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# MADRAS RECORD OFFICE.

## Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1042 7-11-11 Press
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Records of the Guntur
Collectorate
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Revenue (GB) Department.

PRESS SERIES.

G.O., No. 1242

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Mettre fond à ces Classeurs

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following Proceedings of the Board of Revenue, dated 11th February 1887, Forest No. 81 :—

*Read*—the following letter from J. GROSE, Esq., Inam Commissioner, to the Secretary to the Board of Revenue, dated Madras, 16th September 1886, No. 320 :—

I have the honor to submit letter, No. 3268, dated 20th August 1886, from Mr. Farmer (Acting Collector of Trichinopoly), addressed to you, which has been sent through me.

2. In this letter Mr. Farmer urges that Government should assert a claim to trees worth Rs. 6,852 standing in the bed of the tank of an enfranchised inam village named Samudram, and urges it on the ground that poramboke in inam villages has not been alienated to the inamdars.

3. With reference to G.O., No. 664, dated 21st May 1884, he points out that the question as to the alienation of poramboke has been settled as regards zemindaries, but is still open as regards inam villages, which are not specifically noticed in that order. He remarks that the orders extant on the subject are conflicting, and that what he has to show is whether, "as indicated by the Government in 1880 and the Board in February 1884, poramboke tank-bed in the present case was not alienated to the inamdar, or whether, as held impliedly by the Government and the Board in 1874 and expressly by Mr. Stokes in 1882, such poramboke was alienated as in the case of zemindari poramboke." The orders are given *in extenso* in annexure C.

G.O., dated 11th October 1880, No. 1325.
Board's Procs., dated 15th Feb. 1884, No. 516.
G.O., on Board's Procs., dated 23rd May 1874, No. 1227.
Bd.'s Procs., dated 23rd May 1874, No. 1227.
Mr. Stokes, Acting Collector, Tanjore, August 1882.

4. He considers that one fact with which he has to contend is the fact that the inam title-deed for Samudram purports to be for the "*entire*" village and for a stated extent, "*besides poramboke*," the words "entire" and "besides poramboke" being interpolations in the sanctioned form of title-deed. He forwards a letter from a former Acting Inam Commissioner, Mr. Glenny, stating that these "interpolations" were unauthorized; that they are at variance with rulings of the Board and Government; that it is uncertain whether Mr. Blair initiated the interpolations, but certain that he acquiesced in them; that the poramboke in inam villages continues to be reserved just as in ayan villages; and that he intends to submit a corrected form of these title-deeds for inam villages to Government. On this expression of opinion Mr. Farmer lays great stress, thinking that he has to get over express words in the title-deed as it stands now, giving the tank-bed to the inamdar.

5. I do not think the expressions in the inam title-deed can have the effect attributed to them by Mr. Farmer. According to Madras Act VIII of 1869, "nothing in the title-deed is to be deemed to confer on any inam-holder any right to land which he would not otherwise possess." If the inamdar has a right to the trees in the tank-bed, he does not get it through his inam title-deed.

6. Still it seems desirable to state that I think the opinion expressed by Mr. Glenny was wrong. The words "entire" and "besides poramboke" were not interpolations, possibly initiated by Mr. Blair. They were words introduced at the beginning in 1859 when Mr. Taylor was Commissioner, and they were introduced as a matter of course to modify the sanctioned form of title-deed, which was for a minor personal inam, into one which could be used for inam villages. They did not

conflict with any ruling of the Board or Government then extant. Mr. Glenny thinks they conflict with orders which imply that Government have alienated their right to all poramboke except poramboke proper (*i.e.*, land assigned for the communal enjoyment of the villagers), but I am not sure of this (as I shall show hereafter), and even if they did, the orders were passed long subsequent to the introduction of the words.

7. There is one ruling, however, and that the most recent of all with which the introduction of the words "besides poramboke" does seem inconsistent, viz., Board's Proceedings, dated 15th February 1884, No. 516. In this the Board say, "they consider that the rights of the inamdar are strictly confined to the cultivable land, to the assessment of which he may be entitled; but in regard to poramboke, unassessed waste reserved for public purposes, for roads, cattle-stands, water-courses, &c., the inamdar can have no rights, and it rests with the Collector, as the representative of Government, to assert, when necessary, the right of Government as landlord." If the Board are right in this ruling, it will be advisable to alter the present form of title-deed by altering the words "besides poramboke" into "besides all poramboke, except that reserved for communal purposes." I doubt, however, whether it can be upheld, though in apparent accordance with G.O., 11th October 1880, No. 1325.

8. As regards poramboke proper, all the right Government have over it in Government villages is the right to see that it is properly used by the people for the purposes for which it was assigned. This right has never been alienated to any one. It still remains and by the nature of the case must remain with the paramount power and its magistrates. True its Revenue officers may have ceased to exercise, in the case of entire inam villages, the power of imposing prohibitory assessment, but that is a minor matter. True, also, that when a village is given to an inamdar, Government loses the chance of a possible reversion from poramboke proper to other poramboke, as, for instance, when a tank dries up or a village-site is abandoned, but that also is a very minor matter. As regards other poramboke, there can be no doubt but what this belongs to the inamdar. The orders I have quoted imply this, and the analogy of the case to the case of poramboke in zemindaries settles it. Accordingly, so far as I can see, the words "besides poramboke" in the title-deed conflict with no right which is claimed by Government.

9. Even if it is decided that the tank-bed in Samudram, being a bit of poramboke proper, was reserved, I submit that it was reserved simply with a view to enforce communal rights, and not with a view to get revenue or for any other purpose, and that any taking of the trees which grow in it would be regarded by the people with reason as an interference with private rights.

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Enclosures.

From H. R. FARMER, Esq., Acting Collector of Trichinopoly, to the Secretary to the Board of Revenue (through the Inam Commissioner), dated Trichinopoly, 20th August 1885, No. 3268.

I have the honor to submit a memorandum on the claim of the Forest Department of this district to trees valued at Rs. 6,852 standing on the tank-bed poramboke of an enfranchised jaghir village.

2. There are three annexures to the memorandum—

Annexure A shows the origin of the grant and the circumstances under which the present claim came up for orders.

Annexure B contains a transcript of the title-deed produced by the inamdar and extracts from the inam register.

Annexure C contains extracts from the more important records quoted in the memorandum.

3. The matter has been pending for more than a year and a half. I regret the delay which has occurred, but I felt reluctant again to write on a subject connected with poramboke in proprietary estates, as I had already written a prolix paper on this subject. To avoid prolixity in the present case as far as I could, I wrote and rewrote the present memorandum, and though it may still contain redundant matter on some points, and may be defective in others, I hope



that it will not be so much open to objection as my former paper. I was also anxious not to submit the question until Mr. H. E. Stokes had returned to the Secretariat. That officer's views are so decidedly expressed (extract No. III in annexure C) that he does not apparently consider that there is even an arguable case for the Government. He has not, as far as I am aware, given in detail the authorities and grounds for his opinion. Two other Collectors of the district (Tanjore) formed opinions in favor of Government, and the Board agreed with them, as will be seen from the extract just mentioned and from Board's Proceedings, No. 516, dated 15th February 1884 (No. I in annexure C).

4. In deciding whether the case should or should not be placed before a civil court which alone can finally decide it, I would solicit attention to the following authorities:—

The Bombay High Court (page 273, appendix—, volume XII, Bombay High Court Reports) state:—"If it is too much to expect that an *ex parte proceeding in such a case as this* can be satisfactory, the Revenue officers, if unaided by hearing the facts fully debated by the professional advisers of the parties, and left to struggle alone through an enormous mass of documents and accounts, may err on either side."

The Government of India in a letter, dated the 6th July 1880, No. 301, to the Madras Government, state in such cases "nothing short of the clearest and most conclusive evidence" should be accepted against the claims of Government. It has also been stated that such claims against Government ought to be "distinctly restricted to the limits assigned to them by the public records." There are numerous other authorities and examples which will no doubt suggest themselves to the Board, and which show how Government interest may suffer by failure to place the matter before a competent civil tribunal. As the last orders both of Government * and the Board † on this subject are strongly in favor of Government claims, I hope that the Board will feel justified in supporting my recommendation that we should not give the inamdar this valuable property without requiring him to prove in court that it is his. I need hardly allude to the fact that the case is a test case, and that upon its decision rest decisions on many other more important cases. If arguments in favor of inamdars which have not been anticipated by me are put forward, I should feel grateful if allowed an opportunity of meeting them before final orders are passed.

Pages 228, 229, Revenue Selections, vol. III.

* G.O., No. 1325, dated 11th October 1880.
† Board's Proceedings No. 516, dated 15th February 1884.

5. As the question of acquiring by prescription a right to poramboke is not dealt with in G.O., No. 664, dated 21st May 1884, and as I have written somewhat exhaustively on this subject in paragraph 10 of the paper on which that Government Order is passed, I have not repeated the arguments here.

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*Memorandum regarding the claim to the Forest Department to trees on tank-bed poramboke in the enfranchised jaghir village of Samudram in the Kulitalai taluk of Trichinopoly district.*

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*Issue to be decided.*—The question for decision is whether the right to income derivable from a tank-bed (inam) in the enfranchised jaghir village of Samudram in the Kulitalai taluk of the Trichinopoly district belongs to Government or to the inamdar (jaghirdar).

2. *How the question was raised.*—The question has been raised by the District Forest-officer of Trichinopoly with regard to the trees grown on this tank-bed. The circumstances under which the question came up for orders are given in annexure A. The area of the tank-bed is 697·55 acres. The trees growing thereon are valued at Rs. 6,852. The District Forest-officer claims them all for Government under the authority of Board's Proceedings‡, No. 516, dated the 15th February 1884.

‡ No. I in annexure C.

3. *Particulars of conflicting orders on similar cases which have led to the submission of the matter for reconsideration.*—This proceedings no doubt supports the District Forest-officer's contention, and requires that the Collector should, as now requested by the District Forest-officer, "assert the right of Government as landlord" to the trees. I do not, however, think it right to act on these orders before submitting the matter for reconsideration.

The reason which has led me to do this is that conflicting views have been expressed on the subject both by Government and the Board of Revenue. It has, moreover, since the Board's orders of February 1884 were passed, been decided that Government alienated the poramboke

in permanently-settled estates to zemindars (G.O., No. 664, dated 21st May 1884). It has further been stated by the Revenue Secretary to Government that "the case of whole inam villages is similar to that of permanently-settled estates," and * that "Government claims no right to them" (poramboke) "in such estates."

* Mr. H. E. Stokes' order on letter No. 535 of the 15th August 1882, from the Sub Collector of Tanjore, asking if prohibitory assessment could be charged for unauthorized cultivation on poramboke lands required for common use in whole inam villages (*vide* No. II in annexure C).

† G.O., No. 664, dated 21st May 1884.

In the case of zemindari poramboke, the grounds upon which the conclusions against Government are based have been stated † in detail. As regards the poramboke now in question, I cannot find that these grounds have been thus stated. I propose, therefore, with reference to the conflicting views on record, to examine the case of the tank-bed in the village of Samudram, and record the facts which appear to me to be relevant in deciding whether or not it was alienated to the jaghirdar. I shall first notice the conflicting orders. The first orders are by the Board of Revenue and are dated 16th March 1866, No. 1333, ‡ and 21st November 1866, No. 8412.§ These orders, while recognizing the right of the inamdar to revenue derivable from assessed waste not reserved for public purposes, negative his right to derive revenue from poramboke, which has been thus reserved, and the first order denies the power of the Inam Commissioner to alienate such poramboke to the inamdar. The former of the Proceedings just quoted contains the following statement recorded about 1860 by the Hon. T. Muthusami Aiyar, now a Judge of the High Court, and then (1860) engaged as Inam Deputy Collector in North Arcot. This extract, though recorded with reference to the inam settlement, refers to the terms of the original grant, and with regard to these terms a reference is further solicited to pages 91 and 219 of Mr. Hudleston's Minute selections. "In most cases no sunnuds have been produced which can alone afford at this distance of time satisfactory means of ascertaining whether the poramboke is included in, or excluded from, the extent or the chekumma limits of the grant. I think it is probable in the highest degree, as alleged by village officers of old age, that no question of ownership to the poramboke had arisen during the survey, which was in consequence conducted without reference to it, fields being entered consecutively in the direction in which measurements were taken. It must be borne in mind that a general impression is prevalent, especially in the Chittoor taluk, that the right to poramboke vests in the Government, and that any portion thereof brought under the plough is liable to be fully assessed. On this principle the Revenue authorities seem to have acted in some cases, exempting, however, such lands from assessment where the agraharamdars asserted their right, and proved it by means of sunnuds or other reliable evidence. There are instances in which the inamdars have never challenged the right of Government to assess the poramboke, and paid the assessment charged without complaint. On the other hand, there are also cases in which the village officers have not entered poramboke lands rendered fit for cultivation as liable to assessment, and the lands have been accordingly enjoyed as inam." The Inam Commissioner, Mr. Blair, it will be seen from his letter recorded in the first Proceedings quoted above, was in favor of holding that all poramboke had been alienated by Government to the inamdar. Before expressing this view in 1866 in favor of the North Arcot inamdars, he had expressed ‖ the same view with regard to the Tanjore and Bellary inamdars in 1865. This, however, was negatived by Government, who stated that they saw "no reason for surrendering to the agraharamdars the land which as poramboke was reserved for the convenience of the public, notwithstanding that it had subsequently been diverted from its original purpose."

‡ No. III in annexure C.

§ No. IV in annexure C.

‖ *Vide* his letter recorded in G.O., dated 11th October 1860, No. 1325. (No. V in annexure C.)

This order has special reference to Kistna, and it ¶ will be seen that the proprietors of whole inam villages in that district had, as in the cases noticed in North Arcot by the Honorable Muthusami Aiyar, admitted that the poramboke in their villages belonged not to them but to Government. They even went further and offered to pay "two-thirds of the whole assessment thereon as an additional quit-rent," under orders of the Board passed with regard to relinquished and resumed inams excluded, like the tank-bed now in question, from the area upon which the quit-rent of proprietors of whole inam villages was fixed. It will thus be seen that the Board of Revenue, in passing the order of February 1884 upon which the District Forest-officer now wishes me to act, and in which they say that the inamdar can have no right to land like the tank-bed of Samudram, were following the Government Orders of 1880, which, like the frequent admissions against their own interests of the proprietors concerned, indicated that, as stated by the Board, the inamdars "can have no right" to poramboke, and that Government continues to be the landlord, as poramboke, like minor inams, had never been alienated to the village inamdars. But, as stated before, there have been other views expressed by the Government and the Board, and I shall now notice these. They were expressed with regard to Godávari district in 1874, and they are important as perhaps being those to which Mr. H. E. Stokes referred in 1882 when he stated that "the case of whole inam villages is similar to that of permanently-settled estates."

¶ *Vide* Kistna Collector's letter quoted in the above Government Order.



The question in Godávari was first raised with regard to zemindari porambokes, and the ruling was subsequently taken to apply to whole inam villages. The Collector of Godávari in 1874 argued that a zemindar had nothing to do with land, which as poramboke was excluded from the permanent settlement, and as such was the property of Government. The Board did not agree with the Collector in thinking that because the lands were excluded from the permanent settlement they were the property of Government. The Board went on to say: "It is true that the assessment leviable on the lands was not taken into account when the peishcush was fixed, but that was done not because the Government wished to retain their right to the lands, as in the case of the inam lands excluded from the permanent settlement, but because the lands were not cultivable by their nature. The permanent sunnud does not reserve any right to Government in these poramboke lands, as it does in the case of inam lands excluded from the permanent settlement."

Board's Proceedings, dated 23rd May 1874, No. 1227. (No. VI in annexure C.)

Further on in the same year, the proprietor of a whole inam village who had been charged prohibitory assessment for cultivating poramboke (tank-bed) in the village claimed a refund, and the Collector recommended it on the strength of the Board's orders (just quoted) of the preceding May, passed with regard to zemindaris. The Board also recommended the refund, and the Government sanctioned it * on the ground that the tank-bed did not belong to Government, and that "as a general rule, tanks lying within inams or zemindaris are the property of the inamdar or zemindar and not of Government." It is here asserted that poramboke was dealt with at the inam settlement as it had been at the permanent settlement. The order dealing in detail with the grounds for holding that zemindari poramboke was alienated expressly omits to deal with poramboke in inam village, and thus seems to leave the question an open one. These are circumstances which have decided me before acting on the Board's orders of February 1884, as requested by the District Forest-officer, to place before the Board the result of my examination of the grounds upon which these orders of 1884 must be based. I have thus to quote authority to show whether, as indicated by the Government in October 1880, and by Board in February 1884, poramboke tank-bed in the present case was not alienated to the inamdar, or whether, as held impliedly by the Government and the Board in 1874, and expressly by Mr. Stokes in 1882, such poramboke was alienated as in the case of zemindari poramboke.

Board's Proceedings, dated 4th November 1874, No. 3179. (No. VII in annexure C.)

* G.O., dated 26th November 1874, No. 1456, R.D.

4. *Conclusions anticipated.*—The conclusion I arrive at is that the Board's orders of 1884 should, as requested by the District Forest-officer, be acted on. In arriving at this conclusion, I find that the case of poramboke, specially set apart for some public purpose, was dealt with by the Inam Commission started in 1859 in a manner different to that in which similar land was dealt with at the permanent settlement conducted more than 50 years earlier. I find that the inam settlement differed from the zemindari settlement as regards the manner that poramboke was dealt with on the following points:—

(i) In the inam title-deed the area of the village is given exclusive of poramboke. In the zemindari title-deed no area is given, but certain classes of land, held not to include poramboke, are mentioned as reserved.

(ii) In the case of the inam settlement there is no enactment, which like Regulation XXV of 1802 can be taken to imply the alienation of poramboke, because it does not mention it as reserved like inam.

(iii) Inamdars have, and zemindars have not, admitted the right of Government to poramboke like that now in question. I find that a scrutiny of the records of that settlement, in the case of the village of Samudram now under reference, shows that poramboke expressly reserved for specified public purposes (including the tank-bed now under reference) was treated in exactly the same way as the three following kinds of lands which are similarly excluded from the area on which the quit-rent was fixed:—

(1) Minor inams;
(2) Part of the village (one-fifth) which had escheated to Government; and
(3) A part of a neighbouring Government village which the proprietor had encroached on and added to the village of Samudram. The excluded land measured 1853·69 acres and the included land 1603·73 acres.

In the waste alienated was included some waste land which in the early accounts used to be called poramboke, though not reserved for any specific public purpose, but no poramboke which, like tank-bed, was received for a particular public purpose. I find that one of the chief doubts



G.O., dated 21st May 1884, No. 664, R.D.

which have arisen on the subject of the treatment of poramboke at the inam settlement seems to be owing to the unauthorized interpolation,* in the Inam Commissioner's office, of the words "besides poramboke," and the word "entire" before the word "village" in the title-deed, which words are not found in the forms of title-deeds approved by the marginally-noted order of Government. When the proprietor is called upon to establish, as he must do, by unequivocal terms in his grant, his title to poramboke revenue, the conclusion I arrive at is that his grant will be found to negative instead of establishing his claim, and that authorities show that the grant cannot be supplemented or varied by conjecture or inference, or by extraneous matter, except when a latent ambiguity has to be cleared up.

* Letter, No. 148, dated 15th April 1886, from Inam Commissioner. (No. VIII in annexure C).

No. 1069, dated 9th August 1859.

5. *How the point at issue must be proved.*—I will now state how it appears to me that the conclusions anticipated in the last preceding paragraph must be proved. It will then remain to attempt to prove them.

As regards production and nature of proof, there are three questions to be decided.

(i) Does the burden of proof rest on the grantor (Government) or on the grantee (inamdar)?

I find in the next paragraph that it rests on the inamdar.

(ii) Must the proof be afforded by the title-deed or independently of the title-deed?

For the reasons given in paragraph 7, I find that the rule is that the title-deed must decide the question, but that there are exceptions to this rule. For instance, if the subject-matter of the grant is inaccurately described in the title-deed, as a village, extrinsic evidence is admissible to prove to what area the grant really applies.

*Falsa demonstratio non vocet.*—(Section 95, Indian Evidence Act). It may thus be shown that part of the "village" was reserved by Government, though the grant speaks of the "village" generally.

(iii) If the title-deed is not clearly and distinctly in favor of alienation of the land in question, can the alienation be considered proved?

For the reason given in paragraph 8, I find that nothing short of clear and distinct language in the title-deed evidencing alienation will be sufficient to prove such alienation against Government. I further find that even if there be such clear and distinct language in the title-deed, it will be inoperative to prejudice the right of Government if used without the sanction of Government.

6. *Burden of proof.*—The first issue is regarding the burden of the proof. We require to know, in case no evidence is offered, to whom it will be presumed by the Courts that the tank-bed now in question belongs. Upon this point I would beg to refer to the following ruling † of the Bombay High Court passed in a case where a private person claimed land, the alienation of which was denied by Government:—

† Pages 454 and 584, Indian Law Reports, Bombay, vol III, Bashkarappa v. the Collector of North Canara.

"The principle from which we must start is that waste-lands belong to the State."

Section 102 of the Indian Evidence Act provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Upon these grounds it appears to me that a Court may be reasonably asked to require the inamdar to prove his title to the tank-bed now in question, and that Government in the absence of such proof may claim it, and under the rule, *quæqued plantatur solo solo cedit*, may also claim the trees growing thereon, which the inamdar has prevented the Forest Department from removing. But granted that Government will be required to do nothing but meet the arguments of the inamdar, it becomes necessary to see what the arguments are likely to be and how they are to be met.

7. *Where proof must be sought.*—We thus come to the next issue which takes for granted the existence of a title-deed, and the question is whether the proof of title to the tank-bed must be afforded by the title-deed or not.

Upon this issue I quote the following from the Indian Law Reports:—

"The rights of a grantee are defined by the grant under which he holds so much as it confers, he owns, and no more."

Indian Law Reports, Bombay, vol. III, page 717.

As in the last issue the ruling of the High Court quoted seemed to be a practical application to an analogous case of the rule as to burden of proof contained in chapter VII of the Indian Evidence Act, so the ruling now quoted seems to afford in the same way an application of the rules on the exclusion of oral by documentary evidence contained in chapter VI of the Indian Evidence Act. The first section (section 91) of that chapter provides that when the terms of a grant have been reduced to the form of a document, no evidence shall be given in proof of terms of such grant except the document itself, but this does not preclude extraneous evidence in case it can be



shown that the grant contains a latent ambiguity. Section 95 of the Indian Evidence Act provides this safe-guard against "questions of substance going astray and losing themselves in questions of words."

For instance, it is known that the word "village" is an ambiguous term used in several senses. If the word "village" in a title-deed were held to include all the land of a village, the title-deed would purport to convey much that did not belong to the conveyor.

As Mountstuart Elphinstone points out (page 75 of History of India, 3rd edition), when speaking of villages of the very class now in question, "want of advertence to this circumstance has led to mistakes regarding the property of the soil. The native expression being 'to grant a village' or 'a district,' it has been inferred that the grant implied the whole, and excluded the notion of any other proprietors."

Government revenue from poramboke might of course have been granted without infringing the right of others, but the above quotation would show, it is submitted, that even if the area of poramboke had not been excluded from the area entered in the title-deed, alienation of such revenue cannot be inferred from the use in the grant of such an ambiguous term as "village."

If a title-deed purports to convey the village of A, measuring 20 acres of "cultivable land," and it is shown that besides these 20 acres of cultivable land the village contained 20 acres of cultivable and uncultivable land, evidence might, it is submitted, be produced, under section 95 of the Indian Evidence Act, to show whether the framers of the deed meant, when saying they gave the village of 20 acres, to give the whole village of 40 acres, or to give a certain specified area of 20 acres out of the village of 40 acres.

8. *Strength of proof required.*—The third issue is—must the part of the grant under which the land in dispute is claimed by the inamdar be necessarily in his favor, or will it be sufficient to establish his right thereto, if it admits a construction in its favor, while at the same time it admits of a construction in favor of Government. Upon this issue, the following quotations appear relevant. The first extract is from a judgment of the Exchequer Chamber in a case that went up from the Queen's Bench; the second is an extract from Broom's Legal Maxims; and the third is an extract from the Bombay High Court Reports.

In the first case Chief Baron Pollock said: * "The grant is construed most strictly against the grantee and most beneficially for the Crown, so that nothing will pass to the grantee, but by clear and express words, the method of construction, just stated, seeming as recently remarked to exclude the application of either of these two phrases—*expressum facit cessare tacitum* or *expressio unius est exclusio alterius.*"

* Page 906, vol. II, Ellis' and Blackburne's Reports. "The Queen v. the Eastern Archipelago Company."

The second quotation is from Broom's Legal Maxims. It is as follows: "That which the Crown has not granted, by clear express and unambiguous terms, the subject has no right to claim under a grant or charter."

Page 583.

The third quotation is from the Bombay High Court Reports: † "In construing written grants from the Crown to the subject, the well-known rule is, that if the grant be not clear but ambiguous, it must be interpreted favorably to the Crown. In no species of grant, said Cockburn, C.J., does the rule of construction more especially obtain than in grants which emanate from and operate in derogation of the prerogative of the Crown."

† Page 214, appendix, vol. XII.

"Lord Stowell said that the rule was based upon this just ground, that the prerogatives and rights and emoluments of the Crown being conferred upon it for great purposes, and for the public use, it shall not be intended that such prerogatives, rights and emoluments are diminished by any grant beyond what such grant by necessary and unavoidable construction shall take away."

Finally, it is submitted that if the officer who acts on behalf of Government in issuing the title-deed enters in that title-deed words which do not appear in the form of title-deed sanctioned by Government, but which purport to derogate from the prerogative of the Crown, such interpolation will not, it would appear from the following extract, be binding on the Government, nor could the grantee rest thereon a valid claim against Government:—

"A waiver of the prerogative of the Crown is not to be easily implied from the correspondence of its officers, unless they have full authority, and their language is clear and unequivocal" (page 215, appendix, volume XII, Bombay High Court Reports).

The authorities now quoted seem to show that the part of the inamdar's grant under which he claims the revenue or income from the tank-bed now in dispute must be embodied in words, duly authorized by Government, the only and necessary meaning of which is that the income claimed is thereby conveyed to the inamdar. It will thus be beside the point to show either by applying the principle involved in the phrase *expressio unius est exclusio alterius*, or by the application of any other argument, that the deed does not contain words which necessarily imply retention or non-alienation of poramboke by Government. Such words are not needed by Government, while on the other hand, words necessarily supporting and evidencing alienation of the tank are indispensable to the inamdar's claim.

9. *Result of scrutinizing records of title in the present case with reference to the rules of construction on the above four points noticed in paragraphs* 6, 7, *and* 8.—It now remains to examine the Inamdar's title-deed with a view to deciding whether an application of the above rules shows that the 697 acres of tank-bed containing trees claimed by the Forest Department and valued at Rs. 6,852 were alienated to the inamdar as indicated by the orders of 1874 quoted in paragraph 3 above, or remain the property of Government as indicated by the orders of 1880 and 1884 quoted in the same paragraph.

Applying the first of the three rules, it appears that it is upon the jaghirdar of Samudram and not upon the Government that the burden of proof of title to the tank-bed poramboke lies; until the jaghirdar proves his title, the Government must, it would appear from the authorities quoted above, be considered the owners of the tank-bed and the trees thereon.

Applying the second rule, it will be seen from annexure B that the grant has been reduced to writing. Consequently the issue regarding the alienation or non-alienation of the tank-bed must, as required by section 91, Indian Evidence Act, be proved by the grant, unless in the case of exceptions embodied in that Act, such, for instance, as a latent ambiguity which may be explained as provided by section 95 by extrinsic evidence.

With reference to the third rule in paragraphs 7 and 8 above, I have first to strike out any unauthorized interpolation which it may contain, then with reference to the second rule to clear up any latent ambiguity which may be discovered, and finally to see whether it contains any clear and unequivocal provision alienating the tank-bed poramboke.

Annexure B, to which for the text of the title-deed I now beg to request reference, contains a transcript of the title-deed produced by the inamdar. The parts printed in the original are printed in the copy, and the manuscript parts of the original have been inserted in the manuscript. The annexure also contains extracts from the inam register (which is believed to be relevant with reference to section 95, Indian Evidence Act, to explain the terms of the title-deed) prepared at the time of issue of the title-deed in 1865 by the Commissioner who issued the title-deed, and showing the data on which he arrived at the area entered in the title-deed, and at the quit-rent charged on that area. Before dealing with the facts evidenced by the title-deed and the contemporaneously prepared register, it will be well to notice that there are certain additions made therein which are not in the form approved by Government. These additions are the insertions of the word "entire" before the word village, and the interpolation of the words "besides poramboke" in the margin opposite the area of the "village." From letter No. 148, dated 15th April 1886, from the officer in charge of the Inam Department (extract No. VIII in annexure C), it will be seen that these interpolations were "unauthorized, and at variance with the rulings of the Board and Government," and that "poramboke continues to be reserved just as in ayan villages." I propose, with reference to the Bombay High Court ruling quoted towards the end of the last paragraph, to ignore these interpolations, as it would appear that being unauthorized, they cannot affect the question of the Government right to the tank-bed poramboke.

Dealing with the title-deed as it stands after the removal of the words, I shall first show how the area entered in the title-deed was arrived at, and then how the quit-rent charged on that area was fixed. First as regards the area—The subject-matter of the grant is stated in the title-deed to be the "village" of Samudram and to be claimed to be of 1603·73 acres of cultivable land, but from the contemporaneously prepared inam register the "village" is shown to contain altogether 3457·42 acres, the particulars of which were as follows:—

| | ACRES. |
|---|---|
| 1. Minor inams ... ... ... ... ... ... ... | 277·41 |
| 2. Poramboke ... ... ... ... ... ... ... ... | 979·09 |
| 3. Resumed by Government ... ... ... ... ... ... | 435·59 |
| 4. Wrongly included in the village ... ... ... ... ... | 161·60 |
| 5. Entered in title-deed ... ... ... ... ... ... | 1603·73 |
| Total ... | 3457·42 |

The jaghirdar will probably admit that the village of Samudram stated in the title-deed to be claimed to be acres 1603·73 in extent is, as a matter of fact, acres 3457·42 in extent. As the language (quoted in the margin) thus used in the grant seems to be unmeaning with reference to existing facts, it seems that extrinsic evidence as to whether the subject-matter of the grant was the "village" (acres 3457·42) or only acres 1603·73 of the village, is admissible under section 95. The inam register seems to afford the best evidence on this point. It was signed by the Commissioner, who issued the title-deed, nine days before he issued it, and shows that the area of 1603·73 acres entered therein, as claimed to be the extent of the inamdar's village, was arrived at by deducting from the total area of acres 3457·42 the first four items given above and aggregating acres 1353·69 or more than half the village. The object of excluding items 1, 3 and 4 from the area alienated to the inamdar is sufficiently obvious. As regards the remaining item, poramboke, I shall, for the present, simply

"I acknowledge your title to the village of Samudram claimed to be of 1465·23 acres of dry, 156·71 acres of wet, and 33·79 acres of garden land" (total 1603·73 acres).



draw attention to the fact that it was treated in the same way as land admittedly not alienated, and as regards the possible objection that in the absence of a statement of the object or consequence of non-alienation, alienation must be presumed, I would remark that such a contention is not in accordance with the rule requiring proof of alienation to be in clear and unequivocal language contained in the grant. I shall notice further on other objections to presuming that a thing has been done because the reason for not doing it is not given.

Now as regards the data upon which the quit-rent of Rs. 267 was fixed. The area leased for cultivation and yielding a return to the inamdars was, taking an average of three years, as shown in the margin, 806 acres. This extent of land was returned as yielding on an average Rs. 1,454-5-0. Much of the leased land must have been waste, for it was stated that the waste amounted to nearly 1,400 acres, or more than one-third of the village. Perhaps, however, inam and other waste not included in the grant were inadvertently spoken of, when mentioning the area of waste in the village. The Deputy Collector who made the original recommendation made no recommendation to increase the assessment on which quit-rent was to be calculated on account of that part of the waste not included in the 806 acres yielding Rs. 1,454 above mentioned. The Special Assistant to the Commissioner proposed that the assessment should "on account of prospective improvement" be increased from Rs. 1,454-5-0 to Rs. 1,600. One of the sharers receiving an income of Rs. 178 out of the total of Rs. 1,600 had to pay half of it, or Rs. 89 as quit-rent; the other 5 sharers who were debited with the remaining Rs. 1,422 of the income paid one-eighth of it, or Rs. 178 as quit-rent. These two sums added together give 267 rupees, the amount of quit-rent entered in the title-deed as due for the 1603·73 acres of wet, dry, and garden lands. The proportion of quit-rent included on account of waste was, I calculate, Rs. 24. I now come to the arguments which may be based on the facts stated above. It may be said that the subtraction and the entry of the remainder only in the title-deed cannot affect the inamdar's title to land thus subtracted, and not entered in the title-deed, if it can be shown that the inamdar's title to the subtracted land, not entered in the title-deed, had always been insisted on by the inamdar, and recognized by Government before and since the issue of the title-deed, and that part of the quit-rent fixed on the "village" and paid by the inamdar (jaghirdar) represents payment on behalf of the tank-bed now in question. In reply to this, I would first notice that the excluded area consists of the item (No. 2 mentioned above) poramboke, measuring 979·09 acres and including the tank-bed in dispute, and of items 1, 3 and 4, aggregating acres 874·60. I am unaware of the Jaghirdar ever having claimed any right to the last mentioned three items, which were treated at the settlement in exactly the same way as the remaining item poramboke. I am unaware of Government ever having recognized the inamdar's right in the excluded poramboke in this village any more than it did in the excluded inams. I am aware, however (*vide* paragraph 3 above), that proprietors of other villages, settled under the same rules, have admitted that the exclusion in the case of poramboke had exactly the same effect as in that of minor inams, namely, to reserve the Government right to such poramboke, and to negative the inamdar's right thereto. But notwithstanding this, it may be argued that, while the exclusion of items 1, 3 and 4 from the area given in the title-deed evidences the non-alienation to the inamdar of these three kinds of excluded land, the fourth item (poramboke) was excluded, as it was said to have been excluded in the case of zemindaris, "not because Government wished to retain their right to the lands as in the case of inam lands, but because the lands were not cultivable by their nature." In other words it may be stated that what was non-alienation in three cases was alienation in the fourth.

| | | Cawnies. |
|---|---|---|
| Fasli 1270 | .. | 816·47 |
| „ 1271 | .. | 767·81 |
| „ 1272 | .. | 819·27 |
| Total | .. | 2394·55 |
| Average | .. | 798·18 = 806 acres. |

Now even granting that Government did not *wish* to retain their right to the tank-bed in question, when they excluded it from the area entered in the title-deed, and granting that the Government even contemplated the possibility of the inamdar taking without payment the trees worth nearly 7,000 rupees now in question, I would say, in reply to the argument based on the unexpressed wish or supposed intention of Government, that such wish or intention is beside the question. The point at issue is not what Government wished or intended to alienate, but what the title-deed legally construed shows that they did alienate, receiving in return consideration in the shape of quit-rent. To put the opposite case, would the inamdar for one moment think of giving up a plot of land which it was clearly shown Government wished to retain, if, as a matter of fact, his title-deed showed that Government had not retained it? But I submit that the nature of the settlement showed that Government could hardly have intended or wished to alienate any revenue on the tank-bed, for they made the inamdar pay quit-rent representing one-half or one-eighth of all the revenue they alienated; and nothing was charged in respect of the tank-bed, though Rs. 24 was added to the quit-rent on account of other waste included in the grant. The form of title-deed, as revised by G.O., No. 1962, dated 8th July 1869, shows still more clearly that Government did not wish to alienate revenue from poramboke, for instead of stating as the title-deeds did, that so much wet, dry and garden land was alienated, they state that "the right to the Government revenue" on a specified area of wet, dry, and garden land is the

subject-matter of the grant. Poramboke is not classed either as wet, dry, or garden. If it is stated that Government might have included the tank-bed in the area on account of which revenue was charged, if they had anticipated its yielding revenue, the answer is that, as a matter of fact, they did not do so, and excluded it from the area paid for and conveyed by the title-deed. It would have been a very simple thing to include the area of poramboke in a title-deed and charge some small sum, as was done in the case of other waste, in respect of revenue from trees, &c., which might grow thereon. This, however, was not done, and the Board of Revenue have stated that such a course would be "opposed to rule and principle."

Mr. Justice Muthusami Ayyar has stated, with regard to the original grants, that "it is probable in the highest degree that no question of ownership of porambokes had arisen in the survey" defining the limits of the grant. It was, I submit, understood that such poramboke was not alienated, and this was indicated in exactly the same manner as the non-alienation of minor inams, namely, by excluding it from the area entered in the grant; and, as already shown, the grantees themselves have recognized poramboke as having been reserved in exactly the same way as minor inams, and have paid additional quit-rent when allowed to cultivate it. Even if Government, when excluding from the area mentioned in the Samudram inamdar's title-deed the four marginally-noted items, had mentioned that they wished to retain their right as landlords in the case of the first *three items*, and had not mentioned the object of exclusion in the case of the last item, I submit that an inference of alienation or *inclusion* from this omission to state the object of *exclusion* would be unreasonable against a private individual, but against Government it would also be in violation of the rule of construction laid down by the Exchequer Chamber which expressly declares the phrase *expressum facit cessare tacitum* inapplicable to a case where, by its application, it is sought to establish a title against the Crown. Such alienation must, as repeatedly noted in the authorities quoted in the last paragraph, be evidenced by clear, express and unambiguous terms in the grant. In the present case, the object of the reservation was not, as far as I am aware, mentioned in any one of the four cases, and so perhaps it is superfluous to notice what might have been the effect of non-mention of the object in the case of excluded poramboke, and its mention in the case of other excluded lands. In the case of other inam villages or in some general statements regarding the scope of the inam settlement, the object of reservation may be mentioned; but the fact that, in the case of poramboke, the persons who excluded it from the area mentioned in the title-deed did not mention the consequence of exclusion because perhaps they did not anticipate the contingency of such poramboke yielding a revenue to Government cannot, I would submit, turn exclusion into inclusion. To illustrate this by an example. If A had three fields at his disposal, and sold one to B, stating that he retained one of the two others to build on, would it be reasonable for B to claim the third field without additional payment, because A had omitted to state what he intended to do with it? I submit that the most he could do would be to ask A to sell him the third field. The case is still stronger when the claim is against Government. Therefore, in the present case, if the inamdar wants the tank-bed revenue, I submit that, if Government are pleased to let him have it, he should pay additional quit-rent in respect thereof, and cannot claim it because he pays quit-rent for acres 1,603·73 of cultivable land in the same village. Upon these grounds I would submit that the view put forward by Government in 1880 and by the Board in 1884 is correct, and that the tank-bed of Samudram village was not alienated to the inamdar. If the view that the Forest Department have no right to the trees in question be taken, it will apparently have to be held that the title-deed copied in Annexure B contains a clear and distinct provision, authorised by Government, and evidencing the alienation of the tank-bed. I cannot see how such a provision can be safely said to be present in the title-deed until the matter is fully debated before a Court. I therefore solicit orders to treat it as Government property, as requested by the District Forest-officer, in accordance with Board's Proceedings,* No. 516, dated 15th February 1884, and thus to have the issue as to the alienation or non-alienation of the tank-bed finally and authoritatively settled.

Paragraph 1 of Board's Proceedings, No. 1853, dated 16th March 1866. (No. III in Annexure C.)

1. Minor inams.
2. Escheated share of village.
3. Added by encroachment.
4. Poramboke.

* (No. I in Annexure C.)

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ANNEXURE A.

The circumstances attending the original grant of the jaghir village of Samudram, in the Kulitalai taluk, are obscure. It was granted in 1787.† There is a tradition to the effect that the original grantee was a spiritualist; that the then reigning Nabob assigned him the village as a reward for producing the deceased ancestors of the Nabob.

† Inam register of 1866.



2. The village is situated 6 miles to the north of Manapárai, and the South Indian Railway runs through it, between the 266th and 264th miles from Madras. The tank-bund is close to the railway and was inspected by me on the 14th July 1886. The village is an Arthamaniyam or half-free inam, *i.e.*, the inamdar enjoys only the melvaram or the landlord's share. One-fifth of the village was resumed by Government on the occurrence of lapses, and the remaining four-fifths is now in the possession of the inamdars.

3. In 1883, the Railway authorities agreed to take from the Forest Department as much wood as the department could supply, to be delivered at the Manapárai railway station. The Forest Department, instead of cutting the wood departmentally, employed a contractor named Thangamuthu Pillai. A deed of agreement was executed by the contractor on the 6th July 1883 for a period of one year and was duly registered. In this deed, the tank-bed of Samudram village in question was mentioned as one of the places wherein the Forest Department allowed felling by the contractor. The contractor commenced felling in the tank-bed and was obstructed by the inamdars. The District Forest-officer called (office note, No. 943, dated 6th January 1885) the attention of the Collector to his (Collector's) circular No. 9 of 1884 (based on Board's Proceedings, No. 516, dated 15th February 1884), transcribed in the margin, and requested to issue orders to the deputy tahsildar of Manapárai to see that the inamdars of the village did not cause any *obstruction to the contractor*. The District Forest-officer was thereupon informed (letter, No. 321, dated 27th January 1885) that, under the orders conveyed in G.O., No. 1406, dated 18th December 1884, recorded in Board's Proceedings, No. $\frac{44}{\text{Forest 8}}$, dated 8th January 1885, trees on tank-beds did not vest in the Forest Department, even should the tank-bed of Samudram belong to Government. The District Forest-officer then applied (No. 1075, dated 14th February 1885) for instructions as to what should be done with the wood already felled. He was informed (No. 711, dated 25th February 1885) that the village was once an entire inam village, and that as one-fifth of it had been resumed by Government, the Government could lay claim only to one-fifth of the tank-bed. It was further suggested that as the period of the contract had already expired, the difficulty about its terms might be got over by a settlement of account with the contractor. The District Forest-officer again wrote (No. 183, dated 24th June 1885) to say that the contractor was prevented by the inamdars from removing the wood already felled, on the plea that they were entitled to four-fifths of the wood cut, and requested that orders might be issued to the deputy tahsildar of Manapárai to see that no interference takes place on the part of the inamdars in the removal of the wood.

"There having been some misapprehension about the application of standing order No. 17 to cases of unauthorised cultivation of common poramboke lands in inam villages, the Board of Revenue, upon a reference on the subject, decided that the rights of inamdars in entire inam villages are strictly confined to the cultivable land, and that they have no right whatever to poramboke and unassessed waste reserved for public purposes, such as roads, cattle-stands, water-courses, &c. Divisional officers and other subordinate revenue officers in the district are hereby directed to promptly bring to notice all cases of unauthorised cultivation on such lands both previous to and from the date of this circular, and cause prohibitory assessment to be imposed upon them, so that the lands encroached upon may be preserved for the use of the public."

The District Forest-officer was informed (No. 2467, dated 24th July 1885) that, as only one-fifth of the village had been resumed by Government, the inamdars should be permitted to have the four-fifths share of the wood cut, and that, if that arrangement was not at once made, he (the District Forest-officer) might be sued by the inamdars. Thereupon the District Forest-officer again invited (No. 360, dated 11th August 1885) the Collector's attention to the circular No. 9 of 1884 above alluded to, and requested reconsideration of the orders already passed on the subject. In January last, again, the District Forest-officer reminded (No. 875, dated 10th January 1886) the Collector on the subject.

10th August 1886. (Signed) H. R. FARMER,
Acting Collector.

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ANNEXURE B.

The following is the true copy of the title-deed, No. 2429, granted on the 29th March 1865 to the inamdars of Samudram village by the then Inam Commissioner Mr. Blair.

Title-deed granted to Bává Khan Beylam, (2) Mahommed Ali Sahib, (3) Asadalli Sá, (4) Gulasam Bibi, (5) Nanni Bibi, and (6) Latif Hussain.

1. On behalf of the Governor in Council of Madras, I acknowledge your title to the entire village of Samudram, in the taluk of Kulitalai, district of Trichinopoly, claimed to be of 1405·23 acres of dry land, 159·71 acres of wet land, and acres 38·79 of garden lands, besides porambokes.

2. This inam is tax free and hereditary; but it is not otherwise transferable, and in the event of the failure of lineal heirs, it will lapse to the State.

3. On your agreeing to pay an annual quit-rent of 267 rupees, your inam tenure will be converted into a permanent freehold, in which case the land will be your own absolute property, to hold or dispose of as you think proper, subject only to the payment of the above-mentioned quit-rent.

4. If you should desire to commute the quit-rent for the payment of a sum of money, once for all, equal to 20 years' purchase of the quit-rent, you will be at liberty to do so.

COIMBATORE,
29th March 1865.

(Signed) W. T. BLAIR,
Officiating Inam Commissioner.

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Whereas you have agreed to convert your tenure into a freehold, on the term offered you in clause (3) of this deed, your inam is hereby confirmed to you as freehold in perpetuity, subject only to the payment of the annual quit-rent therein mentioned, viz., Rs. 267.

COIMBATORE,
29th March 1865.

(Signed) W. T. BLAIR,
Officiating Inam Commissioner.

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The above deed purports to be in the form approved of in G.O., No. 1069, dated 9th August 1859, and given below—

From a comparison of the form of title-deed sanctioned for adoption with the title-deed as actually issued, it will be found that the words "a personal inam situated in" are scored out in ink. The words following in the form are "the village," but between these two words the word "entire" is inserted in manuscript. Further, the words "besides poramboke" are interpolated in manuscript. Regarding these interpolations, the Director of Revenue Settlement and Agriculture in charge of Inam Department states, in his letter, No. 148, dated 15th April 1886, as follows:—

* * * * *

"I have the honor to say that the interpolations you specify were unauthorised. Further, they are (in respect of "poramboke") at variance with the rulings of the Board and of Government (*vide* Board's Proceedings, dated 16th March 1866, No. 1832, and Board's Proceedings, dated 21st November 1866, No. 3412, and G.O., dated 11th October 1880, No. 1325). The law is clear. Fresh cultivation of available "culturable waste" not being poramboke is not chargeable with assessment. But poramboke continues to be reserved just as in ayen villages."

"Whether Mr. W. T. Blair initiated the interpolation or not is uncertain. He undoubtedly acquiesced in it. As Government never were cognizant of the interpolation, as it is in direct conflict with the Government order of October 1880 above quoted, and as the matter is one of importance, I shall submit to Government, for sanction, new printed forms of title-deeds for entire inam villages to be substituted for those already issued."

2. As regards the question as to what constitutes the inam, the following extract from the inam register, prepared and signed nine days before the issue of the title-deed, shows how the extent of lands (acres 1,603·75) entered in the title-deed was arrived at:—



No. XIV.—Register of Samudram, No. , taluk Kulitalai, district of Trichinopoly.

CLASS, EXTENT AND VALUE OF INAM. village

DESCRIPTION, TENURE, AND DOCUMENTS IN SUPPORT OF THE INAM.

| No. of case or entry relating to one grant in this village. | General class to which the inam belongs. | Survey number and name of field or fields comprised in the grant. Dry, wet or garden. | EXTENT. Local measure. Even where the local measure is in acres, guntas and annas, it is to be entered in this column. | EXTENT. Acres and decimals. English measures. | SURVEY ASSESSMENT. | REVISED OR PRESENT ASSESSMENT. | Description of inam. If for service, it is to be stated whether the service is continued. If for tanks, buildings, &c., whether they are efficiently kept up. | Tenure. Whether free of tax, i.e., saras, dumbala, &c., or liable to quitrent, i.e., jodi, patta, &c. Amount of latter to be entered. | Tenure. Hereditary, unconditional, for life only, or for two or more lives. | By whom granted and in what year. | Written instruments in support of the claim. Original sanad, all miscellaneous documents and other proofs of long possession. In this column it should be stated whether the inam is held with or without grant, whether the grant is produced or lost, &c., and the general specification of terms of all documents produced should be given. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 8 | 10 | 11 | 12 |
| | | Arakai as per pymash of fasli 1269 .. | Dry. Cawny. 3,119 74 12 | Dry. Acres. 3,150·91 | Wet. Acres. 256·0 | Wet. Cawny. 256 40 1 | Garden. Acres. 48·51 | Garden. Cawny. 48 3 5 | Total. Acres. 3,423·24 2 | Total. Cawny. 3,423 24 2 | Acres. 2,457·42 |
| | | Deduct— | | | | | | | | | None. |
| | | Poramboke .. .. .. | 948 85 0 | 968·24 | 20·75 | 20 84 13 | .. | .. | 969 39 13 | 969 39 13 | 975·00 |
| | | Old inams .. .. .. | 133 7 14 | 136·40 | 21·23 | 27 3 3 | .. | .. | 163 10 1 | 163 10 1 | 164·63 |
| | | Government service inams .. .. | 86 77 13 | 86·61 | 15·01 | 14 87 8 | .. | .. | 100 65 5 | 100 65 5 | 101·62 |
| | | Archaka service inams .. .. | 17 59 12 | 17·72 | 3·44 | 3 29 11 | .. | .. | 20 95 7 | 20 95 7 | 21·16 |
| | | Poruvai resumed .. .. .. | 384 16 12 | 388·01 | 37·89 | 37 43 9 | 8·72 | 9 62 11 | 421 28 0 | 421 28 0 | 425·59 |
| | | Total .. | 1,568 43 3 | 1,584·03 | 97·32 12 | 97 32 12 | 8·72 | 9 62 11 | 1,655 38 10 | 1,692·09 | 1,765·32 |
| | | Remaining .. | 1,551 31 9 | 1,566·83 | 158 13 5 | 158 13 5 | 28·79 | 38 40 10 | 1,747 86 8 | 1,765·32 | By Ameen, Toomre on 14th Ziekad Hijri or 1201 as per Mr. W's register. |
| | | Personal—Dry .. .. .. | 1,551 31 9 | 1,566·83 | 2,600 3 0 | | | | Hereditary .. | | |
| | | Wet—One crop .. .. .. | 156 13 6 | 159·71 | 645 5 0 | | | | | | |
| | | Garden .. .. .. | 38 40 10 | 38·79 | 164 13 0 | | | | | | |
| | | Total .. | 1,747 86 8 | 1,765·33 | 3,432 6 0 | | | | | | |
| | | Deduct the assumed extent of land wrongly included in the survey of fasli 1269. | 4 160 0 0 | | | | | | | | |
| | | *Dry.* | | | | | | | | | |
| | | Krishna Row states almost the whole is dry only. | 1,587 85 8 | 1,603·73 | | | | | | | |
| | | remainder .. .. .. | | 1,403·73 | | | | | | | |
| | | Dry .. .. .. | | 150·71 | | | | | | | |
| | | Wet .. .. .. | | 38·79 | | | | | | | |
| | | Garden .. .. .. | | 1,603·73 | | | | | | | |

| | |
|---|---|
| 1. Poramboke .. .. .. .. .. .. | 979·09 |
| 2. Old inam .. .. .. .. .. .. | 154·63 |
| Government service inams .. .. .. | 101·62 |
| Artizan service inam .. .. .. .. | 21·16 |
| 3. Portions resumed .. .. .. .. .. | 435·59 |
| | 1692·09 |

From the extract it will be observed that the total area of the village is given as 3,457·42 acres, from which acres 1,692·09 were deducted on account of the marginally-noted three items. For assumed extent of land wrongly included in the survey of 1269, a further deduction of 161·60 acres was made, leaving a balance of 1,603·73 acres entered in the title-deed as particularised below —

| | acs. | c. |
|---|---|---|
| Dry ... ... ... ... ... ... ... ... ... | 1,405 | 23 |
| Wet ... ... ... ... ... ... ... ... ... | 159 | 71 |
| Garden ... ... ... ... ... ... ... ... ... | 38 | 79 |
| | 1,603 | 73 |

Furthermore, the inam register shows that the extent of land leased out to cultivators a the time of the inam settlement was, on an average, but 806 acres, as shown in the margin.

| Fasli. | Extent leased out. Cawnies. |
|---|---|
| 1270 .. .. .. .. .. .. | 816 |
| 1271 .. .. .. .. .. .. | 767 |
| 1272 .. .. .. .. .. .. | 810 |
| | 2,393 |
| Average .. | 798 |
| Acres .. | 806 |

3. As regards the charge of quit-rent, the area leased to cultivators as shown above and yielding a return to the inamdars was first taken into account. The extent of land thus ascertained was returned as yielding on an average Rs. 1,454-5-0 as shown in the following extract from the inam register :—



The valuation made by Collector when reporting on lapses being only Rs. 1,350.

| Fasli | Description of cultivated lands. | Unassessed Puncar. Cawny. | Unassessed Puncar. Settled. | Unassessed Cowle. Cawny. | Unassessed Cowle. Settled. | Under division of produce. Cawny. | Under division of produce. Collection. | Total. Cawny. | Total. Income. | Miscellaneous receipts. | Total income. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | acs. c. | acs. a. p. | acs. a. p. | acs. a. p. | acs. a. p. | rs. a. p. | acs. a. p. | rs. a. p. | rs. a. p. | rs. a. p. |
| Fasli 1270 | Wet .. .. .. | 8 12 | 20 10 0 | .. | .. | 93 62 | 433 3 0 | 101 74 | 463 13 0 | 119 2 0 | .. |
| | Dry .. .. .. | 624 57 | 532 3 0 | .. | .. | 49 53 | 27 6 0 | 672 53 | 624 7 6 | .. | .. |
| | Garden .. .. .. | 32 12 | 100 10 0 | .. | .. | .. | .. | 42 15 | 120 14 9 | .. | .. |
| | Total .. | 664 81 | 653 7 0 | 108 61 | .. | 1,403 15 | 460 9 0 | 816 47 | 1,199 2 0 | 119 2 0 | 1,318 4 0 |
| | Deduct ¼ belonging to a share resumed in fasli 1271 .. .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | 101 6 0 |
| | Net .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | 1,216 14 0 |
| Fasli 1271 | Wet .. .. .. | 7 55 | 17 14 0 | .. | .. | 118 75 | 383 3 0 | 124 30 | 887 1 0 | .. | .. |
| | Dry .. .. .. | 469 79 | 524 9 0 | 71 37 | 45 11 0 | 84 0 | 23 4 0 | 605 16 | 598 8 0 | .. | .. |
| | Garden .. .. .. | 30 82 | 67 0 0 | 7 55 | 15 4 0 | .. | .. | 38 35 | 109 4 0 | .. | .. |
| | Total .. | 508 16 | 629 7 0 | 78 90 | 60 15 0 | 150 75 | 392 7 0 | 787 81 | 1,682 13 0 | 119 2 0 | 1,692 15 0 |
| Fasli 1272 | Wet .. .. .. | 7 55 | 17 14 0 | .. | .. | 145 0 | 693 11 0 | 150 55 | 650 9 0 | .. | .. |
| | Dry .. .. .. | 469 79 | 524 9 0 | 68 24 | 61 3 0 | 38 0 | 10 11 0 | 621 11 | 636 7 0 | .. | .. |
| | Garden .. .. .. | 30 83 | 87 0 0 | 7 79 | 16 1 0 | .. | .. | 38 01 | 103 1 0 | .. | .. |
| | Total .. | 508 16 | 629 7 0 | 91 3 | 67 4 0 | 183 0 | 649 0 0 | 810 27 | 1,346 1 0 | 107 1 0 | 1,453 2 0 |
| | Total of fasli 1270, 1271 and 1272, being three years .. .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | 4,362 15 0 |
| | Average .. .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | 1,454 5 0 |

The Inam Deputy Collector, who submitted the case for orders, made no recommendation to increase the assessment on which quit-rent was to be calculated on account of waste land not included in the lease. The Special Assistant to the Commissioner proposed, as the marginally-transcribed extract shows, that the assessment should, on account of the prospective improvement of the waste (presumably that included in the extent entered in the title-deed), be increased from Rs. 1,454-5-0 to Rs. 1,600. If the 1,400 acres of waste refers to waste in the 1,603·73 acres entered in the title-deed, it would appear that only 203 acres were cultivated out of an average extent of 806 acres leased. Perhaps, however, the Special Assistant (Chentsal Row) mentioned the total extent of cultivable waste in the village, including waste in minor inams in the resumed one-fifth of the village and in the area added by encroachment. It will be generally admitted that poramboke reserved for a special public purpose, such as a tank, was spoken of not as waste available for cultivation, but as poramboke which had to be deducted from that area. One of the shareholders of the village receiving an income of Rs. 178, out of the total of Rs. 1,600 received as rent by the inamdars, had to pay one-half of it, viz., Rs. 89, as quit-rent, and the remaining five inamdars were charged with one-eighth of the remaining rent (Rs. 1,422) or Rs. 178 as quit-rent. These two sums added together give Rs. 267, the amount of quit-rent entered in the title-deed as due for the 1,603·73 acres of wet, dry and garden lands.

"The assessment adopted on the Settlement by the Deputy Collector not being calculated on the actual area of the village, but upon the revenue raised, requires no reduction on account of the deduction in the area and can be confirmed as recommended. There is a large extent of waste in the village. Deputy Collector makes no addition on account of prospective improvement on cultivation of these lands. The waste though nearly 1,400 acres, Krishna Row states they are hardly fit for cultivation, and, if at all, there is but a very remote chance of their being cultivated. Under these circumstances, I propose to raise the assessment of the village in consultation with Krishna Row to Rs. 1,600."

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ANNEXURE C.

No. I.

Proceedings of the Board of Revenue, dated 15th February 1884, No. 516.

Read—the following letter from J. B. PENNINGTON, Esq., Acting Collector of Tanjore, to the Secretary to the Board of Revenue, dated Vallam, 27th December 1883, No. 7624.

I have the honor to submit the following case for the orders of the Board of Revenue.

2. A question having been raised in August 1882 by Mr. Horsfall, the then Sub-Collector, whether prohibitory assessment can be levied in cases of unauthorised cultivation on lands reserved for public purposes (poramboke) in entire inam villages, Mr. Stokes, in reply, stated that prohibitory assessment cannot be levied in cases of such unauthorised cultivation on the ground that the right of imposing penal assessment is the same as the right of imposing assessment at all, *i.e.*, it is the right to share in the crop; and the fact that, for certain reasons, it is made penal does not affect its nature or origin; and that in the case of whole inam villages, as in permanently-settled estates, all the rights of Government (which include the right to share in the produce of fresh land cultivated) are transferred to the proprietor; and that the Government can claim no revenue from such encroachments, nor can revenue officers, as such, interfere.

3. It seems to me, however, that such land reserved for public purposes in zemindaris or inam villages is *not* made over to the zemindars or inamdars, but only the right to the revenue from cultivated and cultivable land. If Mr. Stokes is right, it would seem that an irrigation channel which passes through an inam village may be encroached upon and half filled up with impunity in the limits of that village, though principally intended for the irrigation of ryotwari villages further east. Clearly, the inamdars have no right to interfere with such a channel, which is reserved for public purposes throughout its whole length; but I do not see how such encroachments can be prevented if not by prohibitory assessment. I beg to be informed whether it is intended that Government should sue the inamdar whenever he encroaches. Surely, also, roads running through zemindaris, &c., are public property, and any one taking forcible possession of any part of them might be charged any rent the Government (or the Local Fund Board on behalf of Government) chooses to impose. Mr. Stokes, indeed, contends that Government has no right to impose prohibitory assessment at all, except so far as it represents a share of the produce; but if this view is to be accepted literally, it could never be legal to impose a prohibitory assessment in excess of the productive powers of the soil. It seems to me that the so-called prohibitory assessment is not, strictly speaking, an assessment at all; it is rather a fine imposed for the cultivation of land which the Government has resolved shall *not* be assessed or cultivated, and I can hardly suppose that the Government, as landlord, has no right to impose such a charge for such a purpose.

4. A similar question is now pending disposal before the Deputy Collector, Patukóta, and I therefore request early orders on the subject.



Resolution—dated 15th February 1884, No. 516.

The Board observe that the question here put has arisen in regard to poramboke in an inam village and not in a permanently-settled estate. They consider that the rights of the inamdar are strictly confined to the cultivable land to the assessment of which he may be entitled; but in regard to poramboke, unassessed waste reserved for public purposes, for roads, cattle-stands, water-courses, &c., the inamdar can have no rights, and it rests with the Collector, as the representative of Government, to assert, when necessary, the right of Government as landlord. In the present case, the Collector should, therefore, impose prohibitory assessment, and leave the party upon whom it is imposed to seek relief in a civil court, if so advised.

(A true Copy and Extract.)

(Signed) E. GIBSON,
Secretary.

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No. II.

Office Note of Sheristadar.

When a similar question was raised by the Head Assistant Collector, Mr. Gibson ruled that the Government has the power of levying prohibitory assessments on encroachments in inam villages under the authority of G.O., dated 12th July 1878, No. 1062. Papers put up.

Pegal inams are minor inams situated in Government villages.

22nd August 1882. (Initialled) T. G.

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Mr. H. E. Stokes'* order thereon.

Mr. Gibson's † order is absurd and altogether opposed to the principles and practice settled by Board's orders in other places. The case of whole inam villages is similar to that of permanently-settled estates, and as to these, there has been correspondence principally relating to Salem and Godávari in which it was settled as long ago as 1827 or so that revenue officers as such have no powers in regard to porambokes in such estates, and that Government claims no right in them. The share of the produce or assessment goes to the zemindar, and the people who are aggrieved by the encroachment are left to such remedies as they may have by law.

† Mr. F. E. Gibson was Acting Collector of Tanjore in the preceding year, 1881.

(Initialled) H.R.F.

(Initialled) H. E. S.

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No. III.

Extract from Board's Proceedings, No. 1833, dated 16th March 1866.

* * * * *

1. Assuming that by poramboke the Commissioner means not *reserved* land, as village-sites, threshing-floors, and such like, to which alone the term is strictly applicable, but refers to available culturable waste, the Board were not aware of the existence of the practice referred to, and consider that even that alluded to in paragraph 12 ‡ of the Inam Commissioner's letter is opposed to rule and principle.

‡ Paragraph 12 herein quoted is as follows:—

In dealing with inam villages, where the extent of poramboke is large, and there is a good prospect of its being brought under cultivation, a moderate addition to the quit-rent is made in respect of such prospective improvement; but in the case of the North Arcot villages, no such addition has been made where the poramboke cultivation was already charged for by the district authorities.

(Initialled) H.R.F.

* * * * * *

(Signed) W. HUDLESTON,
Secretary.

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No. IV.

Board's Proceedings, No. 8412, dated 21st November 1866.

Read—the following letter from J. D. ROBINSON, Esq., Collector of North Arcot, to the Secretary to the Board of Revenue, dated Melpadi, 5th November 1866, No. 326:—

Adverting to the Board's Proceedings of the 16th March last, No. 1833, I have the honor to state that the tahsildars of all the taluks, Chittoor excepted, have, in reply to a circular issued by me on the subject, reported that the practice noticed in the Inam Commissioner's letter does not exist.

* Mr. H. E. Stokes was then Acting Collector of Tanjore.

(Initialled) H.R.F.

2. From an arzi received from the sheristadar in charge of the Chittoor taluk, dated the 15th December last, No. 192, and its enclosures, it would appear that in five * only out of the nineteen entire shrotriem and inam villages in the taluk has unassessed waste been cultivated and included in "ain." There is no order on my records, which authorises the imposition of full assessment on such lands. The practice appears to have crept in under some misapprehension as to the nature of such tenures, as well on the part of the cultivators as of the native revenue officers. These appropriations have been so gradual and limited that they have never attracted attention. The objectionable practice, thus incidentally brought to light, will now be discontinued from fasli 1276, and a circular is under preparation on the subject.

* No. 472, Kathupallay.
" 356, Thathireddipally.
" 474, Kangasamudram.
" 461, Medipallay.
" 266, Venkatasamudram agraharam.

3. All the five villages named above, except Thathireddipally, have been enfranchised by the Inam Commissioner, and quit-rent has been imposed on them.

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Communicated to the Inam Commissioner, with reference to his letter, dated 12th February 1866.

2. The Board entirely approve of the immediate discontinuance of this wholly unauthorised encroachment on private right.†

† This refers to unassessed waste not reserved for a specific public purpose.—H. R. F.

(Signed) W. HUDLESTON,
Secretary.

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No. V.

Order—dated 11th October 1880, No. 1325, Revenue.

Miscellaneous.

The Government see no reason for surrendering to the agraharamdars land which as "poramboke" was reserved for the convenience of the public, notwithstanding that it has subsequently been diverted from its original purpose.

2. The Inam Commissioner, in his letter, dated 4th October 1865, No. 752, evidently employed the term "poramboke" loosely instead of "immemorial waste," its strict meaning being "excluded" as *reserved* for public common purposes. As already defined by G.O., 31st January 1873, No. 129, "poramboke is always unassessed, but all unassessed waste," such as that referred to in the above-quoted letter, "is not included in it." Recent correspondence shows the necessity for preserving poramboke proper from encroachment, and in the present instance, though the Government do not propose to insist on the area in question being utilised again for drinking-water ponds, it must be considered available for such or any other public purpose should the necessity arise.

G.O., 3rd January 1880, No. 3, R.D.
" 13th July " " 759, R.D.

(True Extract.)

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

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No. VI.

Orders of the Board of Revenue, No. 1227, dated 23rd of May 1874.

The zemindarnis are entitled to collect water-rate on subsequent inams, as well as on assessed lands. As regards puntakhets, although the water-rate charged on the lands was not taken into account when the water-rate payable on zemindari lands was commuted and the sum of Rs. 40,000 fixed as the charge, still the Board consider that the zemindarnis may be allowed to charge water-rate on them, as even if the amount (which was small) previously charged on them had been taken into account, it would not have made any difference in the lump charge fixed for the whole zemindari. The Board do not agree with the Collector in thinking that because the puntakhots were excluded from the permanent settlement they are the property of Government. It is true that the assessment leviable on these lands was not taken into account when the peishcush was fixed; but that was done, not because Government wished to retain their right in these lands, as in the case of the inam lands excluded from the permanent settlement, but because the lands were not cultivable by their nature. The permanent samud does not reserve any right to Government in these poramboke lands, as it does in the case of inam lands excluded from the permanent settlement.



2. In some cases the cultivation of poramboke lands may be an offence under section 263 of the Penal Code if it causes injury, obstruction, or annoyance to persons who may have occasion to use the lands, and in some cases the village community may have a right to the land, but it does not follow that Government are entitled to an assessment on those lands. The Board are aware that in the case under notice the puntakhets are not required for public use and were entered as cultivable fields by the Survey Department.

(Signed) J. GROSE,
Secretary.

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No. VII.

No. 3170.

Read—again Board's Proceedings, dated 23rd May 1874, No. 1227.

Read—also the following letter from W. S. FOSTER, Esq., Acting Collector of Godávari, to the Secretary to the Board of Revenue, dated Cocanada, 3rd October 1874, No. 346:—

Errati Subbanna and Addagarrala Ramanna, tenants of agraharamdars of Bodapadu, in Tanuku taluk, were charged by the Head Assistant Collector with prohibitory assessment in faslis 1278 and 1279 for having cultivated under a lease from the agraharamdars a portion of a tank called "Methara kunta" situate within the agraharam, as it was then reported to be a poramboke tank.

2. They claim the refund of the amount charged as the agraharamdars have a right to the tank.

3. The tank in question appears to have been enjoyed by the agraharamdars for the last thirty years, and I think the agraharamdars are entitled to hold it also under Board's Proceedings, dated 23rd May last, No. 1227, and the amount collected from the applicants, who cultivated it under a lease from the agraharamdars, should, therefore, be refunded to them. I have therefore the honor to recommend the refund of Rs. 45-5-5 collected from them and credited to Government on 18th December 1871.

| | rs. a. p. |
|---|---|
| Assessment and water-cess additionally charged. | 44 15 11 |
| Local cess .. .. .. .. .. .. | 0 5 6 |
| Total .. | 45 5 5 |

4. The amount (Rs. 44-15-11) can be met from Land Revenue refund.

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Submitted to Government with the request that Rs. 45-5-5, being prohibitory assessment imposed through a mistake, may be refunded.

2. The assessment was imposed on cultivation in the bed of a tank belonging to Government, but this was not the case. As a general rule, tanks lying within inams or zemindaris are the property of the inamdar or zemindar, and not of Government.

(Signed) J. GROSE,
Secretary.

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No. VIII.

From W. H. GLENNY, Esq., Acting Director of Revenue Settlement and Agriculture, in charge of Inam Department, to the Collector of Trichinopoly, dated Madras, 15th April 1886, No. 148.

In answer to the question put in paragraph 3 of your letter No. 1124, dated 30th March 1886, I have the honor to say that the interpolations you specify were unauthorised. Further, they are (in respect of "poramboke") at variance with the rulings of the Board and of Government (*vide* Board's Proceedings, dated 16th March 1866, No. 1833 and Board's Proceedings, dated 21st November 1866, No. 8412 and G.O., 11th October 1880, No. 1325). The law is clear. Fresh cultivation of "available culturable waste," not being poramboke, is not chargeable with assessment. But "poramboke" continues to be reserved just as in ayen villages. Whether Mr. W. T. Blair initiated the interpolation or not is uncertain. He undoubtedly acquiesced in it. As Government never were cognizant of the interpolation, as it is in direct conflict with the G.O. of October 1880 above quoted, and as the matter is one of importance, I shall submit to Government for sanction new printed forms of title-deeds for entire inam villages to be substituted for those already issued.

2. In your paragraph 4, you ask to be told of the authority for the change of form of title-deed brought to your knowledge by comparison of a deed of 1868 with one of 1869. The order was G.O., 8th July 1869, No. 1902.

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*P.S.*—I have the honor to ask you to send me (to be eventually returned) a specimen of the class of title-deeds bearing the objectionable interpolation.

(Signed) W. H. GLENNY.

*Resolution*—dated 11th February 1887, Forest No. 81.

Submitted for the orders of Government.

2. The village of Samudram, in the Trichinopoly district, is an entire inam village, held four-fifths by the inamdars and one-fifth by Government; the inamdars take only the melvaram or landlord's share; in a tank in this village are trees valued at Rs. 6,852; these trees the Forest Department proposed and did actually commence to cut as fuel for the South Indian Railway, when the inamdars interfered, claiming that of them four-fifths belonged to themselves, and only one-fifth to Government; in other words, claiming that their title-deed covered the tank-bed. The Collector resents this interference and claims the whole of the trees for Government, *i.e.*, he claims that the title-deed does not cover the tank-bed; an insistance on his views is likely to bring the matter before the civil courts, and before taking action, therefore, he refers the matter for the orders of the Board and Government, giving at some length his reasons for maintaining that Government do possess the rights he claims for them, and recommending very strongly that they should be upheld to the utmost.

3. The Board, on the whole, agree with him and support his recommendation; they consider that the matter is, at least, one of doubt, and they think, therefore, in the words used by Mr. Justice Melville, in the somewhat similar case reported on page 195 of volume VI of the Bombay High Court Reports, that the State, "acting for no selfish end, but as the representative of the people, and for the good of the people, is justified in refusing to recognise" the claims which the inamdars put forward. It will be remembered that in G.O., dated 21st May 1884, No. 664, this doubt was disposed of so far as zemindars' lands were concerned, but in paragraph 3 of that order, Government were careful to observe that "Mr. Farmer's research has not extended to the origin of tenures other than zemindari;" as regards inams, therefore, the doubt still remains.

4. The questions which Mr. Farmer now discusses and which he proposes to place for an authoritative decision before a civil court are these: does the *soil* of porambokе proper in an entire inam village belong to the inamdar? if not, does the *revenue* of porambokе proper belong to him? To the first, the Board think that the answer is clearly, no; in such a case as the present, the actual ownership of the soil, even on cultivable and unreserved areas, is not given to the inamdar, much less is it given to him on uncultivable and reserved areas; under recent orders, indeed, it is doubtful if Government would consider that it ever was theirs to give; about the second, the Board admit that there may be doubt, and, as they have said, they think it advisable in the interests of the general public, whom they represent, that this doubt should be authoritatively cleared up.

5. The issues, it is presumed, would be somewhat as follows:—

(1) Was the village of Samudram given to the inamdar to be his own absolute property?

It is true that the title-deed is so worded, but its wording is immaterial; it is admittedly a patched up and probably unauthorised version of a form which was drawn up to suit inams of a nature entirely distinct from that of the one now in question, and it is self-evident on the face of it that it purports—to quote the preamble of Act VIII of 1869—"to give more than either it intended to give or could give;" what it did do, to continue to quote that preamble, was to give the inamdars "as transferees of Government only the right to receive the rent or tax payable to Government."

(2) Admitting then that this is all that was given, does it cover tree-revenue derived from tank-beds?

6. The Board think not; it is true that "porambokes" are included in the grant, but the Board think that the expression is loosely used to refer only to cultivable wastes; it would seem so from the context, "*x* acres of dry land, *x* acres of wet land and *x* acres of garden lands, besides porambokes," or waste lands; and the expression is evidently so used in paragraph 12 of the first Inam Commissioner's letter, which Mr. Farmer quotes in his note on page 17 of these Proceedings.



7. Even admitting that expression did cover tank-beds, the revenue derived from felling the naturally-grown jungle on such lands is not "rent or tax payable to Government," nor is it even "revenue" legitimately derivable from land which, so far as it has been given away at all, has been given away only for the storage of water.

8. The matter has been somewhat prejudiced by the decision of a previous Collector that the case of an "entire" inam village is exactly similar to that of a zemindar's estate; *cadit quæstio*, of course, if this is true, but the Board do not think that it is; under rule XXIV on page 12 of G.O., dated 9th August 1859, No. 1069, "whole inam villages will be dealt with upon the same principles as are prescribed for minor inams," and there can be no question that "minor inams" are not similar to zemindaris.

9. Speaking generally, indeed, an inam is simply an assignment of that particular portion of the public revenue which arises from the tax on land, either in favor of the owner of the land himself, in which case it is a mere exemption from the payment of such tax, or in favor of some one other than the owner, in which case it is virtually a mere pension; indeed, if it came indirectly through the treasury, instead of directly from the land itself, it would be called a pension; to quote from the Bombay High Court appeal case already referred to, "grants in inam are, generally speaking, more properly described as alienations of the royal share in the produce of the land, *i.e.*, of land revenue, than grants of land;" they need not of necessity have anything whatever to do with the ownership of the land. A zemin is the exact opposite of this; it, in the words of appeal suit No. 10 of 1814, Madras, is a "transfer of *proprietary right*;" it need not of necessity carry with it any exemption from the payment of land tax, but it does of necessity carry with it the right—qualified perhaps in some cases by the user of others—to the land itself. The thing granted is in each case distinct; in the one case it is money, in the other, it is land; and rights that would be claimable in the case of the one are not simply on that account claimable also in the case of the other.

10. The orders which have been passed by the Board and Government in the matter hitherto are conflicting, but the weight of authority, such as it is, is in favor of the view which Mr. Farmer upholds; against it is Board's Proceedings, dated 4th November 1874, No. 3170, which proceeds upon the assumed similarity of inams and zemindaris; for it are the later and very decidedly expressed G.O., 11th October 1880, No. 1325, and Board's Proceedings, 15th February 1884, No. 516.

11. The Board, therefore, support Mr. Farmer's concluding recommendation that the trees in question should be treated as Government property, and that the issue should thus be finally and authoritatively settled.

(A true Copy and Extract.)

(Signed) H. A. SIM,
Acting Sub-Secretary.

To the Secretary to Government, Revenue Department.
" Conservator of Forests, Southern Circle.
" Collector of Trichinopoly.
Copy to all other Collectors, except Madras.
" to the Conservator of Forests, Northern Circle.
" " Examiner of Forest Accounts.

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READ—the following letter from J. GROSE, Esq., Inam Commissioner, to the Secretary to Government, Revenue Department, dated Madras, 25th March 1887, No. 78:—

ABSTRACT.—Forwarding a specimen title-deed for an entire inam village.

Read—the following Proceedings of the Board of Revenue (Land Revenue), dated 29th April 1887, Forest No. 271, Mis. :—

*Read*—the following demi-official letter from H. R. FARMER, Esq., dated 15th March 1887 :—

Abstract.—Forwarding a memorandum containing his remarks on paragraph 6 of Board's Proceedings, dated 11th February 1887, Forest No. 81, regarding poramboke in entire inam villages.

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Memorandum on paragraph 6 of Board's Proceedings of the 10th February 1887, Forest No. 81, by H. R. FARMER, Esq. :—

The Board say "it is true that porambokes are included in the grant."

2. I doubt if the Board would have formed this opinion if they had seen the original title-deed, and had been aware of the fact that even Mr. Blair, the Inam Commissioner, *when advocating the inamdars' rights to poramboke*, spoke of what the Board consider "inclusion" as "exclusion" of poramboke.

3. Setting aside the question as to whether, with reference to the marginal quotation, the Inam Commissioner had the full authority of Government, in spite of the sanctioned form of title-deed omitting all mention of poramboke, to alienate poramboke revenue under those title-deeds, and whether—even if he had such authority—the title-deed would not, if it alienated porambokes, confer on the inamdar, in contravention of Madras Act VIII of 1869, "a right to land which he would not otherwise possess," there remains the question whether the grant *unequivocally* includes poramboke, for unless the inclusion is unequivocal, I submit, on the strength of the authorities quoted at page 7 of the Proceedings now under reference, that it is inoperative.

"A waiver of the prerogative of the Crown is not easily to be implied from the correspondence of its officers, unless they had full authority and their language is clear and unequivocal."
Ruling of Bombay High Court, page 215, Vol. XII B. H.C.R.

4. The relevant part of the title-deed printed as a true copy in Annexure B is as follows :—

"I acknowledge your title to the entire village of Samudram, claimed to be of 1,405·23 acres of dry land, 159·71 acres of wet land and acres 38·79 of garden land, besides porambokes."

5. I regret I have not the original title-deed to enable me to transcribe opposite to this so-called "true copy," a copy about the truth of which there could be no question. I have seen a number of title-deeds for "entire inam villages," and, as far as my memory serves me, there is invariably a full stop, and not, as in the copy, a comma after the words "garden lands," and the words "besides porambokes," always in manuscript, are usually inserted in the margin, or wherever the writer chooses. It was to bring out this point that I had the printed part of the original title-deed printed in the copy sent to the Board, and the manuscript part copied in writing. If the original title-deed be referred to, I think that besides the construction adopted by the Board, *there is another reasonable construction, namely, that the passage* transcribed in paragraph 4 above amounts to saying that the inamdars claim that, besides, or leaving out of account, porambokes, there is the area of wet, dry and garden lands specified to which (the wet, dry and garden only) they are entitled. Then if any one encroached on 10 acres of their 1,405·23 acres of dry land, and told them that, counting the the tank-bed in question, they had more dry land than was shown as claimable by their title-deeds, the inamdars would naturally say that the title-deeds showed that they were not to be debited with poramboke and were entitled to 1,405·23 acres of dry land after the poramboke had been deducted from the total area of the village. As shown in the extract from the inam register, this poramboke (*acres* 979·09) in the village *in question* was, like minor inams, deducted or excluded from the total area of the village, in order to arrive at the area to be entered in the title-deed. Is it reasonable to suppose that if it had been intended to include it there would have been any object in going through the meaningless process of first subtracting or excluding and then adding again or including? Again, if it really had been intended by the marginal insertion of the words "besides porambokes" to



alienate porambokes, why was not the area of porambokes given in the grant as in the case of cultivable (wet, dry and garden) lands admittedly alienated? The area of one was known as well as that of the other.

6. The construction above indicated seems to receive strong support from one of the chief advocates of the inamdars. In his letter of the 4th of October 1865, written a little more than six months after the issue of title-deed now in question, Mr. Blair says—

Printed with G.O., No. 1325, dated the 11th October 1880.

"The *exclusion* of porambokes from the extent of land entered in the title-deeds, issued for whole villages of whatever description, is simply on account of the generally uncultivable character of such lands, but this *exclusion* is in no way intended to bar the right of the inamdars to cultivate such lands when practicable and enjoy the same as part and parcel of their village."

The italics are mine. Thus, Mr. Blair, whose evidence on this point may be taken as that of a hostile expert, admits that what the Board thought was inclusion was in fact exclusion.

7. I therefore submit that a scrutiny of some original title-deeds and of the inam registers showing how the areas entered therein were arrived at will show that, as admitted by the officer who issued them, these grants *exclude* porambokes. It may, however, without prejudicing the case of Government, be admitted that, at any rate, when printed and punctuated as in Annexure B, the title-deeds admit of a construction indicating the inclusion of poramboke, as well as the construction indicating exclusion. In other words, it may be admitted that the grants are equivocal on the point at issue. But to operate as the inamdar desires, the provision regarding porambokes must be unequivocal. It is, therefore, submitted that, on scrutiny of the original title-deed, if necessary, and on considering the arguments adduced above, the Board may be inclined to hold that the provision in the title-deed referring to poramboke being equivocal is inoperative, and that therefore, as Blair admitted, porambokes are excluded from, and not included in the grant.

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*P.S.*—While admitting that the construction now suggested seems more likely to be accepted if the original title-deed be inspected, I would not be understood to imply that I consider it inadmissible as an alternative construction if the form, as printed in Board's Proceedings, be alone referred to. The case would be different if the title-deed ran—

"I acknowledge your title to the entire village of Samudram, consisting of 1,405·23 acres of dry land, 159·71 acres of wet land, acres 38·79 of garden lands and 979·09 acres of porambokes."

But as the grant stands I submit that it may be fairly paraphrased as follows :—

"I acknowledge your title to the entire inam village of Samudram, which, you say, contains, besides (*i.e.*, after deducting or excluding) * porambokes, 1,405·23 acres of dry land, 159·71 acres of wet land and acres 38·79 of garden lands."

* *Vide*—Inam Register extract at page 13 of Proceedings.

The interpolation of the word "entire" will probably be allowed to be meaningless, with reference to the admitted deduction of items 1, 3 and 4 (page 8 and 13 of Proceedings) aggregating 874·60 acres. The phrase "an entire inam village" appears to be used merely as the opposite of the phrase "minor inam." There are independent circumstances which seem to tell against the reasonableness of the construction in favor of inclusion of porambokes. If the inamdars invested the value of the trees (Rs. 6,852) in 4½ per cent. Government paper, or four-fifths of that sum at 5 per cent., they would obtain more than the whole quit-rent (Rs. 267) of the village. In other words, if Government give the inamdars the trees, the public may have to pay the inamdars, instead of the inamdars paying the public, for holding the land of the village. The case becomes still stronger where an inamdar, on the strength of paying five or ten rupees for a patch of cultivable land, claims adjoining poramboke hill forest worth a lakh of rupees. I would, therefore, submit that, if the title-deeds are susceptible of two constructions, one of which may lead to, and the other of which does not lead to, such results as these, the courts are *cæteris paribus* likely to ado

the latter construction. I need hardly add that any opinion which the courts may form on this point, will be formed, not on view of the Board's copy of the title-deed, but on view of the original.

Reference on the above, dated 22nd March 1887.

The Collector will be requested to obtain and forward the original title-deed.

*Read*—also letter from the Collector of Trichinopoly, to the Secretary to the Board of Revenue, Madras, dated 29th March 1887, No. 95-4.

*Resolution*—dated 29th April 1887, Forest No. 271, Mis.

Submitted to Government in continuation of Board's Proceedings, dated 11th February 1887, Forest No. 81.

2. The Board cannot agree with Mr. Farmer in his contention that the words "besides porambokes" mean exclusive of porambokes.

(A true Copy and Extract.)

(Signed) M. HAMMICK,
Acting Secretary.

To the Secretary to Government, Revenue Department,
with Mr. Farmer's memorandum, in original, to be returned.

ORDER—dated 7th November 1887, No. 1042, Revenue.

Land Revenue, No. 114.

On a careful consideration of the subject, His Excellency the Governor in Council feels satisfied that the claim put forward by Mr. Farmer on behalf of Government to *poramboke* lands, *i.e.*, unassessed lands reserved for the general purposes of the village community, such as tank-beds, &c., in inam villages is untenable.

2. Of the several orders quoted by Mr. Farmer as bearing on the question, the only one which really supports his contention, viz., G.O., 11th October 1880, No. 1325, was based on a view of the rights to poramboke lands which, as regards zemindaris, at all events, has been since declared to be erroneous.

3. The question hinges on the interpretation of the terms of the title-deed granted by the Inam Commissioner, who was the duly accredited officer of Government specially empowered to examine into inamdars' titles and to recognise and determine their rights. Whatever right he acknowledged to be vested in an inamdar is good as against Government, for such acknowledgment was within the scope of his authority and conclusive. Notwithstanding Mr. Farmer's renewed protest, the Board themselves admit that the words "besides poramboke" in the title-deed mean that *poramboke* was included in the grant, not excluded from it, and regarding this there can be no two opinions. Only one argument of apparent weight is put forward by Mr. Farmer to the contrary, but it is untenable. The minor inams, &c. (items 1, 3 and 4 referred to in paragraph 9 of Mr. Farmer's memorandum), were deducted because excluded and are therefore not mentioned in the title-deed. The poramboke, on the contrary, is mentioned because it is included, but being neither wet, dry nor garden land and its area being immaterial, it is simply referred to in the lump.

4. It is suggested by the Board that the term "poramboke" was probably used loosely to refer to "cultivable waste." It can hardly be supposed that the experienced Revenue officers at the head of the Inam Commission could have so used it in a formal document. Probably, however, by cultivable waste is here meant unassessed waste, *i.e.*, waste which was not deemed cultivable and therefore never surveyed or assessed. But even in that case, the whole proceedings negative the suggestion that only such poramboke was intended to be assigned, but not other classes thereof. All kinds must have been included in the 979 acres mentioned in the inam register on which the title-deed was founded, and which, as Mr. Farmer contends, must be read with it. With all kinds of poramboke lumped up together in the one, it could not be contended that the Inam Commissioner intended to refer to only a part of it in the other.



5. The meaning of granting "an entire village as inam" seems sufficiently simple. It is that all rights therein possessed by Government are assigned to the inamdar. Thenceforth no question of title can arise between the grantor and the grantee as regards lands included in the village. The only question as to poramboke which could then arise would be between the inamdar and the cottamers or the general body of the ryots. This being so, the right of the inamdars is all the stronger as poramboke has been specially acknowledged by the responsible officer of Government duly accredited on that behalf.

6. In the present case it is not contended that any acts of ownership in poramboke have been exercised by Government since the date of the grant, and it seems probable that the inamdars have repaired the tank, protected the trees in the tank bed and otherwise dealt with it as their property.

7. With such a case, the Government do not consider that the claim put forward can be sustained in the courts, and it should therefore be withdrawn.

(true extract)

(Sd) J.H.Price,
Secretary to Government.

To

The Commissioners of Land Revenue, with one enclosure returned.

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Resolution, dated 14th November 1887, Forest No.687.

Communicated to all Collectors and the Conservators of Forests. The Collector of Trichinopoly will withdraw all claims made to the trees on tank-bed poramboke in the village of Samudram in Kulittalai taluk.

(A true copy and Extract)
(Sd) R.S.Benson,
Jr.Secretary.

To (true copy)
The Conservator of Forests, (Sd) R.V.Srinivasiar.
Southern Circle, First Assistant.
,, Collector of Trichinopoly.
,, Collectors of all districts
,, Conservator of Forests, Northern circle.
,, Copy to the Examiner of Forest Accounts,
,, to all Special Forest Settlement officers, with a copy of Board's Proceedings, dated 11th February 1887, Forest No.81.

## PROCEEDINGS OF THE BOARD OF REVENUE.

READ—the following letter from J. GROSE, Esq., Inam Commissioner, to the Secretary to the Board of Revenue, dated Madras, 16th September 1886, No. 320 :—

I have the honor to submit letter, No. 3268, dated 20th August 1886, from Mr. Farmer (Acting Collector of Trichinopoly), addressed to you, which has been sent through me.

2. In this letter Mr. Farmer urges that Government should assert a claim to trees worth Rs. 6,852 standing in the bed of the tank of an enfranchised inam village named Samudram, and urges it on the ground that poramboke in inam villages has not been alienated to the inamdars.

3. With reference to G.O., No. 664, dated 21st May 1884, he points out that the question as to the alienation of poramboke has been settled as regards zemindaries, but is still open as regards inam villages, which are not specifically noticed in that order. He remarks that the orders extant on the subject are conflicting, and that what he has to show is whether "as indicated by the Government in 1880 and the Board in February 1884, poramboke tank-bed in the present case was not alienated to the inamdar, or whether as held impliedly by the Government and the Board in 1874 and expressly by Mr. Stokes in 1882, such poramboke was alienated as in the case of zemindari poramboke." The orders are given *in extenso* in annexure C.

G.O., dated 11th October 1880, No. 1325.
Board's Procs., dated 15th Feb. 1884, No. 516.
G.O. on Board's Procs., dated 23rd May 1874, No 1227.
Bd.'s Procs., dated 23rd May 1874, No. 1227.
Mr. Stokes, Acting Collector, Tanjore, August 1882.

4. He considers that one fact with which he has to contend is the fact that the inam title-deed for Samudram purports to be for the "*entire*" village and for a stated extent, "*besides poramboke,*" the words "entire" and "besides poramboke" being interpolations in the sanctioned form of title-deed. He forwards a letter from a former Acting Inam Commissioner, Mr. Glenny, stating that these "interpolations" were unauthorized; that they are at variance with rulings of the Board and Government; that it is uncertain whether Mr. Blair initiated the interpolations, but certain that he acquiesced in them; that the poramboke in inam villages continues to be reserved just as in ayan villages; and that he intends to submit a corrected form of these title-deeds for inam villages to Government. On this expression of opinion Mr. Farmer lays great stress, thinking that he has to get over express words in the title-deed as it stands now, giving the tank-bed to the inamdar.

5. I do not think the expressions in the inam title-deed can have the effect attributed to them by Mr. Farmer. According to Madras Act VIII of 1869, "nothing in the title-deed is to be deemed to confer on any inam-holder any right to land which he would not otherwise possess." If the inamdar has a right to the trees in the tank-bed, he does not get it through his inam title-deed.

6. Still it seems desirable to state that I think the opinion expressed by Mr. Glenny was wrong. The words "entire" and "besides poramboke" were not interpolations, possibly initiated by Mr. Blair. They were words introduced at the beginning in 1859 when Mr. Taylor was Commissioner, and they were introduced as a matter of course to modify the sanctioned form of title-deed, which was for a minor personal inam, into one which could be used for inam villages. They did not

conflict with any ruling of the I
thinks they conflict with orders v
right to all poramboke except pora
enjoyment of the villagers", but I
even if they did, the orders were
words.

7. There is one ruling, howev
introduction of the words "besides
Proceedings, dated 15th February 18
that the rights of the inamdar are st
ment of which he may be entitled; bu
for public purposes, for roads, cattle-
rights, and it rests with the Collect
when necessary, the right of Govern
ruling, it will be advisable to alter t
"besides poramboke" into "beside
purposes." I doubt, however, whet
ance with G.O., 11th October 1880.

8. As regards poramboke pro
Government villages is the right to
purposes for which it was assigned.
It still remains and by the nature o
and its magistrates. True its Rever

belongs to the inamdar. The orders
case to the case of poramboke in zen
see, the words "besides poramboke
claimed by Government.

9. Even if it is decided that the
proper, was reserved, I submit tha
communal rights, and not with a view
any taking of the trees which grow i
as an interference with private right

overnment then extant. Mr. Glenny
that Government have alienated their
er (*i.e.*, land assigned for the communal
of this (as I shall show hereafter), a
subsequent to the introduction of the

the most recent of all with which the
" does seem inconsistent, viz., Board's
. In this the Board say, "They consider
ed to the cultivable land, to the assess-
o poramboke, unassessed waste reserved.
r-courses, &c., the inamdar can have no
presentative of Government, to assert,
dlord." If the Board are right in this
orm of title-deed by altering the words
oke, except that reserved for communal
be upheld, though in apparent accord-

right Government have over it in
is properly used by the people for the
at has never been alienated to any one.
ust remain with the paramount power
may have ceased to exercise in the case

ke, there can be no doubt but what this
toted imply this, and the analogy of the
settles it. Accordingly, so far as I can
tle-deed conflict with no right which is

in Samudram, being a bit of poramboke
eserved simply with a view to enforce
enue or for any other purpose, and that
l be regarded by the people with reason

3.

From H. R. FARMER, Esq., Acting C
of Revenue (through the Ina
1886, No. 3268.

Trichinopoly, to the Secretary to the Board
ioner), dated Trichinopoly, 20th August

I have the honor to submit a memor
district to trees valued at Rs. 6,852 sta
jaghir village.

the claim of the Forest Department of this
he tank-bed poramboke of an enfranchised

2. There are three annexures to the
Annexure A shows the origin of t
claim came up for orders.
Annexure B contains a transcript
from the inam register.
Annexure C contains extracts f
randam.

um—
d the circumstances under which the present
deed produced by the inamdar and extracts
re important records quoted in the memo-

3. The matter has been pending for
has occurred, but I felt reluctant again
proprietary estates, as I had already wri
in the present case as far as I could, I w
it may still contain redundant matter

a year and a half. I regret the delay which
on a subject connected with poramboke in
a paper on this subject. To avoid prolixity
wrote the present memorandum, and though
nts, and may be defective in others, I hope



that it will not be so much open to objection as my former paper. I was also anxious not to submit the question until Mr. H. E. Stokes had returned to the Secretariat. That officer's views are so decidedly expressed (extract No. III in annexure C) that he does not apparently consider that there is even an arguable case for the Government. He has not, as far as I am aware, given in detail the authorities and grounds for his opinion. Two other Collectors of the district (Tanjore) formed opinions in favor of Government, and the Board agreed with them, as will be seen from the extract just mentioned and from Board's Proceedings, No. 516, dated 15th February 1884 (No. I in annexure C).

4. In deciding whether the case should or should not be placed before a civil court which alone can finally decide it, I would solicit attention to the following authorities:—

The Bombay High Court (page 273, appendix—, volume XII, Bombay High Court Reports) state:—"If it is too much to expect that an *ex parte* proceeding in such a case as this can be satisfactory, the Revenue officers, if unaided by hearing the facts fully debated by the professional advisers of the parties, and left to struggle alone through an enormous mass of documents and accounts, may err on either side."

The Government of India in a letter, dated the 6th July 1880, No. 301, to the Madras Government, state in such cases "nothing short of the clearest and most conclusive evidence" should be accepted against the claims of Government. It has also been stated that such claims against Government ought to be "distinctly restricted to the limits assigned to them by the public records." There are numerous other authorities and examples which will no doubt suggest themselves to the Board, and which show how Government interests may suffer by failure to place the matter before a competent civil tribunal. As the last orders both of Government* and the Board† on this subject are strongly in favor of Government claims, I hope that the Board will feel justified in supporting my recommendation that we should not give the inamdar this valuable property without requiring him to prove in court that it is his. I need hardly allude to the fact that the case is a test case, and that upon its decision rest decisions on many other more important cases. If arguments in favor of inamdars which have not been anticipated by me are put forward, I should feel grateful if allowed an opportunity of meeting them before final orders are passed.

Pages 228, 229, Revenue Selections, vol. III.

* G.O., No. 1325, dated 11th October 1880.
† Board's Proceedings, No. 516, dated 15th February 1884.

5. As the question of acquiring by prescription a right to poramboke is not dealt with in G.O., No. 664, date tively on this subject in paragrapl d, I have not repeated the argume

*Memorandum regar ... ... ...

The reason which has led me to do this is that conflicting views have been expressed on the subject both by Government and the Board of Revenue. It has, moreover, since the Board's orders of February 1884 were passed, been decided that Government alienated the poramboke in permanently-settled estates to zemindars (G.O., No. 664, dated 21st May 1884). It has further been stated by the Revenue Secretary to Government that "the case of whole inam villages is similar to that of permanently-settled estates," and* that "Government claims no right to them" (porambokes) "in such estates."

* Mr. H. E. Stokes' order on letter No. 535 of the 15th August 1882, from the Sub-Collector of Tanjore, asking if prohibitory assessment could be charged for unauthorised cultivation on poramboke lands required for common use in whole inam villages (*vide* No. II in annexure C).

† G.O., No. 664, dated 21st May 1884.

In the case of zemindari poramboke, the grounds upon which the conclusions against Government are based have been stated† in detail. As regards the poramboke now in question, I cannot find that these grounds have been thus stated. I propose, therefore, with reference to the conflicting views on record, to examine the case of the tank-bed in the village of Samudram, and record the facts which appear to me to be relevant in deciding whether or not it was alienated to the jaghirdar. I shall first notice the conflicting orders. The first orders are by the Board of Revenue and are dated 16th March 1866, No. 1833,‡ and 21st November 1866, No. 8412.§ These orders while recognizing the right of the inamdar to revenue derivable from assessed waste not reserved for public purposes, negative his right to derive revenue from poramboke, which has been thus reserved, and the first order denies the power of the Inam Commissioner to alienate such poramboke to the inamdar. The former of the Proceedings just quoted contains the following statement recorded about 1860 by the Hon. T. Muthusami Aiyar, now a Judge of the High Court, and then (1860) engaged as Inam Deputy Collector in North Arcot. This extract, though recorded with reference to the inam settlement, refers to the terms of the original grant, and with regard to these terms a reference is further solicited to pages 91 and 219 of Mr. Hudleston's Mirasi selections. "In most cases no sunnuds have been produced which can alone afford at this distance of time satisfactory means of ascertaining whether the poramboke is included in, or excluded from, the extent or the chekunama limits of the grant. I think it is probable in the highest degree, as alleged by village officers of old age, that no question of ownership to the poramboke had arisen during the survey, which was in consequence conducted without reference to it, fields being entered consecutively in the direction in which measurements were taken. It must be borne in mind that a general impression is prevalent, especially in the Chittoor taluk, that the right to poramboke vests in the Government, and that any portion thereof brought under the plough is liable to be fully assessed. On this principle the Revenue authorities seem to have acted in some cases, exempting, however, such lands from assessment where the agraharamdars asserted their right, and proved it by means of sunnuds, or other reliable evidence. There are instances in which the inamdars have never challenged the right of Government to assess the poramboke, and paid the assessment charged without complaint. On the other hand, there are also cases in which the village officers have not entered poramboke lands rendered fit for cultivation as liable to assessment, and the lands have been accordingly enjoyed as inam" The Inam Commissioner, Mr. Blair, it will be seen from his letter recorded in the first Proceedings quoted above, was in favor of holding that all porambokes had been alienated by Government to the inamdar. Before expressing this view in 1866 in favor of the North Arcot inamdars, he had expressed‖ the same view with regard to the Tanjore and Bellary inamdars in 1865. This, however, was negatived by Government, who stated that they saw "no reason for surrendering to the agraharamdars the land which as poramboke was reserved for the convenience of the public, notwithstanding that it had subsequently been diverted from its original purpose."

‡ No. III in annexure C.

§ No. IV in annexure C.

‖ *Vide* his letter recorded in G.O., dated 11th October 1860, No. 1825.
(No. V in annexure C.)

This order has special reference to Kistna, and it¶ will be seen that the proprietors of whole inam villages in that district had, as in the cases noticed in North Arcot by the Honorable Muthusami Aiyar, admitted that the poramboke in their villages belonged not to them but to Government. They even went further and offered to pay "two-thirds of the whole assessment thereon as an additional quit-rent," under orders of the Board passed with regard to relinquished and resumed inams excluded like the tank-bed now in question from the area upon which the quit-rent of proprietors of whole inam villages was fixed. It will thus be seen that the Board of Revenue in passing the order of February 1884 upon which the District Forest-officer now wishes me to act, and in which they say that the inamdar can have no right to land like the tank-bed of Samudram, were following the Government Orders of 1880, which, like the frequent admissions against their own interests of the proprietors concerned, indicated that, as stated by the Board, the inamdars "can have no right" to poramboke, and that Government continues to be the landlord, as poramboke, like minor inams, had never been alienated to the village inamdars. But, as stated before, there have been other views expressed by the Government and the Board, and I shall now notice these. They were expressed with regard to Godávari district in 1874,

¶ Vide Kistna Collector's letter quoted in the above Government Order.



and they are important as perhaps being those to which Mr. H. E. Stokes referred in 1882 when he stated that "the case of whole inam villages is similar to that of permanently-settled estates." The question in Godávari was first raised with regard to zemindari porambokes, and the ruling was subsequently taken to apply to whole inam villages. The Collector of Godávari in 1874 argued that a zemindar had nothing to do with land, which as poramboke was excluded from the permanent settlement, and as such was the property of Government. The Board did not agree with the Collector in thinking that because the lands were excluded from the permanent settlement they were the property of Government. The Board went on to say: "It is true that the assessment leviable on the lands was not taken into account when the peishcush was fixed, but that was done not because the Government wished to retain their right to the lands, as in the case of the inam lands excluded from the permanent settlement, but because the lands were not cultivable by their nature. The permanent sunnud does not reserve any right to Government in these poramboke lands, as it does in the case of inam lands excluded from the permanent settlement."

Board's Proceedings, dated 23rd May 1874, No. 1227.
(No. VI in annexure C.)

* G.O., dated 26th November 1874, No. 1456, R.D.

on the ground that the tank-bed did not belong to Government, and that "as a general rule, tanks lying within inams or zemindaris are the property of the inamdar or zemindar and not of Government." It is here asserted that poramboke was dealt with at the inam settlement as it had been at the permanent settlement. The order dealing in detail with the grounds for holding that zemindari poramboke was alienated expressly omits to deal with poramboke in inam village, and thus seems to leave the question an open one. These are the circumstances which have decided me before acting on the Board's orders of February 1884, as requested by the District Forest-officer, to place before the Board the result of my examination of the grounds upon which these orders of 1884 must be based. I have thus to quote authority to show whether as indicated by the Government in October 1880, and by Board in February 1884, poramboke tank-bed in the present case was not alienated to the inamdar, or whether as held impliedly by the Government and the Board in 1874, and expressly by Mr. Stokes in 1882, such poramboke was alienated as in the case of zemindari poramboke.

G.O., dated 21st May 1884, No. 664, R.D.

4. *Conclusions anticipated.*—The conclusion I arrive at is that the Board's orders of 1884 should, as requested by the District Forest-officer, be acted on. In arriving at this conclusion, I find that the case of poramboke, specially set apart for some public purpose, was dealt with by the Inam Commission started in 1859 in a manner different to that in which similar land was dealt with at the permanent settlement conducted more than 50 years earlier. I find that the inam settlement differed from the zemindari settlement as regards the manner that poramboke was dealt with on the following points:—

(i) In the inam title-deed the area of the village is given exclusive of poramboke. In the zemindari title-deed no area is given, but certain classes of land, held not to include poramboke, are mentioned as reserved.

(ii) In the case of the inam settlement there is no enactment, which like Regulation XXV of 1802 can be taken to imply the alienation of poramboke, because it does not mention it as reserved like inam.

(iii) Inamdars have, and zemindars have not, admitted the right of Government to poramboke like that now in question. I find that a scrutiny of the records of that settlement, in the case of the village of Samudram now under reference, shows that poramboke expressly reserved for specified public purposes (including the tank-bed now under reference) was treated in exactly the same way as the three following kinds of lands which are similarly excluded from the area on which the quit-rent was fixed:—

(1) Minor inams;
(2) Part of the village (one-fifth) which had escheated to Government; and
(3) A part of a neighbouring Government village which the proprietor had encroached on and added to the village of Samudram. The excluded land measured 1,853·69 acres and the included land 1,605·73 acres.

In the waste alienated was included some waste land, which in the early accounts used to be called poramboke, though not reserved for any specific public purpose, but no poramboke which, like tank-bed, was received for a particular public purpose. I find that one of the chief doubts

which have arisen on the subject of the treatment of poramboke at the Inam settlement seems to be owing to the unauthorized interpolation,* in the Inam Commissioner's office, of the words "besides poramboke," and the word "entire" before the word "village" in the title-deed, which words are not found in the forms of title-deeds approved by the marginally-noted order of Government. When the proprietor is called upon to establish, as he must do, by unequivocal terms in his grant, his title to poramboke revenue, the conclusion I arrive at is that his grant will be found to negative instead of establishing his claim, and that authorities show that the grant cannot be supplemented or varied by conjecture or inference, or by extraneous matter, except when a latent ambiguity has to be cleared up.

* Letter, No. 148, dated 15th April 1886, from Inam Commissioner (No. VIII in Annexure C).

No. 1069, dated 9th August 1859.

5. *How the point at issue must be proved.*—I will now state how it appears to me that the conclusions anticipated in the last preceding paragraph must be proved. It will then remain to attempt to prove them.

As regards production and nature of proof, there are three questions to be decided.

(i) Does the burden of proof rest on the grantor (Government) or on the grantee (Inamdar)?

I find in the next paragraph that it rests on the Inamdar.

(ii) Must the proof be afforded by the title-deed or independently of the title-deed?

For the reasons given in paragraph 7, I find that the rule is that the title-deed must decide the question, but that there are exceptions to this rule. For instance, if the subject-matter of the grant is inaccurately described in the title-deed, as a village, extrinsic evidence is admissible to prove to what area the grant really applies.

*Falsa demonstratio non vocet.*—(Section 95, Indian Evidence Act). It may thus be shown that part of the "village" was reserved by Government, though the grant speaks of the "village" generally.

(iii) If the title-deed is not clearly and distinctly in favor of alienation of the land in question, can the alienation be considered proved?

For the reason given in paragraph 8, I find that nothing short of clear and distinct language in the title-deed evidencing alienation will be sufficient to prove such alienation against Government. I further find that even if there be such clear and distinct language in the title-deed, it will be inoperative to prejudice the right of Government if used without the sanction of Government.

6. *Burden of proof.*—The first issue is regarding the burden of the proof. We require to know, in case no evidence is offered, to whom it will be presumed by the Courts that the tank-bed now in question belongs. Upon this point, I would beg to refer to the following ruling † of the Bombay High Court passed in a case where a private person claimed land, the alienation of which was denied by Government :—

† Pages 454 and 584, Indian Law Report, Bombay, Vol. III, Basikarappa *v.* the Collector of North Canara.

"The principle from which we must start is that waste-lands belong to the State."

Section 102 of the Indian Evidence Act provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Upon these grounds it appears to me that a Court may be reasonably asked to require the Inamdar to prove his title to the tank-bed now in question, and that Government in the absence of such proof may claim it, and under the rule, *quicquid plantatur solo solo cedit*, may also claim the trees growing thereon, which the Inamdar has prevented the Forest department from removing. But granted that Government will be required to do nothing but meet the arguments of the Inamdar, it becomes necessary to see what the arguments are likely to be and how they are to be met.

7. *Where proof must be sought.*—We thus come to the next issue which takes for granted the existence of a title-deed, and the question is whether the proof of title to the tank-bed must be afforded by the title-deed or not.

Upon this issue I quote the following from the Indian Law Reports :—

Indian Law Reports, Bombay, Vol. III, page 717.

"The rights of a grantee are defined by the grant under which he holds so much as it confers, he owns, and no more."

As in the last issue the ruling of the High Court quoted seemed to be a practical application to an analogous case of the rule as to burden of proof contained in chapter VII of the Indian Evidence Act, so the ruling now quoted seems to afford in the same way an application of the rules on the exclusion of oral by documentary evidence contained in chapter VI of the Indian Evidence Act. The first section (section 91) of that chapter provides that when the terms of a grant have been reduced to the form of a document, no evidence shall be given in proof of the terms of such grant except the document itself, but this does not preclude extraneous evidence in case it can be



shown that the grant contains a latent ambiguity. Section 95 of the Indian Evidence Act provides this safe-guard against "questions of substance going astray and losing themselves in questions of words."

For instance it is known that the word "village" is an ambiguous term used in several senses. If the word "village" in a title-deed were held to include all the land of a village, the title-deed would purport to convey much that did not belong to the conveyor.

As Mountstuart Elphinstone points out (page 75 of History of India, 3rd edition), when speaking of villages of the very class now in question, "want of advertence to this circumstance has led to mistakes regarding the property of the soil. The native expression being 'to grant a village' or 'a district,' it has been inferred that the grant implied the whole, and excluded the notion of any other proprietors."

Government revenue from poramboke might of course have been granted without infringing the right of others, but the above quotation would show, it is submitted, that even if the area of poramboke had not been excluded from the area entered in the title-deed, alienation of such revenue cannot be inferred from the use in the grant of such an ambiguous term as "village."

If a title-deed purports to convey the village of A, measuring 20 acres of "cultivable land," and it is shown that besides these 20 acres of cultivable land the village contained 20 acres of cultivable and uncultivable land, evidence might, it is submitted, be produced, under section 95 of the Indian Evidence Act, to show whether the framers of the deed meant, when saying they gave the village of 20 acres, to give the whole village of 40 acres, or to give a certain specified area of 20 acres out of the village of 40 acres.

8. *Strength of proof required.*—The third issue is—must the part of the grant under which the land in dispute is claimed by the Inamdar be necessarily in his favor, or will it be sufficient to establish his right thereto, if it admits a construction in its favor, while at the same time it admits of a construction in favor of Government. Upon this issue, the following quotations appear relevant. The first extract is from a judgment of the Exchequer Chamber in a case that went up from the Queen's Bench; the second is an extract from Broom's Legal Maxims; and the third is an extract from the Bombay High Court Reports.

In the first case Chief Baron Pollock said :* "The grant is construed most strictly against the grantee and most beneficially for the Crown, so that nothing will pass to the grantee, but by clear and express words, the method of construction, just stated, seeming as recently remarked to exclude the application of either of these two phrases—*expressum facit cessare tacitum* or *expressio unius est exclusio alterius*."

* Page 905, Vol. II, Ellis' and Blackburne's Reports. "The Queen *v.* the Eastern Archipelago Company."

The second quotation is from Broom's Legal Maxims. It is as follows: "That which the Crown has not granted, by clear express and unambiguous terms, the subject has no right to claim under a grant or charter."

Page 583.

The third quotation is from the Bombay High Court Reports: † "In construing written grants from the Crown to the subject, the well-known rule is, that if the grant be not clear but ambiguous, it must be interpreted favorably to the Crown. In no species of grant, said Cockburn, C.J., does the rule of construction more especially obtain than in grants which emanate from and operate in derogation of the prerogative of the Crown."

† Page 214, Appendix, Vol. XII.

"Lord Stowell said that the rule was based upon this just ground, that the prerogatives and rights and emoluments of the Crown being conferred upon it for great purposes, and for the public use, it shall not be intended that such prerogatives, rights and emoluments are diminished by any grant beyond what such grant by necessary and unavoidable construction shall take away."

Finally, it is submitted that if the officer who acts on behalf of Government in issuing the title-deed enters in that title-deed words which do not appear in the form of title-deed sanctioned by Government, but which purport to derogate from the prerogative of the Crown, such interpolation will not, it would appear from the following extract, be binding on the Government, nor could the grantee rest thereon a valid claim against Government :—

"A waiver of the prerogative of the Crown is not to be easily implied from the correspondence of its officers, unless they have full authority, and their language is clear and unequivocal" (Page 215, Appendix, Volume XII, Bombay High Court Reports).

The authorities now quoted seem to show that the part of the Inamdar's grant under which he claims the revenue or income from the tank-bed now in dispute must be embodied in words, duly authorized by Government, the only and necessary meaning of which is that the income claimed is thereby conveyed to the Inamdar. It will thus be beside the point to show either by applying the principle involved in the phrase *expressio unius est exclusio alterius*, or by the application of any other argument, that the deed does not contain words which necessarily imply retention or non-alienation of poramboke by Government. Such words are not needed by Government, while on the other hand, words necessarily supporting and evidencing alienation of the tank are indispensable to the Inamdar's claim.

9. *Result of scrutinizing records of title in the present case with reference to the rules of construction on the above four points noticed in paragraphs* 6, 7, *and* 8.—It now remains to examine the Inamdar's title-deed with a view to deciding whether an application of the above rules shows that the 697 acres of tank-bed containing trees claimed by the Forest Department and valued at Rs. 6,852 were alienated to the Inamdar as indicated by the orders of 1874 quoted in paragraph 3 above, or remain the property of Government as indicated by the orders of 1880 and 1884 quoted in the same paragraph.

Applying the first of the three rules, it appears that it is upon the Jaghirdar of Samudram and not upon the Government that the burden of proof of title to the tank-bed poramboke lies; until the Jaghirdar proves his title, the Government must, it would appear from the authorities quoted above, be considered the owners of the tank-bed and the trees thereon.

Applying the second rule, it will be seen from Annexure B that the grant has been reduced to writing. Consequently the issue regarding the alienation or non-alienation of the tank-bed must, as required by section 91, Indian Evidence Act, be proved by the grant, unless in the case of exceptions embodied in that Act, such for instance as a latent ambiguity which may be explained as provided by section 95 by extrinsic evidence.

With reference to the third rule in paragraphs 7 and 8 above, I have first to strike out any unauthorized interpolation which it may contain, then with reference to the second rule to clear up any latent ambiguity which may be discovered, and finally to see whether it contains any clear and unequivocal provision alienating the tank-bed poramboke.

Annexure B, to which for the text of the title-deed I now beg to request reference, contains a transcript of the title-deed produced by the Inamdar. The parts printed in the original are printed in the copy, and the manuscript parts of the original have been inserted in the manuscript. The annexure also contains extracts from the Inam register (which is believed to be relevant with reference to section 95, Indian Evidence Act, to explain the terms of the title-deed) prepared at the time of issue of the title-deed in 1865 by the Commissioner who issued the title-deed, and showing the data on which he arrived at the area entered in the title-deed, and at the quit-rent charged on that area. Before dealing with the facts evidenced by the title-deed and the contemporaneously prepared register, it will be well to notice that there are certain additions made therein which are not in the form approved by Government. These additions are the insertions of the word "entire" before the word village, and the interpolation of the words "besides poramboke" in the margin opposite the area of the "village." From letter No. 148, dated 15th April 1886, from the officer in charge of the Inam Department (extract No. VIII in Annexure C), it will be seen that these interpolations were "unauthorized, and at variance with the rulings of the Board and Government," and that "poramboke continues to be reserved just as in ayen villages." I propose, with reference to the Bombay High Court ruling quoted towards the end of the last paragraph, to ignore these interpolations, as it would appear that being unauthorized, they cannot affect the question of the Government right to the tank-bed poramboke.

Dealing with the title-deed as it stands after the removal of the words, I shall first show how the area entered in the title-deed was arrived at, and then how the quit-rent charged on that area was fixed. First as regards the area—The subject-matter of the grant is stated in the title-deed to be the "village" of Samudram and to be claimed to be of 1603·73 acres of cultivable land, but from the contemporaneously prepared Inam register the "village" is shown to contain altogether 3457·42 acres, the particulars of which were as follows:—

| | Acres. |
|---|---|
| 1. Minor inams .. .. .. .. .. .. .. | 277·41 |
| 2. Poramboke .. .. .. .. .. .. .. .. | 979·09 |
| 3. Resumed by Government .. .. .. .. .. .. | 435·59 |
| 4. Wrongly included in the village .. .. .. .. .. | 161·60 |
| 5. Entered in title-deed .. .. .. .. .. .. | 1603·73 |
| Total .. | 3457·42 |

The Jaghirdar will probably admit that the village of Samudram stated in the title-deed to be claimed to be Acres 1603·73 in extent is, as a matter of fact, Acres 3457·42 in extent. As the language (quoted in the margin) thus used in the grant seems to be unmeaning with reference to existing facts, it seems that extrinsic evidence as to whether the subject-matter of the grant was the "village" (Acres 3457·42) or only Acres 1603·73 of the village, is admissible under section 95. The Inam register seems to afford the best evidence on this point. It was signed by the Commissioner, who issued the title-deed, nine days before he issued it, and shows that the area of 1603·73 acres entered therein, as claimed to be the extent of the Inamdar's village, was arrived at by deducting from the total area of Acres 3457·42 the first four items given above and aggregating Acres 1853·69 or more than half the village. The object of excluding items 1, 3 and 4 from the area alienated to the Inamdar is sufficiently obvious. As regards the remaining item, poramboke, I shall, for the present, simply

"I acknowledge your title to the village of Samudram claimed to be of 1065·23 acres of dry, 459·71 acres of wet, and 78·79 acres of garden land" (total 1603·73 acres).



draw attention to the fact that it was treated in the same way as land admittedly not alienated, and as regards the possible objection that in the absence of a statement of the object or consequence of non-alienation, alienation must be presumed, I would remark that such a contention is not in accordance with the rule requiring proof of alienation to be in clear and unequivocal language contained in the grant. I shall notice further on other objections to presuming that a thing has been done because the reason for not doing it is not given.

Now as regards the data upon which the quit-rent of Rs. 267 was fixed. The area leased for cultivation and yielding a return to the Inamdars was, taking an average of three years, as shown in the margin, 806 acres. This extent of land was returned as yielding on an average Rs. 1,454-5-0. Much of the leased land must have been waste, for it was stated that the waste amounted to nearly 1,400 acres, or more than one-third of the village. Perhaps, however, inam and other waste not included in the grant were inadvertently spoken of, when mentioning the area of waste in the village. The Deputy Collector who made the original recommendation made no recommendation to increase the assessment on which quit-rent was to be calculated on account of that part of the waste not included in the 806 acres yielding Rs. 1,454 above mentioned. The Special Assistant to the Commissioner proposed that the assessment should "on account of prospective improvement" be increased from Rs. 1,454-5-0 to Rs. 1,600. One of the sharers receiving an income of Rs. 178 out of the total of Rs. 1,600 had to pay half of it or Rs. 89 as quit-rent; the other 5 sharers who were debited with the remaining Rs. 1,422 of the income paid one-eighth of it or Rs. 178 as quit-rent. These two sums added together give 267 rupees, the amount of quit rent entered in the title-deed as due for the 1603·73 acres of wet, dry, and garden lands. The proportion of quit-rent included on account of waste was, I calculate, Rs. 24. I now come to the arguments which may be based on the facts stated above. It may be said that the subtraction and the cut of the remainder only in the title-deed cannot affect the Inamdar's title to land thus subtracted and not entered in the title-deed, if it can be shown that the Inamdar's title to the subtracted land, not entered in the title-deed, had always been insisted on by the Inamdar, and recognized by Government before and since the issue of the title-deed, and that part of the quit-rent fixed on the "village" and paid by the Inamdar (Jaghirdar) represents payment on behalf of the tank-bed now in question. In reply to this, I would first notice that the excluded area consists of the item (No. 2 mentioned above) poramboke, measuring 979·09 acres and including the tank-bed in dispute, and of items 1, 3 and 4, aggregating Acres 874·60. I am unaware of the Jaghirdar ever having claimed any right to the last mentioned three items, which were treated at the settlement in exactly the same way as the remaining item poramboke. I am unaware of Government ever having recognized the Inamdar's right in the excluded poramboke in this village any more than it did in the excluded inams. I am aware, however (*vide* paragraph 3 above), that proprietors of other villages, settled under the same rules, have admitted that the exclusion in the case of poramboke had exactly the same effect as in that of minor inams, namely, to reserve the Government right to such poramboke, and to negative the Inamdar's right thereto. But notwithstanding this, it may be argued that, while the exclusion of items 1, 3 and 4 from the area given in the title-deed evidences the non-alienation to the Inamdar of those three kinds of excluded land, the fourth item (poramboke) was excluded, as it was said to have been excluded in the case of Zemindaries, "not because Government wished to retain their right to the lands as in the case of Inam lands, but because the lands were not cultivable by their nature." In other words it may be stated that what was non-alienation in three cases was alienation in the fourth.

| | Cawnies. |
|---|---|
| Fasli 1270 .. .. .. .. .. | 818·47 |
| ,, 1271 .. .. .. .. .. | 767·81 |
| ,, 1272 .. .. .. .. .. | 810·27 |
| Total .. | 2394·55 |
| Average .. | 798·18 = 806 acres. |

Now even granting that Government did not *wish* to retain their right to the tank-bed in question, when they excluded it from the area entered in the title-deed, and granting that the Government even contemplated the possibility of the Inamdar taking without payment the trees worth nearly 7,000 rupees now in question, I would say, in reply to the argument based on the unexpressed wish or supposed intention of Government, that such wish or intention is beside the question. The point at issue is not what Government wished or intended to alienate, but what the title-deed legally construed shows that they did alienate, receiving in return consideration in the shape of quit-rent. To put the opposite case, would the Inamdar for one moment think of giving up a plot of land which it was clearly shown Government wished to retain, if, as a matter of fact, his title-deed showed that Government had not retained it? But I submit that the nature of the settlement showed that Government could hardly have intended or wished to alienate any revenue on the tank-bed, for they made the Inamdar pay quit-rent representing one-half or one-eighth of all the revenue they alienated; and nothing was charged in respect of the tank-bed, though Rs. 24 was added to the quit-rent on account of other waste included in the grant. The form of title-deed as revised by G.O., No. 1962, dated 8th July 1859, shows still more clearly that Government did not wish to alienate revenue from poramboke, for instead of stating as the title-deeds did, that so much wet, dry, and garden land was alienated, they state that "the right to the Government revenue" on a specified area of wet, dry, and garden land is the subject-matter of the grant. Poramboke is not classed either as wet, dry, or garden. If it is stated

that Government might have included the tank-bed in the area on account of which revenue was charged, if they had anticipated its yielding revenue, the answer is that, as a matter of fact, they did not do so, and excluded it from the area paid for and conveyed by the title-deed. It would have been a very simple thing to include the area of poramboke in a title-deed and charge some small sum as was done in the case of other waste, in respect of revenue from trees, &c., which might grow thereon. This, however, was not done, and the Board of Revenue have stated that such a course would be "opposed to rule and principle."

Mr. Justice Muthusami Aiyar has stated with regard to the original grants that "it is probable in the highest degree that no question of ownership of porambokes had arisen in the survey" defining the limits of the grant. It was, I submit, understood that such poramboke was not alienated, and this was indicated in exactly the same manner as the non-alienation of minor inams, namely, by excluding it from the area entered in the grant; and, as already shown, the grantees themselves have recognized poramboke, as having been reserved in exactly the same way as minor inams, and have paid additional quit-rent when allowed to cultivate it. Even if Government, when excluding from the area mentioned in the Samudram Inamdar's title-deed the four marginally-noted items, had mentioned that they wished to retain their right as landlords, in the case of the first three items, and had not mentioned the object of exclusion in the case of the last item, I submit that an inference of alienation or *inclusion* from this omission to state the object of *exclusion* would be unreasonable against a private individual, but against Government it would also be in violation of the rule of construction laid down by the Exchequer Chamber which expressly declares that the phrase *expressum facit cessare tacitum* inapplicable to a case where, by its application, it is sought to establish a title against the Crown. Such alienation must, as repeatedly noted in the authorities quoted in the last paragraph, be evidenced by clear, express and unambiguous terms in the grant. In the present case, the object of the reservation was not, as far as I am aware, mentioned in any one of the four cases, and so perhaps it is superfluous to notice what might have been the effect of non-mention of the object in the case of excluded poramboke, and its mention in the case of other excluded lands. In the case of other inam villages or in some general statements regarding the scope of the Inam settlement, the object of reservation may be mentioned; but the fact that, in the case of poramboke, the persons who excluded it from the area mentioned in the title-deed did not mention the consequence of exclusion because perhaps they did not anticipate the contingency of such poramboke yielding a revenue to Government cannot, I would submit, turn exclusion into inclusion. To illustrate this by an example. If A had three fields at his disposal, and sold one to B, stating that he retained one of the two others to build on, would it be reasonable for B to claim the third field without additional payment, because A had omitted to state what he intended to do with it? I submit that the most he could do would be to ask A to sell him the third field. The case is still stronger when the claim is against Government. Therefore, in the present case, if the Inamdar wants the tank-bed revenue, I submit that, if Government are pleased to let him have it, he should pay additional quit-rent in respect thereof, and cannot claim it because he pays quit-rent for Acres 1603·73 of cultivable land in the same village. Upon these grounds I would submit that the view put forward by Government in 1880 and by the Board in 1884 is correct, and that the tank-bed of Samudram village was not alienated to the Inamdar. If the view that the Forest department have no right to the trees in question be taken, it will apparently have to be held that the title-deed copied in Annexure B contains a clear and distinct provision, authorized by Government, and evidencing the alienation of the tank-bed. I cannot see how such a provision can be safely said to be present in the title-deed until the matter is fully debated before a Court. I therefore solicit orders to treat it as Government property as requested by the District Forest-officer in accordance with Board's Proceedings,* No. 516, dated 15th February 1884, and thus to have the issue as to the alienation or non-alienation of the tank-bed finally and authoritatively settled.

Paragraph 1 of Board's Proceedings, No. 1633, dated 15th March 1866. (No. III in Annexure C).

1. Minor Inams.
2. Escheated share of village.
3. Added by encroachment.
4. Poramboke.

* (No. I in Annexure C.)

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## ANNEXURE A.

The circumstances attending the original grant of the Jaghir village of Samudram in the Kulitalai taluk are obscure. It was granted in 1787.† There is a tradition to the effect that the original grantee was a spiritualist, that the then reigning Nabob assigned him the village as a reward for producing the deceased ancestors of the Nabob.

† Inam Register of 1866.



2. The village is situated 6 miles to the north of Manapárai, and the South Indian Railway runs through it, between the 260th and 264th miles from Madras. The tank-bund is close to the railway and was inspected by me on the 14th July 1886. The village is an Arthamamiyam or half-free inam, *i.e.*, the Inamdar enjoys only the melvaram or the landlord's share. One-fifth of the village was resumed by Government on the occurrence of lapses, and the remaining four-fifths is now in the possession of the Inamdars.

3. In 1883, the Railway authorities agreed to take from the Forest department as much wood as the department could supply, to be delivered at the Manapárai railway station. The Forest department, instead of cutting the wood departmentally, employed a contractor named Thangamuthu Pillai. A deed of agreement was executed by the contractor on the 6th July 1883 for a period of one year and was duly registered. In this deed, the tank-bed of Samudram village in question was mentioned as one of the places wherein the Forest department allowed felling by the contractor. The contractor commenced felling in the tank-bed and was obstructed by the inamdars. The District Forest-officer called (office note, No. 943, dated 6th January 1885) the attention of the Collector to his (Collector's) circular No. 9 of 1884 (based on Board's Proceedings, No. 516, dated 15th February 1884) transcribed in the margin, and requested to issue orders to the deputy tahsildar of Manapárai to see that the inamdars of the village did not cause any obstruction to the contractor. The District Forest-officer was thereupon informed (letter No. 321, dated 27th January 1885) that under the orders conveyed in G. O., No. 1406, dated 18th December 1884, recorded in Board's Proceedings, No. 44, Forest, dated 8th January 1885, trees on tank-beds did not vest in the Forest department, even should the tank-bed of Samudram belong to Government. The District Forest-officer then applied (No. 1075, dated 14th February 1885) for instructions as to what should be done with the wood already felled. He was informed (No. 711, dated 25th February 1885) that the village was once an entire inam village, and that as one-fifth of it had been resumed by Government, the Government could lay claim only to one-fifth of the tank-bed. It was further suggested that as the period of the contract had already expired, the difficulty about its terms might be got over by a settlement of account with the contractor. The District Forest-officer again wrote (No. 183, dated 24th June 1885) to say that the contractor was prevented by the inamdars from removing the wood already felled on the plea that they were entitled to four-fifths of the wood cut, and requested that orders might be issued to the deputy tahsildar of Manapárai to see that no interference takes place on the part of the inamdars in the removal of the wood.

"There having been some misapprehension about the application of Standing Order No. 17 to cases of unauthorized cultivation of common poramboke lands in inam villages, the Board of Revenue, upon a reference on the subject, decided that the rights of inamdars in entire inam villages are strictly confined to the cultivable land, and that they have no right whatever to poramboke and unassessed waste reserved for public purposes, such as roads, cattle-stands, water-courses, &c. Divisional officers and other subordinate revenue officers in the district are hereby directed to promptly bring to notice all cases of unauthorized cultivation on such lands both previous to and from the date of this circular, and cause prohibitory assessment to be imposed upon them, so that the lands encroached upon may be preserved for the use of the public."

The District Forest-officer was informed (No. 2467, dated 24th July 1885) that as only one-fifth of the village had been resumed by Government, the inamdars should be permitted to have the four-fifths share of the wood cut, and that, if that arrangement was not at once made, he (the District Forest-officer) might be sued by the inamdars. Thereupon the District Forest-officer again invited (No. 360, dated 11th August 1885) the Collector's attention to the circular No. 9 of 1884 above alluded to, and requested reconsideration of the orders already passed on the subject. In January last again the District Forest-officer reminded (No. 875, dated 10th January 1886) the Collector on the subject.

10th August 1886. (Signed) H. R. FARMER,
Acting Collector.

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## ANNEXURE B.

The following is the true copy of the title-deed No. 2429 granted on the 29th March 1865 to the inamdars of Samudram village by the then Inam Commissioner Mr. Blair.

Title-deed granted to Bává Khan Beylam, (2) Mahommed Ali Sahib, (3) Asadalli Sá, (4) Gulasam Bibi, (5) Nanni Bibi, and (6) Lutif Hussain.

1. On behalf of the Governor in Council of Madras, I acknowledge your title to the entire village of Samudram in the taluk of Kulitalai, district of Trichinopoly, claimed to be of 1405·23 acres of dry land, 159·71 acres of wet land, and acres 38·79 of garden lands, besides porambokes.

2. This inam is tax free and hereditary; but it is not otherwise transferable, and in the event of the failure of lineal heirs, it will lapse to the State.

3. On your agreeing to pay an annual quit-rent of 267 rupees, your inam tenure will be converted into a permanent freehold, in which case the land will be your own absolute property, to hold or dispose of as you think proper, subject only to the payment of the above-mentioned quit-rent.

4. If you should desire to commute the quit-rent for the payment of a sum of money, once for all, equal to 20 years' purchase of the quit-rent, you will be at liberty to do so.

COIMBATORE,
29th March 1865.

(Signed) W. T. BLAIR,
Officiating Inam Commissioner.

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Whereas you have agreed to convert your tenure into a freehold, on the term offered you in clause (3) of this deed, your inam is hereby confirmed to you as freehold in perpetuity, subject only to the payment of the annual quit rent therein mentioned, viz., Rs. 267.

COIMBATORE,
29th March 1865.

(Signed) W. T. BLAIR,
Officiating Inam Commissioner.

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The above deed purports to be in the form approved of in G.O., No. 1069, dated 9th August 1859, and given below:—

From a comparison of the form of title-deed sanctioned for adoption with the title-deed as actually issued, it will be found that the words "a personal inam situated in" are scored out in ink. The words following in the form are "the village," but between these two words the word "entire" is inserted in manuscript. Further, the words "besides poramboke" are interpolated in manuscript. Regarding these interpolations, the Director of Revenue Settlement and Agriculture in charge of Inam department states in his letter, No. 148, dated 15th April 1886, as follows:—

* * * * *

"I have the honor to say that the interpolation you specify were unauthorized. Further, they are (in respect of 'poramboke') at variance with the rulings of the Board and of Government (*vide* Board's Proceedings, dated 16th March 1866, No. 1833, and Board's Proceedings, dated 21st November 1866, No. 8412, and G.O., dated 11th October 1880, No. 1525). The law is clear. Fresh cultivation of available 'culturable waste' not being poramboke is not chargeable with assessment. But poramboke continues to be reserved just as in Ayen villages."

"Whether Mr. W. T. Blair initiated the interpolation or not is uncertain. He undoubtedly acquiesced in it. As Government never were cognizant of the interpolation, as it is in direct conflict with the Government Order of October 1880 above quoted, and as the matter is one of importance, I shall submit to Government for sanction new printed forms of title-deeds for entire inam villages to be substituted for those already issued."

2. As regards the question as to what constitutes the inam, the following extract from the inam register prepared and signed nine days before the issue of the title-deed, shows how the extent of lands (acres 1603·73) entered in the title-deed was arrived at:—



No. XIV.—Register of Summadram, No. , taluk Kulitalai, district of Trichinopoly.

CLASS, EXTENT AND VALUE OF INAM.

DESCRIPTION, TENURE, AND DOCUMENTS IN SUPPORT OF THE INAM.

| No. of case or entire holding under one grant in the village. | General class to which the inam belongs. | Survey number and name of field or fields comprised in the grant. Dry, wet or garden. | Extent: Local measure. Even where the local measure is in acres gunthes and cents, it is to be entered in this column. | Extent: Acres and decimals. English measures. | Survey assessment. | Revenue on present assessment. |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| | | Available as per Pymash of Fasli 1269 .. | Cawny. 3,110 74 12 | Dry. Acres. 3,159·01 | | |
| | | Deduct— | | | | |
| | | Poramboke .. .. .. | 948 33 0 | 383·84 | | |
| | | Old Inams .. .. .. | 133 7 14 | 53·40 | | |
| | | Government Service Inams .. .. | 86 17 13 | 34·61 | | |
| | | Artizan Service Inams .. .. | 17 35 12 | 17·72 | | |
| | | Portions resumed .. .. | 384 16 12 | 155·01 | | |
| | | Total .. | 1,568 43 3 | 1,784·08 | | |
| | | Remaining .. | 1,551 31 9 | 1,566·83 | | |
| | | Personal—Dry .. .. .. | 1,501 31 9 | 1,503·83 | | |
| | | Wet—One crop .. .. .. | 1,501 13 5 | 1,691·71 | | |
| | | Garden .. .. .. | 33 46 10 | 33·79 | | |
| | | Total .. | 1,747 85 8 | 1,725·33 | | |
| | | Deduct the assumed extent of land wrongly included in the survey of Fasli 1269. Dry .. | " 160 0 0 | | | |
| | | Krishna Row states almost the whole is dry only. | | | | |
| | | Remainder .. .. .. | | 1,537 85 8 | | 1,603·73 |
| | | Dry .. .. .. .. | | " " " | | 1,405·98 |
| | | Wet .. .. .. .. | | " " " | | 158·71 |
| | | Garden .. .. .. | | " " " | | 39·04 |
| | | | | | | 1,603·73 |

| Tenure: Whether free of tax, &c., quit-rent, &c., or liable to quit-rent, &c., Kattubadi, Mahimai, &c. Amount of latter to be entered. | Tenure: Hereditary unconditional. for life only, or for two or more lives. | By whom granted and in what year | Written instruments in support of the claim. Original sanad, all miscellaneous documents and other proofs of long possession. In this column it should be stated whether the inam is held with or without rents, whether the rents is produced or not, &c., and the general specification of terms on all documents produced should be given. | 25th August 1787. |
|---|---|---|---|---|
| 9 | 10 | 11 | 12 | |
| Garden. Acres. 48·81 | Cawny. 3,423 94 2 | Total: Acres 3,257·49 | None. | By Amount of loans on 11th Zilkad Hasti or 1201 as per Mr. W.'s register. |
| " " " " | 969 38 13 | 579·03 | | " " " " " |
| " " " " | 133 10 1 | 154·63 | | |
| " " " " | 109 65 6 | 101·62 | | |
| 9·72 | 20 95 7 | 31·46 | | |
| 9·72 | 431 23 0 | 436·59 | | |
| 38·79 | 1,675 38 10 | 1,492·09 | | |
| " | 1,747 85 8 | 1,765·33 | | |
| Free " | Hereditary " | By Amount of loans on 11th Zilkad Hasti or 1201 as per Mr. W.'s register. | | |
| " " " " | " " " " | " " " " | | |
| " " " " | " " " " | " " " " | | |
| " " " " | " " " " | " " " " | | |
| " " " " | " " " " | " " " " | | |
| " " " " | " " " " | " " " " | | |
| Kyrai " | " " " " | " " " " | | |
| " " " " | " " " " | " " " " | | |
| " " " " | " " " " | " " " " | | |
| " " " " | " " " " | " " " " | | |
| " " "

| | |
|---|---|
| 1. Poramboke .. .. .. .. .. .. | 979·09 |
| 2. Old Inam .. .. .. .. .. .. | 151·63 |
| Government Service Inams .. .. .. | 101·62 |
| Artizans Service Inam .. .. .. .. | 21·16 |
| 3. Portions resumed .. .. .. .. .. | 435·59 |
| | 1692·09 |

From the extract it will be observed that the total area of the village is given as 3,457·42 acres, from which acres 1,692·09 were deducted on account of the marginally-noted three items. For assumed extent of land wrongly included in the survey of 1269, a further deduction of 161·60 acres was made, leaving a balance of 1,603·73 acres entered in the title-deed as particularized below:—

| | Acs. | c. |
|---|---|---|
| Dry .. .. .. .. .. .. .. .. .. | 1,405 | 23 |
| Wet .. .. .. .. .. .. .. .. .. | 159 | 71 |
| Garden .. .. .. .. .. .. .. .. | 38 | 79 |
| | 1,603 | 73 |

| Fasli. | Extent leased out Cawnies. |
|---|---|
| 1270 .. .. .. .. .. .. | 816 |
| 1271 .. .. .. .. .. .. | 767 |
| 1272 .. .. .. .. .. .. | 810 |
| | 2,393 |
| Average .. | 798 |
| Acres .. | 806 |

Furthermore the inam register shows that the extent of land leased out to cultivators at the time of the inam settlement was, on an average, but 806 acres as shown in the margin.

3. As regards the charge of quit-rent, the area leased to cultivators as shown above and yielding a return to the inamdars was first taken into account. The extent of land thus ascertained was returned as yielding on an average Rs. 1,454-5-0 as shown in the following extract from the inam register:—



The valuation made by Collector when reporting on lapses being only Rs. 1,250.

| Fasli. | Description of cultivated lands. | Unpaid Cowle. Unpaid Peishcush. | | Under tirvu pattom. | | Total. | | Miscellaneous receipts. | Total income. |
|---|---|---|---|---|---|---|---|---|---|
| | | Cawny. | Settled. | Cawny. | Settled. | Cawny. | Income. | | |
| | | Rs. A. P. | | Rs. A. P. | | Rs. A. P. | Rs. A. P. | Rs. A. P. | Rs. A. P. |
| Fasli 1270 .. | Wet .. .. .. | 8 15 | .. | 483 13 0 | .. | 101 74 | 887 1 0 | 119 2 0 | 1,313 4 0 |
| | Dry .. .. .. | 624 57 | 20 10 0 | 672 58 | 6 0 | 672 58 | 593 8 0 | .. | .. |
| | Garden .. .. .. | 32 12 | 682 3 0 | 42 15 | 694 7 6 | 42 15 | 102 4 0 | .. | .. |
| | Total .. | 664 81 | 100 10 0 | 1,199 2 0 | 120 14 0 | 816 47 | 1,582 13 0 | 119 2 0 | 1,692 15 0 |
| | Deduct ⅓ belonging to a share pensuel in fasli 1271 .. .. | .. | 653 7 0 | .. | .. | .. | 887 1 0 | .. | 101 0 0 |
| | Net .. | .. | .. | .. | .. | .. | 1,199 2 0 | 119 2 0 | 1,310 14 0 |
| Fasli 1271 .. | Wet .. .. .. | 7 55 | 17 14 0 | 124 30 | .. | 124 30 | .. | .. | .. |
| | Dry .. .. .. | 499 79 | 624 9 0 | 605 18 | 71 57 | 605 18 | .. | .. | .. |
| | Garden .. .. .. | 30 82 | 87 0 0 | 36 93 | 7 53 | 36 93 | .. | .. | .. |
| | Total .. | 538 16 | 629 7 0 | 767 81 | 79 90 | 767 81 | 1,582 13 0 | 119 2 0 | 1,692 15 0 |
| Fasli 1272 .. | Wet .. .. .. | 7 55 | 17 14 0 | 150 55 | .. | 150 55 | .. | .. | .. |
| | Dry .. .. .. | 499 79 | 624 9 0 | 621 11 | 83 24 | 621 11 | 656 9 0 | .. | .. |
| | Garden .. .. .. | 30 82 | 87 0 0 | 38 64 | 7 79 | 38 64 | 593 7 0 | .. | .. |
| | Total .. | 538 16 | 629 7 0 | 810 30 | 91 3 | 810 30 | 103 1 0 | .. | .. |
| | Total of faslis 1270, 1271 and 1272, being three years .. .. | .. | .. | .. | .. | 2,393 81 | 1,696 1 0 | 107 1 0 | 1,455 2 0 |
| | Average .. | .. | .. | .. | .. | 798 | .. | .. | .. |
| | | .. | .. | .. | .. | 806 | 1,565 16 0 | .. | 4,362 15 0 |
| | | | | | | | 1,454 5 0 | | 1,454 5 0 |

The Inam Deputy Collector who submitted the case for orders made no recommendation to increase the assessment on which quit-rent was to be calculated on account of waste land not included in the lease. The Special Assistant to the Commissioner proposed, as the marginally-transcribed extract shows, that the assessment should on account of the prospective improvement of the waste (presumably that included in the extent entered in the title-deed) be increased from Rs. 1,454-5-0 to Rs. 1,600. If the 1,400 acres of waste refers to waste in the 1603·73 acres entered in the title-deed, it would appear that only 203 acres were cultivated out of an average extent of 806 acres leased. Perhaps, however, the Special Assistant (Chentsal Row) mentioned the total extent of cultivable waste in the village, including waste in minor inams in the resumed one-fifth of the village and in the area added by encroachment. It will be generally admitted that poramboke reserved for a special public purpose, such as a tank, was spoken of not as waste available for cultivation, but as poramboke which had to be deducted from that area. One of the shareholders of the village receiving an income of Rs. 178 out of the total of Rs. 1,600 received as rent by the inamdars, had to pay one half of it, viz., Rs. 89, as quit-rent, and the remaining five inamdars were charged with one-eighth of the remaining rent (Rs. 1,422), or Rs. 178 as quit-rent. These two sums added together give Rs. 267, the amount of quit-rent entered in the title-deed as due for the 1,603·73 acres of wet, dry, and garden lands.

> "The assessment adopted on the settlement by the Deputy Collector not being calculated on the actual area of the village, but upon the revenue raised, requires no reduction on account of the deduction in the area and can be confirmed as recommended. There is a large extent of waste in the village. Deputy Collector makes no addition on account of prospective improvement on cultivation of these lands. The waste, though nearly 1,400 acres, Krishna Row states they are hardly fit for cultivation, and if at all, there is but a very remote chance of their being cultivated. Under these circumstances, I propose to raise the assessment of the village in consultation with Krishna Row to Rs. 1,600."

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## ANNEXURE, C.

### No. I.

PROCEEDINGS of the Board of Revenue, dated 15th February 1884, No. 516.

Read—the following letter from J. B. PENNINGTON, Esq., Acting Collector of Tanjore, to the Secretary to the Board of Revenue, dated Vellam, 27th December 1883, No. 7624.

I have the honor to submit the following case for the orders of the Board of Revenue.

2. A question having been raised in August 1882 by Mr. Horsfall, the then Sub-Collector, whether prohibitory assessment can be levied in cases of unauthorized cultivation on lands reserved for public purposes (poramboke) in entire inam villages, Mr. Stokes, in reply, stated that prohibitory assessment cannot be levied in cases of such unauthorized cultivation on the ground that the right of imposing penal assessment is the same as the right of imposing assessment at all, *i.e.*, it is the right to share in the crop; and the fact that, for certain reasons, it is made penal does not affect its nature or origin; and that in the case of whole inam villages, as in permanently-settled estates, all the rights of Government (which include the right to share in the produce of fresh land cultivated) are transferred to the proprietor; and that the Government can claim no revenue from such encroachments, nor can revenue officers, as such, interfere.

3. It seems to me, however, that such land reserved for public purposes in zemindaris or inam villages is *not* made over to the zemindars or inamdars, but only the right to the revenue from cultivated and cultivable land. If Mr. Stokes is right, it would seem that an irrigation channel which passes through an inam village may be encroached upon and half filled up with impunity in the limits of that village, though principally intended for the irrigation of ryotwari villages further east. Clearly the inamdars have no right to interfere with such a channel, which is reserved for public purposes throughout its whole length; but I do not see how such encroachments can be prevented if not by prohibitory assessment. I beg to be informed whether it is intended that Government should sue the inamdar whenever he encroaches. Surely, also, roads running through zemindaris, &c., are public property, and any one taking forcible possession of any part of them might be charged any rent the Government (or the Local Fund Board on behalf of Government) chooses to impose. Mr. Stokes, indeed, contends that Government has no right to impose prohibitory assessment at all, except so far as it represents a share of the produce; but if this view is to be accepted literally, it could never be legal to impose a prohibitory assessment in excess of the productive powers of the soil. It seems to me that the so-called prohibitory assessment is not, strictly speaking, an assessment at all; it is rather a fine imposed for the cultivation of land which the Government has resolved shall *not* be assessed or cultivated, and I can hardly suppose that the Government, as landlord, has no right to impose such a charge for such a purpose.

4. A similar question is now pending disposal before the Deputy Collector, Patukóta, and I therefore request early orders on the subject.



Resolution—dated 15th February 1884, No. 516.

The Board observe that the question here put has arisen in regard to poramboke in an inam village and not in a permanently-settled estate. They consider that the rights of the inamdar are strictly confined to the cultivable land to the assessment of which he may be entitled; but in regard to poramboke, unassessed waste reserved for public purposes, for roads, cattle-stands, water-courses, &c., the inamdar can have no rights, and it rests with the Collector, as the representative of Government, to assert, when necessary, the right of Government as landlord. In the present case, the Collector should, therefore, impose prohibitory assessment, and leave the party upon whom it is imposed to seek relief in a civil court, if so advised.

(A true Copy and Extract.)

(Signed) E. GIBSON,
Secretary.

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### No. II.

OFFICE Note of Sheristadar.

When a similar question was raised by the Head Assistant Collector, Mr. Gibson ruled that the Government has the power of levying prohibitory assessments on encroachments in inam villages under the authority of G.O., dated 12th July 1878, No. 1062. Papers put up.

Pogal inams are minor inams situated in Government villages.

22nd August 1882. (Initialled) T. G.

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MR. H. E. STOKES'* order thereon.

Mr. Gibson's† order is absurd and altogether opposed to the principles and practice settled by Board's orders in other places. The case of whole inam villages is similar to that of permanently-settled estates, and as to these, there has been correspondence principally relating to Salem and Godávari in which it was settled as long ago as 1827 or so that revenue officers as such have no powers in regard to porambokes in such estates, and that Government claims no right in them. The share of the produce or assessment goes to the zemindar, and the people who are aggrieved by the encroachment are left to such remedies as they may have by law.

(Initialled) H. E. S.

† Mr. F. E. Gibson was Acting Collector of Tanjore in the preceding year, 1881. (Initialled) H.R.F.

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### No. III.

EXTRACT from Board's Proceedings, No. 1833, dated 16th March 1866.

* * * * *

1. Assuming that by porambokes the Commissioner means not *reserved* land, as village-sites, threshing-floors, and such like, to which alone the term is strictly applicable, but refers to available culturable waste, the Board were not aware of the existence of the practice referred to, and consider that even that alluded to in paragraph 12‡ of the Inam Commissioner's letter is opposed to rule and principle.

* * * * *

(Signed) W. HUDLESTON,
Secretary.

‡ Paragraph 12 herein quoted is as follows:—

In dealing with inam villages, where the extent of poramboke is large, and there is a good prospect of its being brought under cultivation, a moderate addition to the quit-rent is made in respect of such prospective improvement; but in the case of the North Arcot villages, no such addition has been made where the poramboke cultivation was already charged for by the District authorities.

(Initialled) H.R.F.

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### No. IV.

BOARD's Proceedings, No. 8412, dated 21st November 1866.

Read—the following letter from J. D. ROBINSON, Esq., Collector of North Arcot, to the Secretary to the Board of Revenue, dated Melpadi, 5th November 1866, No. 326:—

Adverting to the Board's Proceedings of the 16th March last, No. 1833, I have the honor to state that the tahsildars of all the taluks, Chittoor excepted, have, in reply to a circular issued by me on the subject, reported that the practice noticed in the Inam Commissioner's letter does not exist.

* Mr. H. E. Stokes was then Acting Collector of Tanjore. (Initialled) H.R.F.

2. From an arzi received from the sheristadar in charge of the Chittoor taluk, dated the 15th December last, No. 192, and its enclosures, it would appear that in five * only out of the nineteen entire shrotriem and inam villages in the taluk has unassessed waste been cultivated and included in "ain." There is no order on my records, which authorizes the imposition of full assessment on such lands. The practice appears to have crept in under some misapprehension as to the nature of such waste, as well on the part of the cultivators as of the native revenue officers. These appropriations have been so gradual and limited that they have never attracted attention. The objectionable practice, thus incidentally brought to light, will now be discontinued from fasli 1276, and a circular is under preparation on the subject.

* No. 472, Kathapallay.
,, 359, Thathireddipally.
,, 474, Rangasamudram.
,, 461, Modipallay.
,, 266, Venkatasamudram agraharam.

3. All the five villages named above except Thathireddipally, have been enfranchised by the Inam Commissioner, and quit-rent has been imposed on them.

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Communicated to the Inam Commissioner with reference to his letter, dated 12th February 1866.

2. The Board entirely approve of the immediate discontinuance of this wholly unauthorized encroachment on private right.†

† This refers to unassessed waste not reserved for a specific public purpose.—H.R.F.

(Signed) W. HUDLESTON,
Secretary.

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## No. V.

Order—dated 11th October 1880, No. 1325, Revenue.

Miscellaneous.

The Government see no reason for surrendering to the agraharamdars land which as "poramboke" was reserved for the convenience of the public, notwithstanding that it has subsequently been diverted from its original purpose.

2. The Inam Commissioner in his letter, dated 4th October 1865, No. 752, evidently employed the term "poramboke" loosely instead of "immemorial waste," its strict meaning being "excluded" as *reserved* for public common purposes. As already defined by G.O., 31st January 1873, No. 129, "poramboke is always unassessed, but all unassessed waste," such as that referred to in the above-quoted letter, "is not included in it." Recent correspondence shews the necessity for preserving poramboke proper from encroachment, and in the present instance, though the Government do not propose to insist on the area in question being utilized again for drinking-water ponds, it must be considered available for such or any other public purpose should the necessity arise.

G.O., 3rd January 1880, No. 3, R.D.
,, 13th July ,, ,, 799, R.D.

(True Extract.)

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

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## No. VI.

Orders of the Board of Revenue, No. 1227, dated 23rd of May 1874.

The zemindarnis are entitled to collect water-rate on subsequent inams, as well as on assessed lands. As regards puntakhets, although the water-rate charged on the lands was not taken into account when the water-rate payable on zemindari lands was commuted and the sum of Rs. 40,000 fixed as the charge, still the Board consider that the zemindarnis may be allowed to charge water-rate on them, as, even if the amount (which was small) previously charged on them had been taken into account, it would not have made any difference in the lump charge fixed for the whole zemindari. The Board do not agree with the Collector in thinking that because the puntakhets were excluded from the permanent settlement they are the property of Government. It is true that the assessment leviable on these lands was not taken into account when the peishcush was fixed; but that was done, not because Government wished to retain their right in these lands, as in the case of the inam lands excluded from the permanent settlement, but because the lands were not cultivable by their nature. The permanent sanad does not reserve any right to Government in these poramboke lands, as it does in the case of inam lands excluded from the permanent settlement.



2. In some cases the cultivation of poramboke lands may be an offence under section 268 of the Penal Code if it causes injury, obstruction, or annoyance to persons who may have occasion to use the lands, and in some cases the village community may have a right to the land, but it does not follow that Government are entitled to an assessment on these lands. The Board are aware that in the case under notice the puntakhets are not required for public use and were entered as cultivable fields by the Survey Department.

(Signed) J. GROSE,
Secretary.

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## No. VII.

No. 3170.

Read—again Board's Proceedings, dated 23rd May 1874, No. 1227.

Read—also the following letter from W. S. FOSTER, Esq., Acting Collector of the Godávari District, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Cocanada, 3rd October 1874, No. 346:—

Errati Subbanna and Addagarrala Ramanna, tenants of agraharamdars of Bodapadu, in Tanuku taluk, were charged by the Head Assistant Collector with prohibitory assessment in faslis 1278 and 1279 for having cultivated under a lease from the agraharamdars a portion of a tank called "Methara kunta" situate within the agraharam, as it was then reported to be a poramboke tank.

2. They claim the refund of the amount charged as the agraharamdars have a right to the tank.

3. The tank in question appears to have been enjoyed by the agraharamdars for the last thirty years, and I think the agraharamdars are entitled to hold it also under Board's Proceedings, dated 23rd May last, No. 1227, and the amount collected from the applicants, who cultivated it under a lease from the agraharamdars, should, therefore, be refunded to them. I have therefore the honor to recommend the refund of Rs. 45-5-5 collected from them and credited to Government on 18th December 1871.

| | Rs. | A. | P. |
|---|---|---|---|
| Assessment and water-cess additionally charged. | 44 | 15 | 11 |
| Local cess .. .. .. .. .. | 0 | 5 | 6 |
| Total .. | 45 | 5 | 5 |

4. The amount (Rs. 44-15-11) can be met from Land Revenue refund.

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Submitted to Government with the request that Rs. 45-5-5, being prohibitory assessment imposed through a mistake, may be refunded.

2. The assessment was imposed on cultivation in the bed of a tank belonging to Government, but this was not the case. As a general rule, tanks lying within inams or zemindaris are the property of the inamdar or zemindar, and not of Government.

(Signed) J. GROSE,
Secretary.

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## No. VIII.

From W. H. GLENNY, Esq., Acting Director of Revenue Settlement and Agriculture, in charge of Inam Department, to the Collector of Trichinopoly, dated Madras, 15th April 1886, No. 148.

In answer to the question put in paragraph 3 of your letter, No. 1124, dated 30th March 1886, I have the honor to say that the interpolations you specify were unauthorized. Further, they are (in respect of "poramboke") at variance with the rulings of the Board and of Government (*vide* Board's Proceedings, dated 16th March 1866, No. 1853, and Board's Proceedings, dated 21st November 1866, No. 8412, and G.O., 11th October 1880, No. 1325). The law is clear. Fresh cultivation of "available culturable waste," not being poramboke, is not chargeable with assessment. But "poramboke" continues to be reserved just as in ayen villages. Whether Mr. W. T. Blair initiated the interpolation or not is uncertain. He undoubtedly acquiesced in it. As Government never were cognizant of the interpolation, as it is in direct conflict with the G.O. of October 1880 above quoted, and as the matter is one of importance, I shall submit to Government for sanction new printed forms of title-deeds for entire inam villages to be substituted for those already issued.

2. In your paragraph 4, you ask to be told of the authority for the change of form of title-deed brought to your knowledge by comparison of a deed of 1868 with one of 1869. The order was G.O., 8th July 1869, No. 1962.

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*P.S.*—I have the honor to ask you to send me (to be eventually returned) a specimen of the class of title-deeds bearing the objectionable interpolation.

(Signed) W. H. GLENNY.

RESOLUTION—dated 11th February 1887, Forest No. 81.

Submitted for the orders of Government.

2. The village of Samudram in the Trichinopoly district is an entire inam village, held four-fifths by the inamdars and one-fifth by Government; the inamdars take only the melvaram or landlord's share; in a tank in this village are trees valued at Rs. 6,852; these trees the Forest department proposed and did actually commence to cut as fuel for the South Indian Railway, when the inamdars interfered, claiming that of them four-fifths belonged to themselves, and only one-fifth to Government; in other words, claiming that their title-deed covered the tank-bed. The Collector resents this interference and claims the whole of the trees for Government, *i.e.*, he claims that the title-deed does not cover the tank-bed; an insistance on his views is likely to bring the matter before the civil courts, and before taking action, therefore, he refers the matter for the orders of the Board and Government, giving at some length his reasons for maintaining that Government do possess the rights he claims for them, and recommending very strongly that they should be upheld to the utmost.

3. The Board, on the whole, agree with him and support his recommendation; they consider that the matter is, at least, one of doubt, and they think, therefore, in the words used by Mr. Justice Melville, in the somewhat similar case reported on page 195 of volume VI of the Bombay High Court Reports, that the State, "acting for no selfish end, but as the representative of the people, and for the good of the people, is justified in refusing to recognise" the claims which the inamdars put forward. It will be remembered that in G.O., dated 21st May 1884, No. 664, this doubt was disposed of so far as zamindars' lands were concerned, but in paragraph 3 of that order, Government were careful to observe that "Mr. Farmer's research has not extended to the origin of tenures other than zemindari"; as regards inams, therefore, the doubt still remains.

4. The questions which Mr. Farmer now discusses and which he proposes to place for an authoritative decision before a civil court are these: does the *soil* of poramboke proper in an entire inam village belong to the inamdar? if not, does the *revenue* of poramboke proper belong to him? To the first, the Board think that the answer is clearly, no; in such a case as the present, the actual ownership of the soil, even on cultivable and unreserved areas, is not given to the inamdar, much less is it given to him on uncultivable and reserved areas; under recent orders, indeed, it is doubtful if Government would consider that it ever was theirs to give; about the second, the Board admit that there may be doubt, and, as they have said, they think it advisable, in the interests of the general public, whom they represent, that this doubt should be authoritatively cleared up.

5. The issues, it is presumed, would be somewhat as follows:—

(1) Was the village of Samudram given to the inamdar to be his own absolute property?

It is true that the title-deed is so worded, but its wording is immaterial; it is admittedly a patched up and probably unauthorised version of a form which was drawn up to suit inams of a nature entirely distinct from that of the one now in question, and it is self-evident on the face of it that it purports—to quote the preamble of Act VIII of 1869—"to give more than either it intended to give or could give"; what it did do, to continue to quote that preamble, was to give the inamdars "as transferees of Government only the right to receive the rent or tax payable to Government."

(2) Admitting then that this is all that was given, does it cover tree-revenue derived from tank-beds?

6. The Board think not; it is true that "porambokes" are included in the grant, but the Board think that the expression is loosely used to refer only to cultivable wastes; it would seem so from the context, "*x* acres of dry land, *x* acres of wet land, and *x* acres of garden lands, besides porambokes," or waste lands; and the expression is evidently so used in paragraph 12 of the first Inam Commissioner's letter, which Mr. Farmer quotes in his note on page 17 of these Proceedings.



7. Even admitting that the expression did cover tank-beds, the revenue derived from felling the naturally-grown jungle on such lands is not "rent or tax payable to Government," nor is it even "revenue" legitimately derivable from land which, so far as it has been given away at all, has been given away only for the storage of water.

8. The matter has been somewhat prejudiced by the decision of a previous Collector that the case of an "entire" inam village is exactly similar to that of a zamindar's estate; *cadit quæstio*, of course, if this is true, but the Board do not think that it is; under rule XXIV on page 12 of G.O., dated 9th August 1859, No. 1069, "whole inam villages will be dealt with upon the same principles as are prescribed for minor inams," and there can be no question that "minor inams" are not similar to zamindaris.

9. Speaking generally, indeed, an inam is simply an assignment of that particular portion of the public revenue which arises from the tax on land, either in favor of the owner of the land himself, in which case it is a mere exemption from the payment of such tax, or in favor of some one other than the owner, in which case it is virtually a mere pension, indeed, if it came indirectly through the treasury, instead of directly from the land itself, it would be called a pension; to quote from the Bombay High Court appeal case already referred to, "grants in inam are, generally speaking, more properly described as alienations of the royal share in the produce of the land, *i.e.*, of land revenue, than grants of land;" they need not of necessity have anything whatever to do with the ownership of the land. A zamin is the exact opposite of this; it, in the words of appeal suit No. 10 of 1814, Madras, is a "transfer of *proprietary right*;" it need not of necessity carry with it any exemption from the payment of land tax, but it does of necessity carry with it the right—qualified perhaps in some cases by the user of others—to the land itself. The thing granted is in each case distinct; in the one case it is money, in the other, it is land; and rights that would be claimable in the case of the one are not simply on that account claimable also in the case of the other.

10. The orders which have been passed by the Board and Government in the matter hitherto are conflicting, but the weight of authority, such as it is, is in favor of the view which Mr. Farmer upholds; against it is Board's Proceedings, dated 4th November 1874, No. 3170, which proceeds upon the assumed similarity of inams and zamindaris; for it are the later and very decidedly expressed G.O., 11th October 1880, No. 1325, and Board's Proceedings, 15th February 1884, No. 516.

11. The Board, therefore, support Mr. Farmer's concluding recommendation that the trees in question should be treated as Government property, and that the issue should thus be finally and authoritatively settled.

(A true Copy and Extract.)

Acting Sub-Secretary.

To the Secretary to Government, Revenue Department.
" Conservator of Forests, Southern Circle.
" Collector of Trichinopoly.
Copy to all other Collectors, except Madras.
" to the Conservator of Forests, Northern Circle.
" " Examiner of Forest Accounts.

Exd. W. J. Lewis.

REVENUE DEPARTMENT.

1887

# Board of Revenue,

MADRAS.

of 1887.

05 MAR 87
REVENUE DEPARTMENT

*Printed February th.*

*Proceedings, dated 11th February* 1887, *Forest No.* 81.

Submitting, for the orders of Government, with Board's observations, a memorandum from Mr. Farmer regarding the *claim of the Forest department to trees on tank-bed poramboke in the enfranchised inam village of Samudram* in Kulitalai taluk, Trichinopoly district.

No.

## *TITLE DEED* GRANTED TO

1. By order of the Governor in Council of Madras acting on behalf of the SECRETARY OF STATE FOR INDIA IN COUNCIL, I acknowledge your Title to a Personal Inám consisting of the right to the Government revenue on land claimed to be acres of dry acres of wet and acres of garden and situated in the Village of Taluk of District of

2. The Inám is subject to a Jodi or Quit-rent of Rupees per annum, and is hereditary, but it is not otherwise transferable; and in the event of the failure of lineal heirs it will lapse to the State.

3. On your agreeing to pay an annual Quit-rent of Rupees inclusive of the Jodi already charged on the Inám as above stated, your Inám tenure will be converted into a permanent Freehold; in which case the Inám will be your own absolute property to hold or dispose of as you think proper, subject only to the payment of the above-mentioned Quit-rent.

4. If you should desire to commute the Quit-rent for the payment of a sum of money, once for all, equal to (20) twenty years' purchase of the Quit-rent, you will be at liberty to do so.

*Dated*

*Madras,*

*Inám Commissioner.*

WHEREAS you have agreed to convert your tenure into a Freehold on the terms offered you in clause (3) three of this Deed; By order of the Governor in Council of Madras acting on behalf of the SECRETARY OF STATE FOR INDIA IN COUNCIL, I hereby confirm to you your Inám as Freehold in perpetuity, subject only to the payment of the annual Quit-rent therein mentioned, viz., Rupees

*Dated*

*Madras,*

*Inám Commissioner.*

WHEREAS you have agreed to convert your tenure into an absolute Freehold, on the terms offered you in clause (4) four of this Deed, and have paid into the Government Treasury of the sum of Rupees
in permanent redemption of the entire Quit-rent chargeable on the Inám; By order of the Governor in Council of Madras acting on behalf of the SECRETARY OF STATE FOR INDIA IN COUNCIL, I hereby confirm to you your Inám in perpetuity as an absolute Freehold, that is to say, free of all tax whatever to the Government.

*Dated*

*Madras,*

*Inám Commissioner.*

Inam Commissioner's Office

No. 78

Madras, 25th March 1887.

From

J. Grose Esquire

Inam Commissioner

To

The Secretary to Government

Revenue Department

Sir,

I have the honor to forward the Speci-men Title Deed for an entire Inam Village called for in your Official Memorandum dated 21st Instant No. 80

It will be observed that the form is the ordinary form + that certain words are added to it in manuscript.

I have the honor to be

Sir

Your most obedient Servant

J Grose

Inam Commissioner

Rec. 25-2/87

Revenue Cpt No.

No 2526.

1887. Dept

From The Inam Comm.r

To The Secretary to Govt

Revenue Dept

Dated 25 March 1887.

Received 28 ——

No 78

Enclosure 1

Forwarding specimen Title Deed for an entire Inam village.

Ref 3013.

REVENUE BOARD OFFICE MADRAS.

## Proceedings of the Board of Revenue. (Land Revenue)

Dated 29th April 1887

Postal No. 271, Miscellaneous.

READ T.D.O. from Mr. W. R. Palmer, C.S., Kurnool, dated 15th March 1887, forwarding a memo containing his remarks on para 6 of Board's Proceedings, dated 17th February 1887, J. No. 81, regarding Form to be in entire Inam Villages.

II. Reference thereon to the Collector of Trichinopoly, dated 22nd March 1887.

"The Collector will be requested to obtain and forward the original title-deed.

III Read also letter from the Collector of Trichinopoly to the Secretary to the Board of Revenue, Madras, dated 29th March 1887, No. 95/4.

Resolution.

Resolution:

Submitted to Government, in continuation of Board's Proceedings, dated 11th February 1887, Item No. 81.

2. The Board cannot agree with Mr. Palmer in his contention that the words "hereby Provided," mean exclusive of Preamble.

(Mime Copy retained.)

Acting Secretary

To,

The Secretary to Government, Revenue Department with Mr. Palmer's Memorandum, in original, to be returned.

1887

2.2.87

Revenue 1887.

# Board of Revenue,

MADRAS.

(Land Revenue).

GOVERNMENT OF MADRAS
25 MAY 87
REVENUE DEPARTMENT

To

The Secretary to Government
Revenue Department

25 May. Encl 1

Proceedings, dated 24th April 1887.
Land No. 271, Miscellaneous

*Subject.*

Submg 4 prs. with remarks a memo. from Mr. H. R. Farmer containing his remarks infra Ltr. Bd's Proc. 4th Feby. 1887, Land No. 81, regarding Perambolle in entire Inam Villages.

17 MAR 87
REVENUE DEPARTMENT

Memorandum

on para 6 of Board's Proceedings of Ro 11th February 1887, Land No. 81, Forest.

by

H. R. Farmer.

The Board say "it is true that Perambokes are included in Ro Grant".

2. I doubt if the Board would have formed this opinion if they had seen the original title-deed, and had been aware of the fact that even Mr. Blair, the Inam Commissioner, when advocating the Inamdars rights to Perambokes, spoke of what the Board consider "inclusion", as "exclusion" of Perambokes.

3. Setting aside the question as to what

with reference to the marginal quotation, the Inam Commissioner had the full authority of Government, in spite of the standard form of title-deed omitting all mention of Poramboke, to alienate Poramboke Revenue under those title-deeds, and whether — or not if he had such authority — the title-deed would not, if it alienated Porambokes, confer on the grantee, in contravention of Madras Act III of 1869, "a right to land which he would not otherwise possess", there remains the question whether the Grant unequivocally includes Poramboke, for unless the inclusion is unequivocally established on the strength

"A waiver of the prerogative of the
"Crown is not easily to be implied
"from the correspondence of its
"officers, unless they had full
"authority and their language
"is clear and unequivocal."

Ruling of Bombay High Court
page 215 - Vol. XI B.H.C.R.

of the authorities quoted at page 7 of the Proceedings now under reference, that it is inoperative.

63

4. The relevant part of the title-deed printed as a true copy in Annexure B is as follows:-

"I acknowledge your title to the entire
"village of Somundram, claimed to be of 1405.23
"acres of dry land, 159.71 acres of wet land,
"and acres 38.79 of garden land, besides Poram
-boke."

5. I regret I have not the original title-deed to enable me to transcribe opposite to this so-called "true copy", a copy about the truth of which there could be no question. I have seen a number of title-deeds for "entire Inam Villages" and

memory serves me, there is invariably a full stop and not as in the copy, a comma after the words "garden lands", and the words "besides Poramboke", always in manuscript, are usually inserted in the margin, or wherever the writer chooses. It was to bring out this point that I had the printed part of the original title-deed sprinkled in the copy sent to the Board, and the manuscript part copied in writing. If the original title-deed be referred to, I think that besides the construction adopted by the Board, there is another reasonable construction, namely that the passage transcribed in para. 4 above amounts to saying that the Inamdars claim that, besides, or leaving out of account, Poramboke, there are ~~no~~ areas which are dry and garden lands

specified to which (the wet, dry and garden only) they are entitled. Then if any one encroached on 10 acres of their 1405.23 acres of dry lands, and told them that, counting the tank-bed in question, they had more dry land than was shown as claimable by their title-deeds, the Inamdars would naturally say that the title-deeds showed that they were not to be debited with Poramboke, and were entitled to 1405.23 acres of dry land, after the Poramboke had been deducted from the total area of the village, as shown in the extract from the Inam Register, this Poramboke (acres 979.29) in the village in question, was like mines, Inams, deducted or excluded from the total area of the village, in order to arrive at the area to be entered in the title-deed. Is it reasonable to suppose that if it had been

and indeed to include it, there would have been any object in going through the meaningless process of first subtracting or excluding and then adding again or including? Again if it really had been intended by the marginal insertion of the words "besides Poramboke" to alienate Porambokes, why was not the area of Porambokes given in the Grant as in the case of cultivable (wet, dry and garden) lands, admittedly alienated? The area of one was known as well as that of the other.

6 The construction above indicated seems to receive strong support from one of the chief advocates of the Inamdars. In his letter of the 4th of October 1865, written a little more than six months after the issue of title-deed now in question, Mr. Blair says - "The exclusion of Poramboke from the extent of land entered in the title-deeds, issued for whole villages of whatever description, is simply on account of the generally uncultivable character of such lands; but this exclusion is in no way intended to bar the right of the Inamdars to cultivate such lands when practicable and enjoy the same as part and parcel of their village". The italics are mine. Thus Mr. Blair, whose evidence on this point may be taken as that of a hostile expert, admits that what the Board thought was inclusion was in fact exclusion.

Printed with G.O. No. 1315 of the 11th October 1886.

7 I therefore submit that a scrutiny of some original title-deeds, and of the Inam Registers showing how the areas entered therein were arrived at, will show that, as admitted by the officer who issued them, these Grants exclude Porambokes. It may however, without prejudice

In case of Government, he admitted that, at any rate when printed and punctuated as in Annexure B, the title-deeds admit of a construction indicating the inclusion of Foramboke, as well as the construction indicating exclusion. In other words it may be admitted that the Grants are equivocal on the points at issue. But if Oberati as the Inamdar desires, the provision regarding Forambokes must be unequivocal.

It is therefore submitted that on scrutiny of the original title-deed, if necessary, and on considering the arguments advanced above, the Board may be inclined to hold that the provision in the title-deed referring to Forambokes being equivocal is inoperative and must therefore, as Mr. Blain admitted, Forambokes are excluded from, and not included in the Grant.

H.K. Receiver

S.S.

While admitting that the construction now suggested seems more likely to be accepted if the original title-deed be inspected, I would not be understood to imply that I consider it inadmissible as an alternative construction if the form, as printed in Boards Proceedings, be alone referred to. The case would be different if the title-deed ran --

"I acknowledge your title to the entire village of Samandram, consisting of 1605.23 acres of dry land, "159.71 acres of wet land, acres 38.79 of garden lands, "and 979.09 acres of Forambokes."

But as the Grant stands I submit that it may be fairly paraphrased as follows -

"I acknowledge your title to the entire Inam "village of Samandram which, you say, contains "besides (i.e. after deducting or excluding) Forambokes

Vide Inam Register extract at page 18 of Proceedings.

1405.23 acres of dry land, 159.71 acres of wet land, and acres 38.79 of garden land".

The interpolation of the word "entire" will probably be allowed to be meaningless, with reference to the admitted deduction of items 1-3-4 (page 8 and 13 of Proceedings) aggregating 874.60 acres. The phrase "an entire Inam village" appears to be used merely as the opposite of the phrase "minor Inam." There are independent circumstances which seem to tell against the reasonableness of the construction in favor of inclusion of Poramboke. If the Inamdars invested the value of fifteen (Rs 6850) in 4½ per cent Government paper, or fourfifths of that sum at 5 per cent, they would obtain more than a whole quit-rent (Rs 267) of the village. In other words if Government give the Inamdars the fee, the public may have to pay the Inamdars instead of the Inamdars paying the public, for holding the land of the village. The case becomes still stronger where an Inamdar, on the strength of paying five or ten rupees for a kadeh of cultivable land, claims adjoining Poramboke Hill Forest worth a lac of rupees. I would therefore submit that if the title-deeds are susceptible of two constructions, one of which may lead to, and the other of which does not lead to, such results as these, the Courts are caeteris paribus, likely to adopt the latter construction. I need hardly add that any opinion which the Courts may form on this point, will be formed not on views of the Board's copy of the title-deed, but on views of the original.

True Copy

P. R. Ramachandra Rao
15-3-87

Copy.

Enclosure to D.O. Letter

dated 15th March 1887

from H. R. Farmer C.

90,

The Revenue Secretary

to Government.

Submitting for consideration
that the title-deeds for Inam villages
admit of a construction indicating
exclusion of Poramboke, as well as
the construction indicating inclusion,
and that being thus equivocal, they
cannot operate to alienate Porambokes
and must in fact be taken to exclude
Porambokes from the Grant.

REVENUE DEPARTMENT.

C No. 1798, 2326 & 3504

From { Board of Revenue Jy 11-2-87, No 88
Carson Proposal 25-3-87, 378
Board of Revenue 29-4-87, 2471

Dated 188 .

FOR ORDERS.

It does not at all follow that because, when his conclusions were overruled, Mr Farmer's deductions had not extended to Inams, therefore a doubt still remains as to Inams. I do not however propose to go into the general question as I think there is ample ground for saying that in this case we could not possibly succeed. I will merely say that the only orders I find cited on, viz. Go. 11 Oct 80 was passed on Mr Carmichael's view of Poramboke as waste, unapplied & unmissable, & could not by any stretch of language be held to apply to Inams.

The Board Comm. may also kindly recollect their proposal, recently sanctioned, to examine into Boundary disputes & recognize & demarcate rights. Whatever rights the ackmr. is found to be entitled to in the Inams should be specified & defined, & the Collr. should then be directed to demarcate & define the boundaries of the Inams & Porambokes.

In the above process Mr Farmer leaves the question as to whether, on enfranchisement, Inam villagers the ownership of the Poramboke land, or of their boundaries, would vest in them, or in the Govt. Poramboke or waste lands belonging to villages enfranchised would not be held to belong to the Inamdar, but to Govt. (Government) as the Sovereign

2. But Government, since on special duty in 1883 to report on the question of enfranchisement of Poramboke lands, and of boundaries, and application of the proceeds of sale of waste lands to the improvement of villages, have ordered that all lands

No. 17

From

Dated 188

FOR ORDERS.

to observe that the theory that the foreshore and reclaimed lands belonged to Government is untenable. In the conversation then recorded, however, the foreshore in Swan village was not specifically included, and hence the present reference.

3. The immediate occasion for raising the question by Rajmee Khatoo, in the claim made on behalf of Govt. by the District Forest Officer Ishinopolis for land marked C 6852 at Sandoway on the Ist Lead (6 pp. 53 acres) in occupation of Jaghir village of Thamaclaung on 1st October, Tarabo B.E. 1245 March 1883, is the 2nd Rider, Govt. concern the Great Depth does not seem to have anything to do with the foreshore lands, except it is the Collector who has charge of Thoon Thamaclaung. But this is an ordinary marshy, flat ground, of no particular value, and

FOR ORDERS.

admit that the words 'besides Foreshore' in the Settlement under which it was included in the grant, mean that it was included in the grant, and excluded from it. About this Doubt there can be no two opinions. Relying on arguments, any apparent weight is put forward by Rajmee to the contrary, but it is untenable. The Foreshore dues &c (item 5, 3rd in page 8) were deducted because included & are not therefore mentioned in the Settlement. The Foreshore on the contrary are mentioned, because they are included, and being taken out, by our garden & their area ascertained, they are visible reference to in the lump.

But it is suggested that Foreshore means something else, viz. Cultivable waste. I have often known the term applied loosely, but never so loosely as that, and I am quite

The Chief Secretary appears to have been made in possession of the agreement entered into by the Collector with the Great Depth in 1883

sure that none of the Eminent Rev. Settlement officers attached to Forest Commission of Enquiry used it in a technical Document [illegible] Probably by accident

waste = waste, i.e. it was not deemed cultivable & therefore never surveyed or appraised as fields. But even in that sense the whole procedure negatives the suggestion that only such foreshore was included & assessed to the Foreshore dues & other charges. All charges must have been included in the 979 acres mentioned in the Assignment, or else the settlement was founded and is, on the Forest Grounds, must be read with it. [illegible] Foreshore included & assessed to cultivation in one, how could it be concluded that the Commissioner intended to refer to only part of it in the other?

The meaning of giving a whole village as mean seems sufficiently simple. It is that all lands therein possessed by Govt are assigned to the Foreshore. Therefore no question of title can arise, as it seems to me, between the Foreshore & the Forests as regards land included in the village. The only question is Foreshore is and is not cultivable waste & the Collector the Foreshore & the Commissioners or General body of the Govt. But a portion is then [illegible] the right of the Foreshore

and their forefathers in Swan villages belong to Government by Rajmee holds that they do, and the Second degree with them. But Govt. as Commissioners, on the other hand, holds the contrary

4. The whole question turns upon the interpretation of the terms of the Settlement granted to the Foreshore. In the case of Thamaclaung village (and so all other cases) the form adopted in the Settlement granted by the Chief Secretary of the Govt. of Lower Burma, dated 1st October 1883, in the following effect.

"It is hereby notified that the Chief Commissioner of Lower Burma has been pleased to sanction the entire village of Thamaclaung

FOR ORDERS.

The Boundaries can be specially acknowledged by the responsible Officer of Govt Duly accredited on that behalf.

It is not pretended that any acts of ownership have been exercised by Govt & may be taken for granted that the Boundaries explained the Creek, bounded the Trees, &c and the records &c (Dorfton City and Cabul) for forging &c &c. In such a case I cannot think it part of our duty to write Circular

Approved
24 Oct
Secretary
Govt
27/10

Revenue Department.

No. 19

From

Dated 188 .

FOR ORDERS.

"Boundaries & Boundary Marks" mentions the existence of Boundaries and therefore "Boundary Marks" are specially reserved.

(2) The Patwaris enclose village "A" Schedules and Settlement Maps & Settlement Registers or other documents as may be necessary for the Settlement Officer.

(3) The Settlement Officer shall prepare a Register showing the Boundaries and Boundary Marks to be observed.

(4) Permanent Boundary Marks shall be erected and the cases of disputes of Boundaries to Boundaries fixed on the Settlement.

(5) A Map giving the exact limits where to erect Boundary

between the Revenue Boards
of the Board and Govt
(vide Encl. Corr. Nos. III, IV, V, VI
& VII. appended to No. 1 Farewell Despatch) dated
of 6 to the undersigned Chatterton Revenue
Secretary. That Govt Resolution
of 7th when the Board ~~was~~ were
Nos. dated 16 March 1866
of 1853 (Encl. Corr. No. III) denied
the power of the Sudder Board
to abolish "Peacock" Zemindaries
Lake. All that the Board
did appear to have been
to deny the power of the
Sudder Board to declare generally
"Rebellious waste" Lowering
(1) the question of Peacock Zemindaries
Zemindaries often. The
Govt appears clearly from Records
Page. 21 Nov. 1866, No. 8412
(Encl. No. IV). In G.O. dated
the 27th October 1870, No. 1325 (Encl
(3rd No. V) Government for the
first time clearly asserted
the principle that Peacock
Zemindaries Sudder Board
belonged to Govt, and the
Correspondence referred to
in this G.O. shows that this

FOR ORDERS.

REVENUE DEPARTMENT.

No.

From

Dated 188 .

FOR ORDERS.

was done because it was
this time believed that Govt had the right to
Zemindaries on permanently
settled estates also. Records
Page. 23 Feby 1874 No. 1227
Encl. Corr. No. VI) negatives the
right of Government to
Zemindaries on permanently
settled estates and Records
Page. 4 Nov. 1881 No. 8192
(Encl. Corr. No. XII) says that
the lands in Zemindaries
belong to the Zemindars.
It is also the practice
the Collectors that the
Zemindaries which the
Zemindaries were demanded
Sudder Board
and Records in the offices of
Dist Collectors would be in no
Govt Corr. (Encl. No. VII)

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No.

From

Dated 188 .

FOR ORDERS.

Vide Forms appended to Govt of India Letter printed in G.G. 9 August 1859 No 1067.

FOR ORDERS.

Revenue Department.

No.

From

Dated 188 .

FOR ORDERS.

Government for the purchase the Swan title deed was granted by Sir W. D. Blair as Swan Comr. and he ought to have known what the grant included, if anybody did. In his letters dated 4th Oct. 1865 at pp 52 & p 53 (encl. transmitted in enclosures to Sir F. Barrow's memorandum) Mr. Blair stated that the exclusion of foreshore from the extent of lands granted in the title deeds secured for whole Swan village description is contrary to the general conditions of such lands by this exception is evidenced to have the right of the Crown reclaimed & which can be enjoy the same as land and part of their village and that the exclusion of the whole village

Title transcript of papers attached with G.O. 31 Oct. 88 No 1325

made by this (Swan) Grant embraces the whole area within the recognized boundaries of the village preceding Foreshore and implies no reservation of Foreshore lands in favor of Government.

The question then is that the memorandum & the title deed are authorized and submitted, altogether considered.

2. That Council recommend to be adopted by Govt.

3rd Consideration (vide 3504)

The only meaning of this question seems to be, if it is submitted, in addition to foreshore lands that is owned by crown

employed of argument, to
include the mean "without
foreshore." From the use
of the expression "the exclusion
of foreshore from the
extent of land entered
in the title deed" in Col.
Blair's letter referred to
in the foregoing para, Mr.
Barrow infers that the
Foreshore was excluded
from the Crown grant.
This view is contradicted
by the terms of the whole
letter, that Col. Blair meant
clearly was the exclusion
of foreshore on the
opposite area mentioned
on the title deed bounded
"foreshore."
Referring to the 6th
Para, it is true that there
is an ambiguity in the
expression of the Town village
as used in Crown grants
but this has nothing to
do with the present question.
The phrase village can
mean only one of the two

FOR ORDERS.

* Para 7 of Col. Francis's Instructions.
Madras. 12th C. Dec. 1798.

Sec. 96. runs as follows
"When the facts are such that the
language used might have been
meant to apply to any one, &
could not have been meant to
apply to more than one of several
persons or things, parties may be
given effect to, should there be found
in the Instrument or Things of two persons

REVENUE DEPARTMENT.

No.

From

Dated 188

FOR ORDERS.

strongest right either the grant
of all the lands in the
village or the grant of
such reasonable rights as
the Government had in
the village. The passage
quoted by Col. Barrow from
Elphinstone's History of
India clearly shows that
in all grants the Town
village should be understood
in the latter sense. This
is doubtless so, and this
construction is recognized
by Madras Act VII of 1869.
If there should be any
regard to the provisions
of Sec. 96 of the Evidence
Act, whether or not the
evidence can be admitted
to show that village means

methods of the two charges
above referred to. Sect
something different.
Sec: 96 quoted by Lt Barnes
does not appear to be
applicable.

10. As regards the 5th
head, the Crown Register
differs from the answer
1603.73
~~Letter~~ acres entered in 4th
item quoted at the total
Area of the village as per
Schedule, 1987. 42
acres, was taken and after
deducting therefrom the
area of 1858.69 (1) mere
Enclosed 29.41 acres, (2) Encroachments
9.79.09 acres (3) portions resumed
by Govt 4.35.50 (4) portions
wrongly included in the
village 16.16 acres, the
remainder was entered
in the table sheet but Crown
regard that (1) (2) (3)
and (4) do not belong to
the Inamdars, the answer
is the same with them (2).
This contention would be
valid if the words "entire

Sec 95 runs as follows.
"When language is used in a
document is plain on itself
but is unnecessary with reference
to existing facts Evidence may
be given to show that it was
used in a peculiar sense."

village" & boundaries were
were demarcated and defi
-nitely in the Inam Rules
read but they cannot be
already formed and be
regarded as such. Consequ
-ently the Collector was right
in the grant of the area of the
Inam enjoyed by grant of
Pertaen & not only land
in addition to give Inamdars
11. As regards the 6th
Section of Collectors Power
as provided by Lt Barnes
that Rules of construction
require that each portion should be strictly construed
& reference is the same only
as regards cases in which
there is no written grant
or where the written grant
does not define the boundary
Should be added in the
note referred to the case
reported at page 203 Bombay
High Court Reports, Vol VII
in which Lt Barnes
"Upon a question of the
ownership of waste the

some rules of common sense
and justice must apply,
whether the subject matter
of construction be a
grant from the Crown
or from a subject. It is
always a question of
intention, to be collected
from language used with
reference to the surrounding
circumstances. There is
nothing to show that the
Crown acted contrary
to the intentions of
Government in excluding
Columbia in the grant
for Crown villages and
in the absence of proof
to the contrary the pre-
sumption should that the
Crown Contracted regularly.
If now the state of the
law be as it is

recommend that reference should be had to the proceedings referred to in para 3 of the memorandum, in support of this statement. It is stated that persons who claimed that the Crown Property in Ceylon, which was declared by the Board to be wholly unauthorized [illegible] (See Proc 111)

The Board cannot consider that any of the persons who claimed property which was declared to be Crown property, had any right to be heard before the Board in support of their claims. Their practice as pointed out by the Surveyor General has been to forward their claims to the Land Commissioners, and from thence to the Collector of Customs. Decisions were given by the Collector of Customs, and if they were dissatisfied with those decisions they appealed to a Board consisting of the Surveyor General, the Land Commissioners, and the Collector of Customs, and these decisions were declared by the Board to be wholly unauthorized proceedings on the part of persons who had no right to be heard before the Board. (See Proc 111)

The Board cannot consider that any of the persons who claimed property which was declared to be Crown property, had any right to be heard before the Board in support of their claims. Their practice as pointed out by the Surveyor General has been to forward their claims to the Land Commissioners, and from thence to the Collector of Customs. Decisions were given by the Collector of Customs, and if they were dissatisfied with those decisions they appealed to a Board consisting of the Surveyor General, the Land Commissioners, and the Collector of Customs, and these decisions were declared by the Board to be wholly unauthorized proceedings on the part of persons who had no right to be heard before the Board. (See Proc 111)

The Govt have not undertaken the duty of keeping Tanks in repair but Crown Rights of access to such Tanks in any way.

The Board cannot consider that any of the persons who claimed property which was declared to be Crown property, had any right to be heard before the Board in support of their claims. Their practice as pointed out by the Surveyor General has been to forward their claims to the Land Commissioners, and from thence to the Collector of Customs. Decisions were given by the Collector of Customs, and if they were dissatisfied with those decisions they appealed to a Board consisting of the Surveyor General, the Land Commissioners, and the Collector of Customs, and these decisions were declared by the Board to be wholly unauthorized proceedings on the part of persons who had no right to be heard before the Board. The right to a Commander, of a Commander and that of an Commander are essentially the same. In the one case the Crown could not dispose of the property in land without the consent of the Crown, and in the other case the Crown could not dispose of the property in land without the consent of the Crown. The right to a Commander, of a Commander and that of an Commander are essentially the same. In the one case the Crown could not dispose of the property in land without the consent of the Crown, and in the other case the Crown could not dispose of the property in land without the consent of the Crown.

FOR ORDERS.

PROCEEDINGS OF

# PROCEEDINGS OF THE MADRAS GOVERNMENT.

*Read*

as Crown" seems sufficiently
simple. It is that all
rights therein preserved
by Government are
assigned to the Inamdar.
Thenceforth no question
of title can arise between
the grantor and the grantee
as regards land included
in the village. The only
question as to Parasnbake
which could then arise
would be between the
Inamdar and the Communes
the
& general body of the
ryots. Throughout the
length of the Inamdars
as all the stronger as
Parasnbake has been specially
acknowledged by the
responsible officer of
Government duly accredited
on that behalf

6. In the present case
it is not contended that
any acts of ownership
in Paramboke have been
exercised by Government
since the date of the grant
and it seems probable
that the Inamdars have
repaired the tank, planted
the trees in the tank bund
and otherwise dealt with
it as their property.
7. With such a case
the Government do not
consider that the claim
first forward can be
entertained in the Court
and it is held therefore
be withdrawn.

15 for the Court's Hand Accts 8/11
3 " Mam Comp
25 Reg & Rev Comr's & Rl Dept Firm Notices

do
5

11
3/11

Coton: 1798, 25267, 3504

Draft G.O.

Ch. Archduke's Army

Evacuations