

- (1) Number of pages 132
(2) Date of repair 17/9/62
(3) Initials of the Referencer mg

MADRAS RECORD OFFICE

Government of Madras ✓

Revenue

DEPARTMENT ✓

G.O. No. 1008-09 ✓
B.P. No.

Press
Mis.

Dated 21-9-1882 ✓ 195..

Not to be folded or roughly handled

- (1) Number of pages 132
(2) Date of repair 17/9/62
(3) Initials of the Referencer my

MADRAS RECORD OFFICE

Government of Madras ✓

Revenue

DEPARTMENT ✓

G.O. No. 1008-09 ✓
B.P. No.

Press
Mis.

Dated 21-9-1882 ✓ 195-..

Not to be folded or roughly handled

21ST SEPTEMBER

18, REVENUE.

GOVERNMENT
REVENUE

RAS.
MENT.

READ—again paragraphs 4 and 5 of G.O.

4. The Board will also cause further of the claims or rights of ordinary ryots under their holdings, and report the result.

5. In all future settlements of land minerals is to be asserted and reserved, or of Government to put a separate assessment.

ber 1879, No. 2029 :—

to be made as to the past history of metals and minerals found

the right of Government to is not possible, then the right of mineral produce is to be so reserved.

READ—again paragraph 3 of G.O., 9th July

3. On the question of the rights

* G.O., 7th October 1879, No. 2029, and 28th January 1880, No. 104.

No. 633 :—

ryots in the minerals under holdings, the views of the Board are.

READ—also the following Proceedings of September 1880.

of Revenue, dated 13th September.

Read—the following replies :—

Letter from the Collector of Ganjam,	14th Mar. 1880, No.	139.
" " " of Vizagapatam,	14th July " "	770.
" " " of Godavari,	1st " " "	214.
" " " of Kistna,	14th May " "	1153.
" " " of Cuddapah,	15th Mar. " "	72.
" " " of Bellary,	21st April " "	1380.
" " " of Kurnool,	15th July " "	283.
" " " of Madras,	23rd Dec. 1879, "	435.
" " " of Chingleput,	5th May 1880, "	224.
" " " of North Arcot,	10th April " "	127.
" " " of South Arcot,	23rd July " "	262.
" " " of Tanjore,	17th April " "	1720.
" " " of Trichinopoly,	18th June " "	587.
" " " of Madras,	14th Aug. " "	281.
" " " of Tinnevely,	19th July " "	439.
" " " of Coimbatore,	11th Feb. " "	19.
" " " Commr. of Nilgiris,	20th Aug. " "	123.
" " " Collector of Salem,	26th June, " "	171.
" " " of South Canara,	10th May " "	886.
" " " of Malabar,	26th April " "	1033.

Resolution—dated 13th September 1880, 1323.

The foregoing papers are the replies of Collectors to paragraph 4 of G.O., dated 7th October 1879, No. 2029, directing further inquiry to be made as to the

21ST SEPTEMBER

1880, REVENUE.

GOVERNMENT
REVENUE

RAS.
MENT.

READ—again paragraphs 4 and 5 of G.O.

4. The Board will also cause further of the claims or rights of ordinary ryots under their holdings, and report the result.

5. In all future settlements of land minerals is to be asserted and reserved, or of Government to put a separate assessment.

ber 1879, No. 2029 :—

to be made as to the past history of metals and minerals found

the right of Government to is not possible, then the right of mineral produce is to be so reserved.

READ—again paragraph 3 of G.O., 9th July

3. On the question of the rights

* G.O., 7th October 1879, No. 2029, and 28th January 1880, No. 104.

No. 633 :—

ryots in the minerals under holdings, the views of the Board are to be considered.*

READ—also the following Proceedings of September 1880.

of Revenue, dated 13th September.

Read—the following replies :—

Letter from the Collector of Ganjam,	14th Mar. 1880, No.	139.
" " " of Vizagapatam,	14th July " "	770.
" " " of Godavari,	1st " " "	214.
" " " of Kistna,	14th May " "	1153.
" " " of Cuddapah,	15th Mar. " "	72.
" " " of Bellary,	21st April " "	1380.
" " " of Kurnool,	15th July " "	283.
" " " of Madras,	23rd Dec. 1879, " "	435.
" " " of Chingleput,	5th May 1880, " "	224.
" " " of North Arcot,	10th April " "	127.
" " " of South Arcot,	23rd July " "	262.
" " " of Tanjore,	17th April " "	1720.
" " " of Trichinopoly,	18th June " "	587.
" " " of Madras,	14th Aug. " "	281.
" " " of Tinnevely,	19th July " "	439.
" " " of Coimbatore,	11th Feb. " "	19.
" " " Commr. of Nilgiris,	20th Aug. " "	123.
" " " Collector of Salem,	26th June, " "	171.
" " " of South Canara,	10th May " "	886.
" " " of Malabar,	26th April " "	1033.

Resolution—dated 13th September 1880, 1323.

The foregoing papers are the replies of Collectors to paragraph 4 of G.O., dated 7th October 1879, No. 2029, directing further inquiry to be made as to the

ORDER—dated 21st September

Miscellaneous

Mr. Bernard's letter, No. 10, September 1879, paragraph 5.
Mr. Bernard's letter, No. 1-39, 1880.

be taken to consider and re-mining privileges should be the mineral rights may be

2. The first of the Government in 1871, and in answer to Letter, dated 11th January 1880, and that no reservation of mines has been at any time

† G.O. of the same date below the surface would excite much dissatisfaction is termed Government waste

3. In April 1875, this G.O., 2nd April 1875, No. 10, Board of Revenue, among other payment by ordinary ryots in return
4. In reply the Board state G.O., 23rd January 1877, No. 10, ment to a share of the crop. regarded as appertaining exclusively practically some arrangement of probably commend itself as fair and people."

5. In their letter of 23rd January 1880, the correspondence to the Government, dated the 1st September, that a distinct policy on royalty, as regards the peculiar character of the land, and that ryots should not be disturbed, and that the right of Government to uphold "the right of Government to a retrospective effect, did not confer

6. From paragraphs 3 and 4 of the Government letter to this effect, dated the 1st September, the Secretary of State therein quoted "paramount rights of the State" which the Government of India settled estates come under reservation of such estates, constitute assets, and accordingly directed in the matters of land revenue, the right reserved, or, where this is not the case, separate assessment on mineral from the Board, this Government

* G.O., 28th January 1880, No. 10, ryotwari tenure in this Presidency

1008, Revenue.

In the communications noted in the margin, the Government of India desire that further inquiry may be made concerning the past history of the claims or rights of ordinary ryots to mines and minerals found under their holdings; and that the same opportunity should be afforded for further question as to the terms on which any cultivated or occupied lands wherein minerals are found.

Under the consideration of this Government from the Government of India, they stated* that the Government did "not possess any exclusive right in minerals, over private lands as means of access to them." They further recorded† the opinion that "any assertion of an exclusive right by Government in all minerals of the private rights of land-holders, and that it was acted on beyond the limits of what

in passing orders on a report by Mr. King of the Geological Survey on gold-bearing rocks in the Wynad, referred to the fact that as to the claim of Government to any gold found on their lands.

"the land-tax has essential reference to the occupation of the soil for agricultural purposes only and the right of Government, therefore, mineral wealth might be the landlord, that is, to Government; but in the case of a division of the profits would be in accordance with the general feeling of the

In 1877, No. 320, this Government forwarded to the Government of India, with the remark that it seemed desirable that the subject of mineral rights and the levy of a tax of this Presidency, should be laid down, and that it was doubtful whether the Courts would uphold it resort to legislation, which would have been a relief to them.

The Government of India letter to this effect, dated the 1st September, and paragraph 6 of their Despatch to the Government of India, inferred that the supposed "paramount rights of the State" to the minerals of the Crown and the public" to be the right that "when temporarily the minerals, just like the other resources of the land revenue may fairly be assessed," paragraph 3, that "in all future settlement to minerals is to be asserted and then, the right of Government to put a reservation to be reserved." Further, on a reference to their view that where no reservations of mineral rights has been made in the ryotwari tenure (this is the case with lands held on ryotwari tenure) cannot be asserted against holders

of land obtained under the waste land has been decided that the claim does not rest on the instruction of the Government in the case of resettlements, among the assets to be taken into account of assessment in Ryotwari districts, as to a right in the State to a share in the minerals where not expressly ceded."

7. In his reply to the Government that in the absence of any distinct judicial usage, the State has a right to minerals, the Secretary of State has approved of the call by the Government of Madras, in regard to the rights of ordinary ryots, he observed that should gold be found in such land, he presumed that mining privileges would be granted, without reservation, on terms similar to those now in force.

8. In communicating this despatch to the Government, the Secretary of State noted in paragraph 1 *supra*, that grantees of waste lands, in the absence of any reservation to minerals, is "not to apply to ordinary settlement operations or in the routine operations of mining, where proprietors of temporarily settled lands of minerals contained therein, such mineral rights are to be reserved; but that "in the case of a division of the profits, the State will be that such land-holders are not to be disturbed in the surface of their lands."

9. The outcome of these instructions is to be left to the Zamindar, and Mr. Logan considers equivalent to the Zamindar, whose full proprietary rights were not mentioned; that ordinary ryots, not being mentioned, "possess

**Sic*—but in numberless cases 'formerly' would extend to hundreds and even thousands of years.

third parties in the Ryots' putta lands; have obtained land under the waste land and possess the right to minerals; and that puttas for extension of cultivation, the Government.

10. In their report now under consideration, to which attention has been called by the Government, the Board point out that in deeds of gift and conveyances of immovable property which the property in minerals and buried treasure is transferred, as indicating a general belief that such are not the property of the State, but that the proprietors have at least some interest in them. The Board say "proof of established law or practice" (paragraph 7 *supra*) has been no judicial decision on the point regarding valuable ores, as they have not been reserved; but, on the other hand, no restriction has been placed on quarrying for stone and gravel, and this might be construed as a waiver of the State's claim to the products below the surface."

11. The Board's recommendation is preferable to take power to impose a tax on the products of mines, instead of asserting an exclusive right to the minerals, and to secure all that, the Board believe, is desirable.

in the case mentioned, it having been expressed the opinion that including minerals, in future revenue, included revision of all evidence seems to point to the fact that minerals as much as from crops

The Secretary of State has declared, in the absence of proof of established law or custom, that permanently-settled estates, but not ordinary ryots, are entitled to minerals in putta land. Further, in such land, he presumed that the rights of cultivating ryots would be reserved for Government lands.

The Government of India put the second question, namely, whether the general ruling that grantees of waste lands, in the absence of any reservation to minerals, are entitled to minerals in putta land, is "not to apply to ordinary settlement operations or in the routine operations of mining, where proprietors of temporarily settled lands of minerals contained therein, such mineral rights are to be reserved; but that "in the case of a division of the profits, the State will be that such land-holders are not to be disturbed in the surface of their lands."

at the mineral rights in Zamindari, as in the case of the Zamindars in the Malabar District to the Zamindars whom the Government has elsewhere; the Wargdars in South India, held with admiration by Sir Thomas Munro, whom the Secretary of State has mentioned, "under ordinary terms of Settlement proprietary rights in lands formerly held by the State and unoccupied," are to be held by the State, and no rights to minerals; that grantees of waste lands may be granted to European planters and others who have obtained land under the waste land, prior to their recent modification, do not, in "waste land" deeds, and in such cases shall be expressly reserved to the State.

on, the Board point to "the phrase 'paramount rights of the State' usually employed by the Government, indicating that the property in minerals and buried treasure is transferred, as indicating a general belief that such are not the property of the State, but that the proprietors have at least some interest in them. The Board say "proof of established law or practice" (paragraph 7 *supra*) has been no judicial decision on the point regarding valuable ores, as they have not been reserved; but, on the other hand, no restriction has been placed on quarrying for stone and gravel, and this might be construed as a waiver of the State's claim to the products below the surface."

— "on the whole, it would seem far preferable to take power to impose a tax on the products of mines, instead of asserting an exclusive right to the minerals, and to secure all that, the Board believe, is desirable."

12. The Honorable Mr. [Name] at the head of these Proceedings and weighty authorities;

- (1) that the State cannot time immemorially minerals in such products
- (2) that subject to the Ryot in the [Name]
- (3) that he is able to mortgage
- (4) that on these principles [Name] immemorial, and for the [Name] which has never been [Name] practice, or precedent, [Name] and discontent which [Name]
- (5) that it would be straining [Name] of recognition of any [Name] land generally may be [Name] general public, it may, [Name] in view to the develop[Name]
- (6) that as regards the [Name] required for cultivation, [Name] less and would only have [Name] in the minds of the ryots

13. In reviewing all that [Name] Right Honorable the Governor in [Name] the Government of this country, [Name] right on the part of the State to the [Name] of the peasant proprietors. He is of [Name] of assessment, i.e., the commuted [Name] confers the right on the Ryot to cultivate [Name] hypothesis that the State was the owner

* Manu, Chapter VIII, v. 39.
Do. do. VII, v. 130.

of the State's right in minerals, [Name] who immediately preceded us, limit [Name] that if the Government are to [Name] Secretary of State, they must be [Name] have not recognized the law [Name] of the State in the soil and its [Name] have been from time to time [Name] be possible, and, as pointed out, [Name] so far as it goes, some direct evidence

- † G.O., 14th June 1864, No. 1013, R.D.
" 23rd January 1868, No. 195, R.D.
" 28th April 1869, No. 1151, R.D.
" 22nd September 1876, No. 1325, R.D.
" 2nd January 1879, No. 2, R.D.

14. Fixity of tenures at [Name] Charter from the days of Manu, and [Name] the State's dues, are in no way [Name] Permanent Settlement and of the [Name] Rules. The line of action proposed [Name] Government, the only right that can

his able and exhaustive minute [Name] ation from the reports of numerous

lating the rule and practice dating from [Name] his Presidency an exclusive right to [Name] that it is fully entitled to a share in [Name] produce of the land;

stated proportion of the produce to [Name] ministration, the proprietary right of [Name] is absolute and complete;

devise or otherwise alienate the land; [Name] ty has been changing hands from time [Name] government to put forward a claim now [Name] and which does not rest on law, [Name] undoubtedly raise a feeling of distrust [Name] take long to allay;

State's privileges to attach the condition [Name] ve right to minerals to the terms on which [Name] occupied, although in the interests of the [Name] particular instances, be justifiable to do so, [Name] of ascertained mineral resources; and [Name] bulk of the land occupied or likely to be [Name] such reservation would be absolutely object-

less and would only have [Name] the effect of creating widespread distrust

urged by the different authorities, the [Name] I can find nothing on record to show that [Name] or British, have ever asserted an *exclusive* [Name] eral products of the soil in the occupation [Name] ion that the contention that the payment [Name] of the State's share in the produce, merely [Name] the surface, could only be upheld on the [Name] of the soil and the Ryot its tenant; a [Name] supposition for which there is not suffi- [Name] cient foundation. There being a text in [Name] ancient Hindu law * defining the extent [Name] as law of the Mahometan conquerors,

that right to a double tithe—it follows [Name] action in the direction indicated by the [Name] pared to show that the British Govern- [Name] and practice and that the proprietary right [Name] isive right to products below the surface, [Name] and acted on. This does not seem to [Name] the Honorable Mr. Huddlestone, there is, [Name] to the contrary in the negotiations between [Name] this Government and the Indian Iron [Name] Company, dating 1833—37, as well as in [Name] more recent cases of applications† for [Name] mining privileges, where this Govern- [Name] ment has uniformly ruled that the [Name] applicants must make their own terms [Name] with the holders of occupied lands.

rates is no doubt the Indian peasants' [Name] ir proprietary rights, so long as they pay [Name] o those of Zamindars holding under the [Name] sers of lands under the old Waste Land [Name] erefore, inequitable in the opinion of this [Name] asserted being that of the State to share in

the produce of the mineral resources in [Name] the Right Honorable the Governor in [Name] (two millions in number, one and a qu [Name] the average, the remainder an average [Name] of a gold mine, are hopelessly without [Name] suppose that they would work or get w [Name] holdings.

15. But the alternative is of course [Name] capitalist in search of a gold-mining [Name] monly settled in this way, when the tra [Name] menced mining, to take the ordinary ge [Name] annual *reddendum* of 5 rupees an acre being [Name] the land. The case may of course be imagin [Name] one, of a ryot, with an undeniable gold reef [Name] declining to part with his interest in it, while [Name] to work it himself. Should such cases beco [Name] might be resorted to, to remedy the incor [Name] expected that a Ryot will be long found to [Name] beyond the wildest dreams of his ambition; [Name] to explain is that besides the assessment alre [Name] limit their share of the mineral produce of [Name] they demand from miners working in waste

(True Extr

J. F. WEBSTER,
[Name] to Government.

To the Board of Revenue, with 20 original enclosures.

Exd. W. H. French.

100 Copies.

Original

Gobt. of (1882) Madras.

REVENUE.

Order, dated 21st September 1882, No. 1008.

Mines and Minerals.—Reviewing the question of the rights of ordinary Ryots in —.



COPIES DESTROYED

21ST SEPTEMBER 1882,

GOVERNMENT
REVENUE DEPARTMENT.

LETTER—from

THE SECRETARY TO THE GOVERNMENT

To

THE SECRETARY TO THE GOVERNMENT
REVENUE DEPARTMENT.

SIR,

Adverting to paragraphs 5 and 6, respectively

Miscellaneous.

* Dated 21st September 1882, No. 1008.

to mines and minerals found under their holdings.

I have the honor to be,
Sir,
Your most obedient servant,

(Sd) E. F. WEBSTER,
Secretary to Government.

Exd. W. H. French.

80 Copies.

REVENUE.

NT.

OF
ST. GEORGE,

OF INDIA,
AGRICULTURAL DEPARTMENT.

of Mr. Bernard's letters, No. 10, the 1st September 1879, and No. 39, dated the 15th May 1880, I am directed to forward the accompanying Proceedings* of this Government wherein are embodied their views on the claims or rights of ordinary ryots

PROCEEDINGS OF THE BOARD OF REVENUE, dated, 13th September 1880.

Read the following replies:—

Letter from the Collector	of Ganjam,	dated 19th Mar. 1880,	No. 139.
"	of Vizagapatam,	" 12th July "	" 770.
"	of Godavari,	" 1st "	" 214.
"	of Kistna,	" 25th May "	" 1,158.
"	of Cuddapah,	" 15th Mar. "	" 72.
"	of Bellary,	" 21st April "	" 1,380.
"	of Kurnool,	" 15th July "	" 283.
"	of Madras,	" 23rd Dec. 1879,	" 435.
"	of Chingleput,	" 5th May 1880,	" 224.
"	of North Arcot,	" 10th April "	" 127.
"	of South Arcot,	" 23rd July "	" 262.
"	of Tanjore,	" 17th April "	" 1,720.
"	of Trichinopoly,	" 18th June "	" 587.
"	of Madura,	" 14th Aug. "	" 281.
"	of Tinnevely,	" 19th July "	" 439.
"	of Coimbatore,	" 11th Feb. "	" 19.
"	of Nilgiris,	" 20th Aug. "	" 128.
"	Commr. of Salem,	" 26th June "	" 171.
"	Collector of South Canara,	" 10th May "	" 886.
"	of Malabar,	" 26th April "	" 1,033.

THE foregoing papers are the replies of Collectors to paragraph 4 of G.O., dated 7th October 1879, No. 2,029, directing further inquiry to be made as to the past history of the claims or rights of ordinary ryots to mines of metals and minerals found under their holdings. No fresh information of any value has been obtained, the universal reply being that no occasion has ever arisen for raising the question, no mines of any value having ever been discovered or worked on ryots' holdings. Several Collectors draw attention to the phrase usually employed in deeds of gift and conveyances of immovable property executed by natives, under which the property in minerals and buried treasure is transferred, as indicating a general belief that such are not the property of the Sovereign. The Collector of Kurnool adverts to the terms used by former Governments in granting maniams, whereby the lands were made over with the eight sources of wealth including minerals, as showing that the State had always reserved to itself the right to minerals in Government lands, but this circumstance does not touch the question of the rights of ryots: the express grant of a right to minerals to an Inamdar does not necessarily imply a reservation in the case of land taken up by cultivators. The case of Malabar and Canara, where a proprietary right in the soil is conceded to the ryot, is different. The Collector of the latter district states that in some of the Mulpattas granted in respect of lapsed estates minerals are distinctly mentioned in describing the rights conferred; as regards Malabar Jemmies, the Board have already in their Proceedings dated 7th June 1880 expressed the opinion that they are entitled to such resources.

2. In reporting on the question in 1871, the Board submitted a précis of all the correspondence on record on the subject and remarked 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." They were also of opinion that although there has been no understanding in this Presidency as to the Crown's exclusive ownership of all minerals below the surface, a legislative declaration to that effect would not be attended with any practical inconvenience. In again reporting on the subject in 1875 they remarked 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."

3. The Secretary of State has now decided that as regards Ryotwari tenures the State's rights to minerals should be presumed still to exist in the absence of any distinct judicial precedent or proof of established law or practice. There has been no judicial decision on the point, and there is no established custom as regards valuable ores as they have not been worked to any extent in private holdings, but, on the other hand, no restriction has been placed on quarrying for stone and gravel, and this might be construed as a waiver of the State's claim to the products below the surface. On the whole, it would seem far preferable to take power to impose a royalty on all ores that may be worked instead of asserting an exclusive right to such products. The former course would secure all that, the Board believe, is desired for the State, while the uncertainty and distrust as regards putta tenures that would be created by the latter would be avoided.

4. With reference to paragraphs 7 and 8 of the letter from the Commissioner of the Nilgiris, the Board observe that, although the waste lands on the Nilgiris and in the Wynnad are not granted "in fee simple," the forms of Indenture hitherto issued under the rules for the disposal of such lands expressly convey to the grantees "all products both above and below the surface" and their claim to any minerals which may be obtained cannot be disputed. Revised forms are now under the consideration of Government.

(A true Extract.)

Secretary.

To the Secretary to Government, Revenue Department, 20
with replies from twenty Collectors in original to be returned.

Copy to all Collectors.

" to the Government Solicitor.

" " Member of the Board of Revenue, in charge of Settlement Department.

Encl. A. S. Rodgers.

200 Copies struck off.

15. 7. 80 - 162 166.
- 9. 6. 80 - 97. 98.
- 5. 5. 80 - 122 125.
- 20. 1. 80 - 296. 97.
- 7. 10. 79 - 107. 108.
- 23. 1. 77 - 666. 669.
- 11. 1. 72 - 133. 136.

Board of Revenue,
MADRAS.

1880.

1880. 1880. 1880.
1880. 1880. 1880.

THE SECRETARY TO GOVT.,
REVENUE DEPARTMENT

Dated September 13th.

Printed 22nd.

Received 17th.

PROCEEDINGS, 13th SEPT. 1880, No. 132

SEPTEMBER.

No. 1323.

Copy 24/9/80

Mines of Metals and Minerals.—Reviews
reports from Collectors as to the past history
the claims or rights of ordinary ryots to
found under their holdings.

MINUTE BY THE HONORABLE W. HUDLESTON, C.S.I.

On the Question as to Ryots' rights in Minerals referred to us by the Government of India.

As to the rights of Ryots in their holdings and especially as to rights in minerals, I think the best way to arrive at some definite conclusion is to bring together the best evidence we can find as to the claims asserted by the State, and this I proceed to do so far as the materials available to me allow.

Hindu.

"Of old hoards (*buried Treasure*) and precious minerals in the earth, the king is entitled to half, by reason of his general protection and because he is the lord paramount of the soil."

Manava Dhurma Sastra (Institutes of Menu).
Chapter VIII,
Verse 39.

"Of cattle, of gems, of gold and silver, added each year to the capital stock, a fiftieth part may be taken by the king. Of grain, an eighth part, a sixth, or a twelfth, according to the difference of the soil and the labor necessary to cultivate it."

Chapter VII,
Verse 130.

"A military king who takes even a fourth part of the crops of his realm at a time of urgent necessity—as of war or invasion—and protects his people to the utmost of his power, commits no sin."

Chapter X,
Verses 118, 120.

"The tax on the mercantile class which in times of prosperity must be only a twelfth part of their crops and a fiftieth of their personal profits, may be an eighth of their crops in a time of distress, or a sixth which is the medium, or even a fourth in great public adversity; but a twentieth of their gains or money and other moveables is the highest tax."

So far the direct *precepts*, but the provisions for deciding boundary disputes equally evidence the recognition of private property in land resulting from labor devoted to its reclamation and occupation, and from limitation of rights asserted by the State.

The following extracts show the practice of sundry dynasties:—

"From the earliest times to the middle of the fourteenth century, the land was assessed at a quantity of rice equal to the quantity of paddy required to sow it. So that a field which required ten kandies of paddy to sow it, paid a land-tax of ten kandies of rice which was paid in either money or kind."

Mr. Thackeray's Report, dated 4th August 1807, on Tenures and Assessment in Canara.

See also Sir T. Munro's Report dated 31st May 1800, appendix to Fifth Report.

"Between the years 1334 and 1347, Hurrihur Roy, King of Bijanuggur, made a new assessment on the principle laid down in the Shaster, where the produce is supposed to be to the seed as 12 to 1. Agreeably to this computation he supposed that two-and-a-half katties of seed yielded thirty katties of paddy, which he divided as follows:—

"To the Landlord	...	7½ or 25 per cent.
"To the Laborer	...	15 or 50 "
"To the Cirkar	...	7½ or 25 "

And still following the Shaster, he divided the Cirkar share as follows:—

"To the Cirkar	...	1/3 of the gross or 5
"To Churches	...	1/30 of do. or 1
"To Brahmins	...	1/6 of do. or 1½

Total ... 7½

"This settlement was concluded upon a rough estimate of the quantity of seed usually sown, and it remained without any alteration till the country was transferred to the Bednore Government about the middle of the 17th century. The Bednore Government levied an additional 50 per cent., and in 1660 the Bijanuggur and Bednore assessment together formed the *shist* or standard."

"A Mirasidar therefore must be understood in general to have a right to no more than 45 per cent. of the produce divisible between himself and the Cirkar. Except in certain situations as follows:—

- 1st.—In lands under small tanks * * * * the Mirasidar receives 50 per cent.
- 2nd.—In high ground under large tanks where small picotahs are used * * * he receives 55 per cent.
- 3rd.—In situations where long picotahs are used * * * he receives 60 per cent."

"Besides the portion of the produce which the inhabitants divide with Government, their fees of every description are inviolably preserved to them."

"The provinces subject to the Government of Fort St. George, with the exception of Canara, Malabar and other Districts in which the traces of private property still existed when they came under our Government, exhibited nearly the same system of landed property and revenue policy. The land was the property of the Cirkar and the Ryot, the interest in the soil was divided between the two * * *. The Cirkar share of land rent was generally received from paddy levied in kind at rates varying from 40 to 60 per cent. of the gross produce after deducting certain portions distributed before the threshing commences. The share or tax of the Cirkar from dry grain land was generally received in cash either as so much for a fixed measure of land, or so much for the same measure of land, but varying with the produce."

"In Dindigul the produce of paddy was always, before our acquisition of the province, divided, after deducting the allowances in kind above referred to, between the Cultivator and the Cirkar in equal portions and received by the Cirkar in kind * * *. The share of the Cirkar in the produce of dry grain land was, before our acquisition of the province, always received in money at so much for a given quantity of land of a given quality."

Mahomedan.

Similar limitations of the claim of Government occur in the ordinances of the Mahomedan dynasties.

The institutes of Timour prescribe regarding "the cultivated lands of the subject" under irrigation, "that of the amount of the produce of those grounds, $\frac{2}{3}$ should be allowed to the possessor thereof and $\frac{1}{3}$ be paid into the Royal treasury," and as regards "the rest of the lands of the husbandman," that "of the produce * * a third or a fourth should be collected."

Akber's revenue system seems to have been based on the principle prescribed by Timour. The proportion which he claimed for the State was one third of the medium produce.

A firman of Aurungzeb determines that the Sovereign's share of the produce shall never exceed one half.

These brief citations will suffice for the present purpose to indicate sources of evidence as to the avowed limitation of the Cirkar's demand on the land. I quoted them more at length in the Proceedings of the Revenue Board, 2nd December 1864, read in the Government Legislative Proceedings, 4th January 1865, No. 2.

It has next to be shown what had been the actual result on the position of the Ryot as ascertained at the commencement of our connection with the administration of the country—and here again I quote from the appendices to that invaluable "Fifth Report of the Select Committee of the House of Commons on the affairs of the East India Company, dated July 1812," which is a perfect mine of information.

"Under all these circumstances, I think it must be admitted that the Mirasidar has an undoubted hereditary property in the soil; that he derives his right originally from the Sovereign to whom he acknowledges obedience, and the render of a stated proportion of the produce is the tenure by which he holds it; that under this impression he uses it as may be most for his advantage, and that by law he considers that right sacred and inalienable so long as he performs the conditions annexed to it." * * *

"But even admitting the right of property in the soil to have been a positive grant from the Sovereign to the Mirasidar, it is as well confirmed to him as that of the freeholder to his Estate in Great Britain."

"Almost the whole of the land in Malabar, cultivated and uncultivated, is private property and held by Jengon right which conveys full absolute property in the soil."

Mr. Thackeray on Malabar, dated 4th August 1807.

"The neighbouring countries of Travancore, Bednore and Canara have the same institution and nearly the same rules regarding private property, which seem never to have been called in question."

"The price of land was low, * * but * * the property itself was guarded by several equitable and humane laws or rather customs originating in precautions which mankind naturally take to transmit their possessions to their descendants. The alienations of land by sale or otherwise was unrestrained. Nothing but gift, or sale or non-payment of rent could extinguish the right of the heir to take it from the owner. * * No crime in the proprietor could be by their tenures bound to the succession. * * It does not appear that the landlords were by their tenures bound to the performance of personal service or any other condition beyond the simple one of discharging the public rent."

(?) Revenue due to the Sirkar.

"The lands of Canara are still to be considered as held under the same conditions and governed by the same rules of transfer as they were under the ancient Government. The increase of assessment by Hyder and Tippoo has in some places annihilated the old proprietors, and it has everywhere diminished the quantity but not altered the nature of the property."

"The greater part of the lands in Canara are private property. * * Original inscriptions on stone and copper prove the antiquity of this venerable institution. They consist of grants by ancient princes to pagodas, &c., granting the land-tax derivable from certain lands and villages, thus transferring the land-tax from the treasury to the individual grantee; but the property in the soil was not granted, because not possessed or claimed by the prince. When he gave the absolute property in the soil, the Sannud expressly mentions the previous purchase of the right."

"The Sannuds and inscriptions on stone and copper are to be found in every part of Canara. They, together with the several accounts—the 'black books'—tradition and the state of the country afford undeniable proof of the antiquity of the institution. * * The different Princes of Bednore, Bejanuggur and even Mysore never seem to have questioned the general right of the people, though an arbitrary assessment and individual act of oppression may have rendered some private estates less valuable."

"I shall first explain the nature of the tenures under which all the lands in the Tinnevely District * * may be comprehended. Pollams in Ramnad and in the Shevagunga District * * may be comprehended."

Report of the Collectors of Southern Poligar peshkash, dated December 1800.

First.—Villages of the *Agraharavadiky*, or villages of which the absolute proprietary right is chiefly held by Brahmins.

Second.—Villages of the *Pundarahvadiky*, or villages of which the absolute proprietary right is chiefly held by Soodra inhabitants.

Third.—Villages which, having gone to perfect waste, Soodra inhabitants were invited to occupy and cultivate them" * * *

"The last general division comprises all those lands which the inhabitants are not considered as at liberty to sell." * * Whether, in the early periods of Hindoo prosperity these villages were individual property like the *Pundarahvadiky* and escheated to the State on the demise of all the proprietors, or whether they were barren wastes before the inhabitants who now occupy them were invited to cultivate, it is not possible to ascertain, nor, if possible, would any benefit result from it. It is sufficient for us to know that the grounds thus occupied, from the time they were divided among the first settlers, have in most cases continued to pass from one generation to another; that the land of each inhabitant is as well known as his house, and that it has never been customary to disturb his possession as long as he yielded to the ruler of the country a certain share of his labors." * * *

"It has been the custom to consider the Hindoo Governments of old despotic and regulated solely by the arbitrary will of the reigning prince. Theoretically received, they were so, but in practice, they had little of this character. The ordinances of their religion had generally the force and effect of laws, and in their operation they were beneficent and just. Even when the country was in later times ravaged by Mussulman armies, and the adoption of the laws of Mahomed with the Hindoo Jurisprudence created universal confusion and engendered continual differences in the decrees of justice, no fundamental material innovations took place in the right to landed property (however grievous the public assessment of the period) such as I have described, and the privilege of tilling the glebe which he first broke and brought into fertility, it has never been the custom to take from the poorest cultivator as long as he duly yielded the public share."

4
"In Tanjore a Mirasidar disposes of his station in any manner he pleases. * * The proprietorship of the land belongs to Government or to the landlord, and he who is entrusted with the duty of making it productive, lives upon it, and cultivates it so long as he pays its revenue and no longer. But this occupation of it, while the superior is satisfied, has been converted by the Mirasidar into a right. They have made the right a property, and they retain, sell, lend, give or mortgage, according to their inclination, the whole or any part of it."

Mr. Harris on Tanjore, dated 9th May 1804.
"Without entering on the question of who is the proprietor of the soil, I will content myself with stating that immemorial usage has established both in Tanjore and Trichinopoly, that the occupants, whether distinguished by the names of Mirasidars or Mahajenums have the right of selling, bestowing, devising or bequeathing their lands in the manner which to them is most agreeable."

"Whether this right was originally granted by the ancient constitution of the country appears to me not worth considering at the present day. I think it a fortunate circumstance that the right does at present exist, whether it originated in encroachments on the Sovereign's rights, in a wise and formal abrogation of those rights, or in institutions coeval with the remotest antiquity. It is fortunate that, at a moment when we are consulting as to the means of establishing the property and welfare of the numerous people of these provinces, we find the lands of the country in the hands of men who feel and understand the full rights and advantages of possession, who have enjoyed them in a degree more or less secure, before the British name was known in India, and who, in consequence of them, have rendered populous and fertile the extensive provinces of Tanjore and Trichinopoly. * * * The landed property of these provinces is divided and sub-divided in every possible degree. There are proprietors of 4,000 acres, of 400 acres, of 40 acres, and of one acre."

"In this province land is everywhere a species of property. * * Numerous cases of disputed right in land have been decided by the local authorities since the cession, and the Government of His Highness the Nabob always acknowledged, if it did not respect, the right claimed by the inhabitants in the exclusive enjoyment of their property in land. From what has been said of property in land in the report on Tanjore or Coimbatore and by many Collectors in other provinces, the truth of the conclusion drawn in the following extract from an Introduction to the History of British India will, it is believed, be no longer disputed."

"In ancient Hindoostan, all landed property was held by a grant from the Sovereign, who was called Sole Proprietor of the Soil and Lord of the Universe; but these pompous and empty titles were nothing more than the gaudy coloring with which the vain extravagance of oriental fancy delights to trick out and bedaub royalty. The Hindoo kings were in fact merely the nominal proprietors of the soil, and the grants of land which they dispensed to their subjects were given in perpetuity without any claim, either expressed or implied, of an absolute paramount right in the property. The landholders therefore were in reality the proprietors of the ground which they possessed and cultivated, and the tenure by which they held it very much resembled our *Loccage* tenure in England at the present day." * * *

"The name by which this property is distinguished is that of *Miras* or *Mirasi*. This word has become familiar to all ranks since the conquest of the Mahomedans. *Swastyam* is the Sanscrit word and is generally used by Brahmins, and *Canianchy* by those Soodras (cultivating castes) who may not have adopted the general term *Miras*." * * *

"Each *Swastyamdar* or *Mirasidar* considers himself proprietor (I here use the word proprietor in a limited sense to describe the *Mirasi* property) of all the land of his *Swastyam*, whether it be cultivated or not."

"In Dindigul, as in all the provinces south of Madras, a property in the land is invested in the resident inhabitants of each village."

Mr. Hodgson on Dindigul, dated 28th March 1808.
"I venture to affirm * * that with a difference in value only, private estates exist as much in every part of India as they do in Canara and Malabar."

"To deprive the individual of the field he has long cultivated, while he continues to pay the rent, is felt and complained of as an act of injustice. The same inhabitants have, however, inhabited the same villages and ploughed the same fields time immemorial. The oppressions of the house of Hyder, and particularly the additional assessment made by Tippoo Sultan, may have produced a temporary desertion, but these deserters have returned from time to time to their fields. Neither the Hindoo or Mussalman Government appear (supposing their rights in the soil as proprietors to be indisputable, and proprietary right to be a right to demand what the proprietor pleases for his land) ever to have exercised that right. What was fair assessment and what was exaction, was well known to the party governing and those governed. It

5
is true, where, as under Tippoo Sultan's reign, exaction had no limit, landed property could have no value; but where fraud could not counteract oppression, a hope of change for the better or inability to resist, produced submission till the load became too heavy to bear, and emigration the only source of relief."

"In Ramnad there is no class of people possessing any right of the nature of Talukdars, and therefore in confirming the proprietary right of the Rani to the lands, the right of no other individual will be violated. The Ryots will, of course, be firmly maintained and protected by the Judicial Courts in their privilege of cultivating the soil and of receiving their accustomed share."

Collector's Report respecting the Permanent Settlement of the Southern Pollams, dated 30th September 1802.
"The resolution of Government to dispose of the proprietary right in the Cirkar lands by sale * *, I conceive to be generally impracticable from the poverty of the description of people they expect to become purchasers, as well as from the objection these very people would have to purchase a proprietary right in what prescription had already made their own. The *Natamkars* certainly consider the soil its own or itself at liberty to deprive save the Mussulman, appears to have considered the present benevolent system, this solitary precedent the inferior subject at its will. In forming the present benevolent system, where no written document is found, surely will not operate as an example to act upon, but where no written document is found, what has been known as usage, will be established as law."

Sir T. Munro on Canara, dated 9th November 1800.
"No man who has ever been in Canara can ever entertain any doubt with regard to its land being private property."

"I have reason to believe, though I cannot speak with any positive certainty, that the same tenures as in Canara existed originally throughout every part of the peninsula. In other parts of the boundaries, individual rights have been trodden down by the oppression and avarice of despotic authority; but still there exists almost in every village, the distinction of *Mirasi* inhabitants or hereditary cultivators. Now the hereditary right to cultivate certain lands and to reap the benefit of that cultivation, seems to be nearly one and the same thing with the right in the land called property."

"Between man and man these rights have an equal value and security; but before the Sovereign who assesses and taxes *at will*, neither one or the other right is good for much."

"All the regulations that have been quoted contain internal evidence of a right having been confirmed to the Ryots to pay their revenue according to their *puttahs*, while the law at the same time defines how the terms of the *puttah* shall be regulated and how accommodated to local usages and customs."

Mr. Hodgson's memoir, dated 1806.
"If this conclusion be correct, it may suggest the propriety of enquiring whether * * those Ryots can claim more or wish for more. They are by law confirmed in the possession of their lands, the rent of the land is fixed, and no increase can be demanded of them under any pretext."

"It is of no moment to the Ryot whether his ancestors acquired their right by purchase or by gift, whether the right be only a prescriptive right or whether it be a right lately granted. It is unimportant whether the Ryots be called proprietors or tenants, *Gramkars* or *Mirasidars*. A subject in provided the law has preserved to them what they have always possessed. In England has only the usufruct and not the absolute property in the soil, or as Sir Edward Coke expresses it, he hath *dominium utile*, but not *dominium directum*, and if the strongest and highest estate that any subject can have in England, is no more than the usufruct (Blackstone), the Ryot of India may rest contented with an usufructuary right."

"By the ancient system of India, the situation of a Ryot was much superior to that of a tenant-at-will. * * * While he continued to pay the rent and fulfil the conditions to which by the custom of his village he was bound, he could not legally be dispossessed."

Note to Mr. Hodgson's Report on Dindigul, dated 28th March 1808.
The foregoing extracts may suffice for the present purpose. If more evidence on the subject be needed, I would refer to the fifth report and its appendices and to the collection of papers on *Mirasi* right compiled mainly by Mr. W. H. Bayley and in part by myself.

The Select Committee of the House of Commons, in 1812, appear to have accepted as conclusive Mr. Place's arguments in favor of the *Mirasi* right which he asserted for the Ryots in the Jaghire—
See Fifth Report on the Jaghire, pages 42 and 43, Vol. 2.

to have been satisfied that in Canara and Malabar:—

* Do. "Landed Tenures," *Ibid* page 77.

† *Ibid* page 84.

NOTE.—Sir Walter Elliot in his Minute on the proposed Inam Settlement (Revenue Proceedings, 8th July 1859), says:—

"There is not an acre of land in Southern India which does not belong, however much the title may have been impaired, to a recognized Proprietor or Municipality subject only to the payment of a land-tax, being the sole, and still the main, source of the public revenue."

"The very idea of a Sovereign being sole proprietor of all the land in his dominions, is opposed to reason and experience. The assertion of such a right in Europe by the introduction of the feudal system, was a gigantic military usurpation. The Mussalman conquerors of India, without the same assertion, arrived practically at a similar result by an enhancement of the assessment so oppressive as in effect to destroy the proprietor's right. In neither case, however, were these wholly extinguished. Many of the original titles still survive both in India and England to demonstrate the fallacy of the assumption. The existence of such right can be proved not only from the privileges still claimed by Mirasidars, which we have used our best endeavours to cancel and destroy, but from numerous ancient grants of land which record that even the Sovereign, when desiring to appropriate a piece of land permanently, for the site of a temple or other building, purchased it for so much money from the inhabitants. Some of these transactions under the Bijanagar dynasty are not older than four or five centuries."

who resides in the village in which the land is a temporary tenant who is invited by the Mirasidar from a distant or neighbouring village to cultivate his Mirasi under an engagement for a given period. * * * In those lands where there are no Mirasidars to claim, the Ryots may be considered as Ool Purakudis holding of the Cirkar, enjoying as they do an hereditary right of occupancy, subject to the condition of paying the rents demanded of them. This right it has never been the practice either of the Hindoos or of the Mussulman Government to take from the poorest cultivator so long as he remained in obedience to the general authority of the Cirkar and duly yielded the public share. Indeed it is not to be discovered in the history of the Hindoos from the reign of their first princes until the final downfall of the Hindoo authority, that any of the landed rights to which your Committee have thus briefly adverted were ever impeached or destroyed; on the contrary, their uninterrupted existence is proved by numberless records, and by none more distinctly than by the ordinary form of a deed of sale."†

† Fifth report, page 87.

NOTE.—The form of deed of sale here referred to, is given at length in the report of the Collector of Southern Poligar peshkash, dated 29th December 1860, in the appendix to the fifth report, and also in the Mirasi papers. It purports to convey to the purchaser "all Nunjah, Panjah, Islands, Water, Stone, Topes, Jungles, Riches, Treasure, and every well which sinks beneath, or every tree that rises above the earth."

rupted existence is proved by numberless records, and by none more distinctly than by the ordinary form of a deed of sale."†

To turn now to the immediate occasion for the foregoing résumé.

In April 1875, this Government in passing orders on a report by Mr. King of the Geological Survey on gold-bearing rocks in the Wynaad, referred to the Board of Revenue among other questions that "as to the claim of Government to any payment by landowners whether

- (a.) Ancient Malabar Jenmis,
- (b.) Proprietors under the Waste Land Rules,
- (c.) Ordinary Ryots,

in respect of gold found on their lands."

The Government of India had been informed in 1872, in reply to an enquiry by them, that this Government had always acted on the principle that, except in regard to Government waste, the Government does not possess any exclusive right in minerals. In their Proceedings of 11th January 1872, this Government recorded its 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.

The Board of Revenue, in reply, dated 20th December 1875, to the last question which alone now needs to be considered, stated that, "as regards ordinary ryotwari tenures, it appears to the Board that the land-tax has essential reference

"the lands in general appear to have constituted a clear private property, more ancient and probably more perfect than that of England*" and that "the landed tenures and rights in the other parts of the modern possessions under the Presidency of Fort St. George" were "of the same kind and description as those which were described by Mr. Place as obtaining in the Jaghire."

"The Ryots who are immediately connected with the soil, * * * may be reduced to two denominations, Mirasidars and Payakaris or Purakudis. Though the Mirasidars appear for some years to have been regarded in the light of fixed cultivators only, with an hereditary right of occupancy so long as they paid the dues of Government; more particular inquiry seems to have established the fact that they possess a real property in the land, having the right of mortgaging, selling, and otherwise disposing of it, and that this right they have always and do still exercise.† * *

* * * Of the Payakaris or Purakudis there are two descriptions. The Ool Purakudi is the fixed and permanent tenant of the Mirasidar land. The common Purakudi is the common tenant of the Mirasidar from a distant or neighbouring village to there are no Mirasidars to claim, the Ryots may be considered as Ool Purakudis holding of the Cirkar, enjoying as they do an hereditary right of occupancy, subject to the condition of paying the rents demanded of them. This right it has never been the practice either of the Hindoos or of the Mussulman Government to take from the poorest cultivator so long as he remained in obedience to the general authority of the Cirkar and duly yielded the public share. Indeed it is not to be discovered in the history of the Hindoos from the reign of their first princes until the final downfall of the Hindoo authority, that any of the landed rights to which your Committee have thus briefly adverted were ever impeached or destroyed; on the contrary, their uninterrupted existence is proved by numberless records, and by none more distinctly than by the ordinary form of a deed of sale."†

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."

In their letter of 23rd January 1877, this Government forwarded the correspondence to Government of India, with the remark that it seemed desirable that a distinct policy on the subject of mineral rights and the levy of a royalty, as regards the peculiar condition of this Presidency, should be laid down by the Government of India, and with the opinion that Ryots should not be disturbed, as it was doubtful whether the Courts would uphold "the right of Government," whilst resort to legislation, which would have a retrospective effect, did not commend itself to approval.

With their letter of 1st September 1879, the Government of India forwarded to us certain legal opinions on the subject of State rights in India in mines and minerals and copy of a despatch to the Secretary of State, in paragraph 6 of which they said—

"Seeing that different classes of tenure may be grouped under the generic term of Ryotwari tenure, we hesitate finally to accept without further inquiry the view that all holders of Ryotwari lands are entitled to all mines and minerals under their holdings. Probably the Jenmis of Malabar whose tenure is ancient may be so entitled. But we shall ask the Madras Government to consider further the question of the rights of ordinary Ryots in the minerals under their holdings."

and accordingly in their letter to us (last para.) they requested that—

"further inquiry may be made concerning the past history of the claims or rights of ordinary Ryots to mines and minerals found under their holdings. If the claims of Ryots to such property has previously been admitted in practice on any considerable scale, then the fact should be capable of verification. If, however, since the time of Sir T. Munro, Ryots have been held to enjoy rights in their land as against third parties, and subject to the paramount rights of the State, then there seems no reason why the claims of the Crown or of the public to mines found under Ryots' holdings should be summarily surrendered."

It may be inferred from the preceding part of paragraph 6 of the despatch to the Secretary of State, to which the Government of India referred us, that these supposed "paramount rights of the State" and "claims of the Crown and the public," to which the Government of India alluded, were the right that, "when temporarily settled estates come under re-settlement, the minerals just like the other resources of such estates (State) constitute assets on which land revenue may fairly be assessed." To this principle of a State share in all produce of a Ryots holding, this Government saw no reason to take exception, and in communicating the correspondence to the Board of Revenue for further report as to the past history of the claims or rights of ordinary Ryots in the matter, they directed, that "in all future settlements of land revenue, the right of Government to minerals is to be asserted and reserved, or where this is not possible, then the right of Government to put a separate assessment on mineral produce is to be so reserved." The first instruction applied to land newly taken up for cultivation out of the waste; the second to the case of existing holdings.

On 15th May 1880, the Government of India communicated to this Government the reply of the Secretary of State to their despatch above mentioned. In this reply, the following passages occur:—

"You hold, and I concur in your view, that the royal prerogative, as it obtains in England, in respect to gold and silver mines, does not prevail in British India, at least outside the Presidency towns. You proceed to infer that grantees of waste lands, whether or not the grants expressly comprise all products above and below the surface, are, in the absence of provision to the contrary, entitled to mines of gold and silver found thereunder."

"If this proposition be limited to grantees of waste lands 'in fee simple' under the rules framed in different provinces in accordance with the instructions given by my predecessor, Sir C. Wood, in his despatch No. 14 of 1862, I do not dispute it; but I must point out that

the expression 'grantees of waste land' used without any limitation might be held to include persons who have received, under ordinary terms of settlement, the proprietary rights in lands formerly waste and unoccupied, and to such grantees this view does not apply.

"As regards the second question, whether, apart from the prerogative, the Crown in India can assert a right to gold, silver, and other minerals found in proprietary lands, you are disposed to agree * * that, in the permanently-settled districts, the State does not possess such right. This was the view arrived at by my predecessor, Sir C. Wood * *. I am disposed to think that even if the legal right * * could be established, it would not be desirable to enforce it. * * I apprehend that * * the landholders of the lower provinces are sufficiently alive to their own interests either themselves to develop the mineral resources (i.e., Bengal.)

their estates may contain or to afford facilities to others to do so.

"This, however, does not apply to any other parts of India. I look upon it as pretty certain, that the mineral resources of their lands will not be effectually worked by the peasant proprietors themselves of Madras or Bombay, or by the village communities of Northern India; and I apprehend that other promoters of mining enterprise would be likely to meet with considerable obstacles from intricacies of tenure and the difficulty of dealing with numerous small landholders. I consider, therefore, that care should be taken to reserve all State rights to minerals which still exist, and I am of opinion, especially with reference to the views of the Madras Government mentioned in paragraphs 3 and 6 of your letter, that, in the absence of any distinct judicial precedent or proof of established law or practice, such rights should be presumed still to exist throughout India. I take it that the notion that payment of an assessment based on the agricultural value of land and intended to cover the right of cultivation, conveys property in minerals below the surface, is essentially a modern one, and would never have occurred to the Native Governments to which our own succeeded. I approve, therefore, of the instructions you propose (paragraph 6 of your letter) to give to the Government of Madras on this subject. * * You conclude * * that whenever the question as to the right of the State to minerals found in proprietary lands actually arises, it will have to be answered for that locality in accordance with practice and precedent. But that where the nature and extent of proprietary rights are still unsettled, and where custom and practice regarding mines have not been established, opportunity should be taken to declare by legislation that mines are State property. With these views, I fully concur."

"With regard to the third question, you consider that, where proprietors of lands temporarily settled are held to be the owners of the minerals they may contain, such mineral resources may be taken into account for assessment on re-settlement. In this view I concur, but request that care may be taken not to confer proprietary rights in minerals by including them among assessable assets, where such ownership has not been proved previously to exist." * *

"Regarding the last subject discussed in your letter, the terms on which applications to mine in Government waste lands * * shall now be granted; I have to observe that the arrangements you propose appear to refer to mining operations in Government waste lands only. Should, however, it be decided that mineral rights in any owned or occupied land in Madras are vested in Government, and should gold be discovered in any such lands, I presume that, with due regard to the rights of the cultivating proprietors, mining privileges will be granted on terms similar to those now approved for Government lands." * *

The Government of India in communicating to us this despatch stated that, "hereafter, except in permanently-settled estates, it will be presumed throughout India that, in the absence of any distinct judicial precedent or proof of established usage, the State has a right to minerals." The general ruling that grantees of waste lands, in the absence of any provision to the contrary, are entitled to minerals, is "not to apply to ordinary cultivating leases made in the course of settlement operations or in the routine of district revenue work." * * "Where proprietors of temporarily-settled lands have been judicially held to be owners of minerals contained therein, such mineral resources may be taken into account on re-settlement; * * but * * in the absence of a judicial decision, the presumption will be that such landholders are not owners of the minerals underneath the surface of their lands."

The outcome of these instructions is that Zemindars are possessed of proprietary rights superior to those of Ryots; that in the absence of judicial decision or established law or usage to the contrary, Ryots, although admitted by the Secretary of State to the designation of "peasant proprietors" and to possess "under ordinary terms of settlement the proprietary rights in lands formerly waste and unoccupied," are to be held to have no rights in minerals; and that mining privileges may be granted to third parties in the Ryot's puttah lands, but that European planters and others who have obtained land under the waste land rules prior to their recent modification do possess the right to minerals. Further that, in future

"waste land" deeds and in puttahs for extension of cultivation, the minerals shall be expressly reserved to Government. This last provision is the only one that has as yet had any practical result here irrespective of the general feeling of distrust which the change in the puttah form has probably produced, and that result is mischievous inasmuch as it tends to disturb the basis for important agricultural statistics, because extension of cultivation by an existing Puttahdar can no longer be merely included in his existing puttah as heretofore, but needs to be evidenced by a separate puttah in a new form, and the total number of puttahs will therefore no longer represent the number of Puttahdars.

The result of the Revenue Board's further inquiry into the general history of Ryot's rights in minerals shows, as was to be expected, that in this Presidency, exclusive State rights in them having ever been asserted, no occasion has arisen for litigating the question and no judicial decision upon it has ever been given or obtained.

It also shows that, while there is no record of any discovery or working of precious metals in Ryots' holdings, no restriction has ever been placed on Ryots quarrying stone or gravel in their holdings, but that the previous assessment is charged on such land although thereby rendered unfit for cultivation.

It further shows that to this day the Ryots, when transferring their puttah holdings by sale, use the identical form of sale deed conveying all property above and below the surface as has been employed from time immemorial and which is quoted in a former part of this note.

The Board deprecate any assertion of an exclusive State right to minerals as calculated to create "uncertainty and distrust as regards puttah tenures," and they advocate in its stead the levy of a royalty, which is practically the claim to a share in the particular product, to which this Government have already stated that they see no objection in principle.

Further evidence of the recognition in this Presidency of a right in Ryots incommensurate with the assertion of an exclusive State right in minerals may be found in the history of the negotiations between this Government and Mr. Heath and the Indian Iron Company, which date from 1833 to 1857.

All the leases granted on the several occasions expressly stipulated that, irrespective altogether of the privileges conceded by Government, "no land that had at any former period been cultivated or converted to uses connected with cultivation should be entered upon for the purpose of raising ore without the previous written consent of the Mirasidars of the village and of other Ryots having an interest therein."

In more recent cases of application for mining privileges, this Government has uniformly ruled that the applicants must make their own terms with the holders of occupied lands.

To close this lengthy but hasty review of the subject, I submit that the only conclusion that can fairly be drawn from the evidence that I have brought together is, that the State cannot, without violating the rule and practice dating from time immemorial, assert in this Presidency (or as I believe in any part of India) an exclusive right to minerals in occupied lands, but that it is fully entitled to a share in such products as in any other produce of the land.

I am myself further and decidedly of opinion, that the State is straining its privileges when it attaches the condition of the recognition of any such exclusive right to the terms on which land generally may be newly occupied, although I do not dispute that, in the interests of the general public, it may in particular instances be justifiable to do so in view to the development of ascertained mineral resources.

As regards the vast bulk of the land occupied or likely to be required for cultivation, I am convinced that any such reservation is absolutely objectless and can only have the effect of creating wide-spread distrust in the minds of the Ryots as to the view taken by Government of their rights in their holdings. I greatly fear this must have been already induced.

I must apologise to my Honorable Colleagues for the length at which I have dealt with this subject; but I have not time to be brief and it is the last occasion on which I can possibly champion the rights of the Ryots which I have so often found it necessary to assert. I very greatly regret to recognise that the necessity has increased as time advanced since I first came out to the country. Assertions of the right of the State to revise its demand for Land Revenue without any apparent recognition of an absolute limit to the demand; enunciations by Courts of the doctrine that the Ryot is a tenant-at-will liable to be displaced yearly at the caprice of a landlord, whether Government or a middleman; the loose talk of rights being conferred by a puttah, to say nothing of the lax general use of the terms *landlord* and *tenant*, lease and rent, to designate Government or Zemindars, Ryots, puttah and revenue, and the apparently prevailing ignorance as to the origin and history of landed tenures in the country, make me very anxious as to the future.

7th June 1882.

(Signed) W. HUDLESTON.

7-82
17-82
17-82
17-82

REVENUE (1882) DEPART

No.

*Minute by the Hon^{ble}
W. Huddleston.*

Dated

Reed.

No.

*Print
21/9*

SUBJECT.

*Regarding the question
as to Ryots rights in
minerals referred to
by the Government of
India.*

1882.

REVENUE AND AGRICULTURAL
DEPARTMENT.

From the Government of
Fort St. George.

Letter, dated 21st Sept. 1882, No. 1009.

Forwarding the views of this Government on
the question of the rights of the ordinary ryots
to mines and minerals.

Ms No 10623

Revenue Department

Proceedings of the Board of Revenue.

Dated September 30, 1880.

Read the following letter from J. Wore, Esquire,

Collector of Nellore to the Secretary to the Board of Revenue dated Nellore September 14, 1880, No 352b.

With reference to Board's Proceedings, December 11, 1879,

No 3309, I have the honor to report that the history of the District is devoid of any reference to the finding of Mines and Minerals in the holdings of ryots.

2. As no right over such Mines has ever been asserted with respect to them by Government it follows that the ryots have the full right at present subject to the condition of the Standing Orders that remission or resignation shall not be allowed when the ryot has made a part of the land unfit for cultivation (as by digging quarries or mines).

3. On the other hand I am aware of no instance in which an occasion for ryots to assert this right has arisen. There are disused copper mines at Samanipenta (Udayagiri Taluk) and Bogulapalli (Manigiri Taluk), but they belong to the Zemindars of Balastry and Venkatagiri, and iron sand need to be found and worked under the Moturpha rules in various places, but always in waste and unoccupied land.

4. The Tahildar of Nellore informs me that when ryots transfer their land by sale or otherwise, they insert in the deed a stipulation to the effect that all Minerals, hidden treasure and water sources found on

on

15
on the land shall be enjoyed by the Transferee.

Submitted to Government in continuation of Board's
Proceedings dated September 13, 1880, № 1323.

(True copy and exact)

Calcutta
Secretary

To

The Secretary
to Government

Rangoon Department

No. 5826 + 5958.

From Board of Rev. 13 Sept to No 1823
Dated 30 — 187.

FOR ORDERS.

The Secretary of State has in the words of the for of India ruled that

"Except in permanently settled States it will be presumed — that in the absence of any distinct judicial precedent, or proof of established usage the State has a right to universal."

As there appears to be no such precedent or usage in the Presidency the

para of letter in f. o. g. June 20 No. 533, which also contains the Sec of State's dispatch.

Revenue 1880 1881

44-5958

Proceedings of the Board of Revenue. New York 1883.

18th September 30, 1880.
New York 1880.

2110

Submitting to Board report from
to Secretary of State on the history of the
Board in regard to reservation of land
rights to Indians and Mexicans.

23570
210-11
259-94

Question as to
the State right
to minerals in
N.Y. holdings
appears to be
decided.

If so it becomes
necessary to
consider

"the terms on
which mining
privileges should
be allowed in
any cultivated
or occupied lands
----- wherein
the mineral
rights may be
decided to be
vested in the State."

The Mr. Flushing
with these two
questions before

17
on together -
See para 7 of letter
in J.O. 9 June 1881.
It will be
remembered
that the latter
has come up in
connection with
occupied paddy
plots in the
Mead, Applications
being in which
have been received
from Mr. Flushing.

See
qu.

1850 + 5753

FOR ORDERS.

Supplements
State right to
in Paper Holdings

Don't know

Let me have these
papers again in
Madras with the
volume on Mineral
right compiled
by Mr. Bayly &
myself. & the 13th
vol. on the part
Recovering title in
1854. (see in volume)
I am the whole of it
done 1/1/1850

Summit on

The question act
Right is not in
Minerals reported
I was the 1st
of India

under

Manava Sharma's
Institutes of Manu
Chap VIII.
verse 39.

Chap VII
verse 30

With the right of property
in this holding. I suppose
as a right in minerals
I think the best way
arrive at some definite
conclusion is a thing
together the best of the
be can give as to the
claims asserted by
the State. This Mineral
I do not know. The State
available to me, as to

off old words (British India)
precious minerals in the
soil in being is entitled
to help, by reason of his
General protection &
because he is the lord
paramount of the soil

"Plenty of gold - of
gold silver - address
just to the Capital Stock
as to the past time

part may be taken by
the King. Of grain, an
eight part: of timber of
a sixth. According to the
difference of the soil & the
labor necessary to
cultivate it.

Chapter 10
Aristotle says that the
King is a part of the
of the state, & that he
should be a part of the
people, as of his
or his nation - and
protect his people to
the utmost of his power.
Comm. to 20. line

The law in the
mercantile class &
in times of prosperity
must be only a small
part of their crops
& a fifth of their
personal profits.

10
In an eighth of their
crops in times of distress
or in the 12th in the
mercantile or when a
great public
advising - but which
of their gains or property
of the government
to the highest tax.

10
Like the poor people
but the provision for
deciding boundary disputes
quickly & reduce the
recognition of private
property in land & call
from labor devoted to
it & exclamation &
regulation. & from
limitation of right
asserted by the state.

The following extracts
show the practice of
land & royalties.

"From the earliest times to the middle of the 14th Century the land was assessed at a quantity of rice equal to the quantity of paddy required to sow it. So that a field of 10 Kaudes of paddy & so on it paid a land tax of 10 Kaudes of rice. It was paid in in the money of kind.

Between the years 1336 and 1360 Kurikhus Raja King of Vijayanagar had a reassessment in the principle laid down in the Skaster. From the produce is supposed to be 12 2 1.

Assayably this computation he supposed that 2 1/2 Katties of rice yielded 30 Katties of paddy. It is divided as follows

Mr. Mackenzie's Report
of 4 Aug. 1887.
on Immigrant Settlements
in Canada

To the Landlord 7 1/2 or 25 %
To the labourer 15 or 50 %
To the Cultivator 7 1/2 or 25 %

And still following the Skaster he divided the land as follows

To the Cultivator	1/6 of the gross	or 5
To Churches	1/30 of do.	or 1
To Brahmins	1/20 of do.	or 1 1/2
		7 1/2

"His settlement was concluded upon a rough estimate of the quantity of seed actually sown. It remained so until any alteration in the country was made. The British Govt. about the middle of the 17th Century. The British Govt. lived on about 50% and in 1660. the Vijayanagar Government. The settlement together with the list or standard

A Mercader therefore must be understood in general to have a right to no more than 45 per cent of the produce dividible between him self & the Corker. Except in certain circumstances - as follows

1st Inland and small tanks x x x the Mercader receives 50 percent.

2^d In high ground and large tanks where small picotals are used x x he receives 55 percent.

3^d In situations where large picotals are used x x he receives 60 percent.

x x x x x
A Mercader the portion of the produce & the inhabitants divide with Government - this has growing discontents and is invariably increased & thus

Mr. Place on Land Revenue in the Galilee. of June 1794.

Common practice of the District is to give the share of produce to the Government

B. of P. on Municipal Vileage Leases of Apr. 1808

The Province is only left to the Govt of Mr. St. George with the exception of a small & limited nearly the same system of landed property & revenue policy. The land has the history of the Corker to the Govt. the interest in the soil

has divided between the two x x x The Corker's share of produce was generally equal from each land in kind at rates varying from 40 to 60 percent of the gross produce after deducting certain portions distributed before the marketing commenced. The share of the Corker from dry grain land was generally less in cash & the amount for a fixed measure of land or so much for the land measure of land. but varying in the produce

Mr. Hodgkins report on Sidgul of 28 March 1808

In Sidgul the produce of Paddy was always after the requisition of the leaving divided after deducting to a certain kind above specified - to the Government & the Lihars in equal portions. & the share of the Lihars in the produce of dry grain

the acquisition of the service
land was then to be paid. And in
many instances for a given
quantity of land of a given quality.

Similar limitations of the
claim of lord occur in
the ordinances of the Arab
dynasties

The Institutes of Manu
prescribe regarding the cult.
lands of the subject - more irrigation
"that of the amount of the produce
those grounds $\frac{2}{3}$ shall be reserved
to the possessor & the $\frac{1}{3}$
to be paid to the royal
treasury." & as regards the
cult of the lands of the husbandman
that "of the produce $\frac{1}{3}$ a third
or a fourth shall be collected"

Alberici's Institutes lay down
the same & having been based
on the principle described
by Manu.

A German of learning & of
tastes that the sovereigns
share of the produce shall
be reduced one half.

The husbandman

In
Barin & Son's Analysis
p. 11.

be claimed for the State
be one third
of the husbandman
produce

Place on the paper
of 8th June 1799

22

22
See brief citations with
supplies for the present
purpose. I indicate some
provisional act the above
limitations of the lord's
demand on the land. I
quote them from a
treatise in the first of the
law. 10. 2. 10. 1. 10. 1. 10. 1.
10. 1. 10. 1. 10. 1. 10. 1.

22
I have the above
quoted from the actual
dicta on the position of
the right as ascertained
at the commencement
of the conversion to the
administration of the
country. I have again I
quote from the appendix
I have in the Fifth
Report of the Select Committee
of the House of Commons on the affairs
of the E. I. Co. of July 1812.
It is a perfect mine of gold.

"I have these circumstances
I think it must be admitted
as facts of the property"

that the Mirasidars have
undoubted territorial property
in the soil - that he drives
his right originally from the
sovereign whom he acknowledges
obedience. & the under-
stated position of the person
is the tenure by D. & C. holds it.
that under this impression he
uses it as a means to work for
his advantage & that by law
he conceives that right sacred
& inalienable & long as he
performs the conditions annexed
to it. * * *

but from admitting the right
of property in the soil I have
been a positive ground from
the sovereign. The Mirasidars
it is as well confirmed & there
is that of the proprietor. & his
estate in Great Britain.

Almost the whole of the land
in Malabar, although
uncultivated, is private property
held by known right. D. & C.
may be called upon to perform
the duties of the proprietor
in the soil.

Ms. Thackeray on
Malabar
of 4 Augt 1807

Mr L Munro on
Canara.
of 31 May 1800.

? Revenue due
to the Government

of Government, the Mirasidars
have the same
in the soil, & the
same rules regarding
private property. I have
been told that the
in question is a
question of law.

The price of land is low
* * but * * the property
itself was guarded by several
quantities of human labour
or rather custom or equity
in the transactions of the
naturally free & honest
this possession & this right
of land. The alienation
of land by sale or otherwise
was not restrained. If they
had gift or sale or even
the payment of rent could
be made from the proprietor
* * no crime in the proprietor
could extinguish the right of
the land to the Government.
* * It does not appear that
the Government have by their
treatment of the performance of
personal service or any other
condition beyond the simple
one of discharging the public
duty. The lands of Malabar
are the property of the Government.

under the same conditions & governed by the same rules of transfer as they are under the ancient government. The increase of access to the oil & dippos. has in some places annihilated the old proprietors & has everywhere diminished the quantity. But notwithstanding the nature of the property.

W. Thackeray's Report on Lanana of 4 Aug. 1807

"The greater part of the land in Lanana are private property. Original inscriptions on Stone & Copper prove the antiquity of this venerable institution. The earliest grants by ancient princes & Rajas of granting the land tax derived from certain lands & villages, this transferring the land tax from the treasury to the individual grantee. But the property in the soil was not granted because not possessed or claimed by the prince. Some he gave the absolute property in the soil, the land

4 24 7
I surely mentions the previous purchase of the right." x x
"The inscriptions & inscriptions on Stone & Copper are I have found in every part of Lanana. They together with the old accounts - the Black's books - traditions & the state of the country appear to indicate the people of the antiquity of the institution." x x "The different princes of Bidnor - Begamgarh & even Mysore have since I have questioned the general right of the people, though an arbitrary assessment, & individual acts of oppression, may have rendered some private estates less valuable."

Report of the Col. of Southern Asiatic Society of Dec. 1800.

I shall first explain

as I have been perusing

the nature of the tenure under
S. all the lands in the Timuculy
pothams - in Kinnamal &
in the Shringmuga district
xx being the comprehended
first villages of the Agmlara
vady - or villages of S. the
absolute proprietary right
is chiefly held by Brahmins
- second. Villages of the Pundaral
vady - or villages of S. the
absolute proprietary right is
chiefly held by Looda inhabitants.

Third. villages of S. having
some proprietary rights. Looda
inhabitants live in villages &
occupy & cultivate them.

The last General Division
comprises all these lands S.
The inhabitants are considered
as at liberty to sell & &
whether in the early periods
of Hindoo prosperity these
villages were individual

property like the Pundaral
vady & inherited to the S.
as the Guicci felt the property
or whether they have been
vested before the independence
then now occupy them as
in the S. culture, it is
not possible to ascertain
how if possible or any
except it result from it.
It is difficult for us
to know that the ground
thus occupied from the
time they were divided among
the first settlers live in
most cases continued to
pass from one generation
& another. That the land
occupied in the present is as
well known as his house
& that it has never been
customary to disturb his
possession as long as he
gilded to the ruler of the
country a certain share
of his labours. xx

xx
It has been the custom
to consider the Hindoos

as their own property

of old despotic & regulated
solely by the arbitrary will of
the reigning prince. Theoretically
revised, they are so. But in
practice they are little of this character
the ordinances of this religion had
generally the force of laws.
In this position they were beneficent
just. Even when the country
was in later times ravaged
by Muzulman armies. & the
adoption of the laws of Mahomed
with the Hindus gives produce
created universal confusion
the general criminal differences
in the degrees of justice, no fundamental
material innovations took place
in the right of landed property;
(known given to the public
assessment of the period)
such as I have described -
& the privilege of taking the
Globe B. a first book
brought forth for the first
it has now been the custom
to take from the poorest
cultivator as a negative
only yielded the public share

W. Skinner on Zanjore
19 May 1804

In Zanjore a Hindoo
disposes of his estate in
any manner he pleases.
The proprietorship
of the land belongs to
Government & the
landlord. He is
entrusted with the duty
of making it productive
lives upon it. & cultivates
it so long as
he pays its revenue &
no longer. But this
occupation of it, which
the superior is satisfied
has been converted by
the Hindoos into a
right. They have made
this right a property - &
they retain, sell, lend, give
or mortgage according
to their inclination. The
whole or any part of it -

From the Principal Secy.
of Bengal & Dickinson
8 Sept 1805.

Without entering on the
question of the
prosperity of the soil, I
will content myself with
stating that immemorial
usage has established
both in Bengal & Dickinson
that the occupant of the
land distinguished by the names
of Mirasidar or Mahajamin
has the right of selling,
bestowing, devising, or
bequeathing their lands in
the manner &c. & there is
no objection.

Whether this right was
originally granted by the
ancient constitution of
the country appears I am
not worth considering at the
present day. I think it a
fortunate circumstance
that the right does not
exist, whether it
originated in encroachment

or of the original right to
land & formal abrogation
of those rights, or in
the remotest antiquity
It is fortunate that at a
time when we are
contenting with the
means of establishing the
property & welfare of the
numerous people of these
provinces, we find the
lands of the country in
the hands of men who
full understand the
full right & advantage
of possession - Who
have enjoyed them in
a degree more or less
secure before the
British name was
known in India - &
who in consequence of
them have rendered
themselves & posterity the

as their own property -

of the provinces of Tanjore
& Trichinopoly: &c. &c.
The land property of these
provinces is divided & subdivided
in every possible degree.
There are perceptions of
4000 acres. of 400 acres.
of 40 acres. and of one acre."

"In this province land is
very much a species of
property &c. &c. Numerous
cases of disputed right in
land have been decided
by the local authorities and
the action of the Government
of H. H. the Nabob always
acknowledged, if it did not
respect. the right claimed
by the inhabitants in the
exclusive right of this
property in land. From
what has been said of
property in land in the report

W. Hodgson on
Tanjore of 26 Sept 1807

on Tanjore, or Coimbatore
by many collectors in
the provinces. The South
of the conclusions drawn
in the following extract
from an Introduction to the
History of British India
with it is believed, be
wholly or disputed.
In ancient times the
all land property was held
by grant from the sovereign
who was called Sole Proprietor
of the Soil and Lord of the
Inhabitants. But these persons
themselves little were to think
more than the grant coloring
with which the vain & trifling
of oriental fancy & high
of rank and nobility
regality. The Hindu
kings were in fact only
claiming the nominal proprietorship
of the soil & the grant of
land to the subjects
of this subject was given
in perpetuity to that any
claim as to the property
as their own property. and

or implied - of an absolute
paramount right in the property.
The landholders therefore were
in reality the proprietors of the
ground. By the possession and
cultivation of the tennish by which
they held it, very much resembled
our soccage tennish in England
at the present day. - x x x

a The name by which this
property is distinguished is
that of Quiras or Miraci -
This word has become familiar
to all ranks since the conquest
of the Marindans.

Shastri is the Sanskrit
word for generally used by
Hindus - and Carvachy
by those who are (authoritative)
castes) who may or may not
adopted the general term
Hindus - " x x x

"Each Swastimandir or
Swastidar considers himself
proprietor (I mean the work
proprietor is a limited Swastidar
to describe the Swastidar property)
of the land of his Swastimandir

Mr Hodgson a Resident at
of 28 March 1808

I therefore inform you that I deprive the individual
 of Sept. 80) of the pilot license
 authority while he continues

I deprive the individual
 of the pilot he has long
 authorized while he continues
 to pay the rent. is felt
 complained of as an
 act of injustice. The
 same in tal talan have
 looked in to the cause
 villages of the same
 fields from time immemorial
 The oppressions of the house
 of Hyder & particularly the
 ad hoc assessments made by
 Tippos Sultan may have
 as their own property. and

produced a temporary distress
 but these distresses have returned
 from time to time & this field & field
 neither the Hindus or Mussulmans
 Government appear (supposing this
 right in the soil as proprietors
 & the individual & proprietary
 right to be a right to demand
 that the proprietor ploughs for
 his land & sow & live & exercise
 that right. He has fair access
 to his own estate was well
 known to the party governing &
 those governed. It is true some
 accidents & difficulties arise & action
 led to which, land & property could
 have been taken - but where fraud
 could not come to act of oppression
 a life of change for the better or
 inability & death produced
 submission till the land became
 too heavy to bear, & emigration
 the only source of relief.

"In demand there is no
 class of people possessing
 any right of the nature of
 Colrs Report
 respecting the Government
 of the Southern
 States of 30 Sept 1802

30
 holders - & therefore in
 enforcing the proprietary right
 of the State to the land - the
 right of the individual
 will be violated. The right
 will however be firmly
 maintained & protected by
 the judicial courts in their
 private life & authorizing the
 soil & preserving this
 accustomed share.

Report of Colrs of
 Dir & Sub
 of 31 March 1800

"The resolution of Govt
 to dispose of the proprietary
 right in the Crown lands
 by sale & to determine
 the generally in practice
 from the point of the
 description of people they
 expect to become purchasers
 as well as from the objection
 that our people would
 have to purchase a proprietary
 right in that prescription
 had already made this one.
 The State has certainly
 considered the firm they authorize
 as their own property - and

to government save the
Muscovite, appears to have
considered the soil its own
or itself at liberty to deprive
the inferior subject of it
- like - In forming the present
Lunenburg system the colony
presumably greatly with reference
as an example & act upon.
No written document
is found, but this is known
as usage, will be established
as "law"

"No man who has
lived here in Canada
can ever obtain any
doubt with regard to it
land being private property"

"I have reason to believe
that I cannot speak with
any positive certainty
that the same tenures as
in Canada existed originally
from the very first"

Sir J. Munro
in Canada
of 9 Nov. 1800

Lord L. Buntine
Munro of 25 Nov.
1806.

31

the principle. In other
parts of the boundaries,
individual rights have been
trampled down by the oppression
favoured of despotic authority
but still there exists, almost
in every village, the distinction
of hereditary rights in inhabitants or
hereditary cultivators -
The hereditary right
to cultivate certain lands
of each the benefit of that
cultivation, seems to be
nearly one & the same
thing with the right in
the land called property.
Between man and man
these rights have an equal
value & security - but
before the sovereign who
assesses taxes a still
higher one or the other
right is good for
much"

W. Hodgson's Memoirs
of 1806.

"All the Regulations that
have been quoted, contain
a virtual witness of
a right having been

conferred & the Ryots & pay
this revenue according to their
pattals. While the law at the
same time defines how the
terms of the pattal shall
be regulated & how accommodated
to local usages & customs.

If this conclusion be correct
it may suggest the propriety
of enquiring whether the
Ryots can claim more or
less for more. They are
by law enfranchised in the possession
of their land - the extent of the
land is fixed - no increase
can be demanded of them
under any pretext.

It is of no moment to the
Ryots whether his ancestors
acquired their right by purchase
or by gift. Whether the right
be only a prescriptive right -
or whether it be a right lately
granted. It is unimportant
whether the Ryots be termed
called proprietors or tenants
"grumblers" or "mirasidars"
provided the law has preserved

32 15
I think that they have
always possessed. "A
subject in England has
only the usufruct & not
the absolute property in
the soil. or as Sir Edward
Coke expresses it. he
has the dominium
utile in fact dominium
directum - if the strongest
highest estate that
any subject can have
in England is no more
than the usufruct (Shelley's
the right of India may
be contented with
an usufructuary right.

Note of Mr. Hodgson
Esq. on Dindigul.
of 28 March 1808

"By the ancient system
of India, the situation of a
Ryot was much inferior
to that of a tenant in England
& which he continued to pay
the tax & fulfil the conditions
which by the custom of
the village he was bound

he could not legally be
dispossessed -

The foregoing extracts may
suffice for the present purpose
of showing the only right
he needed. Now as to the
right of the appurtenant
to the collection of papers
or Mirasi right compiled
mainly by W. W. R. Bayly
in part by myself.

The Whetstone in
1812 appears to have accepted
as conclusive Mr. Place's
argument in favor of the
Mirasi right. It is asserted
for the right in the jaghirs.

I have been satisfied since
that in Canara & Malabar
the lands in general appear
to have constituted a clear
private property, more
ancient & probably more
perfect than that of England
and that the landed tenures

have of course

See section of right
Report on the jaghirs
pages 42 & 43
vol 1

See "Landed Tenures"
ibid page 77

See Bellini's Memoir in his Memoirs on
the history of India. (Rev. Rev.
8 July 57) page 5

There is not a acre of land
in Southern India that does not
belong to some one. The
only land seen in fair. The
recognized jurisdiction of the
Municipality of the land
the land, the land, the land
the land, the land, the land
the land, the land, the land

The idea of a country being
the property of the land
in his dominions, is opposed
to reason & experience. The
assertion of such a right in
Europe by the introduction of the
feudal system, was a gigantic
mistake.

The idea of a country being
the property of the land
in his dominions, is opposed
to reason & experience. The
assertion of such a right in
Europe by the introduction of the
feudal system, was a gigantic
mistake.

right in the other parts
of the modern possessions
under the Presidency of Fort
St. George. The right of the
land and description
as there is no description
of the land as obtaining
in the jaghirs.

The right of the land
immediately connected
with the soil & the right
deduced from the land
Mirasi dars. and
Sajakeris or Rorakudis.

Though the Mirasidars appear
for some years to have
been regarded in the
light of fixed cultivators
only, with an hereditary
right of occupancy, so
long as they paid the
dues of Government -
more particularly regarding
sums I have established
the fact that they possess
a real property in the
land, having the right
of disposing of it.

and otherwise disposing of it
that this right they have always
do still exercise. x x

x x Of the Rajakaris or Pura Kudis
there are two descriptions:

The 1st Pura Kudi is the fixed
permanent tenant of the
Miracidar. The village in which the land
is situated.

The common Pura Kudi is
the temporary tenant who is
in vited by the Miracidar
from a distant or high lying
village & enters into his Miraci
under an engagement for
a given period. x x x

In these lands there
are no Miracidars & claim
the Ryot may be considered
as Pura Kudis holding
of the Cirkar, enjoying as they
do an hereditary right
of occupancy, subject to
the condition of paying the
rent demanded of them.

This right it has never
been the practice either of

It is said that from
the foreign & long
distance of the
a piece of land
permanently for the life
of a temple or the building
thereof it is so much
more from the public domain.
Some of these transactions
under the Rajakaris
dynasty are not older
than 4 or 5 centuries.

9/

34

The Rindors or of the
Musselman govern.
I take from the poorest
cultivator so long as
he remained in obedience
of the general authority of
the Cirkar & only yielded
the public share.
Indeed it is not to be
discovered in the history
of the Rindors from the
reign of their first prince
until the final downfall
of the Rindor authority
that any of the landed
right & the poor
Committee have thus
briefly adverted to
has been peached or
destroyed. on the
contrary their ruin wrought
is a time is proved

The form of deed of sale here
referred to, is given at length
in the report of the Com. of Southern
Pohjan. See sketch of 29d Dec.
1800. in the App. & the Fifth
Report. It purports to convey
to the purchaser "all Rindor
Punjab. Islands - water - stone -
trees - jungles - riches - treasure."

by some more distinctly than
by the ordinary form of deed of
sale.
I turn now to
the immediate occasion

for the foregoing reasons

In April 1875. the Govt.
in passing orders on a Report
by Mr King of the Geol. Survey
on Goldbearing Rocks in the
Mysore region to the Bd.
of Rev. among the
questions that

a as to the claim of
Govt. & any payment
by landowners whether
(a) ancient Malabar tenants
(b) proprietors under the Waste Land Rules
(c) ordinary Ryots
in respect of gold found on
their lands.

The Govt of India had been
informed in 1872. in reply
to an Enquiry by them. that
this Govt had always acted
on the principle that except
in regard to Govt. lands
the Govt. does not possess

and every well known
links beneath. or
every one that rises
above - the rest the -

In this case? of 11 Jan 77
this records its opinion
that any assertion of an
Exclusive Right by
Govt. in all Minerals
below the surface
is an invasion
of the private rights
of landholders &
is a much
dis satisfaction
if it ever has acted
or beyond the limits
of what is termed
Govt. lands.

any Exclusive Right in
Minerals. -

In the Bd. of Rev. in reply to
the last question & also
for matters to be considered
states that "as regards
ordinary Ryotwar tenants
it appears to the Bd. that
the Land Tax has essentially
displaced the occupation
of the soil for agricultural
purposes only & the right
of Govt. to share in the
crop. Theoretically
therefore Mineral wealth
might be regarded as
appertaining exclusively
to the landowner, that is
to Government. but
practically some arrangement
of the nature of a division
of the profits is probably
concluded itself as
fair & in accordance
with the general feeling
of the people"

In this letter of 23 Feb 77
the Govt. forwarded the Comspec
& G.O. with the remark that
it seemed desirable that
a distinct policy on the subject
of mineral rights & the levy
of a royalty be suggested. The
peculiar condition of this
Presidency & the land
don by the Govt of India
on the opinion that
Ryot should not be disturbed
as it was doubtful whether
the Comt. would uphold
the rights of Govt. "While
deserting legislation & so
have a retrospective effect
did not recommend itself
to approval.

In this letter of 1 Sept. 79
the G.O. forwarded a certain
legal opinions on the subject
of state rights in India in
mineral & minerals & copy of a
dispatch to the Sec. of State
from C. P. & M. Govt.

Rev. P. > Oct 74

107

"Seeing that different
classes of tenure may be
grouped under the generic
term of Ryotwari tenure
we hesitate finally to accept
the further inquiry & view
that all holders of
Ryotwari lands are
entitled to all mines
& minerals under their
holdings. Probably the
principles of Ryotwari
tenure is an ancient
may be entitled.
But we shall ask the
Madras Govt. to consider
further the question of
the rights of ordinary
Ryots in the minerals
under their holdings"
and accordingly in this
letter I am (last para) by
agreement that further
inquiry may be made
concerning the past history
of the claims or rights
of ordinary Ryots & mines
& minerals found under
their holdings. If the claim

of such land property has
previously been admitted
in practice on any considerable
scale, then the fact should be
capable of verification.
I know since the time of Sir
J. Mans. you have been
held & enjoy rights in this
land as against third parties
only & not the paramount
rights of the State, for those
seems to reason by the
claims of the Crown or of
the public & since found
under Ryot's holdings shd.
be summarily annulled.

It may be inferred from the
preceding parts of the para 6 of
the despatch & the Sec. of S. D.
the G.D. approved as that
these supposed "paramount
rights of the State" and
"claims of the Crown or the
public" & S.D. G.D. alluded
were the rights of "Whom
temporarily settled Estates
come under settlement with
the Minors but like the

37
A pa state claim
in all products
of a Ryot's holding

The first instruction
applied to land newly
taken up for cultivation
out of the waste - the second
to the case of a Ryot's holding

Rev. P.
9 June 80
No. 633

Other resources of such
Estates (which) constitute
assets of the land & which
may fairly be accessed
to this principle the G.D.
seems to reason & fall
in with the principle
of the concept of the B.D.
for the rights of the
the fact this is of the
claims or rights of the
G.D. in the matter. They
directed that in all future
settlements of land shd.
the rights of G.D. & Minors
be so recorded. or since this
is not possible then the
rights of G.D. & Minors
be so recorded. or since this
is not possible then the
rights of G.D. & Minors
be so recorded.

On 15 May 80. the G.D.
communicated to the G.D.
the reply of the Sec. of State to
this despatch above mentioned
in this reply the following
passages occur.

Mr. Lidd & Simons in your
view that the royal prerogative as
it obtains in England in respect
of gold & silver mines does not prevail
in British India at least outside the
Mining Zones. I am inclined to infer
that grantee of waste lands within
or without the zones, especially comprising
all products above & below the surface
are in the absence of provision to the
contrary, entitled to mines of gold
& silver found thereunder.

If this proposition be limited
to grantee of waste lands 'in fee
simple' under the rules framed in
different provinces in accordance
with the instructions given by my
predecessor, Sir C. Wood, in
his despatch W. 16 of 1872, I do
not dispute it. But I must
point out that the expression
'grantee of waste land' used
without any limitation, might
be held to include persons who
have received, under ordinary
terms of settlement, the proprietary
rights in lands formerly waste
& unoccupied, & to such grantees
this view does not apply.

As regards the second question
whether apart from the prerogative
the Crown in India can assert a
right to gold & silver & the
minerals found in proprietary

11

(i.e. Bengal)

38
lands you are disposed to
agree & admit in the per-
manent settled district
the state does not possess
such right. This was
the view arrived at by my
predecessor Sir C. Wood &
I am disposed to think that
even if the legal right
could be established, it
is not desirable to enforce
it. I apprehend that
the landholders of the
lower provinces are sufficiently
alive to their own interests
& their their rights & dwell
in the mineral resources their
estates may contain or to
afford facilities to others
to do so.
This however does not
apply to many other parts of
India. I look upon it as
pretty certain that the mineral
resources of this land will
be effectively worked by
the peasant proprietors, the
holders of *malikana* or *bonafide*
rights of village communities
or by the village communities
of Northern India & I apprehend
that the promoters of mining
enterprise will be likely to meet
with considerable obstacles from
various species of tenure & the
difficulties of dealing with

numerous small landholders.
Remains to be seen that can be
be taken to secure the State right
in minerals & still exist and
I am of opinion especially with
ref. to the views of the Madras
Govt. mentioned in paras. 3 &
6 of your letter, that in the absence
of any distinct judicial precedent
or proof of established law or
practice, such right should be
presumed still to exist in the
India. I take it that the notion
that payment for assessment
based on the agricultural value
of land & intended to cover the
right of cultivation, conveys
property in minerals below the
surface is essentially a modern
one & no such has occurred
to the Native Government & I am
own succeeded. I approve
the form of the instructions you
propose (para 6 of letter) & give
to the Govt. of Madras on this
subject. x x You conclude x x
that whenever the question as to
the right of the State to minerals
found in proprietary lands actually
arises it will be for the Government
Govt. to be in accordance

with practice & precedent.
But that when the State
right of proprietary right
is still unsettled & the
custom & practice regarding
minerals have not been settled
opportunity should be taken to
declare by legislation that
minerals are State property
with the views I fully
concur.
With regard to the third
section you consider that
the proprietors of lands
temporarily settled are
like the owners of the
minerals they may contain
such mineral resources
may take into account
for assessment &
settlement.
In this view I remain
in request that care may
be taken not to confer
proprietary right in
minerals by including
them among assessable
assets & that such
ownership has not been
prevalent previous to the present

x x "Regarding the last
subject discussed in your
letter - the terms on which applications
to mine in Govt. waste land x x
shall now be granted x x I have
to show that the arrangements
you propose appear to refer to
mining operations in Govt. waste
lands only. Should however
it be decided that mineral rights
in any owned or occupied
land in Madras are vested
in Govt. I should feel that
no crown in any such
lands, I presume that
both in regard to the right
of the authorizing proprietors,
mining privileges will be
granted on terms similar
to those now approved for
Govt. lands -

The G. I. is coming
I was this Dispatch
stated that "hereafter
except in permanently
settled estates - it will
be presumed that the

12/

100

India that in the absence
of any distinct judicial
precedent for the purpose
established under the
State laws of the
Minerals - that
General ruling that
Government waste lands
in the absence of any
provision to the contrary
are entitled to minerals
is not to apply to
any authority
leases made in the
course of settlement
operations or in the
exercise of District
Revenue work x x

Some proprietors of
temporarily settled
lands have been
judicially held to
be owners of minerals
contained therein
such mineral
resources may be
taken into account

on settlement x x
 but x x in the absence
 of judicial decision
 the presumption will be
 that such landholders
 are not owners of the
 minerals underneath
 the surface of their
 lands.

that zemindars are
 possessors of proprietary
 rights superior to those of Ryots

altho admitted by the
 Sec. of Govt. & the designation
 of "feudal proprietors"
 & "ordinary tenants"
 "settlement" in the
 "rights in lands" form

rights
 not given

The outcome of these
 instructions is that in
 the absence of judicial
 decision or established
 law or usage to the contrary
 Ryots have ~~not~~ ^{no} been held
 to have rights in minerals - & that mining
 but that European planters
 & others who have obtained
 land under the waste land
 rules prior to this recent
 modification do possess
 the right to minerals.

that mining
 privileges
 may be granted
 to third parties
 in the Ryot
 settlement lands

Further that in future
 "waste land" rules & in
 future for settlement of
 cultivation the minerals

that the present
 of Govt. This last position
 is the only one that can
 be got by any practical
 result - irrespective of the
 question of belief of the
 Govt. the claim in the public
 form has probably prevailed
 that result is this - that
 was much as it tends to
 disturb the basis for
 important agr. cultural
 statistics - because
 extension of settlement
 by an existing Ryotdar
 can no longer be
 merely included in his
 Ryotdar as heretofore,
 but needs to be recorded
 by a separate form - & the
 in a new form - & the
 total number of Ryotdars
 will therefore no longer
 represent the number
 of Ryotdars.

The result of the Rev. Secy's
 further inquiry into the
 general history of Ryots

rights in minerals, there
aspects be expected that in the Presidency
exclusive State right
in them having been
asserted, no occasion
has arisen for litigating
the question & no judicial
decision upon it has
ever been obtained.

It also shows that while
there is no record of any
discovery or working of
precious metals in Ryot
holdings - no restriction
has ever been placed on Ryot
quarrying stone or gravel
in their holdings but that
the previous assessment is charged
on such land although
undrained except for cultivation.

Further it shows that in this
country the Ryots when transferring
their paternal holdings by sale
use the identical form of sale
 deed conveying all property
above & below the surface
as has been employed for many

13/

time immemorial &
is quoted in a
former part of the
Notes.

The Bd. do not make any
assertion of an exclusive
State right in minerals
as calculated to create
"uncertainty of title" or
as regards future
"tenures" & they advocate
in its stead the living
for royalty. It is
practically the claim
of a share in the
particular product
of the soil. The Bd. have
already stated that
they do not object
in principle.

Further evidence of
the recognition in the
Presidency of a right

in Ryot incompatible with
the assertion of an exclusive
State right in minerals may
be found in the history of
the negotiations between
the Govt & Mr. Keith & the
Indian Iron Company & date
from 1833 to 1839

All the leases granted
on the several occasions
expressly stipulated that
the respective allottees of the
privileges conceded by Govt
should that land at any
former period been cultivated
or converted to uses connected
with cultivation. It is
intended upon the purpose
of raising or to that the
provisions be then consent
of the Ministers of the village
of other Ryot carrying on
in that manner -

In more recent times
of applications for mining
privileges, the Govt has
uniformly ruled that

43

26
the applicants must make
their own terms with the
holders of occupied
lands

28 I enclose this lengthy
series of the subject.
I submit that the only
conclusion that can
fairly be drawn from
the evidence that I have
brought together is
that the State cannot
without violating the
rule & practice dating
from time immemorial
assert in this country
(or as I believe in any
part of India) an
exclusive right to
minerals in occupied
lands but that it is
fully entitled to share
in such products, as
in any other produce
of the land -
I am myself further

the loose talk of rights
being enforced by a father.

Schweitzer

7 June 1892

No.

Minutes by the Hon^{ble} Mr. Huddleston C.S.
From on Ryots' rights in minerals
Dated 1882

FOR ORDERS.

E.D.W.

Minutes by the Hon^{ble}

W. Huddleston of 7th June

1882

Subject

Ryots' rights in

minerals.

The point on which we are
called to record an opinion
is as to the extent of the State's
right in minerals on lands
held direct from Government,
under the Dywansy tenure.
The opinion of the Secretary
of State is that in the ab-
sence of any distinct precedent
"precedent or proof of established
law or practice" the exclusive
right of the State to minerals
in such lands should be
presumed to exist though
India and he contended that
"the notion that payments
of an unspecified value
for agricultural value
of land used intended
to cover the right of cultivation,
convey property in minerals
below the surface is essentially
a modern one would
never have occurred to the
"Native Governments" which
our own succeeded
Mr. Huddleston in his ex-
planative minute shows
that the right of the State
to share in the mineral

Received

2/2/82

E.D.W.

Printed 10/1/82

9/1/82

as in all other products
of the earth was taken into
consideration in the
earliest times and the
proportion fixed at one
fiftieth. - He goes on to show
by the citation from the reports
of numerous & rightly au-
thorities that subject to
the payment of a stated
proportion of the produce
to meet the necessities of
the administration the
proprietary right of the
ryot in the soil of his
holding was as absolute
and complete as that
of the owner of an estate
in England. Like the
latter he was able to
mortgage, sell, devise
or otherwise alienate
it and the alienated re-
ceived it on the same
conditions of tenure and
the rights of the former
proprietor became vested
in him. On these principles
property has been changing
hands from time im-
memorial and for
the Govt to put forward
a claim now which
does not rest on law
practice or precedent
would undoubtedly
raise a feeling of
injust and discon-

490 - I read by mistake
the 2^d para relating
to wealth added erroneously
to the expected stock

Some

has never been asserted and
which

47

to the Govt. the land
share - the Govt. is
the Govt. and the Govt.
is the Govt.

* written memorandum

- tent which would take
long to allay - The contention
that the payment of
a proportion, i.e. the committed
value of the States share in
the produce, merely confers
the right on the ryot to
cultivate the surface
could only be upheld
on the hypothesis that
the State was the owner of
the soil and the ryot its
tenant; a supposition
for which there is not
the slightest foundation.
There being a law
depriving the ryot of
the State's right in
minerals & it follows
that if the Government
must take action in the
direction indicated by the
S.D. they must be prepared
to show that the British
Govt. have not recognized
this land & practice and
that the proprietary right
of the State in the soil & its
subsurface right & products
below the surface have
been from time to time
asserted & acted on. This
is impossible and as
pointed out by Mr. St. John
at page 9 of his Memorandum
there is direct evidence
to the contrary in the
negotiations between

Gosh & the Indian Iron
Company dating 1833-37

FOR ORDERS.

In replying I should
strongly insist that there is nothing in
record to show that the
Governments of this
Country have ~~had~~ ^{had} ~~any~~ ^{any}
British have ever asserted
an exclusive right in
the soil of the State & the
mineral products of the
soil in the occupation
of peasant proprietors
but on the contrary in
the negotiations with
the Iron Company ^{the Govt}
I have ^{admitted} ~~admitted~~ the rights
of the latter. In connection
with this I would point out
that the proprietary rights
of landholders under
existing being ~~very~~ ^{very}
disposed of the Government
holding under ^{superior}
manufact settlement
and of the purchasers
placed under the old
state land rules

The line of action proposed
is inequitable & impolitic
and that in the opinion
of the Govt the only right
that can be asserted is
that of the State
11-7-82 Share in the
product of the minerals

And Mr. Culler
in Committee
see last para on
page 8 of Mr. Stoddard's
minutes

It is to be noted
that the Government
has not yet decided
whether it will
assert its right
to the minerals
or not.

2/48

48

resources in occupied
holdings in such pro-
portion as may be
determined on as
fair & equitable, the
State demand being
levied in the form of
a royalty on the work
minerals raised.
So far there is no doubt
whatsoever -

As to the question of un-occupied land by Govt.
I am inclined
very much inclined
to go with Mr. Stoddard
in his opinion that
it will be a good adminis-
trative policy to deal
with such cases on the
same principles and
in giving them ^{at} ~~for~~ ^{at} ~~for~~
-ation to reserve only
the State's right to share
in the mineral produce
The wealth of the State
is dependent on the
prosperity of the people
and the grabbing policy
indicated with not
conduce to the latter
honor on this point,
any State's policy

It is to be noted
that the Government
has not yet decided
whether it will
assert its right
to the minerals
or not.

Thank differently I am
open to conviction -
no amount of argu-
ment will shake my
views in regard to the
rights of the negro to an
equal right to things.
H. J.

6/14/02

by anything we have done, & that we have no judicial decision against us - ~~Does not seem to be~~ it seems time that we ought to legislate. If it were at all reasonable to suppose that our paddy ryots - two millions in number, one & a quarter millions paying us 1/2% per annum on the average, the remainder an average of 3/6 1/2 - with work mines discovered to exist under the surface being occupied, it would be quite enough to say, let them pay something between the royalty fixed by Munro (500 B.C.), viz 50 percent, & the double of the exacted by Mahometan Law. But we know that we need expect nothing of the kind. The alternative therefore is to adopt the course recommended by the Secy of State, which I have quoted. Fixity of tenure at inequitable rates is no doubt the Ryots' charter from the days of Munro, but I expect even Munro would not have introduced a thing of the kind doing as the S. of S. proposes to do - remove, with full compensation, a Ryot who cultivates the surface of a gold mine, half of which is the King's due, & which the Ryot himself is helplessly without resources to work, or get worked.

D.F. - July 10/2.

Well. but will you limit the compensation to the loss of the surface or will you recognize the ryots' property below and pay him for his share in the gold - The S. of S. urges the exclusive right of the State to minerals in ryotwari holdings and says that it has no right in Zamindari estates. My contention is that the rights of property are in

Presented by Mr. G. S. Sullivan

12/7/82

I have read Mr. Huddleston's Minute & Mr. Sullivan's note.

The S. of S. has left all the mineral rights in Zamindari to the Zamindar, and in Malabar districts to the Zamindars, whom Mr. Huddleston considers equivalent to the Zamindars elsewhere. I think he should have left them in Canara to the Wargdars, whose full proprietary rights were held in administration by Munro.

The question, as it remains for him to decide, after hearing what we have got to say - is, to whom do the minerals belong in land occupied by the ordinary Madras Ryot? If to him, he presumes that the gold he discovered in any such land, mining privileges will be granted - with due regard to the rights of cultivating proprietors - on terms similar to those now applied for gold lands.

The 15th Rev. report that there is no judicial decision on the point, & no established custom - except that, on the principle of 'da minimis non curat Rex', ryots quarrying for stone or gravel have not been placed under any restriction. This is the only case we have, except one cited by Mr. Huddleston, where we refused permission to an Iron Co. to dig ore in Ryots' holdings without the Ryots' consent - but I cannot agree in the view that we permanently waived the State's claim to minerals in such localities by our procedure on this occasion. Holding therefore that we are not estopped

c.s. 7-82 both cases identical
11-7-82 but in Zamindari we have
P.C. 11-7-82 by the Permanent Settlement
for Ryots' holdings

Ann

90

Revenue Department

Draft G.O. D. 1008 of 21 September 1882

Civil

Read again paras 4 and 5 of G.O. 7th October 1879 No. 2029, and para 3 of G.O. 9th June 1880 No. 1133.

Read also the following papers:—

Proceedings of the Board of Revenue, dated 13th September 1880, Nos. 1133.

Proceedings of the Board of Revenue, 30th September 1880, Nos. 1133.

Minute by the Hon. W. Huddleston, dated 1st June 1882.

Civil { C. No. 5824 of 1880.

Civil { C. No. 5958 of 1880.

Civil { C. No. 4682 of 1882.

* Mr. Bernard's letter No. 10, dated 1st Sept. 1879, para 5.
80 - 80 - No. 1-39 dated 15th May 1880.

In the communication noted in the margin, the Government of India desire that further enquiry may be made concerning the past history of the claims

claims or rights of ordinary
rights to mines and minerals
found under their holding
and that the same
opportunity should be
taken to consider and
report upon the further
question as to the terms
on which mining or
privileges should be
allowed in any cultivated
or occupied lands wherein
the mineral rights
may be decided to be
vested in Government.

2. The first of these
questions ^{came} under
the consideration of this
Government in 1841,
and in answer to an
inquiry from the Govt
of India, they stated that

* Letter of 11th Jan'y 1842, No. 69.

⊕ G.O. of the same date
11.68.

the Government did not
possess any exclusive
right in minerals and
that no preservation of
right of way over private
lands as means of access
to mines has been at any
time made or claimed.
They further recorded the
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
land holders, and would
excite much dissatisfac-
tion if it ever was acted
on beyond the limits of
what is termed Government
waste? In

3. In April 1875, this G.O. 2nd April 1875, N^o. 512.
Government in passing
orders on a report by
Mr. King of the Geological
Survey on gold bearing
rocks in the Wynad,
referred to the Board
of Revenue, among
other questions, that as
to the claim of Govern-
ment to any payment
by ordinary ryots in
respect of gold found on
their lands.

4. In reply, the Board
stated 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

G.O. 23rd Jan'y 1877, N^o. 319.

14.
mineral wealth might
be regarded as appertain-
ing exclusively to the
Landlord, that is, to Govt.,
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."

5. In their letter of
23rd Jan'y 1877, N^o. 320,
this Government forwards
the correspondence to the
Government of India,
with the remark that
it seemed desirable that
a distinct policy on the
subject of mineral rights
and the levy of a royalty,
as

as regards the peculiar
condition of this
Presidency, should
be laid down ~~by~~ that
~~Act of 1871~~, and
with the provision that
Rights should not be
disturbed, as it was doubt-
ful whether the Courts
would uphold the right
of Government, "whilst
resort to legislation, which
would have a retrospective
effect, did not commend
itself to ^{their} approval.

6. From paragraphs
3 and 5 of the Government
of India letter to this
Government dated
the 1st September 1879
and paragraph 6 of the
Despatch to the Secretary

93

15
of State therein quoted,
this Government infer
that the supposed "paramount
rights of the State and
claims of the Crown and
the public" to which the
Government of India
alluded, were the right
that "when temporarily
settled Estates come under
re-settlement, the minority,
just like the other portions
of such Estates, constitute
assets on which land-
revenue may fairly be
assessed," and accordingly
directed in the terms of
paragraph 3 that "in all
future Settlements of land
revenue, the right of
Government

Government to minerals
is to be asserted and
reserved, or, where this
is not possible, then the
right of Government to
put a separate assessment
on mineral produce is to
be reserved. Further, on
a reference from the Board,
the Government indicated
their view that where no
reservations of mineral
rights has been made
in the past (this is the
case with lands held on
pottware tenure in this
Presidency), the claim
cannot be asserted
against holders of land
obtained under the waste
land rules, in this last
mineral case.

G.O. 28 Jan'y/80 11-104.

16
mentioned case, it
having been decided
that the claim does not
exist. They also expressed
the opinion that the
instruction of the
Government of India,
as to including minerals
in future settlements,
among the assets to be
assessed to the revenue,
included provision of
assessment in Ryotwari
Districts. They added
"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."

In his reply to the
Government

Government of India,
the Secretary of State
has declared that in the
absence of any distinct
judicial precedent
or proof of established
law or usage, the state
has a right to minerals,
except in permanently
settled estates, but has
approved of the call by
the Government of
India for further informa-
tion from Madras in
regard to the rights of
ordinary ryots to minerals
in Pottah land. Further
on, he observed that should
gold be discovered in
such land, he presumed
that mining privileges
would be granted, with

55

due regard to the rights of
cultivating proprietors,
on terms similar to those
now approved for Govt
lands.

8. In communicating
this Despatch, the Govt
of India put the second
question noted in ^{remarked} paragraph
1 ^{supra}, and that the
general ruling ~~was~~
that grantees of waste
lands, in the absence
of any provision to the
contrary, are entitled to
minerals is not to apply
to ordinary cultivating
leases made in the
course of settlement
operations or in the frontier
of

of District Revenue
with ^{and that} ~~where~~ ^{where} proprietors
of temporarily settled
lands have been judicially
held to be owners of
minerals contained
therein, such mineral
resources may be
taken into account
on resettlement; ~~but~~ ^{that} in the absence
of a judicial decision,
the presumption will
be that such landholders
are not owners of the
minerals underneath
the surface of their lands.

9. The outcome of
these instructions is
that the mineral rights
in Zaminaries are to

56

18
be left to the Zamindar,
and in Malabar District
to the jennies whom
Mr. Logan considers
equivalent to the Zamindars
elsewhere; the Wargdars
in South Canara, whose
full proprietary rights
were held with admin-
istration by Sir Thomas
Munro, not being mentioned.
That ordinary ryots whom
the Secretary of State
designates "peasant
proprietors" possessing
"under ordinary terms
of settlement the proprietary
rights in lands formerly
waste and unoccupied"
are to be held to have no
rights

~~of the~~ - but in numerous cases
"formerly" who are found to
have been in possession for
years.

rights to minerals; that
mining privileges may
be granted to third parties
in the Ryots' Patta
lands; but the European
planters and others
who have obtained lands
under the waste land
rules prior to their
recent modification
do possess the right
to minerals; and that
in future "waste land"
deeds and in Pattas
for extension of cultivation,
the minerals shall be
expressly reserved to
Government.

10. In their report
now under consideration

57

the Board refer to the
opinion they gave in
1871 which was substantially
what the Madras Govt
expressed in their letter
to the Government of
India dated 11th July
1872; and to the view
expressed by themselves
subsequently in 1875
vide paras 2 and 4
supra. The Board
point to the phrase
(to which attention has
been called by several
Collectors) usually
employed in deeds of
gift and conveyances
of immovable property
executed by natives;
under

under which the property
in minerals and
buried treasure is
transferred, as indicating
a general belief that
such are not the property
of the sovereign. As to
"distinct judicial precedent
or proof of established
law or practice" (para
4 supra) the Board
say "there has been
no judicial decision
on the point, and there
is no established custom
as regards valuable
ores as they have
not been worked to any
extent in private holdings,
but

A. C. C. that the landowners
have at least some interest
in them.

58

but on the other hand,
no restriction has been
placed on quarrying
for stone and gravel
and this might be
construed as a waiver
of the States claim to
the products below the
surface.

11. The Board's
recommendation is
"on the whole it would
seem far preferable
to take power to impose
a royalty on all ores
that may be worked
instead of asserting an
exclusive right to such
products. The former
course should secure
all that the Board
believe

believe, is desired for the
State, while the uncertainty
and distrust as regards
Patta ensures that
would be created would
be avoided."

12. The Honorable
Mr. Huellston, in his
able and exhaustive
minute read at the
head of these Pros
shows by citation from
the reports of numerous
and weighty authorities;
(1) that the State cannot
without violating the
rule and practice
dating from time
immemorial, assert
in this Presidency
an exclusive right
to minerals in occupied
lands.

57

lands, but that it is
fully entitled to a share
in such products as
any other produce of the
land;

(2) that subject to the
payment of a stated
proportion of the produce
to meet the necessities
of the administration,
the proprietary right
of the ryot in the soil
of his holding was
absolute and complete
as that of the owner
of an Estate in England;
(3) that like the latter
he was able to mortgage,
sell, devise or otherwise
alienate it, and the
alienee received it
on the same condition
of tenure and the
rights of the former
proprietor.

proprietor became
vested in him; —
(4) that on these principles
property has been
changing hands from
time immemorial,
and for the Government
to put forward a claim
now which has never
been asserted and
which does not rest
on law, practice, or
precedent would
undoubtedly raise
a feeling of distrust
and discontent which
would take long to
allay; —

(5) that it would be
straining the States
privileges to attach
the

60

the condition of recogni-
-tion of any exclusive
right to minerals to the
terms on which land
generally may be newly
occupied, although in
the interests of the
general public, it
may in particular
instances, be justifiable
to do so in view to the
development of
ascertained mineral
resources; and
and (6) that as regards
the vast bulk of the
land occupied or likely
to be required for
cultivation, such
reservation would be
absolutely objectionable
and would only have
the

the effect of creating
widespread distrust
(4) in the minds of the
Egyptians.

13. In thus briefly
reviewing all that
has been urged by the
different authorities
in the matter, the Right
Hon^{ble} the Governor
in Council can find
nothing on record
to show that the Govt
of this country, native
or British, have ever
asserted an exclusive
right on the part of the
State to the mineral
products of the soil
in the occupation of
the peasant proprietor.

He

61

* Mosaic Chapter VIII verse 39.
— do. — VIII verse 130.
A text in ancient Hebrew

And the ~~Law of the~~ Law of the
Mosaic, who immediately
preceded us, claiming that
right to a double tithe —

He is of opinion that
the contention that the
payment of assessments
i.e. the commuted value
of the States share in
the produce, merely
confirms the right on the
Egyptians to cultivate the
surface, could only be
upheld on the hypothesis
that the State was the
owner of the soil and
the peasant its tenant, a
supposition for which
there is not a sufficient
foundation. There
being a law defining
the extent of the States
right in minerals, it
follows that if the
Government are to
take action in the direction
indicated

indicated by the Secretary
of State, they must
be prepared to show
that the British
Government have not
13 recognized the law
and practice and that
the proprietary right
of the State in the soil
and its exclusive right
to products below the
surface, have been
from time to time
have asserted and
acted on. This does
not seem to be possible,
and as pointed out
14 by Mr. Huddleston, there
is direct evidence to
the contrary in the
negotiations between
the

as far as it goes, some

62
X.G.C. 14th June 1864 no. 1013 R.D.
" 23rd Jan^y 1868 no. 195 "
" 28th April 1869 no. 1151 "
" 22nd Sept^r 1876 no. 1325 "
" 2nd January 1879 no. 2 "

Indian peasants

as Raut is a
modern Mahomedan
term, before we are
to raise, when going
back to name.

this Government and
the Indian Iron Company
dated 1833-34, as well
as in more recent
cases of applications for
mining privileges,
where this Government
has uniformly ruled
that the applicants
must make their own
terms with the holder
of occupied lands.
14. Futility of tenures
at beneficial rates is
no doubt the ~~legitimate~~
charter from the days
of Manu, and their
proprietary rights, so
long as they pay the
States' dues, are in no
way inferior to those of
Zamindars

Zemindars holding
under the Permanent
Settlement and of the
purchasers of lands
under the old Waste
Land Rules. The line
of action proposed, is
therefore inequitable
in the opinion of this
Government, the only
right that can be asserted
being that of the State
to share in the produce
of the mineral resources
in the occupied holdings
in such proportion as
may be determined on
as fair and equitable,
the State demand being
levied in the form of a
royalty on the ore, or
minerals raised. On
the other hand, the
Rich

15. The alternative is
of course open to the Ryot
of selling his lands to the

13
Right Honorable the
Governor in Council
observes that the bulk
of the Ryots (two millions
in number, one and
a quarter millions
paying 4 Rs. per annum
on the average, the
remainder an average
of Rs. 36) who cultivate
the surface of a gold
mine, ~~half of which~~
~~is the things~~, are hope-
lessly without resources
and it would not ~~be~~
~~it~~ be reasonable
to suppose that they
would work or get work
the mines discovered
to exist in their holdings.
15. After a careful
consideration was considered

of all these circumstances,
 the Right Honorable
 the Governor in Council
 has come to the conclusion
 that it would be a
 wise policy to take
 powers by legislation
 to remove a ryot who
 cannot work his mine,
 and fully compensate
 him not only for the
 loss of the surface
 produce but also
 for his share, say
 50 per cent of the
net profits, in the
 minerals of which
 he is dispossessed.

When a ryot is capable
 and willing to work
 the mine or get it worked,
 he should be allowed
 the mining privileges
 similar

capitalist is desired
 to a gold mining speculation.
 The question is to be commonly
 settled in this way, when
 he is anxious to be employed,
 before he commences mining,
 to take the ordinary gold
 mining lease from Govt, the
 annual reddendum of 5 Rs.
 an acre being payable in
 addition to the 1/2 of
 the land. The case must be
 considered in a different
 but not be a common one, for
 a ryot, with an undivided
 field of mining through his
 fields, is not only desirous
 to part with his interest in it, while
 quite unable, as no ryot would
 be able, to work it himself.
 But such cases are numerous and
 important, before the Govt.
 is required to remedy the inconvenience.
 It is not however the case
 that a Ryot will be likely
 found to be the potentiality
 of learning with regard to the
 demands of his ambition; and all
 into the Govt. have come to explain
 is that besides the 1/2 already
 paid for occupied lands, they
 will limit their share of the
 minerals produced of such lands
 to the rent for area which they
 demand from miners working on
 waste lands, the proportion of 1/2.

similar to those approved
 for Government
 waste lands. *JW*

Copy to the Board of Revenue
 with 20 original Rs. 18/10/82

100
4

JW
 24/8/82

States' rights to
Minerals in negotiable
lands.

Guil. com.
21/9

x dated 21 Sept. 1882 aw. 1008

No 1009, 8/21 September 1882

The Secretary to the Govt. of India
Revenue and Agricultural Dept.

Sir,

Adverting to paragraphs
respectively
5 and 6 of Mr. Bernard's
letters no 10 dated the 1st September
1879 and no 1-39 dated the
15th May 1880, I am directed
to forward the accompanying
copy of Proceedings of this
Government wherein are
embodied their views on the
claims or rights of ordinary
rights to mines and minerals
found under their holdings.

To

The Government of India

Subject

State's rights to mines and
minerals in ordinary British
lands.

And to be submitted
to the Indian Government

Respectfully
The Government

11/11/19
4/11/19

Recd 21/9

Recd 25/9