiefly in consideration of their ascertained superior worth, or perhaps in a small degree on account of the valuable commodities of iron, coal and tussar silk, in a manner peculiar to this province, besides the other more ordinary productions of Bengal, we are to recollect that the two former articles, found chiefly on the surface of the ground, and the latter formed abundantly in the woods by a caterpillar feeding on the *bere* and *sāl* tree, instead of the mulberry, afford more than a presumptive proof of general poverty of soil, or at least the imperfective state of cultivation."

It is to be observed that the total net revenue of the soubah of Bengal, under every denomination, as established during the administration of Cassim Ullee Khan, continued thenceforward until the acquisition of the dewanny.

8. The history of the *loha mehal* in zillah Beerbhoom is fully set forth in the case of *Gooroopershad Bose, appellant, versus Bisnoo Churn Hazra*, decided by the Court of Sudder Dewanny Adawlut on the 31st July 1811. The exclusive right of the late zemindar of Beerbhoom to the iron produced in his zemindaree was therein established. The collections from this source of profit formed a distinct mehal of his estate, and constituted one of the assets on which the revenue of the whole zemindaree was fixed at the decennial settlement; and this mehal was sold as one of those composing the estate on the public sale of its component parts in satisfaction of the arrears of Government revenue. It appeared, however, that there were some partial *loha mehals* in the late zemindaree annexed to particular land mehals.

9. Very important principles respecting the operation of the permanent settlement are to be found in the Resolutions of Government, dated the 24th December 1818, embodied in a letter addressed to the Board of Commissioners for Behar and Benares, which terminated the discussions on the subject of the right of Government to a separate revenue from the nemuck sayer, or saltpetre mehal, in Bengal, Behar, and Benares.

The following are extracts from that letter—

Para. 2.—"The original right of Government to derive a revenue from saltpetre in the same manner as from other products of the soil appears to be undisputed.

Para. 3.—"The only question is, how far that right has been permanently alienated by special grants, or compounded for by the general operation of the settlement.

Para. 20.—"The perpetual settlement, as Government have of late repeatedly had occasion to announce,* was a compromise for the share of the State in the profits and resources of whatever description of lands to which the settlement extended.

PROCEEDINGS OF THE DEPARTMENT OF
AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Pros. No. 37.]

Law and practice as to mineral rights.

Also Section 31, Regulation II, 1819.

Para. 21.—“If exceptions to the operation of that compromise are set up, the burthen of proof lies distinctly on Government.

Para. 22.—“The Governor General in Council is decidedly of opinion that in all cases respecting the saltpetre produced within estates permanently settled, a clear reservation (either express or by facts) of the nemuck sayer, must be shown to entitle the Government to make any demand on account of that article.

Para. 24.—“Before acting on any general statement that the durkhasts given in, or kaboolets executed by the proprietors of any tract of country, exclude the nemuck sayer, it will be proper to call for and inspect the several documents referred to. The contents of one must not be inferred from those of another, still less must the exclusion of the article be presumed from the silence of the records regarding it.

Para. 26.—“The article must, in the judgment of the Governor General in Council be presumed to have been included in the settlement in all cases in which there may not exist distinct proof of its exclusion.

Para. 30.—“The extent to which the general right of Government (to share in the produce of the soil) has been limited by the perpetual settlement, it must be superfluous to state, nor can it be necessary to inform your Board, that on the principles of that great measure, it is not enough for the purpose of justifying the demand of an increased revenue, to shew that a particular article of profit was not included in the assets when the permanent jumma was adjusted. It must, as already intimated, be shewn that the article was unequivocally excepted, either in express terms or by facts forming a necessary virtual exception.”

On these grounds the claim advocated by the Board of Commissioners on behalf of Government to additional revenue from the saltpetre mehals in the three Provinces was abandoned.

10. On examining the records of the decennial settlement concluded with the Rajah of Pachete, I find no notice of coal mines; indeed, the Collector's statements contain no particulars of the assets on which the jumma was adjusted. An application

12th August and 25th November 1822. was made by Mr. J. L. Heatly in 1822, to the Secretary to Government in the Territorial Department, for copies of documents “relative to certain coal mines in the district of Pachete granted by the Ramghur Rajah to his father Suetonius Grant Heatly jointly with Messrs. J. Sumner and Redferne, some time between the years 1773 and 1776,” the documents specified being the grant of the Rajah and the Government sundry confirming the same. In a previous application to the Board of Revenue, dated 19th October 1821, he stated—“In December 1777, I find a quantity of coals, the produce of these collieries, amounting to 2,000 maunds, were delivered into the Company's military stores.”

I am not aware what documents exist among the Government records on the subject of Mr. Heatly's enquiry, but if the mines were not worked at the period of the decennial settlement, it is probable no mention will be found of them in the detailed accounts of the settlement in the Collector's office, the Government revenue having been adjusted on the actual resources of the zemindarees. Indeed, I gather from Captain Hannington's letter* that they are silent on the subject.

11. Mr. W. Jones, who established collieries in pergunnah Shearghur, in zillah Jungle Mehals in 1816, in a letter to Government, dated 22nd May of that year, says—

“Having been under the necessity of building six large huts, and occupying ground and rock together, to the amount of 99 beegahs, I was in justice bound to take a pottah from the proprietors of the land which is in Shearghur pergunnah, zillah Jungle Mehals, and zemindaree of the Rancee of Burdwan. I also take a grant of all the coal in the Shearghur from the Rajah of Burdwan. I am not certain that he holds the right to give such a grant; however, those papers being in my own name, I shall deliver them over to Government whenever that may be called for, and I hope I may not be thought presumptuous in taking them without orders, as I have merely done it to prevent trouble hereafter.”

It appears from Mr. T. Bracken's evidence before the Select Committee of the House of Commons in 1831, that the late firm of Alexander and Company, who had a contract with Government to supply them with coals for their Marine and Mint Departments, held a perpetual lease from the Rajah of Burdwan of the lands in which the coals were produced. The Government do not appear to have regarded themselves either as the proprietors of these coal mines, or as being entitled to draw an additional revenue from the profits of them.

12. On the whole, I conclude that the Government cannot claim any additional revenue from the coal mines in the zemindaree lands of Pachete, unless it can be clearly shewn that the right to do so was specially reserved at the time of the settlement.

13. I now come to the second division of the subject, and first as to the right of Government to the property in the coal mines in the ghatwalee lands of Pachete. I understand that these ghatwalee or degwaree lands are situated in the zemindaree of the Rajah of Pachete;

PROCEEDINGS OF THE DEPARTMENT OF
AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Law and practice as to mineral rights.

[Pros. No. 37.

that they are interspersed with the jagheerdaree and malgoozaree lands; and that there is no difference between the degwaree and jagheerdaree lands, except that the latter pay a quit-rent to the zemindar, and the former are held rent-free.^a I consider therefore, in the absence of any proof to the contrary, that the Rajah is the proprietor of the soil, and consequently, for the reasons assigned in the discussion of the first question, that Government have no right of ownership in the mines.

14. Captain Hannington states* that the ghatwalee “are lands which at the time of the decennial settlement, were set apart for the maintenance of a rural police, and were in consequence left entirely unassessed.

* Letter of 28th February 1841. It has therefore been usual to assume that these lands are the real property of Government, the zemindar having no right whatever in them. Indeed, the same thing is clearly implied in clause 4, section 8, Regulation I of 1793.” But in this view Captain Hannington does not distinguish between the proprietary right and the right of Government to assess the lands in question. The general character of the police lands is, that they were lands allotted by the zemindars out of their estates for the maintenance of police officers whom they were formerly bound to keep up for the preservation of the peace of their districts. When therefore the Government undertook the charge of the police, and the produce of some of the lands was resumed under the clause above quoted, the Collectors were directed † to make the settlement of them with the zemindars of the estates in which they were situated, as being likewise the proprietors of the lands so resumed. Thus, the Government in communicating to the Acting Magistrate of Midnapore their sanction for the partial resumption of the produce of the pyke

† See circular order of Government to the Collectors, dated 12th April 1793.

12th April 1793. lands in his district, added—“the lands are of course to be left in the possession and to continue the property of the landholders, and the resumed proportion of the produce of them is to be collected and brought to account in the modes prescribed in the orders this day issued to him.”

So also when the Collector of Beerbhoom, after having received the sanction of Government for the resumption of the police jagheer lands in his district spoke of them as “late the property of the zemindar” and of “receiving charge of them from him,” the Board of Revenue in addressing Government on the subject observed—“we apprehend that the Collector has misconceived the intent of the Regulations in supposing that they are to be taken from under the charge of the zemindar, the object of the regulations on this point being, as we conceive, only to subject the zemindar to the payment of such a sum over and above his fixed jumma as may appear proportionate to the produce of the lands which were heretofore set apart for the support of the police.”

Again, when the Rajah of Burdwan objected to engage for the resumed thannabdaree lands of his zemindaree, and the Collector, as one mode of overcoming the difficulty, proposed that (if not inconsistent with the Rajah's proprietary right) the land should be sold by auction either upon the assessment proposed, or on such an assessment as might be deemed reasonable, after local investigation and deduction of the proprietary 10 per cent., the Government informed him that in their opinion “it would neither be proper nor just for Government to retain possession of the lands, or to dispose of them at public sale.”

15. The question, whether the zemindar or the ghatwals have a right to the produce of the coal mines in ghatwalee lands, I find to be a very difficult one. It is in some measure connected with another discussed in the papers of this reference, viz., whether the zemindar has a right to enhance the rents of the police jagheerdars on his estate.

16. On the part of the zemindar it might be urged that the lands described in clause 4, section 8, Regulation I of 1793, having been formally allotted by him for the maintenance of certain descriptions of police officers, and he having been peremptorily required to discharge those officers on Government taking upon itself the charge of the police, it is at his election to impose such rents upon their lands as the neighbouring lands of a similar quality are assessed at, and in case of the present occupants declining to engage for them on these terms, to make such other arrangement respecting them as he thinks proper; also that, being the proprietor of the soil, he has a right to the produce of the mines it contains. It must be supposed at the same time that the zemindar expresses his readiness to enter into engagements for the payment of the revenue, which

Compare Art. 1 of the Police Regulations of 7th December 1792. Paragraph 17th of the circular letter to the Magistrates of the same date.

Cause 4, section 8, Regulation I of 1793, and section 2, Regulation XXII of 1793.

^a Major Ouseley refers in his letter of the 17th July 1841, to Regulation XXIX of 1814, relating to certain ghatwalee tenures in Beerbhoom, but on examining into the history of those peculiar tenures, I do not perceive anything analogous to the present case. I may here remark that many of the estates in the Behar portion of zillah Rangurh were permanently settled with persons denominated ghatwals. See statement enclosed in Collector's letter dated 21st June 1791.

PROCEEDINGS OF THE DEPARTMENT OF
AGRICULTURE, REVENUE AND COMMERCE, AUGUST, 1872.

Pros. No. 37.]

Law and practice as to mineral rights.

may be fixed upon the lands according to their produce, including that of the mines, whenever Government may think fit to resume the produce under the clause above quoted.

17. As the police chakran lands of all descriptions must fall within the provisions, either of clause 4, section 8, Regulation I of 1793, or section 41, Regulation VIII of 1793, in which latter case they are at the disposal of the zemindar, I do not perceive how the above plea can be refuted; but it is certain that the practice, at least in the south-western districts of Bengal, has been different, and that there the police officers occupying the lands, contemplated in the first mentioned clause, the produce of which has not been resumed, have been continued as if in the employ of Government. If this practice be admitted to be legal, it would, I think, follow that the zemindar has no right either to assess such lands when held rent-free, or to increase the assessment of such as pay a quit-rent, so long as the Government find it expedient to keep up the establishment of officers occupying them. The lands must in that case be regarded as having been made over by the zemindars to Government for the purposes of police during the pleasure of the latter, in consideration of themselves having been relieved from the burthen of preserving the peace of their estates, and then, as Captain Hannington justly remarks, "in reason the rents ought to be unalterable, for if not, they might be raised until the tenure ceased to be remunerative, and then what would become of the police?"

And I observe it stated in the report of the Collector of Midnapore, dated 25th June 1828, that on the investiture of the zemindar of Midnapore with a joint charge of the police of his estate, and the consequent restoration to him of the resumed pyke jagheer lands, he bound himself by his kaboolut not to resume any of these lands, and not to demand any revenue from the pykes beyond the peshkush paid by them previously to 1793, on account of their behallee jagheer land.

18. Although it seems clear in this view of the case that the police ghatwals and jagheer-dars of Pachete would be entitled, as respects the zemindar, to the profits which they might derive from their lands by the improvement of cultivation and the clearance of waste, the point still remains whether they would be also entitled to the produce of the mines.

19. By the Mahomedan law a mere lease-holder would probably not be considered entitled to work new mines, because "at the expiration of the lease the land must be restored in its original state;" and I believe that by the English law a tenant for life cannot open new mines, but the tenures under consideration are of a peculiar kind, and I can discover no law or precedent applicable to them. Before coming to a decision it would be proper to ascertain, if possible, what are considered the relative rights of the parties in similar tenures in other parts of the country: If the zemindar's right to the mines be established, it might then be a question whether the Government would not be entitled to a revenue from the zemindar's profits from the mines, on the ground that the police lands were excluded from the operation of the permanent settlement. And an equitable compensation would be due from the zemindar to the ghatwals for the produce of any lands which might be rendered unfit for cultivation by opening new mines.

On the other hand, it might be pleaded on the part of the zemindar that under clause 4, section 8, Regulation I of 1793, only such produce of the lands as was appropriated for police purposes, was excepted from the operation of the settlement, and the minerals having been judged not to form a portion of such produce, the Government right as regarding them must be held to have been compounded for at the settlement in common with all other profits not specially excepted from that arrangement.

NO PRESENT ORDERS.

(2)

LIST OF PAPERS—(continued).

- No. 33. From the Government of the North-Western Provinces, No. 2040A, dated 21st December 1871. In reply to No. 43, dated 14th August 1871, communicates the views of the Lieutenant-Governor regarding the above-named subject.
- No. 34. From the Government of Madras, No. 69, dated 11th January 1871. Intimates that no change is called for in the law affecting mineral rights as the Land Acquisition Act confers all the powers which it can properly be desired to exercise in connection with it.
- No. 35. Proceedings of the Board of Revenue relating to the law and practice observed in Madras.
- No. 36. From the Chief Commissioner of British Burma, No. 407-5, dated 23rd March 1872. In reply to No. 47, dated 14th August 1871, submits information regarding the granting away of mines and access to mines over land which is private property.
- No. 37. From the Government of Bengal, No. 37, dated 6th June 1872. In reply to No. 42, dated 14th August 1871, submits information on certain points in connection with the law and practice regarding the minerals rights in Bengal.
No present orders.

Intant RN 3933/29

1872.

REFERENCE TO FORMER CASES.

Progs., August 1871, Nos. 1 to 4.

GOVERNMENT OF INDIA.
DEPARTMENT OF AGRICULTURE,
REVENUE AND COMMERCE.

MINERALS and GEOLOGICAL SURVEY.

August 1872.

Proceedings Nos. 26 to 37.

REFERENCE TO LATER CASES.

Law and practice as to mineral rights.

LIST OF PAPERS.

- No. 26. From the Public Works Department, No. 289, dated 16th August 1871. In reply to No. 39, dated 11th instant, regarding the above, states that the law is uncertain as to Government rights, or at all events it should be made clearer.
- No. 27. From the Government of Bombay, No. 4154, dated 26th August 1871. In reply to No. 41, dated 14th ultimo, states that there is no local law or practice affecting mines, owing to their non-existence in that presidency, but the lease of a mine might be authorized by law to obtain a right of way over surface property in the manner provided by Land Acquisition Act (No. X of 1870).
- No. 28. From the Chief Commissioner of Mysore, No. 2714-11, dated 31st August 1871. Acknowledges receipt of No. 48, dated 14th ultimo, and submits opinion relative to the points referred to by this Government on the law and practice as to mineral rights.
- No. 29. From the Resident, Hyderabad, No. 30, dated 7th October 1871. In reply to No. 49, dated 14th August last, states that in the Berars the theory that Government is landlord has always been held; and remarks further on the subject. As regards access to mines, thinks that the procedure laid down in Act X of 1870 (the Land Acquisition Act) sufficiently protects the interests of both Government and landholders. Encloses replies of the Commissioners, East and West Berars, on the subject.
- No. 30. From the Chief Commissioner of the Central Provinces, No. 2133-202, dated 10th October 1871. In reply to No. 46, dated 14th August 1871, states that, in the absence of any express law, the administration has invariably acted on the assumption that all mines, not expressly granted away, belong to the State; and offers further remarks on the subject.
- No. 31. From the Chief Commissioner of Oudh, No. 4787, dated 2nd December 1871. In reply to No. 45, dated 14th August, communicates the rules in force in that province regarding the law and practice as to mineral rights.
- No. 32. From the Government of the Panjab, No. 878, dated 7th December 1871. In reply to No. 44, dated 14th August, 1871, forwards copy of a letter No. 777, dated 29th September 1871, from the Financial Commissioner, giving information relating to mineral rights in the Panjab.

No. 847, dated Madras, 27th February 1877.

From—The Secretary to the Government of Madras,
To—The Secretary to the Government of India.

I am directed to forward, for submission to the Secretary of State, the accompanying despatch* from this Government, requesting sanction to a modification of the indentures for lands sold under the Waste Land Rules of 7th March 1863 in force in the Wynad taluk of the Malabar district in view to securing the State's rights to minerals in land sold under those rules.

No. 17A., dated Madras, 27th February 1877.

From—The Government of Madras,
To—Her Majesty's Secretary of State for India.

IN forwarding copies of our Proceedings noted in the margin, we have the honour to request that the sanction of Her Majesty's Government may be accorded to the modification of the indentures for lands sold under the Waste Land Rules of 7th March 1863, in force in the Wynad taluk of the Malabar district, in such manner as may be considered necessary by our legal advisers to secure to Government full and complete right to all minerals known to exist or hereafter discovered in lands sold under these rules, with power to enter upon or to permit others to enter upon such lands with a view to prospecting for minerals, or to working mines therein existing. Such modification we propose should be temporary, pending the enunciation by the Supreme Government of the policy to be followed in relation to the State's rights to minerals upon which we have requested their instructions in our letter, 23rd January 1877, No. 320, and the perfection of the measures which may be necessary to give to that policy a practical form.

2. It will be observed from our Proceedings, 3rd February 1877, No. 503, that we thought it desirable to obtain the opinion of our law officers as to our power to add to the conditions laid down in the Waste Land Rules; and also how far a buyer would be bound by such fresh conditions if inserted without your sanction.

3. In accordance with the opinion so elicited, we desire to obtain your approval to the course above proposed. We are anxious that no unnecessary obstacles should be thrown in the way of applicants obtaining land under the rules, even though the land applied for may contain auriferous or other valuable mineral deposits; but at the same time His Grace the Governor in Council considers that, under no circumstances, should such lands be alienated without the State's rights in the minerals being fully secured. It will be observed that the Advocate General has, on a former occasion, expressed an opinion that the State has no right to minerals found in lands sold under the rules.

4. Where the application has been merely to occupy for a limited time with a view to ascertaining the mineral wealth of a locality, we have, in a few cases, permitted temporary occupation, on the projectors binding themselves to abide by any conditions which may hereafter be imposed by the State in regard to royalty and the working of the mines generally.

Extract from the Proceedings of the Government of Madras, Revenue Department, No. 503, dated 3rd February 1877.

Read the following:—

Proceedings of the Board of Revenue, dated 23rd January 1877.

Read the following letter:—

No. 1, dated Calicut, 5th January 1877.

From—The Collector of Malabar,
To—The Acting Secretary to the Board of Revenue, Madras.

Referring to G. O., Revenue Department, No. 448, dated 30th March 1876, I have the honour to state that on further inspection of one of the blocks of land applied for by Captain Cox, I find I was mistaken in my assertion that there were no indications of quartz on the land. The tahsildar recently reports "slight indications of quartz" on one of the blocks, the 150-acre one.

2. The land was to have been sold on the 8th instant, but under the circumstances I have directed the postponement of the sale till 8th February.

3. Meanwhile I solicit the orders of the Board and Government as to whether the block may be sold on the condition that all mineral rights are reserved to Government.

KEEP-WITHS PRINTED.

Note by Under Secretary, dated 19th August 1871.
Initials by Secretary, 20th August 1871.
Note by Under Secretary, dated 3rd September 1871.
Initialled by Secretary, 5th September 1871.
Précis, dated 16th July 1872.

KEEP-WITHS NOT PRINTED.

File of office slips.
Draft letter to the Government of Bengal, dated 31st May 1872.
File of takeed slips and office slip.
Extract from the Allahabad Government Gazette, dated 17th June 1865.

Remarks by the Board of Revenue, Madras.

Submitted for the early orders of Government.
2. The Board support the proposal in paragraph 3.

Order thereon by the Government of Madras.

His Grace the Governor in Council is doubtful whether the Local Government, regarded as Agent of the Secretary of State, can legally insert a condition, such as that proposed by the Board of Revenue, in the terms of the sale of land under the Waste Land Rules, without the sanction of that authority as principal, the Rules having been enacted by the Secretary of State. Further, whether a condition inserted without such sanction would be valid and enforceable against a purchaser, even supposing that the purchaser made no protest when concluding the contract.

2. The question will be referred for the opinion of the Advocate General.

Extract from the Proceedings of the Government of Madras, Revenue Department, No. 1179, dated 28th August 1876.

Read the following :—

Proceedings of the Board of Revenue, dated 9th August 1876, No. 2030.

Read the following letters :—

No. 190, dated Calicut, 20th July 1876.

From—The Collector of Malabar,

To—The Acting Secretary to the Board of Revenue, Madras.

With reference to the Proceedings of the Board of Revenue, No. 458, dated 16th February last, I have the honour to forward herewith a statement embodying the information therein called for.

2. The lands mentioned in the list are to be disposed of under the Waste Land Rules, and I see no objection to the cost of survey and demarcation being taken as the price of the land, the applicants being bound to come under fresh obligations, if necessary, in respect of mining rights.

3. Several applications which are either avowedly for lands for gold-mining, or which are believed to relate to such lands, have been excluded from this list, and I would propose to delay the disposal thereof pending final orders on the gold question.

ENCLOSURE No. 1.—Statement.

No. 203, dated Tellichery, 31st July 1876.

From—The Collector of Malabar,

To—The Acting Secretary to the Board of Revenue, Madras.

Referring to G. O., Revenue Department, No. 1001, dated 25th instant, and my letter No. 190, dated 20th instant, I have the honour to suggest that to prevent much disappointment to applicants for waste lands in Wynaad, I may be allowed to dispose of the pending applications after personal inspection by the Wynaad Deputy Collector and on his reports that the lands applied for present no indications of being auriferous.

2. This will not be such a satisfactory arrangement as that of deputing an officer of the Geological Survey to make the inspections, but under the circumstances it is the best I can suggest.

3. I would of course at the same time propose to insert a condition in the deeds reserving all mineral rights.

Remarks by the Board of Revenue, Madras.

Submitted for the orders of Government.

2. The Board recommend that the Collector be authorised to dispose of pending applications as proposed, on condition that the mineral rights of Government are strictly reserved. The Board note that such applications as are believed to have been made with a view to gold-mining have not been included in the list submitted with the first of the foregoing letters. It is presumed that the position of the blocks for which no boundaries have been given is approximately known to the Collector.

Order thereon by the Government of Madras.

It is observed that these applications seem to have been made with the *bonâ fide* purpose of bringing the lands under cultivation. If therefore the further inquiry proposed shows that they

are not likely to contain minerals, the lands may be sold in fee-simple under the Waste Land Rules, it being formally intimated to the purchasers that such right as the State may be able to claim in the way of royalty from mines discovered on land which is private property is fully reserved.

2. For some of the lots no boundaries are specified. In these cases the Collector is not at liberty to proceed any further till the information is supplied. Such boundaries should, as far as possible, be run straight from corner to corner, to save time as well as expense in demarcating.

Extract from the Proceedings of the Government of Madras, Revenue Department, No. 1001, dated 25th July 1876.

Read the following :—

Proceeding of the Board of Revenue, dated 14th July 1876, No. 1811.

Read the following letter :—

No. 173, dated Calicut, 11th July 1876.

From—The Collector of Malabar,

To—The Acting Secretary to the Board of Revenue, Madras.

I have the honour to inform you that in 1874 Captain Cox of Cheramaddy in South-
* Acres 100 and 150 in extent re- East Wynaad applied to my predecessor for certain lands*
spectively. for cultivation under the Waste Land Rules.

2. The usual surveys were made, and the only step now required is to put up the lands to auction.

3. I am, however, precluded by the order in paragraph 11 of the Board's Proceedings, No. 3384, dated 20th December 1875, from disposing of this among other applications as no officer of the Geological Survey has yet visited the locality. This fact was reported to the Board in my letter No. 21, dated 19th January last.

4. It seems that Captain Cox calculated on being able to enter upon the land last year, and he accordingly entertained an Agent, whom he has been unprofitably paying since then. Moreover, Captain Cox has just come out from England to start these new estates, and he has asked me to take up his application as a special case.

5. I have the honour therefore to suggest that Captain Cox may be allowed to enter upon the land at once, on the understanding that all mineral rights are reserved to Government, and if minerals are hereafter discovered, Captain Cox agrees to come under fresh obligations in respect thereof. Captain Cox has already paid the cost of the survey, and this I would recommend should be the price of the land; for, as a matter of fact, planters very rarely, if ever, bid against each other for land, and the survey cost is usually the price of the land. I also understand that there is no indication of the existence of quartz on either of the blocks applied for.

6. All the other conditions usual in the sale of lands under the Wynaad Waste Land Rules would of course remain unaltered.

Remarks by the Board of Revenue, Madras.

Submitted for the orders of Government.

2. Captain Cox's application for two blocks of land in the Wynaad have remained undisposed of, pending the examination of the locality by Mr. King of the Geological Survey Department: vide G. O., dated 3rd November 1875, No. 1568. The Collector was instructed, in the concluding paragraph of the Board's Proceedings, dated 20th December 1875, No. 3384, to await Mr. King's report; and on his subsequently suggesting that as there was a prospect of considerable further delay in the disposal of the matter, applicants for blocks should be allowed to occupy them on ordinary putta tenure, on the distinct understanding that all mining rights of Government are reserved, the Board called for certain information to enable them to address Government (Proceedings, dated 16th February 1876, No. 453), but no reply has been received.

3. Mr. Logan now proposes that auction sale should be dispensed with in Captain Cox's case, the cost of the survey already paid being taken as the price of the land, on the condition that Captain Cox consents to submit to any conditions that Government may hereafter impose in regard to mineral rights. As Captain Cox has been put to unnecessary expense by the recent restrictions on the grant of lands, the Board think that his case is deserving of consideration, and they therefore support the Collector's recommendation, on the presumption that there are no other applicants for the same blocks. Sale by auction will entail a further delay of at least three months.

Order thereon by the Government of Madras.

The Government are of opinion that a public auction after the three months' notice cannot be dispensed with, it being prescribed by Act XXIII of 1863. The course authorised by law should be followed.

2. It is noted that there are no indications of quartz on the land.

Extract from the Proceedings of the Government of Madras, Revenue Department, No. 319,
dated 23rd January 1877.

Read the following—

Proceedings of the Board of Revenue, dated 20th December 1875, No. 3334.

Read again :—

G. O., dated 2nd April 1875, No. 512.

Read also the following letter :—

No. 325, dated Madras, 7th July 1875.

From—The Government Solicitor, Madras,

To—The Acting Secretary to the Board of Revenue, Madras.

I have the honour to acknowledge the receipt of the Proceedings of the Board of Revenue, dated 8th April last, No. 2766, endorsed on order of Government, dated 2nd April 1875, No. 512, Revenue Department, requesting the Advocate General's opinion whether the claim of Government to any payment by landowners in respect of gold found on their lands is sustainable without resorting to litigation.

2. I submitted the matter for the consideration of the Advocate General, and I now forward herewith a copy of his opinion.

Opinion by the Advocate General of Madras.

In the case of the first of the three classes mentioned in Government order, *viz.*, ancient Malabar jenmies, it would be hazardous to offer a decided opinion as to the rights of Government in respect of gold found on their estates, without fuller information as to the previous history of the case and the position of the jenmies than the papers submitted afford, or than I have been able to collect from the Law Reports or from Major Walker's pamphlet on Malabar jenmies, the only treatise on that subject which appears to be available. The Crown is entitled according to the English Common Law, to gold and silver mines (Stephen's Commentaries, Vol. II, 566, 4th Edition), but it by no means necessarily follows that this part of English Common Law applies in British India, and it would in any case be subject to any proved local custom or circumstances which could be regarded as giving rise to a prescriptive right. If, as Mr. King states (paragraph 5), "gold has been long known and worked in the Malabar district, and the panners have got it in one way and the korumbars in another, it is probable that some evidence would be obtainable as to the conditions under which these persons carried on their workings, and as to the customary payments, if any, which they have made to Government in consideration thereof. If it be ascertained that no such dues have been paid, it would be of course strong evidence against the right of the Crown now to assert any such right.

2. Major Walker, in his elaborate examination of the tenures of Malabar and their various incidents, makes no mention of any right of the sovereign power to gold found on the land. Though he finds traces of institutions corresponding to those of feudal Europe (pp. 41-2), the services rendered appear to have been of a military nature; and he considers that there was "no regular tax anterior to the Mahomedan invasion." Without venturing to speak with decisiveness on a subject of which so little seems to be known, I am led by the perusal of Major Walker's pamphlet to the inference that it would be extremely difficult to establish any right on the part of Government in respect of gold found on the land of jenmies.

(b). With regard to proprietors under Waste Land Rules, I find that the form of indenture appended to the "Rules for the sale of unassessed waste land," 5th March 1863, No. 416, conveys to the grantee not only the soil, but "all products both above and below the surface." A person holding under one of these instruments would, in my opinion, be entitled to any minerals obtained from the soil. As to the third class, the ordinary ryot holds, as I understand, on a tenure which Government ordinarily suffers to run on from year to year on the same terms, but the rental of which Government at any time may, and occasionally does, enhance. Consequently, if gold were found on the holding of any such ryot, Government would no doubt be justified in treating this as an occasion of raising the rental, provided that no definite period of settlement had previously been agreed on.

I must apologise to the Board for my delay in forwarding this opinion. The papers were unfortunately overlooked on my departure for Ootacamund.

No. 310, dated Calicut, 14th October 1875.

From—The Acting Collector of Malabar,

To—The Acting Secretary to the Board of Revenue, Madras.

I have the honour to submit my report on the three points referred for my opinion in Board's Proceedings No. 2766 of the 8th April. This report has been delayed, because I wished to have an opportunity of visiting Wynaad before submitting it.

2. The first question is as to the conditions on which leases should be granted for auriferous tracts of Government land; and on this point my opinion, after careful consideration, is, that no such leases should be granted. I presume that Government wished to encourage this enterprise by every means in their power; and if that is so, I do not think that any better means could be devised than those which have already so tended to spread the cultivation of coffee in that taluk, and which may be shortly described as selling land outright and letting the purchaser make the best of his bargain. The policy is so obviously a good one and of such general application, and it has been recognised as such and acted on for so long a time, that arguments in its favour seem to me to be unnecessary.

3. This brings me to the second question, which is, what reservations should be made as to the right of Government to a royalty when waste land is put up for sale in the Wynaad. On this point, I think, after mature consideration, that I would leave the rules exactly as they are at present, and I would not alter the conveyance as at present of "all products both above and below the surface." If quartz-crushing or alluvial washing for gold is to become a thriving industry in Wynaad, as I sincerely hope and confidently trust it will, its success will be due to men who are more alive than their neighbours to the natural advantages lying spread around them; and it seems to me that there is nothing unfair in allowing to such men, as the natural reward of their superior acumen, any profits, however enormous, they may realise by disposing of portions of the land bought by them in open auction. I would therefore not feel inclined to restrict the area (500 acres) of waste land which may be sold in one block, at any rate for the present, or until it has been shown conclusively that gold-mining in Wynaad is going to be a remunerative speculation. As I also do not propose to remit the tax of Rs. 2 per acre of forest land, and Re. 1 per acre of grass, payable from the fourth year on such lands, as at present, it is clear that no great inducement will be held out to any one to buy up large quantities of land merely on speculation. I would, however, suggest that the tax be made payable from the date of the opening of any mine on the land, and I would reserve power to split up an application-block into convenient sized portions, if that was found to be a convenient arrangement, either before or at the time of auction.

4. At the same time it is obvious that increased industry in that unhealthy district will render necessary increased establishments and increased expenditure by Government in various ways; and it is only equitable, I think, that Government should have power to impose proportionate taxation in the shape of a royalty.

5. And this brings me to the last point to be considered, *viz.*, the claims of Government to any payment by landowners, whether (a) ancient Malabar jenmies, (b) proprietors under the Waste Land Rules, (c) ordinary ryots in respect of gold found on their lands. You will

observe on reference to the marginally noted correspondence that ever since the country passed under British rule, and up to the present day, a gold-washing tax has been paid by some individuals holding lands in Wynaad. It is described in one of the letters as having been imposed by Tippoo, and continued ever since: "It appeared in the revenue accounts under the head 'Small Farms and Licenses' until Fasli 1266, when, on the abolition of this head of revenue, it was carried to the head of 'Land Revenue.' It might be deemed a species of moturpha, but it is levied on the landowner who worked the diggings with his own slaves;" and it appears that on the emancipation of the slaves the mines could not be worked with so much success, and that, in consequence, the collections fell in arrears. The tax was levied at Rs. 36 per cradle, of which it appears—

(1.) The Nellialum Arshugal had	...	...	6
(2.) Ponnery Devasom	...	...	2½
(3.) Cherangote Ramoonney Nair	...	...	5
(4.) The Nilambur Tirumalpad on account of Nambalicode Varnavar	...	...	8½

and the localities in which these men had their workings were Nos. 1 and 2 in Muniad Amshom, No. 3 in Cherangote, and No. 4 in Nambalicode, all in South-East Wynaad. The Board directed in the proceedings quoted above that "no demand should be brought to account unless the privilege is really exercised; and acting on this principle, it would appear that the tax has been abolished altogether, except in the case of the Nilambur Tirumalpad, who still pays Rs. 197 per annum. Some volumes of the gold correspondence from my records were sent to Mr. King at the time he was making his inquiries; so I am unable to say if they throw any further light on this question, as the volumes have not as yet been returned. But enough has been said to show what the tax is, and I think it is at least doubtful if action could be taken under the Revenue Recovery Act for its collection, if it again fall in arrears, or for its extension to others, should that become necessary. There is no doubt whatever in my mind that a Malabar jenmie's rights extend to everything on the land or underneath it, and, as above alluded to, the Deed X, prescribed by the Wynaad Waste Land Sale Rules, conveys "all products both above and below the surface." As to the third class, I am not quite sure what is meant by "ordinary ryots" in Malabar, because if allusion is made to persons in occupation of Government lands, the Government is in the position of a jenmie, and the question of whether a royalty on minerals would be demanded would depend on the terms on which the respective persons hold their lands. I am not aware of any holding given on such terms that the person could not be ejected if he refused to pay such a royalty. It follows therefore, in my opinion, that if Government desire to secure a revenue from a royalty on gold-mining, legislation must be resorted to; and this step I would recommend should be adopted if the

present enterprise in Wynaad, which, as yet, is chiefly tentative, should prove to be a remunerative one.

6. I think the power should be given to enable Government to call for statements of the gross outturns of gold from each mine, and that a royalty not exceeding 10 per cent. of such outturn should be leviable thereon.

Other details could be arranged if this proposal is adopted.

No. 315, dated Calicut, 16th October 1875.

From—The Acting Collector of Malabar,

To—The Acting Secretary to the Board of Revenue, Madras.

Adverting to my letter No. 310, dated 14th instant, I have the honour to inform you that I considered it advisable to suspend, during the last three months, disposal of some eight or nine Wynaad waste-land applications, pending consideration of the terms on which Government would be prepared to give lands in Wynaad in future, and I beg the Board will at the earliest date let me know if there is any objection to my proceeding to dispose of such applications.

2. The Board will see from my letter that I do not consider that it is necessary, at least for the present, to alter to any material extent the terms on which land in Wynaad is disposed of. I suspended the disposal of applications, because Government, in G. O. No. 1133, dated 4th September 1874, directed that no land was to be alienated which contained gold; and in the unsettled state of the question, and in view of the occurrence of quartz reefs over such a large extent of country, I thought the safest plan was to delay disposal of applications temporarily.

No. 342, dated Calicut, 26th November 1875.

From—The Acting Collector of Malabar,

To—The Acting Secretary to the Board of Revenue, Madras.

I have the honour to invite your attention to my letter dated 16th ultimo, No. 315, and to request that the early orders of the Board on the subject may be obtained and communicated to me.

2. The working season in Wynaad is at hand, and it is essentially necessary that some definite order should be issued. If applications under the Waste Land Rules that are now pending are not disposed of soon, a whole working season will be lost.

Read also—

Proceedings of the Government, dated 3rd November 1875, No. 1568, Revenue Department.

ABSTRACT.—Requesting Mr. King, of the Geological Survey Department, to complete his explorations of the auriferous deposits in Wynaad, and to inspect the waste lands for which applications have been received by the Collector.

Remarks by the Board of Revenue, Madras.

In the first of the foregoing papers the opinion of the Board on three points was called for by Government:

1st.—As to the conditions on which leases should be granted for auriferous tracts of Government land in the Wynaad.

2nd.—What reservations should be made as to the right of Government to a royalty, when waste land is put up for sale in the Wynaad.

3rd.—As to the claim of Government to any payment by landowners, whether (a) ancient Malabar jenmies, (b) proprietors under the Waste Land Rules, (c) ordinary ryots, in respect of gold found on their lands.

The Board were also directed to consult the Advocate General whether such a claim is sustainable in any of the cases mentioned without resorting to legislation.

2. The Collector of Malabar was consulted by the Board on the points referred for their consideration, and his letter of the 14th October contains his views on the several questions. On the first point he is of opinion that leases should not be granted for auriferous tracts of Government land, on the ground that the present mode of disposing of waste land affords the best means of encouraging enterprise, which he presumes to be the object of Government. The Board concur in thinking that it will seldom, if ever, be desirable to grant leases of auriferous tracts. Should it hereafter appear desirable in any special case to do so, the conditions must depend upon the circumstances of the case.

3. On the second point, Mr. Logan would maintain the rules for the sale of waste land in the Wynaad exactly as they are at present, but suggests that the tax should be made payable from the date of the opening of any mine, and that power should be given to split up a block into conveniently-sized portions either before or at the time of auction. He is also of opinion that Government should have power to impose taxation in the shape of the royalty proportionate to any expenditure which may have to be incurred on account of increase of

establishments, &c. The Board would leave the rules for the disposal of waste lands much as they are at present, but think that where there are indications that a tract applied for is auriferous, it would be well to limit each lot of land sold to a maximum of 100 acres. One person of course may apply for several blocks, but if the areas of each are limited, transfers and subsequent dealings will be considerably facilitated. The Board would sell such lands subject to the ordinary land-tax under the rules, and would introduce a distinct clause specifying their liability to such royalty, not exceeding a stated maximum percentage on the net profits, as Government might from time to time determine to levy on the produce of mines situated thereon. To meet any doubts which may be entertained as to the right of Government to a royalty on the produce of mines on lands sold under the rules, it would be well to introduce the word royalties in the Deed X annexed to the rules before the words "general taxes and local rates now existing, or which at any time hereafter may be imposed by law."

4. On the third point, Mr. Logan refers to old correspondence showing that a gold-washing tax was imposed by Tippoo and had been continued from the commencement of British rule, being levied on the landowner, who worked the diggings with his own slaves; but that on the collections falling into arrears, the Board ruled that no demand should be made unless the privilege was really exercised, and that since 1860 it has not been collected, except in the case of the Nilambur Tirumalpad, who still pays Rs. 197 per annum. He is of opinion that the claim to a royalty could not be enforced under the present law as regards the first and second classes of landowners specified in the order of Government, but might in respect of the third class; and recommends that if the enterprise should prove remunerative, and Government be desirous of securing a portion of the profits, they should be empowered by law to levy a royalty not exceeding 10 per cent., of the gross outturn from each mine.

5. The Advocate General in his opinion expresses doubt as to the rights of Government in respect of gold found on the lands of jenmies, and considers that the form of indenture annexed to the Waste Land Rules precludes any demand being made on proprietors holding under such a document, but that Government might successfully establish a claim in respect of the produce of mines situated on lands held on ordinary ryotwari tenure.

6. The Board are not aware of any distinct information of authority on the right of jenmies to the products of mines as against the claims of the ruling power, although various vague assertions appear to have been made on the subject. Major Walker's exhaustive treatise on the subject of jenm right is silent on the subject; and had any distinct principle been recognized, it is reasonable to suppose that he would have recorded it. The Board believe that amongst the many items which constituted the revenues of the Hindu Rajas in Malabar before the irruption of Hyder, the proceeds of gold-washings or diggings, or a share thereof, was one. Tippoo seems to have contemplated gold-mining, and would probably have paid but little respect to jenm or other rights; but the fact that a tax of the nature of the moturpha apportioned with reference to the number of cradles used in gold-washing was levied shows that the idea of the ruling power's right was continuously kept up till quite recently; and to this day a tax appears to be paid in connection with washing or petty mining carried on in the lands of the Nilambur Raja.

7. The Board further observe that in the report of the Committee appointed by Government to examine the gold mines in Malabar dated 25th May 1833 mention is made of the privilege of collecting gold having been farmed out by Government at the commencement of the present century. On the whole, it appears to the Board that there is sufficient evidence of the exercise of the right to warrant the conclusion that the Crown could impose a royalty on the produce of mines situated on the lands of ancient jenmies without necessarily resorting to legislation.

8. As regards proprietors under the Waste Land Rules, the Board think that as the form of conveyance is now worded there can be no question as to the right of purchasers of land under those rules to minerals found thereon, but they presume that Government could levy an impost by legislation, and in the opinion of the Board it would be quite equitable to legislate for the collection of a tax sufficient to cover the cost of all charges that might result from the opening of gold diggings.

9. As regards ordinary ryotwari tenures, it appears to the Board that the land-tax has essential reference to the occupation of the soil for agricultural purposes only, and the right of Government to a share of the crop. Theoretically, therefore, mineral wealth might be regarded as appertaining exclusively to the landlord, that is, to Government; but practically some arrangement of the nature of a division of the profits would probably commend itself as fair, and in accordance with the general feeling of the people.

10. Although it appears to the Board that the right of Government to a share in the produce of mines might possibly be maintained without special provision except as regards the second class of landowners, such a claim is open to question, and it is advisable therefore that legislation should be resorted to. The Board believe their views as to the form legislation should take are sufficiently indicated by what has been said above.

11. With reference to Mr. Logan's application for yearly orders as to the disposal of applications under the Waste Land Rules now pending, the Board observe that by G. O., dated 3rd November 1875, Mr. King has been requested to complete his explorations with as little delay as possible. His report on the sites applied for must be awaited.

Read also—

Proceedings of the Board of Revenue, dated 9th September 1876.

Read the following letter :—

No. 215A., dated Tellichery, 16th August 1876.

From—The Collector of Malabar,

To—The Acting Secretary to the Board of Revenue, Madras.

With reference to confidential memorandum No. 138, dated 4th instant, from the Acting Under Secretary to Government in the Revenue Department (copy of which is enclosed, as I observed it was not communicated to the Board), I have the honour herewith to forward, in original, Mr. King's report, dated 21st January 1876, which formed an enclosure to the memorandum under reference.

2. As my opinion on the general question of the disposal of lands containing auriferous quartz has already been communicated in my letter printed with Board's Proceedings No. 3384, dated 20th December 1875, I presume that my opinion is now sought only with reference to the proposals which are made by Mr. King in paragraph 21 of his report and which, for easy reference, I extract as follows :—

"A.—That auriferous lands or lodes be reserved whenever possible according to the directions given in paragraphs 9, 10, 11, or according to modifications of these.

"B.—That lands be applied for either for mining purposes or for cultivation.

"C.—That a clause be inserted in leases other than mining leases, reserving minerals and a right to enter on the land and work these to Government, or such person as shall be entitled by Government to do so, during such time as the lease runs, provided that any damage done be paid for at an appraised value other than mineral value.

"D.—That in all cases, even after currency of lease, a royalty on minerals (metals and stones), such as is usually levied in the British dominions, be claimable by Government.

"E.—When lands or lodes are taken up for gold-mining, that they are to be sold as usual, but that a higher rate (than on agricultural lands) per acre be paid during currency of lease, and that a royalty be levied on gross outturn of ore, but that during payment of royalty the annual rent or rate cease or be reduced.

"F.—That the amount of land or extent of reef or claim granted to an applicant for gold-mining be limited."

3. As regards these proposals generally, I have the honour to observe that, so far as we know at present, the only auriferous quartz reefs in Wynaad are those which Mr. King has indicated in his map of that portion of the taluk known as South-East Wynaad. I have not seen that map, but I understand that all the auriferous reefs lie in the Amshoms of—

1. Ganapativattam.

2. Cherangode.

3. Munad.

4. Nambólakode.

Mr. King expresses a tolerably strong opinion (paragraphs 12 and 13) that the quartz reefs in the other portions of the taluk are not of so rich a character, and it would seem therefore that he is inclined to deal differently with lands in South-East Wynaad than with lands elsewhere in the taluk. As I understand him, he would "reserve," presumably for mining purposes only, all known auriferous lands or lodes in the part of the country already surveyed by him, viz., South-East Wynaad, and would apply clause C to all other lands in the taluk.

4. With the information contained in paragraphs 9, 10, 11, 22, and 26 of this letter before me, I would feel inclined to have the quartz reefs already laid down in Mr. King's map permanently demarcated by the Survey Department as reserves for mineral mining, and sold in small blocks of 500 feet x 1,000 feet as Mr. King suggests in paragraph 26.

5. But as regards all other lands, whether situated in South-East Wynaad or elsewhere in the taluk, I am still (vide paragraph 3 of my previous report) in favour of no change in the present rules. If gold or any other valuable mineral exists elsewhere than in the proposed "reserves," it is far more likely to be discovered by men who have an interest in discovering it than by men whose interest is all the other way, as would be the case if such a provision as clause C were inserted in their title-deeds.

6. As regards each of the six proposals, I have also the following remarks to make :
Clause A.—If at any future time gold or other valuable minerals are discovered, it would always be open to Government to set aside other tracts of land as "mineral reserves" in the manner proposed (vide paragraph 4 above) for the known auriferous quartz reefs of South-East Wynaad.

Clause B.—This proposal would (it seems to me for the reasons given in paragraph 5 above) be needlessly restrictive of enterprise if applied generally. But where an application is made for any block of "mineral reserve," it should certainly be distinctly stated in the application whether the land is required for mining purposes or for cultivation.

Clause C.—In my opinion this clause should be applied only in the case of applications for "mineral reserves" for the purposes of cultivation, and the procedure for determining damages should be distinctly laid down in the contract of lease. The most convenient procedure would be for the lessee to make a detailed statement in writing setting forth all his claims, and to submit it to the Collector, who, in the case of disagreement, would forward all papers to the Board, whose order in the matter should be final; "mineral reserves" should not be sold for anything but mining purposes. The lease of such lands for agricultural purposes would

have to contain detailed provisions (1) for giving timely notice before entry for mining purposes; (2) for submission of the written claim for damages within a certain time; (3) for determination by the Collector of the damages independently of the lessee in case of opposition; (4) for entry upon the land immediately after the damages so determined have been tendered, a notice in the district Gazette being sufficient proof of tender; (5) for entry after tender of the award as finally decided by the Board of Revenue; and (6) for written permission being obtained before buildings or other costly improvements were made on the land, and failing such written permission, no damages should be claimable in respect thereof. A form of lease would have to be drafted by the law officers embodying these and any other suggestions that occur.

Clause D.—I have already in my former report stated that in my opinion legislation would be necessary in order to secure the payment of a royalty from mines situated on private estates. In the case of mines sunk on Government lands the "mineral reserve" deed of sale might provide for the levy of this royalty, but it seems to me to be preferable to legislate generally for all mines that are sunk on Government lands or on private lands.

Clause E.—If the size of holding recommended in paragraph 26 of Mr. King's letter be adopted, the ordinary land assessment on each holding would be Rs. 23 or Rs. 11½, according as the land was forest land or grass; and these assessments would be leviable from the fourth year of occupancy. The object of Government should certainly be to spur on projectors of mining companies to open out; but at the same time the assessment should not be so large as to prevent a company with large capital from securing a considerable extent of adjoining holdings, so that they might be able to concentrate their workings. On the whole, therefore, I am disposed to adhere to my former opinion, that lands taken up for mining purposes should be assessed with ordinary assessment rates from the date of the opening of a mine; and one year seems to be a sufficient time for a company to make the necessary arrangements after acquiring land, I would propose that the assessment should be levied from the end of the first year after the mining right is sold. As the assessment which I would propose to levy is comparatively small, I do not think it would be necessary to reduce it so soon as the mine began to pay a royalty.

Clause F.—I have already observed (paragraph 4 above) that it would be as well, as suggested by Mr. King, to dispose of "mineral reserves" in small blocks of 11½ acres each.

7. In conclusion, I would observe that it will probably be found necessary that an officer of the Geological Survey should accompany the Revenue Survey party when they are demarcating the "mineral reserves," as suggested in paragraph 4 above, and that so far as I am aware the question of vertical proprietorship in minerals has never arisen in this district.

No. 376, dated Beddadavole, 21st January 1876.

From—The Deputy Superintendent, Geological Survey of India,

To—The Under Secretary to the Government of Madras, Revenue Department.

I have the honour to inform you, with reference to the Proceedings of the Madras Government, Revenue Department, 3rd November 1875.

1. That before receipt of that order I had been already posted by the Government of India to my proper work on the Godavery Valley.

2. I have communicated with the Superintendent of the Geological Survey of India, stating that there are no reliable maps (other than those of the Atlas Sheets) extant of the rest of Wynaad on which gold-mapping can be laid down, and that there did not appear any urgent necessity for carrying on the survey at present, and that part of the country which had been done last season was the known gold region, and where any development of the gold industry was likely to take place for some years to come; but that, if convenient, I would visit Wynaad for a short time to inspect the waste lands.

3. This short visit, I regret to write, could not be carried out, as it was found that other duties would prevent the local authorities meeting me there at the time I proposed, and subsequent directions from Dr. Oldham to proceed to the Godavery prevented my further arranging to meet the Collector of Malabar.

4. Under these circumstances, and having been personally requested by His Excellency the late Governor to consider the question, I beg to place before the Board of Revenue the following notes on the letting of lands in Wynaad for mining purposes.

5. The question put before me was that of granting Government lands where agricultural and mining interests are to be considered. These may exist often in the same block, as, for instance, in the case of Mr. Irvine's application near Koontalandy and that of Mr. Holmes on the Parcherry Hill, in both of which there is excellent forest lands, while there are portions or promising reefs of quartz close alongside or underneath these areas.

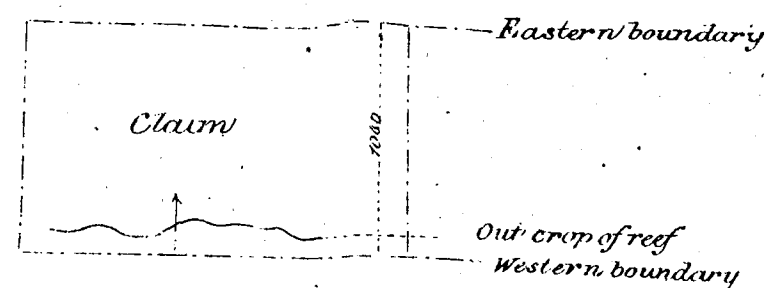
6. It is supposable that the title-deeds of the lands taken up hitherto for cultivation give the right, or at any rate do not reserve it, to all minerals contained in or underneath such properties, but that government is protected by the royalty usually levied on precious metals.

7. At all events, it is quite clear that if the gold industry becomes a success in Wynaad, that indiscriminate letting of the land for cultivation will allow the proprietors to act, if they be so disposed, as retarders of the mining interest, in so far as they can prevent the opening up of mines on or even near their lands. Equally, in the present uncertain condition of the gold industry, it is as great a retardation of the coffee-planting interest that lands should be held back until rules are made for the letting on reservation of mineral lands.

8. If the waste lands now applied for are situated in the area already surveyed by me in South-East Wynaad, and of which I furnished Government with a map in March last, there need be little difficulty as to the letting or reservation of such. I have laid down the outcrops of the reefs on that map, as also the possible lines in which they may be expected to lie; the lands traversed by those lines ought not to be granted for coffee or other agricultural purposes, or if they be so granted, all right and title to the minerals ought to be reserved for Government or such persons as may be entitled by Government to work them as suggested in a plan referred to further on.

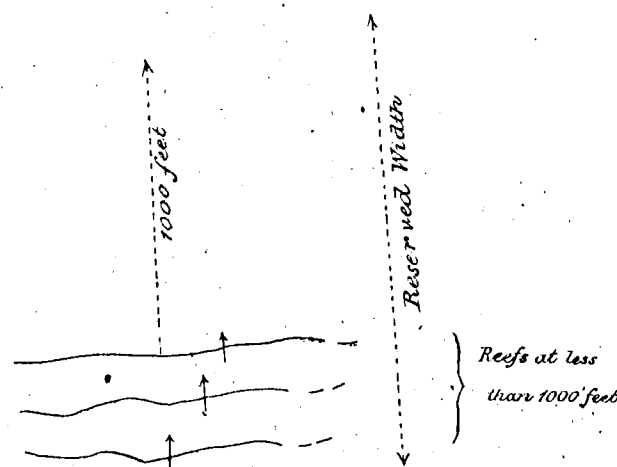
9. These auriferous lands should be marked out, taking the outcrops of the reefs (or their supposed lines) as guides for the *western* boundaries of the claims. The reefs run about north-west—south-south-east; therefore the *western* boundaries of the claims ought to have this direction or nearly, so and they might be a few yards west of the outcrops, or at any rate on the western side of these, but the *eastern* boundaries ought to be 1,000 feet east of the western boundaries.

Thus—



Or in any another way, let the land applied for agriculturally be marked out. Then, if a reef lie through it, a strip of land at least 1,000 feet wide along the reef and on its *eastern* side should be reserved for mining purposes: or if there be one or more outcrops at less than 1,000 feet from each other, then land for that width eastward of the most eastern one ought to be reserved in addition to that traversed by the other more proximate outcrops.

Thus—



Again, should an outcrop lie outside of the western boundary of the application at a less distance than 1,000 feet from it, then the balance of width required ought to be reserved from that side of the application. In the case of an outcrop lying without the application on the eastern boundary, no land need be cut off on that side, as the underlie of such a reef will not be in the ground applied for.

10. These rules apply to the reefs mapped in by me; but it may be in other parts of Wynaad that the dip of the reefs shall be in an opposite direction, viz., *westward*, in which case the widths of the claims or reservations would be taken *westward* of the outcrops.

11. As to the lengths of the reserved lands, these must be unlimited northwards or southwards along the outcrops, as the reefs run for miles across country in north-north-west—south-south-east directions nearly.

12. For lands other than I have surveyed, the only evidence of their auriferousness is that they are traversed by quartz veins, or that they are said to be so. I myself am not much inclined to believe in their richness, because the quartz of the reefs northward of Sultan's Battery and Vellaramulla changes somewhat in character, and there are no old workings, nor is

there any tradition of gold having been found in that direction. Still it is possible that the unsurveyed reefs may be auriferous, and it is as well that some rules should be framed whereby such lodes may be worked in any agricultural country.

13. There is, however, the difficulty of knowing whether land does contain these mineral lodes—a difficulty which can only be finally settled by the applications being visited by a reliable mining or geological expert. To a certain extent, the lodes of Wynaad are in many cases easily recognisable and traceable owing to the gangue being of a distinct colour, and generally hard and liable to be left standing out over the surface of the ground, while they run in a tolerably constant direction across the ordinary rock of the country. So that, in many cases, such lands could be selected and reserved without much difficulty.

14. For cases not so clear, and until more is known of what may be done in the gold industry, the only plan I can at present suggest is, that an officer of the Geological Survey of India should inspect the lands applied for at a certain season, say a month in the year, or some time between May and November. This plan might possibly be arranged in consultation with the Government of India and the Superintendent of the Survey.

15. Much time and opportunity will, however, be lost by this method, and a plan should be adopted to meet this, which can, I think, be done by introducing a clause into the leases which shall reserve all mineral rights.

16. I find that the question has already been resolved to some extent in Australia, where over a great area the country is mainly developed in an agricultural way; and laws were framed and are now in force by which agricultural interests were liberally considered, while the mining rights were secured. After a certain time, and on certain conditions, "free selectors" became absolute owners of the lands; but minerals are reserved during currency of the lease.

17. As, for example, in Queensland the lease contains certain clauses or conditions amounting to this: "During the currency of such lease the Governor, or any person authorized in that behalf, may make entry to dig or remove gold or other metals, &c., provided that any damage done to the lessee shall be made good to him, the amount to be determined by arbitration." (In this case, the lease may run for ten years, or on certain terms for three years).

18. Again in New South Wales: "And crown lands within gold fields not within area excluded by proclamation and not occupied for gold-mining purposes, shall be open for sale in like manner, provided that properly authorised persons may at any time be at liberty to dig and search for gold within the land selected, and that should such land be found to contain auriferous deposits, it shall be within the power of the Governor in Council to annul the sale, but the conditional purchaser shall be entitled to compensation by appraisal of the value other than auriferous."

19. Further, in Victoria: "No such license or lease shall give power to any licensee, lessee, or assignee to search for or take any metal; and it is provided that before any license or lease is issued to any applicant, he shall make a declaration on oath before a justice, in a form settled by the Regulations, that his application is made in conformity with the provisions of the Act."

(The above extracts are from "Australia and New Zealand," Anthony Trollope, Appendix to Volume I, referring to a digest of the Queensland Crown Lands Alienation Act of 1868, and Mac Phail's *Australian Squatting Directory*.)

20. Here, then, is a form of land-letting and reservation, which, with some modifications, might be applied in Wynaad, though at first sight the power of entering on and appropriating part of a proprietor's holding might appear vexatious. The latter objection can, however, be met by the holder obtaining the mining right himself.

21. It is therefore suggested that in the disposal of waste lands in Wynaad, or indeed in any other part (the borders of Mysore for example) of the Presidency, the following points be considered:

A.—That auriferous lands or lodes be reserved whenever possible according to the directions given in paragraphs 9, 10, 11, or according to the modifications of these.

B.—That lands be applied for either for mining purposes or for cultivation.

C.—That a clause be inserted in leases, other than mining leases, reserving minerals and a right to enter on the land and work these to Government or such person as shall be entitled by Government to do so during such time as the lease runs, provided that any damage done be paid for at an appraised value other than mineral value.

D.—That in all cases, even after currency of lease, a royalty on minerals (metals and stones) such as is usually lieved in the British dominions, be claimable by Government.

E.—When lands or lodes are taken up for gold-mining, that they are to be sold as usual, but that a higher rate (than on agricultural lands) per acre be paid during currency of lease, and that a royalty be levied on gross outturn of ore, but that during payment of royalty the annual rent or rate cease or be reduced.

F.—That the amount of land or extent of reef or claim granted to an applicant for gold-mining be limited.

22. As regards the reservation of lands in the first instance, the mode of procedure suggested may need a little explanation. A peculiarity of the reefs in Wynaad is, that having such a low dip or inclination, a wide area of ground is required to cover a fair amount of the lodes

lying beneath. It is necessary to have 1,000 feet of width to secure a reef (cropping on the western edge of area) down to a vertical depth of 705 feet on the eastern edge of reserved area, which is about the average depth reached in Australian workings; of course, the miner need not apply for such a width, as he will be guided by other considerations than mere reservation of supposed auriferous ground.

23. In entering on and mining land already under cultivation, or which may hereafter be so, a system of getting at the lodes under the estates will have to be considered, for it would in many cases be very undesirable to have such wide strips of ground appropriated as the low dip of the reefs necessitates—that is, supposing that the proprietorship of lands holds vertically under the properties, as, I believe, is the case in England. It might, however, be so arranged that only so much land be appropriated as might be required for buildings, right-of-way, water-supply, waste heaps, &c., and then the mines could be worked for the rest of the width of area granted, at a safe depth beneath the cultivated ground.

24. As to the amount of royalty to be levied, that of ten per cent., on the gross outturn of gold seems too high, and this is, I believe, the rate mentioned in land leases of the Government of India. The average outturn of gold in Wynaad may possibly never exceed twelve penny-weights to the ton of stone, which ought to be a good remunerative rate of production; but a 10 per cent. royalty would reduce this to 1080 cwt., making the average return little more than a paying industry. In Nova Scotia the royalty seems to have varied; but it cannot be nearly so high as this. In a statement of working expenses I find royalty entered as 3 per cent. in one item, and again as 2 per cent. in another. But a more definite notice makes leases profitable. "Upon failure to pay 2 per cent. royalty, at the rate of £4-0-1½ or 19-50 dollars per ounce on the gross yield of gold except from areas specially exempted on account of the owners having erected the first mill in the district."—(*Mining Industries of Nova Scotia*.—A. Heatherington.

25. In my suggestion (E), the proposed higher rent is, irrespective of small areas being presumably more valuable than equal areas of cultivation, to meet the possibility of land being applied for to secure a claim, the applicant not being prepared, however, to commence work until some indefinite period shall have elapsed. An increased rent will prevent speculation of this kind; and the reduction, or ceasing of this as soon as an outturn makes a royalty payable will encourage legitimate industry.

26. The plan of limited holdings is suggested partly because a large holder could just as easily retard the mineral development as a cultivator. Claims are limited in size in other gold-producing countries. In Nova Scotia "the size of a claim or area has been gradually increased to 37,500 square feet—150 feet on the course of and 250 feet across the lodes—or about 6-7ths of an acre, and a holding may now consist of any number of such areas, provided that covenants of the titles under which they have been granted are duly observed." (*Mineral Industries, Nova Scotia*.—Heatherington.) These areas are too small; the working of so many different holdings as might eventually be opened up would necessitate a wasteful expenditure on numerous shafts and many separate sets of machinery. A better plan would be to allow 500 feet on the run of the reef or reefs, and, as I have already pointed out, 1,000 feet across, or nearly 11½ acres; thus giving ample room for works, a fair share of lodes workable at convenient depth, and possibly water-supply sufficient for machinery.

27. In conclusion, a question has continually presented itself during the writing of these notes which it may be as well to notice, namely, whether the mining proprietorship shall hold over the lodes vertically under the claim, or on those which appear, or would appear if continued, upwards on the surface of the claim. I believe that in the British dominions the proprietorship lies vertically; but the clause of reservation (C) and the width of holdings may be affected by this in the view given in paragraph 23. Vertical ownership must probably still be maintained, but a system is, if I remember rightly, adopted in some parts of America by which reefs are granted—that is, they may be worked out to any depth; that is, narrow claims are granted on the out-crops of the reefs, and these are mined with their underlie, or on what may be called the dip system of ownership in contradistinction to the vertical hold in England. One advantage of this ownership on the underlie is that such wide holdings for mining are not necessary; and in this respect such a system would meet the inconvenience of entering on and working gold reefs in agricultural lands. However, if it can be so arranged under the system of vertical ownership that reefs can be mined under an estate, only a sufficient area of land having been appropriated for right-of-way, &c., &c., and the securing of the outcrop of the reef, or reefs, then any introduction of an exceptional form of proprietary right will be needless.

Remarks by the Board of Revenue, Madras.

Submitted for the orders of Government.

2. With the foregoing letter the Collector of Malabar submits his views on Mr. King's suggestions regarding the course which should be adopted in respect of applications for land for agricultural and mining purposes in the Wynaad, together with Mr. King's communication to Government in original. Mr. King recommends that the auriferous tracts marked on a map submitted to Government should be reserved, and should not be granted for coffee or other agricultural purposes; or, if so granted, that all right and title to the minerals should be reserved to Government, and that other tracts where there is evidence of the presence of gold should be similarly reserved. In the unreserved tracts he would likewise reserve all mineral rights by the introduction of a clause to that effect in the leases, by which the Board

presume the title-deed granted under the Waste Land Rules is meant. He proposes that applicants for land should be required to state whether the land is taken up for mining or for cultivation. Land taken up for the latter purpose is apparently to be sold under the Waste Land Rules, subject to the condition that Government shall be at liberty to enter thereon and work mines, or authorise any person to do so, provided that the landholder shall be entitled to compensation for damage done to the land by appraisal of its value apart from the mineral wealth it may contain. It will be open to the holder to obtain the mining right himself. Lands avowedly taken up for gold-mining or situated within the reserved tracts is to be sold in lots of a limited area under the rules as usual, subject to the payment of a higher rate of assessment than the agricultural rate, and to payment of a royalty on the gross outturn of the ore, the assessment being reduced or remitted during such payment. The Board presume that it is intended that the assessment should be proportionately reduced, i. e., that if the royalty for the year exceeds the assessment, the latter should be remitted altogether, and if it equals half the assessment, only a moiety of the assessment should be charged. It is not clear, however, what is meant by the expression, during the currency of the lease. It would appear from clauses C and D that the grant of mining leases for limited periods is contemplated in the case of lands granted for cultivation, when applications for permission to mine thereon are made, but land taken up for mining purposes is, under clause E, in which the expression is payable in perpetuity unless redeemed. Mr. King was possibly under the impression that land sold under the rules could at any time be given up, as it probably would be abandoned when the claim proved unprofitable or was worked out. Nor is it clear whether the proprietary right of the landholder, on whose holding permission has been granted to mine, is to cease and determine as regards the portion taken up, or whether it reverts to him on the expiration of the mining lease. It would appear that no rent or purchase-money is to be paid in such cases, and that the mining right is to be for a limited period only.

3. These are points of detail, however, and do not affect the main question under consideration, namely, what steps Government should take to secure the reservation to itself of the right of mining or granting permission to mine on land hereafter alienated in the Wynaad. As regards the well-known auriferous tracts, Mr. Logan concurs with Mr. King in thinking that they should be reserved for mining purposes, and suggests that these tracts should be permanently demarcated by the Survey Department, and sold in blocks, measuring 500 feet by 1,000 feet, the area recommended by Mr. King.

4. He sees no objection to the reservation of mining rights on these tracts in the event of an application being made for an assignment of a portion thereof for purposes of cultivation; but as regards the unreserved tracts, he adheres to the opinion already expressed in his letter embodied in Board's Proceedings, dated 20th December 1875, No. 3384. He argues that the effect of such a clause as Mr. King would introduce into the deed of sale would be to make the holder conceal the existence of gold or other valuable mineral on his estate, whereas if not so fettered, he would have an interest in its discovery. This view was concurred in by the Board in their proceedings quoted above; the only changes recommended therein being that the maximum size of blocks should be reduced in the auriferous tracts, and a clause inserted in the deed specifying the liability of the holders to payment of a royalty on the net profits of mines. On reconsideration, however, the Board are inclined to think that, considering the imperfect information at present available in regard to the area covered by gold-producing reefs in the Wynaad, some such reservation of the rights of Government as that proposed in tracts of a possibly auriferous nature is a measure of only ordinary prudence. If gold does not underlie the lands, the reservation does not affect the landholder; whereas if it exists, the holder of the land has the best possible opportunities for discovering its presence, and can protect himself by applying for the mining right himself, as pointed out by Mr. King. Until the whole country has been properly surveyed by an officer of the Geological Survey Department, at any rate it seems advisable that this precaution should be taken, and as it may easily be effected by omission from the title-deed of the clause which conveys all products below the surface to the purchaser and by the specific reservation of mineral rights to Government, including right of entry to seek for gold and carry on mining operations, there need be no further hinderance to the disposal of waste lands in the Wynaad, such as has been entailed by the difficulty in obtaining a qualified officer to inspect the blocks applied for. It will of course be necessary to lay down very carefully the rules which should regulate the grant of mining leases, and payment of compensation for damages, &c., but until the general question of the reservation to Government of the right to grant such leases, it would be premature to discuss these points of detail.

5. As regards the rate of assessment to be charged on land taken up for gold-mining, and Mr. King's suggestion that a proportionate reduction should be made during payment of royalty, Mr. Logan adheres to the opinion he has already expressed, namely, that assessment should be leviable from the end of the first year, from the date of sale of the mining right, and should continue to be collected notwithstanding the payment of a royalty. This view appears to the Board to be sound. The State has a right to the assessment for the mere occupancy of the land, and should not be called upon to relinquish this, because it has a further right to share in the mineral wealth which it may be found to yield. As regards the imposition of a royalty the Board have already expressed their views, and have recommended that legislation should be resorted to.

6. With reference to the concluding paragraph of Mr. King's letter, the Board are of opinion that any deviation from the rule of vertical ownership would lead to complications.

Orders thereon by the Government of Madras.

Resolved that the following letter be forwarded to the Government of India:—

No. 320, dated Madras, 23rd January 1877.

From—The Secretary to the Government of Madras,

To—The Secretary to the Government of India.

With reference to an enquiry from the Government* of India "regarding the law and practice as to mineral rights" in this Presidency, this Government intimated to the Government of India its occurrence in the views expressed by the Board as regards (1) the rights of landholders to minerals within their holdings, (2) as to the Government right of access to supposed mines within a private holding; but dissented from the Board's opinion that "a legislative declaration of the Crown's rights" in this respect (the Crown's exclusive ownership of all minerals below the surface throughout British India) would not be attended "with any practical inconvenience in Madras;" observing that "any assertion of an exclusive right by Government to all minerals below the surface would be an invasion of the private rights of landholders, and would excite much dissatisfaction if it ever was acted on beyond the limits of what is termed Government waste."

2. Subsequently the Government of India, in their letter* of the same year, issued instructions to the effect "that in all cases some royalty, however small, should be levied on minerals or quarries of valuable stone, in order to prevent possible disputes and difficulties hereafter, and that in any case it should be distinctly laid down that in the absence of any special contract between Government and any individual, specifying the rate of royalty for a given term, the Government always reserves to itself the right to alter and increase the royalty in any manner it sees fit, on giving six month's previous notice." Further, they state that "while the most liberal terms may be made with the pioneers of any mineral enterprise, care should be taken to preserve the Government lien in its fullest vitality, to prevent monopolies growing up, and to avoid any such permanent engagement as might hereafter prove embarrassing."

3. Since these instructions were issued, this Government has received no further expression of the views of the Government of India.

4. Meanwhile, however, in this Presidency much attention has been paid by many private adventurers to the development of the mineral resources of the country, more especially in the Wynad Division of the Malabar District, where gold had been known to exist and had been worked from time immemorial.

5. The attention of Government having been called to the subject, Mr. King, of the Geological Survey of India, was directed to report on the gold prospects of the tract. Mr. King in due course furnished his report and a key map of the country, together with some suggestions in a postscript (subsequently referred to the Board and printed with their Proceedings, 9th September 1876) as to the royalty that should be levied from the miners. On this report the Government† raised three questions which were referred to the Board for opinion: (1) the conditions on which leases should be granted for auriferous tracts of Government land in the Wynad; (2) reservations of royalty when waste land of an auriferous character is hereafter put up for sale; (3) claim of Government to any payment by land-holders, whether (a) ancient Malabar

† G. O., 2nd April 1875, No. 512. jennies,† (b) proprietors under the Waste Land Rules, (c) ordinary ryots, in respect of gold found in their lands. The Advocate General was at the same time asked to say whether legislation would be necessary before any such claims were enforced.

6. The Board's Proceedings, 20th December 1875, No. 3384, is a reply to the foregoing reference, but in the interval leave was granted to one responsible body of projectors to prospect for gold-bearing reefs, with the promise of the assignment of a definite area in due course, under such terms (which are not to be illiberal) of rent and royalty as may be determined. Since this one or two applications have been complied with on the same terms.

7. On the first point on which their opinion was asked, the Board advise no leases, but that the block applied for shall be sold outright at public auction, as under the existing Waste Land Rules; (2) on the second point, that the liability to pay royalty on the outturn of gold should be reserved at a fixed rate; (3) on the third point, they consider, and the Advocate General's opinion points the same way, that no claim should be made against hereditary proprietors (jennies) without resorting to legislation, and they concur also with the Advocate General that legislation would be required before an impost can be levied from present proprietors under the Waste Land Rules; and they recommend that power be taken by Statute to collect a tax sufficient to cover all charges resulting from gold diggings, i. e., police, &c. They think no legislation necessary in the case of ordinary ryots, but would recommend its being taking a moiety, apparently as in the case of land.

8. As regards the jennies it will be observed that the Advocate General doubts whether the Crown has any latent right, but the Board consider that the facts authorise a different inference.

9. In their subsequent Proceedings, 9th September 1876, No. 3719, the Board submit with a report from the Collector some remarks on Mr. King's postscript; but they more

especially relate to the course which should be pursued (1) to ascertain what tracts are valuable on account of their auriferous deposits, (2) to prevent the alienation of waste lands, and not to the principles of policy involved. Before therefore proceeding further in this difficult subject, His Grace the Governor in Council is of opinion that it is desirable that a distinct policy on the subject of the mineral rights and levy of royalty as regards the peculiar condition of this Presidency should be laid down by the Government of India for the guidance of this Government.

10. Until such a course is marked out, His Grace the Governor in Council considers that it would be impolitic to interfere with jennmi proprietors, or holders of land under the Waste Land Rules. Nor should in his opinion the ryots be disturbed, as he doubts whether the Courts would uphold the rights of Government, whilst resort to legislation, which would have a retrospective effect, does not commend itself to his approval.

11. But His Grace is of opinion that, as regards the future, it is necessary that some measures should be adopted which would secure Government from loss, as, in the case of gold mining in the Wynad succeeding, a considerable number of people would be attracted to the gold fields, and the consequent police and other expenses would be necessarily large. To meet such charges probably the simplest course would be the levy of a reasonable royalty on the mineral produce of lands sold under the Waste Land Rules. He is therefore disposed to regard favourably the suggestions of the Board in paragraph 3, curtailing in auriferous tracts the blocks as to size, and making the addition to the conditions of the Waste Land Rules suggested by the Board. As, however, such steps cannot be taken without the sanction of the Supreme Government, I am to request their early instructions.

Extract from the Proceedings of the Government of Madras, Revenue Department, No. 846, dated 27th February 1877.

Read again—

G. O., dated 3rd February 1877, No. 503.

Read also the following letters:—

No. 99, dated Madras, 15th February 1877.

From—The Government Solicitor, Madras,

To—The Secretary to the Government of Madras.

I have the honour to acknowledge receipt of the order of Government, dated 3rd February 1877, No. 503, Revenue Department, requesting the Acting Advocate General's opinion as to the legality of inserting the conditions proposed by the Board of Revenue in the terms of the sale of land under the Waste Land Rules without the sanction of the Secretary of State.

2. I submitted the matter for the consideration of the Acting Advocate General, and I now forward herewith a copy of his opinion.

Opinion by the Acting Advocate General, Madras, dated 15th February 1877.

I think it better not to delay my opinion until I get the Waste Land Rules, which were not sent to me, as the matter seems to be rather pressing.

It appears to me that there is no harm in inserting the condition mentioned in paragraph 3 of the letter of the Collector of Malabar, dated the 5th January 1877, No. 1. If the insertion of such condition be hereafter sanctioned by the Secretary of State, that will give the same authority to the act of the Government as if they had express prior authority; if not so sanctioned, I presume the Government would not desire to insert, or if inserted, to insist upon such a condition. The rule of law is, I believe, applicable to such a case, which declares that a subsequent ratification by the principal of the act of the agent is equivalent to a prior authority given to the agent. Such ratification may be given at any time by the Secretary of State, and the condition would be enforced.

Order thereon by the Government of Madras.

His Grace the Governor in Council considers it desirable to obtain, prior to any sale, the sanction of the Secretary of State, through the Government of India, to the insertion of conditions securing the State's rights to the minerals in lands sold under the Waste Land Rules in the Wynad Taluk, pending the final settlement of the questions that have arisen, and which are now before the Government of India, in relation to the State's claims to minerals in proprietary and other lands. The Collector of Malabar will postpone the sale of the portions of land applied for by Captain Cox pending a reply to this reference.

Ordered, that the following letter be despatched to the Home Government, through the Government of India.

[*Vide* No. 847, dated 27th February 1877 (page 1 of enclosures).]

Regd. R.N. 3933/79

R 8990/79

R 7090/79

1/22/79

Adm. - Take up to Govt.
for settlement
2/1/79

No. 3,309.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 11th December 1879.

Read the following Proceedings of the Madras Government, dated 7th October 1879,
No. 2,029, Revenue Department:—

ABSTRACT.—*State's Rights to Minerals.*—Communicating to the Revenue Board letter from the Government of India on the subject of the reservation of the — with orders on certain points.

COMMUNICATED to all Collectors for information and guidance with reference to paragraphs 2 and 3 and for report with reference to paragraph 4. The Government Solicitor will be requested to report what modification of the forms of Indenture under the Waste Land Rules is required to reserve to the State full rights and property in all metals and minerals with all reasonable conveniences for working them. The forms of Title-deed granted under Board's Standing Orders 37 and 38 (pages 401 to 405 of the Appendix) should be modified in a similar manner.

2. The Board presume that the instructions in paragraphs 2 and 5 of the order have no reference to the grant of ordinary waste on putta or to the revision of the Ryotwari settlement now in progress as the rights of ryots in the minerals under their holdings form the subject of further inquiry. The terms of the Government Order are general, but paragraph 8 of the Despatch of the 1st September shows that the Circular on which the Government Order read above is based relates only to grants under the Waste Land Rules. The Board gather from paragraph 6 that the instructions regarding future settlements relate to temporarily-settled estates of private proprietors. The only estates of this nature in this Presidency are a few polliems, the proprietors of which have rejected the offer of sanads; their successors are to be required to receive sanads, and the necessary alteration of the form can then be made.

(A true Extract.)


Acting Secretary.

To the Secretary to Government, Revenue Department,
with two original enclosures returned.
„ all Collectors, with Government Order.
„ the Government Solicitor, with do.
Copy to the Member, Board of Revenue,
in charge of Settlement Department, with do.

Exd. A. Grubert.

No. 8990

From The Rev B^dDated Dec. 11th 1879 No 3309

FOR ORDERS.

Submit that the construction
 placed by the B^d on Para
 2 & 5 of G.O. No. 2029 of
 Oct. 7th 79 is correct.

The expression used in
 them viz;

"in all future grants &
 leases of govt. waste land
 for cultivation"; and
 and

"in all future settlements
 read as wide & general in
 their application, but they
 are copied verbatim from
 the Circular letter No. 50
 of Sept. 1st 79. Para 2 & 3.
 & comparing the wording of
 Para 2 & 5 with that of
 Para 8 & 6 of the
 despatch of the Govt of State
 of the same date No. 7 it
 seems clear that the B^d's

On review of the whole of
 the correspondence the
 intention of the Govt. clearly
 is to reserve the rights
 of the State in lands
 in all cases of waste
 land except given for
 cultivation & new
 objects. & this is possible.
 altho. I consider that when
 such reservations have
 been made in the past, the
 claim cannot be asserted
 against Ryots a bit more
 than agt. holders of land
 obtained under the waste
 land rules. It is also
 clear that the view of the Govt.
 as expressed in the last

Dec 1879: Sept

Board of Revenue,
 MADRAS.

To

THE SECRETARY TO GOVT.,
 REVENUE DEPARTMENT,
 &c., &c., &c.

Dated December 11th.

Printed 1879.

Received " 22

PROCEEDINGS, 11TH DECEMBER 1879, No. 3,309

Copy 20/11/79. and

DECEMBER.

No. 3,309

No 104. - 22 January 1880

Government rights to Minerals. — Communi-
 cating to all Collectors Government Order re-
 garding reservation of —, and requesting Gov-
 ernment Solicitor to report what modification of
 the forms of Indenture under Waste Land Rules
 is required to reserve the rights to the State.

interpretation is correct.

The difference between
the wording of Para 8 &
Para 13 of that despatch
is obvious.

24/12/94 J.S.G.

Content of para 4
of this despatch
of Sept 24 & the despatch
of Sept 24. The fact
is that the Govt
late years has recognized
the proprietary rights
of the people in their holdings
in the most extensive
& complete form by
buying them at not
the full value of their
land. One required
for public purposes.

I think too that the
provision of para 4 of
the despatch regarding
the inclusion of minerals
in assets is in fact
a little out of

temporarily altered. But
is much broader than the
M. assume. Will likely
the inclusion of assets
in the list of assets
only. It seems to hold
a permanent value
as supposed by the Govt.
& the Govt. has
in this. I think all
evidence points to
light in the State to
show in the people
from minerals as
much as from crops
and other products
of the soil. In fact, the
provision of little
importance. If the
asset has not been
developed it can
scarcely be valued.
It has been so

Q

No. 104

Under date the 28th January 1880.

READ the following

Chod990/77. { Proc. of the Board of
Revenue 8/11 Dec 1877
no 3309.

An review of
the whole of the corres-
-pondence the Govt.
consider that the in-
-tention of the Govt of
India clearly is to
reserve the rights of the
State in minerals in
all cases of waste land
hereafter given for cul-
-tivation and see no
objection to this in prin-
-ciple, although they
consider that where
such reservation has
not been made in the
past, the claim can-
-not be asserted against
rights any more than
against holders of
land obtained under
the

27/1

To the Hon^{ble}. W. Huddleston
for approval.

The valuation is only
and the form of taking
a Royalty on reimburse
looked. It is I think
perfectly legitimate.

This is a very different
matter from assisting
the States' proprietary
rights in all minerals
in existing holdings.

7.1.80

R.C. 12/1/50 R. 26/1/50
 C. 26-12-79 R. 9-1-80

the Waste Land Rules,
which is also apparent
by the view of the
Govt. of India ex-
pressed in the last
sentence of para 4 of
their despatch of
1st Sept 1879 to the
Secy of State although
they have called for
further report on the
case of ryots

2. The Govt are also
of opinion that the
purview of para 6
of the Despatch re-
garding the in-
clusion of minerals
in assrts in future
resettlement of
temporarily settled
estates is much
wider than the
Board assume, and
will include the re-
vision of assessment
in Ryotwari Districts
and not only Polaris
not

not held on permanent
settlement as supposed
by the Board, and the
Govt see no hardship
in this. All evidence
seems to point to a
right in the State to
a share in the profits
from minerals as
much as from crops
where not expressly
excluded.

3. Practically the
point is of little im-
portance. If the as-
srt has not been
developed it can
scarcely be valued.
If it has been so the
valuation is only
another form of
taking a Royalty
on minerals work-
ed, which the
Government con-
sider perfectly
legitimate.
This, however,
is

is a very different
matter from as-
serting the State's
proprietary right
in all minerals
in existing holdings

100 The Board of Revenue
21.5 Feb

133

Edith

GOVERNMENT OF MADRAS.
REVENUE DEPARTMENT.

28th January 1880, No. 104.

No. 296. READ THE FOLLOWING PAPER:—

Proceedings of the Board of Revenue, dated 11th December 1879, No. 3,309.

ABSTRACT.—Communicating to all Collectors Government Order regarding reservation of Government rights to Minerals, and requesting Government Solicitor to report what modification of the forms of indenture under Waste Land Rules is required to reserve the rights to the State.

No. 297. ORDER THEREON, 28th January 1880, No. 104.

Miscellaneous.

ON review of the whole of the correspondence the Government consider that the intention of the Government of India clearly is to reserve the rights of the State in minerals in *all* cases of waste land *hereafter* given for cultivation and see no objection to this in principle, although they consider that where such reservation has *not* been made in the *past*, the claim cannot be asserted against ryots any more than against holders of land obtained under the Waste Land Rules, which is also apparently the view of the Government of India as expressed in the last sentence of paragraph 4 of their despatch of 1st September 1879 to the Secretary of State, although they have called for further report on the case of ryots.

2. The Government are also of opinion that the purview of paragraph 6 of the despatch regarding the inclusion of minerals in assets in future resettlement of temporarily settled estates is much wider than the Board assume, and will include the revision of assessment in Ryotwari Districts and not only Poliems not held on permanent settlement as supposed by the Board, and the Government see no hardship in this. All evidence seems to point to a right in the State to a *share* in the profits from minerals as much as from crops where not expressly ceded.

3. Practically the point is of little importance. If the asset has not been developed it can scarcely be valued. If it has been so, the valuation is only another form of taking a royalty on minerals worked, which the Government consider perfectly legitimate.

This, however, is a very different matter from asserting the State's proprietary right in all minerals in existing holdings.

(True Extract.)

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

To the Board of Revenue.

Exd W. H. French.

130 Copies.

PRINT

GOVT. OF (1880) GOVERNMENT

REVENUE.

To

THE BOARD OF REVENUE.

Dated January 28th.

Printed February 2nd.

Recd.

Encl.

G.O., 26th January 1880, No. 101.

JANUARY.

Nos. 296-297.

Government Notice to Members.--In reference to Revenue Board's Proceedings requesting Government Solicitor to report what modification of the terms of indenture under Waste Land Rules is required to reserve the —, the Government consider that the intention of the Government of India is to reserve the rights of the State in minerals in all cases of waste land *hereafter* given for cultivation; and stating, with observations, that they see no objection to this in principle.