(131)

venue Department

inutes of Consultation

2nd Feb 1858.

Bach Nos 40-42.

Lr No 131 Dt 30th Jan 1858

பாதுகாப்பு பிரிவு-1

செப்பனிடுபவர் பெயர்: [illegible]

செப்பனிடுவதற்காக எடுத்துக் கொள்ளப்பட்ட நாள்: 09/08

29/9/08 சரிபார்க்கும் முதல் அலுவலர் கையொப்பம்

09/08 20/10/08 சரிபார்க்கும் 2ம் அலுவலர் கையொப்பம்

21/X/08 உதவி [illegible] கையொப்பம்

Read again the following letters from the Secretary to the Board of Revenue dated 26th November and recorded in Diary to Consultation 1st December 1857, No. 1450.

From the Government Pleader; dated 11th and recorded in Diary to Consultation 15th December 1857, No. 1558.

Read also the following papers.

No. 40. Extract from the Proceedings of the Board of Revenue; dated 24th December 1857, No. 4702.

Read Extract Minutes Consultation dated 12th December 1857, Revenue Department.

(Here enter No. 1293.)

With reference to Mr. Dale's preliminary remarks, the Board observe that in their Draft Act they purposely avoided deviating from the existing law except where such a course seemed absolutely necessary. Their object was to obviate the delays and discussions which might ensue in the Legislative Council if a complete alteration of the law was proposed. The mere vesting a Collector with the power at his option of selling *either* the personal or the real property of a defaulter *or both* appeared to the Board unlikely to meet with opposition, because it is obviously just that Government should have this remedy against all the property of its debtor, and also because Government actually already possessed it though under such condition as often rendered the possession of it useless.

2. There are however considerations of policy which render it advisable to resort to process against the land for the recovery of arrears due on *large Estates*, and the Board thought that the Draft Act would meet with opposition, if in departure from the Bengal practice it proposed to sanction the immediate distraint and sale of personal property for all arrears, Zemindary as well as Ryotwarry. This too would cut away the ground on which the Act is proposed, viz. that arrears on petty Ryotwarry holdings cannot be recovered conveniently in all cases by the sale of land, as in the case of a large Zemindary.

3. The wish of laying before the Legislative Council an Act which in consideration of its involving so little deviation from the present Law they might be solicited to pass without delay also led the Board to retain many existing provisions (and especially such as afforded the ryot protection against wrongful proceedings) which if they had been remodelling the Law entirely they might have modified or wholly abolished. These changes however seemed to them to be unnecessary under present circumstances, particularly as such a revision of the entire Code was in contemplation at no distant date.

4. The Board will now proceed to notice Mr. Dale's remarks seriatim.

Letter para. 2. 5. Mr. Dale considers Sections VIII. (Clause 6.) XIX (Clause 3.) XXI. and XXVI. Regulation XXVIII. of 1802 objectionable in so far as they involve forfeiture of the arrear in event of their breach. The Board have now omitted the portions objected to, and if Government think fit another penalty can be substituted. The Legislative Council may however demur to absolving the subordinates of a Collector from consequences (which attach to private proprietors, and which for years past have attached to Government servants also.

Para. 3. *Para. 4.* 6. Sections X. XXX. and XXXI. of the same Regulation are deemed inapplicable. The Board see no difficulty in regard to Section X. for however small the estate may be, the property found on it may remain there till sold. The matter is one of little importance, and the Section is now omitted.

Para. 5. 7. In regard to Section XI., Mr. Dale would give the Collector the option of selling the crops standing. To this the Board see no objection and have modified their draft accordingly.

Para. 7. 8. The difficulties noticed in this para. were intended to be obviated by Section XIV. of the Draft Act which enacted that Regulation V. of 1822 (in accordance with its preamble) should not apply to Government sales.

Para. 8. 9. The Sections referred to affect only personal property, landed property Government can and do purchase and the Board think this sufficient. It is undesirable they think that the Collector should compete at sales of personal goods, and as Government can sell the entire property real and personal of a defaulter and ultimately imprison him, further protection seems uncalled for.

10. The Board are of opinion for the reasons already given in para. 2 of these Proceedings that the insertion of the term Ryotwary, or of the words "lands not permanently settled," is essential. The lands referred to by Mr. Shubrick are clearly held on what is considered in this Presidency Ryotwary tenure, as otherwise the demand on them would be payable under all circumstances, and they would be saleable under Regulation XXVII. of 1802. It seem also necessary that Act XXIII. of 1856. should be notice.

Para. 11.

Para. 12.

11. The Board would object to "verbal" engagements and prefer following the present law. They did not contemplate the seizure of property situated in other Zillahs or within the limits of the Supreme Court. On general grounds Government might justly claim this power, but the Board think the powers of sale and imprisonment conferred by the Draft Act sufficient for present purposes. The question raised by Mr. Dale will be properly considered during the preparation of the new Revenue Code.

"*As altered or modified by subsequent legislation and so far as the same may be applicable.*"

12. The Board do not approve of the alteration made in Section III. of the Draft Act as given in the margin. On further consideration, they would propose re-enacting as parts of this Act the Sections retained from Regulation XXVIII. of 1802. This would make the Act lengthy in appearance, but would obviate all future doubts and difficulties. The Board have omitted the words "and damages" in Section XII. but they would point out that damages are not payable when the demand *wholly or in part* is justly due, and the officers of Government cannot reasonably claim greater protection.

13. The Draft has been recopied and is now resubmitted with marginal remarks explanatory of the alterations.

14. The Board much regret that they have been unable to submit their reply sooner, but the question is one of considerable difficulty.

(A true Extract.)

(Signed) J. D. SIM, *Acting Secretary.*

AN ACT TO AMEND ACT 23 OF 1856.

Whereas doubts still exist regarding the process to be taken against defaulters in payment of the public Revenue,* and whereas difficulties occur under the provisions of Regulations XXVII. and XXVIII. of 1802 in recovering arrears of such Revenue, it is hereby enacted as follows.

* *The Board would propose here inserting "due on lands not permanently settled," or retaining the original wording of the Section.*

II. Whenever Rent or Revenue may be withheld beyond the day on which they fall due according to the Kistbundy, or other engagement [whether† written or verbal], or in cases where no particular day is fixed then beyond the time when such rent or revenue became payable agreeably to local usage, the Collector shall have authority to proceed for the recovery of such arrears by the distraint or seizure, and the sale of the personal or real property of the defaulter wherever found.

† *The Board would omit the words enclosed between brackets.*

New Section.

III. In the distraint or seizure and sale of personal property for arrears of rent or revenue the following rule shall be observed.

1 Section VIII. Regulation XXVIII. of 1802 Clause 1.
2 do. do. Clause 2.
3 do. do. Clause 3.

IV. Where defaulters on receiving notice may neglect to pay the amount due or to give satisfactory security for early payment, or where defaulters may have absconded, or may be otherwise not forthcoming, so that the notice cannot be served upon them, the attaching officer shall in either case transmit an inventory of the property attached to the nearest public officer empowered to sell distrained property, in order that it may be publicly sold for the discharge of the arrear due.

Note.—Clause 5 is omitted as unnecessary, and Clause 6 in consequence of Mr. Dale's objection.

Section X. omitted in consequence of Mr. Dale's objection.

V. Section IX. as it stands but stopping at the words "forthwith release the property."

Section XI. modified to give the distrainer power to sell the crops standing.

VI. Distrainers attaching the crops or ungathered products of the lands belonging to defaulters may cause them to be sold in due course without reaping or gathering them, or at their option may cause them to be reaped or gathered in due season and stored in proper places until sold. The expense of reaping &c., &c., (as in the original Section).

VII. Section XII.

Section XIII. modified so as to point out more clearly the person by whom the loss shall be made good.

VIII. Where property distrained may be stolen or lost or damaged while in the keeping of the distrainer by reason of the necessary precautions for its due preservation not having been taken, the loss or damage shall be made good by the Officer whose neglect occasioned the loss or damage.

Section XIV. the rest omitted.

IX. The distress levied shall not be excessive, that is to say the property distrained shall be as nearly as possible proportionate to the amount of the arrear.

Section XV. in part.

X. Attachments shall be made after sunrise and before sunset and not otherwise.

XI. Section XVI.

Latter part of Section XVII. the first part being unnecessary is omitted.

XII. Where persons not being defaulters, &c., (as far as) "may have grown."

XIII. Section XVIII. the words "Zillah" Court being substituted for Court of Adaulut.

XIV. Section XIX. Clause I.

XV. Section XIX. Clause 2 the words "Darogah" being omitted.

Sect. XX. omitted as unnecessary.

XVI. Section XIX. Clause 3 as "far as for six months."

Section XXI. modified.
The Board propose giving the defaulter as well as the distrainer a little more time and have simplified the process.

XVII. At the expiration of the 10th and before the expiration of the 30th day following the day on which the attachment was made, the public officer empowered to sell distrained property shall cause to be affixed to the outer door of the defaulter's house a list of the property to be sold with a notice specifying the place where and the day and hour at which the distrained property shall be sold, and shall cause proclamation of the intended sale to be made by beat of drum in the village to which the lands belong.

XVIII. At the appointed time the property shall be put up in one or more lots as the distrainer may consider advisable, and shall be disposed of to the highest bidders. Where the property may sell for more than the amount of the arrear, the overplus, after deducting expenses of process and interest, shall be paid to the defaulter.

XIX. Section XXII. omit "to be paid at the time of sale," substitute "distrainer" for "Cauzy or Commissioner" and close; the defaulting purchaser shall make good to the distrainer any loss arising as well as the expenses incurred on the resale. If any profit accrue on the resale it shall be accounted for to the owner of the property distrained.

Sections XXIII. to XXXIII omitted.

XX. When defaulters shall not have any personal property on which the Collector can distrain, or when he may elect not to distrain on any personal property, or when the personal property of such defaulter shall be first distrained and sold if the arrear due with interest and all expenses of distraint and sale be not liquidated by the proceeds of such sale, the Collector shall have authority to proceed against the real property of the defaulter for the amount due with interest and all expenses attending such further sale.

XXI. When the landed or other real property of a defaulter is first attached and sold, if the arrear due with interest, expenses of attachment and sale, management and all other just charges be not liquidated by the sale, the Collector may of his own authority distrain and sell the personal property of the defaulter for the recovery of such balance with interest, and all expenses of distraint and sale.

XXII. Immediately on the occurrence of an arrear, or at any subsequent period, the Collector shall have authority to attach at his discretion the whole or such portion of a defaulter's landed property as he may deem sufficient to answer the amount in arrear, but the previous sanction of the Board of Revenue shall be necessary for the sale of landed and other real property.

XXIII. The provisions of Sections XI. XII. XIII. XV. XVI. XVII. XVII. Regulation XXVI. of 1802 shall be applicable to sales of landed property under this Act, but a Persian Translation of the sale advertisement shall not be necessary.

XXIV. Where arrears of Rent or Revenue with interest and other charges as aforesaid may not be liquidated by the sale of the personal and real property of the defaulter, the Collector shall have authority to cause the arrest of the defaulter in the manner following.

XXV. The Collector shall cause a motion to be made to the Civil Judge of the Zillah within which the arrear of revenue is due, praying that the defaulter may be arrested, unless the amount due by him as set forth in the said motion be paid within a time to be specified by such Judge.

XXVI. The Judge shall thereupon issue an order for the arrest of such party and for his production before the Court within such time after his arrest as in such order shall be specified, unless such party pay the arrear demanded with all expenses of process within 48 hours after the said order shall be served upon him, provided that with the consent of the Collector a longer period may be allowed for such payment. In the event of the arrear not being paid as above provided, the officer charged with the execution of the order shall convey the defaulter to the Court without unnecessary or unreasonable delay.

XXVII. On the arrival of the defaulter at the Court, the Judge shall call upon him to answer the demand where the demand, or any portion of it may be denied, the Judge shall enter into a summary enquiry into the merits of the case.

XXVIII. Where after such enquiry it shall appear that the arrear demanded is not justly due, the Judge shall discharge the defendant with full costs,* but where it may appear that the demand wholly or in part is justly due, the Judge shall direct the defendant to be kept in custody until the amount shown to be due, and interest thereon at one per cent. per mensem with costs of suit may be discharged, or until the Collector make application to the Court for the release of the defendant. The Collector shall pay the defendant whilst in confinement the same allowance for subsistence as is fixed for other prisoners in the Jail wherein he may be confined.

** The words "and damages" are here omitted in consequence of Mr. Dale's objection.*

XXIX. Interest at one per cent. per mensem shall be charged on all arrears of rent or revenue under this Act from and after 30 days after the arrear has occurred.

The re-enactment of the portions of Regulation XXVIII. of 1802 which are to be retained render this Section unnecessary.

XXX. [Regulation V. of 1822 shall not be applicable to sales of property under this Act].

XXXI. This Act shall not apply to Zemindars, Mootahdars or others holding lands on permanent tenures, or to their Sub-tenants.

XXXII. Arrears of revenue due to Government other than land revenue and hitherto recoverable under Regulation I. of 1826 and 5 of 1832 as well as sums leviable under Sections VI. and X. Regulation IX. of 1822 and Acts XII. and XX. of 1850, shall hereafter be recoverable solely under the provisions of this Act.

Inserted for consideration of Government Pleader.

XXXIII. Regulation XXVIII. of 1802 and Act XXIII. of 1856 shall be imperative as respects arrears of Revenue due to Government on lands not permanently settled.

(Signed) J. D. SIM, *Acting Secretary.*

No. 41. From D. ELIOTT, Esq., Member of the Legislative Council; to H. FORBES, Esq., Acting Secretary to the Government of Fort Saint George, dated Fort William the 12th November 1857.

SIR,

Referring to Mr. Morgan's letter dated the 17th July and the Minute of Mr. Currie therewith transmitted, I have the honor to request that you will, as early as possible, apprize me whether the draft of an Act is under preparation according to Mr. Currie's suggestion, and, if so, when it is likely to be ready.

No. 42. ORDER THEREON, No. 131; dated 30th January 1858.

1. In an Extract from the Minutes of Consultation dated 23d October 1856, No. 1126, the Government had before them the representations made by the Board of Revenue in their Proceedings of the 26th September preceding, respecting the state of the land revenue balances, and the difficulties and inconveniences experienced by the local officers in their recovery, owing chiefly to the unsatisfactory and inefficient state of the law for the collection of the land revenue. After giving the Board's representations their careful consideration, the Government came to the conclusion that, pending a revision of the entire law which had already been ordered and was in progress, the best course would be to obtain a short Act declaring Regulation XXVIII. of 1802, to be in force for the recovery of Ryotwar balances. An application was accordingly made to the Member of the Legislative Council of India for Madras, with the understanding that the new Act was to be in force until the revised Code should be enacted, and to be among the laws rescinded by it. With certain modifications in the draft prepared by this Government, explained in Mr. Eliott's Minute of the 20th November 1856, Act No. XXIII. of 1856 was passed by the Legislative Council of India, under the title of "An Act for the better recovery of arrears of revenue under ryotwar settlements in the Madras Presidency."

Bd. pro. 17th January 1857, *No.* 194.
3d June ,, 1888.

2. The new Act had scarcely come into operation when it was discovered that its provisions did not fulfil the intentions of this Government, and that in practice it created difficulties other than those previously experienced. These were explained in the letter to the address of the Clerk to the Legislative Council dated 27th June 1857, No. 657. It was shewn in that letter that, although the revenue in ryotwar districts was collected under Regulation XXVII. of 1802 prior to the enactment of Act XXIII. of 1856, the officers of Revenue had no power under the new Act to take advantage of the older Law; and that, bound by the provisions of Clause 7, Section 34, Regulation XXVIII, they could sell landed property only after the expiration of the Revenue year, and then only through the intervention of the Zillah Court. It was stated that the inconvenience formerly felt from the obligation first to sell landed property, was now experienced from the necessity of selling first the personal property of defaulters, and Government concluded with an expression of their opinion that legal power should be given to their officers to sell either land or personalty, as in any case might be desirable.

3. The subject was taken up by the Legislative Councillor for Bengal in a Minute, dated 27th June 1857, and under the circumstances therein stated, and in the absence of the Legislative Member for Madras, it was suggested that the Madras Government should send up the draft of such an Act as would fully meet their requirements.

4. The correspondence that has ensued in consequence is recorded at the [illegible] of these proceedings, together with Mr. Eliott's letter of the 12th November, enquiring whether the draft of an Act is under preparation according to Mr. Currie's suggestion, and if so, when it is likely to be ready.

5. In their letter of the 26th November, No. 4164, the Board of Revenue submitted, for the consideration of this Government, the draft of an Act for the recovery of Ryotwary arrears of revenue, and explained the principles on which it was based. They thought it best to make as few alterations in the present law as possible, in order to prevent difficulties and delay in the disposal of the question; arrears due to Government, they said, could be recovered by the sale both of real and personal property, though in an exceedingly embarrassing way, and that the

object of the draft Act was merely to give the Collector the power of realizing an arrear by the sale of the personal or real property of the defaulter as he might deem advisable for the prompt recovery of the Government dues. Personal property, they added, would, under the new law, be sold according to Reg. XXVIII. of 1802, and real property according to Reg. XXVI. of 1802, and imprisonment effected only through the intervention of the Courts.

6. The draft Act was referred for the opinion of the Government Pleader, and that officer's views are given at length in his letter dated 11th December 1857, No. 131. Mr. Dale observed that "legislation by reference to existing laws was at all times attended with difficulty, but particularly so when the provisions, to which additions are to be made, or which are to be incorporated in the new legislation, were not entirely applicable to the new state of matters." He referred to the proposal to make Regulation XXVIII. of 1802 with certain exceptions, the basis of the new law; he considered some of the provisions* of that Regulation harsh, and showed where they were so; he stated that Sections 10-11-30 and 31 appeared to him to be inapplicable, and he finally adverted to other points as being open to question. These will be noticed more at length hereafter.

*Cl. 6 Sec. 8
Cl. 3 ,, 19
,, 21-26

7. In their proceedings of the 24th December, the Board take up the consideration of Mr. Dale's representations; they have yielded to some of his objections, but have either disapproved or overruled others, and in submitting a revised draft Act they propose to re-enact, as parts of this Act, the Sections retained from Regulation XXVIII. of 1802. This makes the Act lengthy, but as the Board observe will obviate all future doubts and difficulties.

8. In reference to Mr. Dale's preliminary remarks, the Board say that they purposely avoided deviating from the existing law, excepting where such a course was absolutely necessary; that their object was to obviate the delays and discussions which might ensue in the Legislative Council, if a complete alteration of the law was proposed, and that the mere vesting a Collector with the power of selling either the personal or real property of a defaulter, or both, was not likely to meet with opposition, since it was just that the Government should have this remedy against all the property of its debtor, and because the Government actually possessed it, though under such conditions as often rendered the possession useless. They refer, in paras 2 and 3, to other considerations which influenced them in the course taken by them, but it seems unnecessary to notice these further.

9. Mr. Dale, as before mentioned, considered some of the provisions of Regulation XXVIII. of 1802 to be harsh and objectionable, inasmuch as they involve forfeiture of the arrear in event of their breach. These are Clause 6 of Sec. 8, Clause 3 of Sec. 19, and Sections 21 and 26. The Board have properly omitted these portions, and it will be for the Legislative Council to introduce any other penalty for a breach of the Regulations in selling property in any other mode than that prescribed by law, if such should be deemed necessary.

10. The Board have also excluded Sections 10, 30 and 31, and have modified Section 11, so as to give the distrainer power to sell the crops standing. These are in accordance with Mr. Dale's views, and are approved. They have modified Section 13 so as to point out more clearly the person by whom the loss in distrained property is to be made good.

11. Referring to Sections 24 and 26 of Regulation XXVIII. of 1802, Mr. Dale thinks that there can be no valid objection to property distrained being purchased by a Collector in his public capacity. These Sections, the Board observe, have reference to personal property; landed property, they say, Government can and do purchase, and this they think sufficient. They consider it undesirable that the Collector should complete at sales of personal goods, especially as Government can sell the entire property, real and personal, of a defaulter and ultimately imprison him. The Government think, with the Board, that this is sufficient protection.

12. Mr. Dale objects to the term "Ryotwary" in the preamble of the former draft, but the Board have over-ruled the objection, and consider the term, or its equivalent "lands not permanently settled," essential. In the present draft the Government adopting the Board's views, have inserted the latter expression.

13. The Board object, and it seems to the Government very properly, to the term "verbal engagements" employed by Mr. Dale in his revision of their original draft Act. This has been omitted in the draft now under consideration.

14. The Board observe in reference to the enquiry in para. 12 of Mr. Dale's letter, that they did not contemplate the seizure of property situated in other Zillahs or within the limits of the Supreme Court. The Government are of opinion that the insertion of the words "wherever found" in the proposed Act will obviate many difficulties now experienced from the removal of property about to be attached across the frontier of adjoining districts. Mr. Elliott's attention will be attracted to the words, and he will be requested to exercise his discretion in pressing their retention on the Legislative Council, according as he may think that their introduction in the new Act will meet with acceptation or otherwise.

15. The Board object to Mr. Dale's alteration of Section III. of their original draft Act, and in their present draft they have re-enacted, as parts of this Act, the Sections retained from Regulation XXVIII. of 1802. They have omitted as unnecessary Clause 5 of Section 8, Sections 20, and 23 to 33, of these latter Sections the Government propose that Section XXVII. shall form a part of the new Act.

16. In the Sections XXIV. to XXIX. of the draft Act the Board have adopted the provisions of Section XXXIV. of Regulation XXVIII., but it appears to Government that, by that part of the law, the interference of the Court is called into operation at an unnecessary stage of the realization of an arrear of revenue. By Clause 4 of Section XXXIV. of Regulation XXVIII. and by Section XXVII. of the present Act, the Judge would enter on any enquiry into the fact of the arrear alledged against a defaulter, before any appeal had been made to him, and the Government are of opinion that this is both unnecessary and improper, they have therefore adopted the provisions of Sections XII. and XIII. of Regulation XXVII., and have substituted them for that part of Regulation XXVIII. which the Board had embodied in Sections XXIV. to XXIX. of the proposed Act.

17. A draft Act, revised in conformity with the above views, will now be forwarded to the Government Pleader, together with the Board's letter, and the draft Act which accompanied it, for any observations or amendments he may desire to offer or suggest, preparatory to its being sent up to the Legislative Member for enactment. Mr. Dale will be requested to give the subject his early consideration, and to return the draft with as little delay as possible. He will observe that this draft will render Regulation XXVIII. of 1802 and Act XXIII. of 1856 altogether inoperative as respects arrears of revenue due to Government on lands not permanently settled.

(Signed) H. FORBES,
Acting Secretary to Government.

AN ACT TO AMEND ACT 23 OF 1856.

Whereas doubts still exist regarding the process to be taken against defaulters in payment of the Public Revenue due on lands not permanently settled, and whereas difficulties occur under the provisions of Regulations XXVII. and XXVIII. of 1802 in recovering arrears of such Revenue, it is hereby enacted as follows:

Clause 1 Section 5 Regulation 28 of 1802 modified.

II. Whenever Rent or Revenue may be withheld beyond the day on which they fall due according to the Kistbundy or other engagement, or in cases where no particular day is fixed, then beyond the time when such Rent or Revenue became payable agreeably to local usage, the Collector shall have authority to proceed for the recovery of such arrears by the distraint or seizure, and the sale of the personal or real property of the defaulter.

III. In the distraint or seizure and sale of personal property for arrears of Rent or Revenue, the following rules shall be observed:

Clause 1 Section 8 Regulation 28 of 1802.

First.—Distrainers shall furnish to the persons employed to attach the property of defaulters, demands in writing and signed with their names, specifying the amount of the arrear for which the attachment may be issued, and the date on which the arrear fell due. The persons so deputed shall produce the writing as authority for making the attachment, and on the day on which the property may be attached shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property attached, and the name of the place where it may be lodged or kept.

Clause 2 Section 8 of 1802.

Second.—The writing shall further set forth the intention of the distrainer to bring the attached property to immediate public sale unless the amount and expenses of the attachment be previously discharged.

Clause 3 Section 8 Regulation 28 of 1802.

Third.—Where defaulters may be absent, a copy of the writing, with the endorsement, shall be fixed or left at his usual place of residence before the expiration of the third day, calculating from the day of the attachment.

Clause 4 Section 8 of 1802.

IV. Where defaulters on receiving notice may neglect to pay the amount due, or to give satisfactory security for early payment, or where defaulters may have absconded, or may be otherwise not forthcoming, so that the notice cannot be served upon them, the attaching officer shall in either case transmit an inventory of the property attached to the nearest public officer empowered to sell distrained property, in order that it may be publicly sold for the discharge of the arrear due.

Note.—Clause 5 and 6 of Section 8 Regulation 28 of 1802 omitted.

Part of Section 9 of Regulation 28 of 1802.

V. Where defaulters may tender payment of the arrear demanded in the presence of two credible witnesses, after their property may have been attached, and prior to the day fixed for sale, together with payment of the necessary expenses attending the attachment, the distrainer shall receive the amount of such arrear and expenses immediately upon the same being tendered, and shall forthwith release the property.

Note.—Section 10 of do. omitted.

Section 11 of do. modified.

VI. Distrainers attaching the crops or ungathered products of the lands belonging to defaulters may cause them to be sold in due course without reaping or gathering them, or at their option may cause them to be reaped or gathered in due season and stored in proper places until sold. The expense of reaping, or gathering, and storing such crops or products, shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold.

Section 12 of Regulation 28 of 1802.

VII. Distrainers shall not work the bullocks or cattle, or make use of the goods or effects distrained; they shall provide the necessary food for the cattle or live stock, the expense attending which shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold.

Section 13 of do. modified.

VIII. Where property distrained may be stolen or lost or damaged while in the keeping of the distrainer by reason of the necessary precautions for its due preservation not having been taken, the loss or damage shall be made good by the officer whose neglect occasioned the loss or damage.

First part of Section 14 the rest omitted.

IX. The distress levied shall not be excessive, that is to say, the property distrained shall be as nearly as possible proportionate to the amount of the arrear.

First part of Section 15 the rest omitted.

X. Attachments shall be made after sunrise and before sunset, and not otherwise.

Section 16 of Regulation 28 of 1802.

XI. Where under farmers or ryots may make a fraudulent conveyance of property, to prevent the attachment of it for arrears, the Zillah Court upon proof thereof, shall cause the property to be delivered up to the distrainer, and compell the person to whom such transfer or conveyance may have been made to pay to the distrainer damages equal to the value of one-half the property, with costs of suit.

Middle part of Section 17.

XII. Where persons not being defaulters, or responsible for defaulters, may claim a right to the property distrained, and the distrainer may, notwithstanding, cause the same to be sold, the claimants, on proof of such right in the Zillah Court and in the event of the distrainer being unable to prove responsibility for the arrear of rent or revenue, on account of which the property may have been sold, shall recover from the distrainer the full value of such property, with costs and damages, according to the circumstances of the case. But claims to crops upon the ground, or to gathered product of the ground attached, in the possession of the defaulter, whether founded upon a previous sale, mortgage, or otherwise, shall not bar the prior claim of rent or revenue due from the ground upon which such crop or product may have been grown.

Section 18.

XIII. Where persons not being owners may be convicted of forcibly or clandestinely taking away property once distrained, the Zillah Court upon proof thereof, shall cause such persons to be imprisoned, until they restore the property, or make good the value of it to the distrainer, and, moreover, to pay to him, as damages, a sum of money equal to the value of such property, with costs of suit.

Clause 1 Section 19.

XIV. Distrainers shall have power to force open any stable, cowhouse, golah, granary, or other building to enter any dwelling house, the outer door of which may be open (excepting the apartments in such dwelling-house appropriated for the Zenana, or residence of women,) and to break open the door of any room in such dwelling-house for the purpose of attaching property belonging to a defaulter and lodged therein.

Clause 2 Section 19.

XV. Where distrainers may have reason to suppose that the property of a defaulter is lodged within a dwelling-house, the outer door of which may be shut, or within any apartments appropriated to women, which by the usage of the country are considered private, such distrainers shall represent the same to the Police (within whose jurisdiction the house may be situated,) and on such representation, the Police shall send a Police Officer to the spot, in the presence of whom distrainers may force open the outer door of such dwelling-house, in like manner as they may break open the door of any room within the house, except the Zenana; distrainers may also, in the presence of the Police Officers, after due notice given for the removal of women within a Zenana, and after furnishing means for their removal in a suitable manner (if they be women of rank, who according to the customs of the country cannot appear in public,) enter the Zenana apartments for the purpose of attaching the defaulter's property deposited therein; but such property, if found, shall be immediately removed from such apartments, after which they shall be left free to the former occupants; and nothing in this Regulation shall be understood to authorize a distrainer or his agent to force open the door of a dwelling-house, or to enter the apartments of women which by the usage of the country are considered private, in any other mode than is herein prescribed.

Part of Cl. 3, Sec. 19.
Note. Sec. 20 omitted

XVI. Third.—Persons entering the apartments of women, or forcing open the outer door of dwelling-houses, contrary to the provisions of this Regulation shall be imprisoned for six months.

Sec. 21 modified.

XVII. At the expiration of the 10th and before the expiration of the 30th day following the day on which the attachment was made, the Public Officer empowered to sell distrained property shall cause to be affixed to the outer door of the defaulter's house a list of the property to be sold, with a notice specifying the place where, and the day and hour at which the distrained property will be sold, and shall cause proclamation of the intended sale to be made by beat of drum in the village to which the lands on which the arrear has accrued may belong.

XVIII. At the appointed time the property shall be put up in one or more lots as the distrainer may consider advisable, and shall be disposed of to the highest bidder. Where the property may sell for more than the amount of the arrear, the overplus, after deducting expenses of process and interest, shall be paid to the defaulter.

Section 22 modified.

XIX. The property shall not be sold for other than ready money, and the purchaser shall not be permitted to carry away any part of the property until paid for. Where the purchaser may fail in the payment of the whole or part of the purchase money within five days, calculating from the day following the sale, the whole of the property, or the part of it which may be unpaid for, shall be resold by the distrainer on such day as he may fix, for the best price offered for it: the defaulting purchaser shall make good to the distrainer any loss arising, as well as the expenses incurred on the resale. If any profit accrue on the resale, it shall be accounted for to the defaulter.

Note—Sections 23 to 33 omitted.

XX. When defaulters shall not have any personal property on which the Collector can distrain, or when he may elect not to distrain on any personal property, or when the personal property of such defaulter shall be first distrained and sold, if the arrear due with interest and all expenses of distraint and sale be not liquidated by the proceeds of such sale, the Collector shall have authority to proceed against the real property of the defaulter for the amount due with interest and all expenses attending such further sale.

XXI. When the landed or other real property of a defaulter is first attached and sold, if the arrear due with interest, expenses of attachment and sale, management and all other just charges be not liquidated by the sale, the Collector may of his own authority distrain and sell the personal property of the defaulter for the recovery of such balance with interest, and all expenses of distraint and sale.

XXII. Immediately on the occurrence of an arrear, or at any subsequent period, the Collector shall have authority to attach at his discretion the whole or such portion of a defaulter's landed property as he may deem sufficient to answer the amount in arrear, but the previous sanction of the Board of Revenue shall be necessary for the sale of landed and other real property.

XXIII. The provisions of Sections XI. XII. XIII. XV. XVI. XVII. XVIII. Regulation XXVI. of 1802 shall be applicable to sales of landed property under this Act, but a Persian translation of the sale advertisement shall not be necessary.

XXIV. Where arrears of Rent or Revenue with interest and other charges as aforesaid may not be liquidated by the sale of the personal and real property of the defaulter, the Collector shall have authority to cause the arrest of the defaulter in the manner prescribed in Section XIII. of Regulation XXVII. of 1802.

XXV. Parties considering themselves to have been aggrieved by the Collector's acts under the preceding Section shall have liberty to appeal to the Judge, who on receiving such appeal shall proceed according to Section XII. of Regulation XXVII. of 1802.

XXVI. Interest at one per cent per mensem shall be charged on all arrears of Rent or Revenue under this Act from and after 30 days after the arrear has accrued.

XXVII. Regulation V. of 1802 shall not be applicable to sales of property under this Act.

XXVIII. This Act shall not apply to Zemindars, Mootahdars, or others holding lands on permanent tenures, or to their sub-tenants.

XXIX. Arrears of Revenue due to Government other than Land Revenue and hitherto recoverable under Regulation I. of 1826 and 5 of 1832, as well as sums leviable under Sections VI. and X. Regulation IX. of 1822, and Acts XII. and XX of 1850, shall hereafter be recoverable solely under the provisions of this Act.

XXX. Regulation XXVIII. of 1802 and Act XXIII. of 1856 shall be inoperative as respects arrears of Revenue due to Government on lands not permanently settled.

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(9) 181

No. 4702

Extract from the Proceedings of the Board of Revenue dated 21st December 1857

Read Extract Minutes Consultation dated 12th December 1857.

(Here enter No. 1793)

With reference to Mr. Dale's preliminary remarks the Board observe that in their Draft Act they purposely avoided deviating from the existing Law except where such a course seemed absolutely necessary. Their object was to obviate the delays and discussions which might ensue in the Legislative Council if a complete alteration of the Law was proposed. The mere vesting a Collector with the power at his option of selling *either* the personal or the real property of a defaulter or both appeared to the Board unlikely

to

meet with opposition because it
obviously just that Government
hould have the remedy against
ll the property of its debtor and
lso because Government actually
merly possessed it though under
uch condition as often rendered
he possession of it useless.

There are however consider
ations of policy which render it ad.
isable to resort to process against
he Land for the recovery of arrears
due on large Estates and the Boar
thought that the Draft Act would
meet with opposition, if in depar.
ture from the Bengal practice it
proposed to sanction the imme.
diate distraint and sale of perso.
nal property for all arrears, Ze.
mindary as well as Ryotwary. This
would cut away the ground

on

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on which the Act is proposed. Viz that arrears on petty Ryotwary holdings cannot be recovered conveniently in all cases by the sale of Land as in the case of a large Zemindary.

3 The wish of laying before the Legislative Council an Act which in consideration of its involving so little deviation from the present Law they might be solicited to pass without delay also led the Board to retain many existing provisions (and especially such as afforded the Ryot protection against wrongful proceedings) which if they had been remodelling the Law entirely they might have modified or wholly abolished.

These changes however seemed to them to be unnecessary under present circumstances particularly as such a revision of the entire Code was in contemplation at no distant date.

4 The Board will now proceed to notice Mr. Dale's Remarks seriatim.

5 Mr. Dale considers Section VIII Clause 6 XIX (Clause 3) XXI and XXVI Regulation XXVIII of 1802 objectionable are so far as they involve forfeiture of the arrear in event of their breach. The Board have now omitted the portions objected to and if Government think fit another penalty can be substituted. The Legislative Council may however demur to absolving the subordinates of a Collector from consequences which attach to Private Proprietors, and which for years past have attached to Government servants also. Letter Para 2.

Para 3. Sections X. XXX and XXXI of the same Regulation are deemed inapplicable. The Board see no difficulty

Para 4. in regard to Section X for however small the Estate may be, the property found on it may remain there till sold. The matter is one of little importance and the Section is now omitted.

7 In regard to Section XI

Para 5. Mr. Dale would give the Collector the option of selling the crops standing. To this the Board see no objection and have modified their draft accordingly.

Para 7 8 The difficulties noticed in this para were intended to be obviated by Section XIV of the draft Act which enacted that Regulation V of 1822 (in accordance with its preamble) should not apply to Government Sales.

Para 8. 9 The Sections referred to affect only personal property — Landed property Government can and do purchase and the Board think this sufficient. It is undesirable they think that the Collector should compete complete at sales of personal goods and as Government can sell the entire property real and personal of a defaulter and ultimately imprison him, further protection seems uncalled for.

10 The Board are of opinion for the reasons already given in Para 7 of their Proceedings that the insertion of the term Ryotwary or of the words "lands not permanently settled" is essential. The lands referred to by Mr Shubrick are clearly held on what is considered in this Presidency Ryotwary tenure or otherwise the demand on them would be payable under all circumstances and they would be saleable under Regulation XXVII of 1802. It seems also necessary that Act XXIII of 1856 should be noticed.

11 The Board would object Para 11

to

to "verbal" engagements and prefer following the present law. They

Para 12 did not contemplate the seizure of property situated in other Zillahs or within the limits of the Supreme Court. On general grounds Government might justly claim this power but the Board think the powers of sale and imprisonment conferred by the Draft Act sufficient for present purposes. The question raised by Mr Dale will be properly considered during the preparation of the new Revenue Code.

The

12 The Board do not approve of the alteration made in Section III of the Draft Act as given in the margin. On further consideration they would propose re-enacting as parts of this Act the sections retained from Regulation XXVII of 1802. This would make the Act lengthy in appearance but would obviate all future doubts and difficulties. The Board have omitted the words "and damages" in Section XII but they would point out that damages are not payable when the demand wholly or in part is justly due and the officers of Government cannot reasonably claim greater protection.

"as altered or modified by subsequent legislation and so far as the same may be applicable."

13. The Draft has been recopied and is now resubmitted with marginal remarks explanatory of the alterations.

14 The Board much regret that they have been unable to submit their reply sooner but the question is one of considerable difficulty.

(Abstract)

(Sd) J. D. Sim
Secretary

To
H. Forbes Esq.
Secretary to Government
Revenue Department

An Act to amend Act 23 of 1856.

Whereas doubts still exist regarding the process to be taken against defaulters in payment of the public Revenue, and whereas difficulties occur under the provisions of Regulations XXVII and XXVIII of 1802 in recovering arrears of such Revenue it is hereby enacted as follows.—

* The Board would propose here inserting "due on lands not permanently settled" or retaining the original wording of the section

II. Whenever Rent or Revenue may be withheld beyond the day on which they fall due according to the Kistbundy or other engagement [whether written or verbal] or in cases where no particular day is fixed then beyond the time when such rent or revenue became payable agreeably to local usage, the Collector shall have authority to proceed for the recovery of such arrears by the distraint or seizure

* The Board would omit the words enclosed between brackets

Ind Cons. 15 December 57 No. 35-36

Extract from the Proceedings of the Board of Revenue. Dated the Nov 25th Dec 1857

No. 4702

S. No. 131 30th January 1858

Submitting observations with reference to the remarks in the letter from the Govt. [illegible] on the draft Act proposed by the Board to amend Act XXIII of 1856 and forwarding the draft Act recast with marginal remarks explanatory of the alterations—

Copy as the Act sent to [illegible] – 31 Jany 58

[illegible] Dec 57 No. 1430

(12)

131

sale of the personal
property of the de-
wherever found
in the distraint or
and sale of perso-
property for arrears of
revenue the following
shall be observed.-

New Section

VIII Regn XXVIII of 1803 Cl 1
Cl 2
Cl 3

are defaulters on re-
tice may neglect
amount due or to
factory security for
payment or where de-
may have abscond
may be otherwise not
coming so that the
cannot be derived
them, the attaching
shall in either case
out an inventory of
property attached to the
public Officer em-
ed to sell distrained
ty in order that it
be publicly sold for
discharge of the arrear

Note Cl 5 is omitted as unnecessary and Cl. 6 in consequence of Mr. Dale's objection.

Sect IX as it stands
stopping at the words
shall release the property"

Sect X omitted in consequence of Mr. Dale's objection

131 2

Section XI modified to give the distrainer power to sell the crops standing.

VI. Distrainers attaching the crops or ungathered products of the lands belonging to defaulters may cause them to be sold in due course without reaping or gathering them or at their option may cause them to be reaped or gathered in due season and stored in proper places until sold. The expense of reaping &ca &ca (as in the original section)

VII Sect: XII

VIII Where property distrained may be stolen or lost or damaged while in the keeping of the distrainer by reason of the necessary precautions for its due preservation not having been taken, the loss or damage shall be made good by the Officer whose neglect occasioned the loss or damage.

Sect XIII modified so as to point out more clearly the person by whom the loss shall be made good.

x. The distress levied shall not be excessive that is to say the property distrained shall be as nearly as possible proportionate to the amount of the arrear.

x. Attachments shall be made after sunrise and before sunset and not otherwise.

xI Sect XVI.

XII Where persons not being defaulters &c. as far as "may have grown."

XIII Sect XVIII the words "Zillah Court" being substituted for Court of Adawlut."

XIV. Sect XIX Cl 1

XV Sect XIX Cl 2 the words "dungah" being omitted.

XVI. Sect XIX Cl. 3 as far as "for six months,"

Sect XIV the rest omitted

Sect XV in part

Latter part of Sect XVII the first part being unnecessary is omitted.

Sect XX omitted as unnecessa

Section XVI modified

the 1st proposing the defaulter as well as the distrainer a little more time & place supplying the process

in which the arrear has accrued &c

XVII. After expiration of the 10th and before the expiration of the 30th day following the day on which the attachment was made the public officer empowered to sell distrained property shall cause to be affixed to the outer door of the defaulter's house a list of the property to be sold with a notice specifying the place where and the day and hour at which the distrained property shall be sold, and shall cause proclamation of the intended sale to be made by beat of drum in the Village to which the lands belong.

XVIII. At the appointed time the property shall be put up in one or more lots as the distrainer may consider advisable and shall be disposed of to the highest bidder. Where the property may sell for more than the amount of

t the arrear, the overplus after
educting expenses of proces
nd interest shall be paid
the defaulter

x. Section XXII.

ount to be paid at the
time of sale substitute
"distrainer" for "Cong or
Commissioner" and close the
defaulting purchaser shall
ake good to the distrainer
y loss arising as well as the
penses incurred on the resale
d any profit arising on
e resale it shall be
ccounted for to the owner
l the property distrained

~~Sect XXIII to XXXIII~~ omitted

x When defaulters shall
t have any personal pro
perty on which the Collector
n distrain or when he may
lect not to distrain on any
rsonal property or when
he personal property of
t defaulter shall
e first distrained and so
ld of the arrear due with
interest

interest and all expenses of distraint and sale be not liquidated by the proceeds of such sale the Collector shall have autho to proceed against the real property of the defaulter for the amount due with interest and all expen attending such further sale

XXI When the land or other real property of a defaulter is first attached and sold if the arrear due with interest, expenses of attachment and sale, management and all other just charges be not liquidated by the sale the Collector may of his own authority distrain and sell the person property of the defaulter for the recovery of such balance with interest and all expenses of distraint and sale.

XXII Immediately on the
occurrence

occurrence of an arrear or at any subsequent period — the Collector shall have authority to attach at his discretion the whole or such portion of a defaulter's landed property as he may deem sufficient to answer the amount in arrear but the previous sanction of the Bd of Revenue shall be necessary for the sale of landed and other real property.

XXIII. The provisions of Sections XI. XII. XIII. XV. XVI. XVII. XVIII. Reg. XXVI of 1802 shall be applicable to sales of landed property under this Act but a Persian Translation of the sale Advertisement shall not be necessary.

XXIV. Where arrears of Rent or Revenue with Interest and other charges as aforesaid cannot be liquidated by the sale of the personal and real property of the defaulter the Collector shall have authority to cause the arrest of the Defaulter in the manner following:

XXV. The Collector shall cause a motion to be made to the Civil Judge of the Zillah within which the arrear of revenue is due praying that the defaulter may be arrested unless the amount due by him as set forth in the said motion be paid within a time to be specified by such Judge.

XXVI. The Judge shall thereupon issue an order for the arrest of such party and for his production before the Court within such time after his arrest as in such order shall be specified unless such party pay the arrear demanded with all expenses of process within 48 hours after the said order shall be served upon him, provided that with the consent of the Collector a longer period may be allowed for

such payment. In the
nt of the arrear not be-
g paid as above provided
Officer charged with the
cution of the order shall
ney the defaulter to the
urt without unnecessary
unreasonable delay.

VII. On the arrival of the
aulter at the Court, the
dge shall call upon him
nswer the demand where
demand or any portion of
may be denied, the Judge
ll enter into a Summa-
enquiry into the merits
the case.

VIII. Where after such
quiry it shall appear that
arrear demanded is not
tly due, the Judge shall
scharge the defendant
th full costs* but where
may appear that the de-
and wholly or in part is
justly

* The words "and damages" are here omitted in consequence of Mr. Dale's objection.

justly due the Judge shall direct the defendant to be kept in custody until the amount shown to be due and interest thereon at one per Cent per mensem with costs of Suit may be discharged or until the Collector make application to the Court for the release of the Defendant. The Collector shall pay the defendant whilst in confinement the same allowance for subsistence as is fixed for other prisoners in the Jail wherein he may be confined.

XXIX. Interest at one per Cent per mensem shall be charged on all arrears of Rent or Revenue under this Act from and after 30 days after the arrear has accrued.

XXX. [Reg. V of 1822 shall not be applicable to sales of property

The reenactment of the portions of Reg. XXVIII of 1802 which are to be retained render this Section unnecessary.

property under this Act.]

XXXI. This Act shall not apply to Zemindars, Mootahdars or others holding lands on permanent tenures or to their Sub-tenants.

XXXII. Arrears of Revenue due to Government other than Land Revenue and hitherto recoverable under Reg: I of 1826 and 5 of 1832 as well as sums leviable under Sects. VI and IX Reg. IX of 1822 and Acts XII and XX of 1850, shall hereafter be recoverable solely under the provisions of this Act.

XXXIII. Reg XXVIII of 1802 and Act XXIII of 1856 shall be inoperative as respects arrears of Revenue due to Government on lands not permanently settled.

Inserted for consideration of Government Pleader.

Acting Secretary

From

D. Eliott Esquire
Member of the Legislative Council

To

H. Forbes Esquire
Acting Secretary to the Government of
Fort St. George.

Dated Fort William the 12th November 1857

Sir,

Referring to Mr. Morgans letter dated the 17th July and the Minute of Mr. Currie therewith transmitted, I have the honor to request that you will, as early as possible, apprize me whether the Draft of an Act is under preparation according to Mr. Currie's suggestion and, if so, when it is likely to be ready.

I have the honor to be,
Sir
Your Most Obedt. Servt.

D. Eliott

Member of the Legislative Council

Encl.

An Extract from the Proceedings of the Board of Revenue dated 24th Dec. 1857 No. 4702.

Draft of an Act to amend Act 23 of 1856.

C. 16-12/57

Cons 4th Aug 65 Nº 128

Revenue 1806 Sept [illegible]

Nº 1431

From the Honble D Eliott Esqr Member of the Legislative Council

Dated 12 [illegible]

Recd 26 [illegible]

Nº 41

(131)

(19)

Rev Dept 29

Nº 131

(131)

Extract from the Minutes of Consultation
Under date the 30th January 1858

Read again the following letters

From the Secy to the Board of Revenue
dated 26 Nov & recorded in Sep Cons 1 Decr 57 Nº 1460
From the Govt Pleader Sudr Adalut
dated 11 and recorded in Sep Cons 15 Decr 57 Nº 1558

Read also the following Paper

Extract Pro: Board of Rev.

(Here enter 24 Decr 57 Nº 1702)

From the Honble D Eliott Esqr
Member of the Legislative Council

(Here enter 12 November 57)

1. In an Extract from the Minutes of Consultation dated 23d October 1856 Nº 1126, the Government had before them the representations made by the Board of Revenue in their proceedings of the 26th September preceding, respecting the state of the land revenue balances, and the difficulties and inconveniences experienced

by the local Officers within
the Presidency owing chiefly to
the unsatisfactory and
insufficient state of the
law for the collection of
the Land Revenue. After
giving the Board's Repre-
sentations their careful
consideration, the Govern-
ment came to the conclu-
sion that pending a revision
of the entire law which
had already been ordered
and was in progress the
best course would be to
obtain a short Act declar-
ing Regulation XXVIII of 1802
to be in force for the recovery
of Ryotwar balances. An
application was accordingly
made

made to the Member of the
Legislative Council of India
for Madras, with the un-
derstanding that the new
Act was to be in force until
the revised Code should be
enacted, and to be among
the laws rescinded by it.
With certain modifications
in the draft prepared by
this Government, explained
in Mr Eliott's minute of the
30th November 1855, Act No. IX
of 1856 was passed by the
Legislative Council of
India, under the title of
"An Act for the better recovery
of arrears of revenue under
Ryotwar settlements in
the Madras Presidency."

The new Act had scarcely come into operation when it was discovered that its provisions did not fulfil the intention of this Government, and that in practice it created difficulties other than those previously experienced. These were explained in the letter to the address of the Clerk to the Legislative Council dated 27th June 1857 No 657. It was shewn in that letter that, although the revenue in Nyrbwar districts was collected under Reg. XXVII of 1803 prior to the enactment of Act XXIII of 1856, the

To pro 17th Jany 1857 No 191
5 June — 188

the Officers of revenue had no power under the new Act to take advantage of the older law, and that, bound by the provisions of Cl. 7 Sec. 34 Reg XXVIII, they could sell landed property only after the expiration of the revenue year, and then only through the intervention of the Zillah Court. It was stated that the inconvenience formerly felt from the obligation first to sell landed property was experienced from the necessity of selling first the personal property of defaulters, and Government concluded with an expression of their opinion that legal power should be given to their Officers to sell either land or personalty, as in any case might be desirable.

3 The subject was taken up by the Legislative Councillor for Bengal in a Minute dated 27th June 1857, and under the circumstances therein stated, and in the absence of the Legislative Member for Madras, it was suggested that the Madras Government should send up the draft of such an Act as would fully meet their requirements.

4 The correspondence that has ensued in consequence is recorded at the head of these proceedings, together with the Board's letter of the 13th November enquiring whether the draft of an Act is under preparation according to the Council's suggestion, and if so when it is likely to be ready.

5 In their letter of the 26th November last the Board of Revenue submitted, for the consideration of this Government, the draft of an Act for the recovery of Ryotwary arrears of Revenue, and explained the principles

on which it was based They thought it best to make as few alterations in the present law as possible, in order to prevent difficulties and delay in the disposal of the question; Arrears due to Government they said [illegible] not be recovered by the sale both of real & personal property, though in an exceedingly embarrassing way; and that the object of the draft act was merely to give the Collector the power of realizing an arrear by the sale of the personal real property of the

defaulter

defaulter as he might deem advisable for the prompt recovery of the Government dues. Personal property, they added, would, under the new law, be sold according to Reg. XXVIII of 1802, and real property according to Reg. XXVII of 1802, and imprisonment effected only through the intervention of the Courts.

6 The draft act was referred for the opinion of the Government Pleader, and that Officer's views are given at length in his letter dated 11th December 1857 No 1311. Mr. Dale observes that legislation by reference

to existing laws was at all times attended with difficulty, but particularly so when the provisions to which additions are to be made, or which are to be incorporated in the new legislation, were not entirely applicable to the new state of matters. He referred to the proposal to make Regulation XXVIII of 1802, with certain exceptions, the basis of the new law; he considered some of the provisions* of that Regulation harsh, and shewed where they were so; he stated that sections 0-11-30 and 31 appeared to

ch 6 Sec 8
ch 8 – 17
– 21. 24

him

him to be inapplicable, and he finally adverted to other points as being open to question. These will be noticed more at length hereafter.

7 In their proceedings of the 24th December, the Board take up the consideration of Mr Dales representations; they have yielded to some of his objections, but have either disapproved or overruled others, and in submitting a revised draft Act they propose to re-enact, as parts of this Act, the sections retained from Regulation XXVIII of 1802.

His

hereinafter the [illegible], but as the Board deem will obviate all future doubts and difficulties.

8 In reference to Mr Dale's preliminary remarks, the Board say that they purposely avoided departing from the existing law, except in those cases where it was absolutely necessary, that their object was to obviate the delays and expenses which might ensue in the Legislative Council if a complete alteration of the law was proposed, and that the mere vesting a Collector

with

with the power of selling either the personal or real property of a defaulter, whether it was not likely to meet with opposition, since it was just that the Government should have the remedy against the property of its debtor, and because the Government actually possessed it, though under such conditions as often rendered the possession useless. They refer, in paras 2 and 3, to other considerations which influenced them in the course taken by them, but it seems unnecessary to notice these further.

9 Mr Dale, as before mentioned, considered some of the provisions of Regulation XXVIII of 1862 to be harsh and objectionable, inasmuch as they involve forfeiture of the arrears in event of their breach. These are clause 6 of Sec. 8, clause 3 of Sec. 17, and sections 21 and 26. The Board have properly omitted these portions, and it will be for the Legislative Council to introduce any other penalty for a breach of the Regulations in selling property in any other mode than that prescribed by law

if

if such should be deemed necessary.

10 The Board have also excluded sections 10, 30 and 31, and have modified Sec. 11, so as to give the distrainer power to sell the crops standing. These are in accordance with Mr Dale's views and are approved. They have modified Sec. 13 so as to point out more clearly the person by whom the loss in distrained property is to be made good.

11 Referring to sections 24 and 26 of Reg XXVIII of 1862, Mr Dale thinks that there can be no valid objection to property distrained being

purchased by a Collector
in his public capacity. In
deciding the Board seem
have reference to personal
property; landed property
they say Government can
and do purchase, and this they
think sufficient. They consi-
-der it undesirable that the
Collector should be present
at sales of personal goods,
especially as Government
can [illegible] the [illegible] property
[illegible]
defaulters [illegible] otherwise
unfortunate [illegible]. The Gov-
-ment think, with the
Board, that there is suffi-
-cient protection.

12. The Board object to
the

the term "ryotwary" in
the preamble of the
former draft, but the
Board have over-ruled
the objection, and con-
-sider the term, or its
equivalent "lands not
permanently settled,"
essential. In the
present draft the Gov-
adopting the Board's
views, have inserted
the latter expression.

13. The Board
object, and it seems
to the Government
very properly, to the
term "verbal engage-
-ments" employed by
Mr

Mr Dale in his revision of their original draft act. This has been omitted in the draft now under consideration.

14. The Board observe in reference to the inquiry in para 12 of Mr Dale's letter, that they did not contemplate the seizure of property situated in other Zillahs or within the limits of the Supreme Court. The Board are of opinion that the insertion of the words "wherever found" in the proposed Act will obviate many difficulties

now

now experienced from the removal of property about to be attached across the frontier of adjoining Districts. Mr Eliott's attention will be attracted to the words and he will be requested to exercise his discretion in pressing their retention on the Legislative Council, according as he may think that their introduction in the new Act will meet with acceptation or otherwise.

15. The Board object to Mr Dale's

alteration of Section III of their original draft act, and in their present draft they have re-enacted, as parts of this act, the sections retained from Regulation XXVIII of 1802. They have omitted as unnecessary Cl 5 of Section 8, Sections 20 and 23 to 33. Of these latter sections the Govt propose that Section XXVII shall form a part of the new act.

16. In Sections XXIV to XXIX of the draft Act the Board have adopted the provisions of Section XXXIV of Reg XXVIII; but it appears to Government that, by that part of the law, the interference of the Court is called into operation at an unnecessary stage of the realization of an arrear of revenue. By clause 4 of Section XXXIV of Reg XXVIII, and by Section XXVII of the present act, the Judge would enter on any enquiry into the fact of the arrear alledged against a defaulter, before any appeal had

been made to him,
and the Govt. are
of opinion that this
is both unnecessary
and improper, they
have therefore adopted
the provisions of Sections
XII & XIII of Regulation
XXVII, and have sub-
stituted them for
that part of Regulation
XXVIII which the
Board had embodied
in Sections XXIV to XXIX
of the proposed act.

7 A Draft
Act, revised in con-
formity with the
above views will
now be forwarded
to the Govt. pleader,
together

together with the
Board's letter, and
the draft act which
accompanied it,
for any observations
or amendments he
may desire to offer
or suggest, prepara-
tory to its being
sent up to the
Legislative Member
for enactment. Mr.
Dale will be re-
quested to give the
subject his early
consideration, and
to return the draft
with as little delay
as possible. He will
observe that this
draft will render

Reg

Regulation XXVIII of 1802 and Act XXIII of 1856 altogether inoperative as respects arrears of revenue due to Govt. on lands not permanently settled.

2 – Copies to the Secy. of State [illegible]

1 – Govt. [illegible]

with Copy of this Letter & Despt. [illegible]

An Act to amend Act 23 of 1856.

Whereas doubts still exist regarding the process to be taken against defaulters in payment of the public Revenue due on lands not permanently settled, and whereas difficulties occur under the provisions of Regulations XXVII and XXVIII of 1802 in recovering arrears of such Revenue, it is hereby enacted as follows:

I. Whenever Rent or Revenue may be withheld beyond the day on which they fall due according to the Kistbundy or other engagement, or in cases where no particular day is fixed, then beyond the time when such rent or revenue become payable agreeably to local usage, the Collector shall have authority to proceed for the recovery of such arrears by the distraint or seizure, and the sale of the personal or real property of the defaulter ~~wherever found~~.

III In the distraint or seizure and sale of personal property for arrears of rent or revenue, the following rules shall be observed.

First. Distrainers shall furnish to the persons employed to attach the property of defaulters demands in writing and signed with their names, specifying the amount of the arrear for which the attachment may be issued, and the date on which the arrear fell due. The persons so deputed shall produce the writing as authority for making the attachment, and on the day on which the property may be attached shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property attached, and the name of the place where it may be lodged or kept.

Second. The writing shall further set forth the intention of the distrainer

to

to bring the attached property to immediate public sale unless the amount and expenses of the attachment be previously discharged.

Third. Where defaulters may be absent a copy of the writing, with the indorsement, shall be fixed or left at his usual place of residence before the expiration of the third day, calculating from the day of the attachment.

IV Where defaulters on receiving notice may neglect to pay the amount due, or to give satisfactory security for early payment, or where defaulters may have absconded, or may be otherwise not forthcoming, so that the notice cannot be served upon them, the attaching officer shall in either case transmit an inventory of the property attached to the nearest public officer empowered to sell distrained property, in order that it may be publicly sold for the discharge of the arrear due.

V Where defaulters may tender payment of the arrear demanded in the presence of two credible witnesses after their property may have been attached, and prior to the day fixed for sale, together with payment of the necessary expenses attending the attachment, the distrainer shall receive the amount of such arrear and su expenses immediately upon the same being tendered, and shall forthwith release the property.

VI Distrainers attaching the crops or ungathered products of the lands belonging to defaulters may cause them to be sold in due course without reaping or gathering them or at their option may cause them to be reaped or gathered in due season and stored

in

in proper places until sold. The expense of reaping, or gathering and storing such crops or products, shall be defrayed by the owner upon his redeeming the property or from the proceeds of the sale in the event of its being sold.

VII Distrainers shall not work the bullocks or cattle, or make use of the goods or effects distrained; they shall provide the necessary food for the cattle or live stock, the expense attending which shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold.

VIII Where property distrained may be stolen or lost or damaged while in the keeping of the distrainer by reason of the necessary precautions for its due preservation not having been taken, the loss or damage shall be made good by the officer whose

neglect

glect occasioned the loss or damage

The distress levied shall ot be excessive, that is to say, he property distrained shall be s nearly as possible proportionate the amount of the arrear.

Attachments shall be made after sunrise and before unset, and not otherwise.

Where under-farmers or ryots may make a fraudulent conveyance property to prevent the attachment it for arrears, the Zillah Court pon proof thereof, shall cause the roperty to be delivered up to the dis-trainer, and compel the person to whom uch transfer or conveyance may have een made to pay to the distrainer amages equal to the value of one half he property, with costs of suit.

Where persons not being de-faulters, or responsible for defaulters

may claim a right to the property distrained, and the distrainer may notwithstanding, cause the same to be sold, the claimants, on proof of such right in the Zillah Court and in the event of the distrainer being unable to prove responsibility for the arrear of rent or revenue, on account of which the property may have been sold, shall recover from the distrainer the full value of such property, with costs and damages, according to the circumstances of the case. But claims to crops upon the ground, or to gathered product of the ground attached in the possession of the defaulter, whether founded upon a previous sale, mortgage, or otherwise, shall not bar the prior claim of rent or revenue due from the ground upon which such crop or product may have been grown.

XIII Where persons not being owners may be convicted of forcibly or clandes-tinely taking away property once distrained, the Zillah Court upon proof thereof, shall cause such persons to be imprisoned until they restore the property or make good the value of it to the distrainer, and, moreover, to pay to him as damages, a sum of money equal to the value of such property, with costs of suit.

XIV. Distrainers shall have power to force open any stable, cowhouse, godown, granary, or other building, to enter any dwelling house, the outer door of which may be open, excepting the apartments in such dwelling house appropriated for the Zenana, or residence of women, and to break open the door of any room in such dwelling house, for the purpose of attaching property belonging to a defaulter and lodged therein.

XV. Where distrainers may have reason to suppose that the property of a defaulter is lodged within a dwelling house, the outer door of which may be shut, or within any apartments appropriated to women, which by the usage of the country are considered private, such distrainers shall represent the same to the police, within whose jurisdiction the house may be situated, and on such representation, the police shall send a police officer to the spot, in the presence of whom distrainers may force open the outer door of such dwelling house, in like manner as they may break open the door of any room within a house, except the Zenana. Distrainers may also, in the presence of the police officer, after due notice given for the removal of women within a Zenana, and after furnishing means for their removal in a suitable manner (if they be women of rank, who according to the customs of the country cannot appear in public), enter the Zenana apartments for the purpose of attaching the defaulter's property deposited therein, but such property, if so found, shall be immediately removed from such apartments, after which they shall be left free to the former occupants, and nothing in this regulation shall be understood to authorize a distrainer or his agent to force open the door of a dwelling-house or to enter the apartments of women which by the usage of the country are considered private in any other mode than is herein prescribed.

XVI Third. Persons entering the apartments of women, or forcing open the outer door of dwelling-houses, contrary to the provisions of this regulation, shall be imprisoned for six months.

XVII At the expiration of the 10th and before the expiration of the 30th day following the day on which the attachment was made, the public officer empowered to sell distrained property shall cause to be affixed to the outer door of the defaulter's house a list of the property to be sold with a notice specifying the place where and the day and hour at which

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the distrained property shall be sold, and shall cause proclamation of the intended sale to be made by beat of drum in the Village to which the lands on which the arrear has accrued may belong.

XVIII At the appointed time the property shall be put up in one or more lots as the distrainer may consider advisable, and shall be disposed of to the highest bidders. Where the property may sell for more than the amount of the arrear, the overplus after deducting expenses of process and interest, shall be paid to the defaulter.

XIX The property shall not be sold for other than ready money, and the purchaser shall not be permitted to carry away any part of the property until paid for. Where the purchaser may fail in the payment of the whole or part of the purchase-money within five days calculating from the day following the sale the whole of the property, or the part of it which may be unpaid for shall be resold by the distrainer on such day as he may fix, for the best price offered for it, the defaulting purchaser shall make good to the distrainer any loss arising, as well as the expenses incurred on the re-sale. If any profit accrue on the re-sale, it shall be accounted for to the defaulter.

XX When defaulters shall not have any personal property on which the Collector can distrain, or when he may elect not to distrain on any personal property, or when the personal property of such defaulter shall be first distrained and sold if the arrear due with interest and

all

all expenses of distraint and sale be not liquidated by the proceeds of such sale, the Collector shall have authority to proceed against the real property of the defaulter for the amount due with interest and all expenses attending such further sale.

XXI When the landed or other real property of a defaulter is first attached and sold, if the arrear due with interest, expenses of attachment and sale, management and all other just charges be not liquidated by the sale, the Collector may of his own authority distrain and sell the personal property of the defaulter for the recovery of such balance with interest, and all expenses of distraint and sale.

Immediately

XII Immediately on the occurrence
from arrear, omitting subsequent
periods, the Collector shall have full
right to attach into his [illegible] the
whole or such portion of a defaulter's
landed property as he may deem suf-
ficient to answer the amount in
arrear, but the previous sanction of the
Board of Revenue shall be necessary for the
sale of landed and other real property.

XXIII The provisions of Sections XI. XII. XIII.
XV. XVI. XVII. XVIII. Regulation XXVII of 1802 shall
be applicable to sales of landed property on
under this act, but a Persian translation of
the sale advertisement shall not be necessary.

XXIV Where arrears of Rent or Revenue [illegible]
with Interest and other charges as
aforesaid may not be liquidated by the
sale of the personal and real property
of the defaulter, the Collector shall
have authority to cause the arrest of
the Defaulter in the manner prescribed in
Sec: XIII of Regulation XXVII of 1802

XXV Parties considering themselves to
have been aggrieved by the Collector's
acts under the preceding section shall
have liberty to appeal to the Judge
who on receiving such appeal shall
proceed according to Sec XX of Regula-
-tion XXVII of 1802.

XXVI Interest at one per cent
per mensem shall be charged on
all arrears of Rent or Revenue under
this act from and after 30 days after
the arrear has occurred.

XXVII Regulation V of 1802 shall
not be applicable to sales of property
under this act.

XXVIII This act shall not apply
to Zemindars, Mostahiders, or others
holding lands on permanent tenures
or to their sub-tenants.

XX~~VIII~~IX Arrears of Revenue due
to

to Government other than Land Revenue and hitherto recoverable under Regulation I of 1826 and 5 of 1832, as cesses or sums leviable under Sects VI and X Regulation IX of 1822 and Sects XII and XX of 1850, shall hereafter be recoverable solely under the provisions of this Act.

XXX
~~XXIX~~

Regulation XXVII of 1802 and Act XXIII of 1850 shall be inoperative as respects arrears of Revenue due to Government on lands not permanently settled.

B.S.

Copy Sd/ [illegible]
30 Jany 58

Cont. 15th Decr./57 No. 35 & 36.
— 4th Augt. " " 27 & 28

24/4/58 —

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(131)

Lock Shd.

Revenue 1858 Department
Ltr to Cons: 2nd February

No. 131.

Extract Mins of Cons:
Dated 30th January/58.

From Bd. of Revt. d/ 9th June/58
C. No. 879 inl. 7

Forwarding to the Government Pleader for any revisions or amendments he may desire to offer or suggest, preparatory to its being sent up to the Legislative Member for enactment, a revised Draft Act adapting the provisions of Section XII & XIII of Regulation XXVII, for the recovery of Ryotwary arrears

Copy to the Member of the
Legislative Council
for Madras —
26 Feby/58
No. 48 —

No. 140 & 142