

Revenue Dept.

EMC. Cons. dt 24.2.1857
(Bäckström 3).

EMC. A.O. No 173 Revenue
dt 18.2.1857

REVENUE DEPARTMENT

S.M.C. dated 24th FEBRUARY

BACK NO - 1-3

ORDER NO 173 dated - 18th FEB 1857

பாதுகாப்பு பிரிவு-1

செய்ப்பிடுபவர் பெயர் S. சிமலா

செய்ப்பிடுவதற்காக
எடுத்துக்கொள்ளப்பட்ட நாள் 6/2006

செய்ப்பிட்டு முடித்த நாள் 8/2006

சரிபார்க்கும்

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ஆராய்ச்சி

முதல் மு.நி.பா.எ.

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உதவியாளர்

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Fort Saint George, Revenue Consultation of 24th February 1857.

No. 1. Read the following letter from J. GOLDINGHAM, Esq., Commissioner for the Northern Circars; to J. D. BOURDILLON, Esq., Secretary to Government Fort Saint George; dated Vizagapatam 27th May 1856, No. 60.

1. I have the honor to submit the following remarks on the revision of the Revenue Code of this Presidency as required in Extract Minutes of Consultation 10th January 1856, No. 33.

2. I fully concur in the view that the proposed revision should be complete, and think that Mr. Stokes has wisely selected the Bombay Code as a model for the purpose. I am fully impressed with the remarks of Government in regard to the importance of formal legislation contained in para. 3 of Extract Minutes of Consultation 5th October 1855, No. 1115.

3. The year 1802 was peculiarly marked. The legislature proposed to itself at that period two chief objects, viz. the establishment of a permanent property in the land and the withdrawal of Judicial functions altogether from Collectors. Both have been found to be failures, proceeding from the real proprietors or land holders having been entirely overlooked. Regulations IV. and V. of 1822 were enacted to correct the mistakes of 1802, experience thus showing that the rights of the occupants of the land should be the first thought of; the legislature and that the Court of the Collector is the only place where those rights can be suitably protected. It appears important to bear these facts in mind in the proposed revision of the Revenue Code.

4. Like 1802 the present period has special claims on the legislature, but with a vast amount of experience to aid its deliberations.

5. The 3 Sketch enactments proposed by Mr. Stokes bring together the scattered parts of the Law, but it seems open to consideration whether a more lucid arrangement might not be adopted by confining to each head of enactment what properly belongs to it. Thus the first clause of Section II. of the first Sketch Act is no part of the settlement of the Land Revenue, but belongs to the head of offices by whom the Revenue administration shall be conducted. Section VIII. and following of the same Act belong to the powers of Collectors as treated of in the 2d Sketch Act. In the last mentioned Sketch Act, the powers of the Board of Revenue, as a Court of Wards, and their powers as well as those of Collectors in matters of Endowment and Escheat are introduced in the midst of the rules prescribing the duties of the Board of Revenue and Collectors. The duties and powers of these functionaries should rather have been disposed of under distinct heads.

6. The first Sketch Act is intended to refer to the "Settlement of the land Assessment;" but very little is said on that subject, and no notice is taken of the rights of the occupants of land.

7. Looking to the foregoing considerations, perhaps the most lucid form of arrangement is that adopted by the Indian Law Commissioners in their preparation of the Penal Code. It appears one Act, as it were, consisting of a series of Chapters, a separate Chapter being appropriated to each subject: such an arrangement seems to have suggested itself to Mr. Stokes at one time.

8. Two points remain for consideration, 1st, whether appeals shall lie from the decisions of the Revenue Authorities in any case to the Courts, and to what extent, if at all, cases of malversation shall be enquired into by Revenue officers.

9. Experience seems to have shewn that a class of cases incidental to the state of relationship of the people to Government can only be successfully investigated and disposed of by the Revenue Authorities. The claim of enquiry is completely provided for. The Collector may be

appealed to in cases decided by his subordinate officers; and the Board of Revenue and Government are always open to appeals from the acts of their officers. As a general rule then, it seems desirable that cases cognizable by the Revenue officers should be finally disposed of in that Department. In regard to cases of malversation coming under Regulation IX. of 1822, the evils of allowing an Appeal to the Civil Court of the District have been seen lately in the Manipal-tam trials.

10. The other point is to what extent, if at all, cases of malversation shall be disposed of by the Revenue Authorities. The Collectors of Rajahmundry and Masulipatam and the Acting Collector of Guntur were consulted as to the expediency of removing the offences cognizable under Regulation IX. of 1822, from the Revenue Authorities to the Courts. All three officers point out the great defect of the present law in allowing Appeals to the Courts, and are of opinion that a law embracing the offences in question administered by the Revenue Authorities is necessary for the protection of the ryots. Mr. Purvis is of opinion that "any system would be better than that which at present obtains, whereby public servants, notoriously corrupt, and convicted after the fullest investigation, of bribery and corruption by the local Revenue officers of the District, and the decisions confirmed in Appeal by the controlling Authority, are often relieved from the penalty attaching to their misconduct on a further appeal to the Court."

From Collr. of Rajahmundry 16th Feb. 1856,
No. 15.

Mr. Purvis.
Mr. Lushington.
Mr. Newill.

From Collr. of Masulipatam 16th March 1856,
No. 24 with enclosure.

From Collr. 15th March 1856, No. 25.

From Collr. of Guntur 9th Feb. 1856.

Mr. Lushington expresses himself in strong terms on the defect of the present law, and encloses Extracts from letters he had addressed to Government 2d March 1854, No. 4, paras. 18 to 21, and 18th December 1854, No. 26, para. 17. Mr. Newill adverts to the fact that cases have seldom stood the test of re-trial before the Courts, and accounts for it partly from sympathy of the Court servants, also engaged in similar practices, with the accused parties; and partly in consequence of Judicial officers, from deficiency of knowledge of the subject, being unable to discern what constitutes "a fraudulent entry in the public accounts concerning the extent, value, classification, and assessment of land," or "what is, or is not an extra collection, or what particular servants are responsible for the accuracy of the accounts." "It might be very inconvenient," Mr. Newill adds, "to lay the least for the Judges to have to pronounce upon the correctness or otherwise of such entries in the accounts, which he could not perhaps well do without the assumption of Revenue powers, and thus coming into conflict with the duties of the Revenue officers."

11. The question generally is argued by the Board of Revenue in their Proceedings dated 6th November 1820. The general tenor of that paper is to show that there is a class of cases which can be satisfactorily disposed of by the Revenue Authorities only. Regulations V. and IX. of 1822, embrace those cases.

12. The offences declared by Regulation IX. of 1822, are 1 Bribery, 2 levying unauthorized cesses, 3 embezzlement or fraudulent misappropriation of public money or public property, 4 fraudulent entries in the public accounts or other records, and 5 falsifying, destroying or concealing public documents of any kind. The punishment of the 3d, 4th and 5th classes of offences mentioned above is also provided for by Act XIII. of 1850, but the corrupt receipt of money and levying unauthorized cesses do not fall within the scope of this Act.

13. The descriptions of persons amenable to Regulation IX. of 1822, are also enumerated in that enactment. They embrace all persons, whether in the public service of Government, or otherwise, but in the latter case, pretending to act with the authority of public officers.

Persons in the public service may be viewed under two general heads. 1st, village servants as Curums and Heads of villages; and 2ndly, those on the other establishments generally of the Collector. The returns of offences tried embrace for the most part the village servants, and the offences chiefly come under the 3d, 4th and 5th classes above enumerated, while the other class of servants is comparatively seldom found in the returns of trials and sentences, though it is well

known that they are not less corrupt than the village servants. In their case, corrupt receipt of money is generally the offence committed.

14. In regard to village servants, dismissal from office and a small fine would, in most cases, be a sufficient punishment. The moral effect of a conviction under Act XIII. of 1850, would also be greater than several judgments under Regulation IX. of 1822, but that Act should not be resorted to, except where there is sufficient evidence to insure conviction, and where the punishment it awards is called for. With these views, if correct, an enactment like Regulation IX. of 1822, so far as regards the 3rd, 4th and 5th classes of offences enumerated, is not required. The Revenue Authorities would, on charges embracing such offences being proved, dismiss the parties with or without a small fine, or forward the case to the Criminal Court for trial. This course would apply to charges involving the 3d, 4th and 5th classes of offences against all classes of public servants.

15. In cases of embezzlement, it is important that under criminal prosecution, the liability of the accused to make good any loss that may be sustained in consequence of misconduct should not be overlooked, but this liability is declared in Section XVI. of Act XIII. of 1850.

16. In the event of Regulation IX. of 1822 being declared to be no longer necessary, cases of corrupt receipt of money and of levying extra cesses have to be provided for. I do not see why they should not be treated like cases of embezzlement. The parties should be liable to a criminal prosecution as well as to make restitution. Thus in all charges of bribery and extra cesses, the Revenue authorities should, on proof, proceed at once to recover from the parties convicted the full amount of the money or monies received, with power to make restitution, when proper, to the parties aggrieved. It does not seem to be at all necessary that the Revenue authorities should proceed further in the punishment of the offenders. Their attention is to be confined simply to the recovery of the money, if further proceedings are necessary, the case will be prosecuted criminally. The craving for money is the foundation of this species of corruption; and it should therefore be a main object of the Legislature to get back what has been corruptly received. If this course is invariably followed, public servants would perhaps grow weary of laying themselves out to obtain money in these ways. A well sustained criminal prosecution under circumstances requiring such a course would also have a powerful effect in deterring others from similar practices; but it is obviously not desirable that this should be adopted except on sufficient grounds. The observations of the Law Commissioner in note A quoted in the margin above, guide me in making these remarks. Recovery of monies corruptly received and restitution, when proper, to the sufferers is what the Law Commissioners would term "disagreeable" to the offenders and should for that reason be enforced.

See Penal Code, Note A, on the chapter of punishments, pages 6, 7.

17. Accompanying is a skeleton sketch of a Revenue Code, prepared as suggested in the foregoing paras. It is a mere skeleton as the details can alone be filled up by a person who can give exclusive attention to the subject for a few weeks. The principles on which it is based are however set forth.

18. Chapters I and II declare the principles according to which the settlement of the Land Revenue should be made, and the rights of the Landholders. The Board of Revenue more than 30 years ago drew up something similar, embodying a few remarks by Colonel (Sir Thomas) Munro, which was intended to be a Ryotwar Regulation; the paper was printed, but has remained untouched among the records of the Board ever since. Shortly after the preparation of that paper, the administration of Ryotwar was marked by the introduction of restriction and rules varying in every District, fettering the action of the Landholders, and perhaps to this circumstance, is to be attributed chiefly the difficulty experienced, where there was a disposition to consider the subject, in framing a Law which would be suited to all Districts. To postpone the consideration of this important matter any longer, after the recent explicit declaration of enlightened views by Government and the Honorable Court, appears to be inexpedient and injurious to the prosperity of the country and the interests of Government. The description given of dilapidated Farms and estates in Europe, where the owner is satisfied with a reduced rental and an insolvent state of the tenants, rather than adopt measures, whether by outlay of money, or otherwise, for the improvement of the property, not unfrequently applies to the state of the lands and condition of the landholders in this country. The present administration of

Ryotwar may perhaps be designated that of petty fields. To parcel out the country into large farms would be perhaps the opposite error. A fair assessment will lead to an extensive occupation of land, and when the owners of large holdings find that their lands may become valuable properties, it seems certain that the present class of petty occupants will either become large holders themselves, or gain a subsistence as the under tenants of their more substantial brethren. Sections 12, 13 and 14 of Chapter I. are intended to afford facilities to the growth of large land-holders.

19. The use of indefinite terms as "local usage" in Section IV. of Mr. Stokes' first Sketch seems very undesirable. Its tendency is only to breed disputes. It was wisely adopted in the earlier periods of legislative action to cover a want of local knowledge, necessarily incident to the first acquisition of a country.

20. In regard to the additional impost on account of water furnished by Government, it is proposed in Chapter I. that lands under wells, so situated as to draw off public water, shall be liable to the rates of tax for water, unless specially declared to be exempt by the controlling Revenue Authorities of a District. It will seldom be desirable to enforce this provision, but its existence is necessary in case a large abstraction of Government water in this way so as to cause a serious loss of revenue, should, at any time, take place. If the loss of revenue is not great, it would be better not to enforce the restriction.

21. The remaining Chapters of the proposed Sketch do not call for much remark. It will be seen that as the several classes of cases belong peculiarly to the Revenue administration, there is no appeal allowed in any case to the Civil Court of the District; cases coming under Chapter VIII. are now settled on the evidence of members of the village community, who are called away to a distance from their homes for the purpose. The proposed Law acts on that source of information, but under an arrangement more suited to the convenience of the parties concerned as well as to promote the ends of justice.

22. The Zemindary Law, or Regulation XXV. of 1802, will of course remain as it is: adverted to its defects both as respects the rights of the ryots and the succession in Hill Zemindaries, as well as in others also, which requires the heir in the ordinary legal sense and not the fittest Member of the Family to assume the management, it may seem at first, that the terms of the permanent award might be declared open to modification when the interests of the family required it, and on their application. I think, however, on considering the matter, that it would be dangerous to make any alteration of the kind, and that probably greater evils would follow a change than any that are now feared.

23. With the sentiments above expressed, Chapters I. II. and VIII. appear to me very important. I would wish to see the same practical head engaged in drawing up their provisions as was employed in preparing the new forms of Revenue accounts.

24. Mr. Stokes' Sketch Act for exempted lands might also form a Chapter of the proposed Code.

Sketch of a Code for the administration of the Land Revenue, and for declaring the duties and power of Revenue Officers.

CHAPTER	I.	On the settlement of the Land Revenue.
"	II.	On the rights of the holders of land.
"	III.	On the officers entrusted with the administration of the revenues, and their duties.
"	IV.	On the powers of Revenue officers in the collection of the revenue.
"	V.	On the powers of the Board of Revenue as a Court of Wards, and on those of the Revenue officers acting under them in their capacity as a Court of Wards.
"	VI.	On the powers of Revenue officers in cases of Endowments and Escheats.
"	VII.	On the powers of Revenue officers in cases of corrupt receipt of money, levying extra cesses, and embezzlement of public money and public property.
"	VIII.	On the powers of Revenue officers in cases of disputes respecting the occupancy, cultivation, and irrigation of land, and possession of crops in Ryotwar Districts, and generally in all disputes connected with the land between ryot and ryot in the same District.

CHAPTER IX. On the powers of Revenue officers in cases of disputes between Zemindars and their ryots, in Zemindary villages, also respecting rates of assessment and arrears of rent or revenue, and respecting the occupancy, cultivation, and irrigation of land and possession of crops, and generally of all disputes connected with the land between ryot and ryot under Zemindary tenure.

X. On the powers of Revenue officers in regard to the office of Curum, and in cases of claims to the possession of, or succession to hereditary village or other offices in the Revenue and Police Departments, or to the enjoyment of any of the emoluments annexed thereto.

Chapter I. On the Settlement of the Land Revenue.

1 and 2. Sections I. and III. of Mr. Stokes' first Sketch Act to be retained, the former relates to occupied land and the latter to unoccupied.

3. Land is either unirrigated or irrigated. In the revenue sense, land is irrigated when the water for the purpose is supplied by Government. Irrigation furnished by private outlay does not take the land so watered from the unirrigated class for purposes of assessment.

4. Rates of assessment to be in money, regulated with reference to the productive power of the soil, irrespective of the product grown. A division of the produce commuted to money* at the current market rate admissible only as a temporary arrangement under special circumstances, till fixed rates can be applied.

5. Rates of assessment to be moderate and few in number. The assessment of Government to be generally about $\frac{1}{3}$ of the gross produce. A scale of rates of assessment to be prepared for each District, to be brought into use under the sanction of the Governor in Council.

6. The assessment thus fixed to be subject to no increase, unless the land is watered from sources supplied by Government outlay, and unless the prices of produce undergo a permanent change.

7. When land is watered from sources furnished by Government, such land will be liable to additional impost on that account, either at a uniform rate per acre, or according to one of the rates of a fixed scale, as sanctioned by the Governor in Council.

8. To meet the contingency of a permanent change in the prices of produce, the rates of assessment to be reviewed once every 15 years, but with reference to such change only.

9. Improvements effected by holders of land, whether by manure or outlay of capital, or in any other mode, at their own cost, to belong to them. Wells may be constructed without the previous permission of the Revenue authorities and without subjecting the lands watered by them to additional impost, provided the wells are not so placed as to draw off the water furnished by Government; in the latter case, additional impost will be charged or otherwise as the loss sustained by Government may be much or little, but generally exemption shall be allowed, if compatible with the interests of Government. Works other than wells to be constructed only with the concurrence of the Revenue authorities, in order that the interests of the country generally, and those of the revenue, may be duly attended to.

10. A field is a portion of land varying in extent from the fraction of an acre to several acres and is known by the vernacular terms, khēt, chenoo and vyl.

11. Sub-divisions of the village area, each composed of several fields, are also found. The assessment will be fixed on the sub-division, as a whole or on its component fields separately as hereafter provided.

12. A village, or the subdivision of a village composed of several fields, if held by a single individual or by more persons than one in partnership, may be assessed as a whole, without a detailed assessment of its component fields. In such cases, the entire holding will be answerable for the assessment thus fixed without reference to joint rights where such may exist, and such

*NOTE.—In Tanjore and Tinnevely a standard grain demand has been fixed which is annually commuted to money at the current market prices of Grain, but this arrangement was intended to give way to fixed rates. A considerable portion of Tanjore is settled according to fixed rates, but the work was suspended under the orders of the Board of Revenue and Government.

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holdings if sold or transferred, whether by private arrangement or publicly for arrears of revenue, shall be thus transferred or sold entire, unless it shall be shown to the Revenue authorities that sub-division may be made with obvious benefit to the people and the revenue. The same rule to apply to the persons in holdings of this description, when desirous of dissolving partnership.

13. Where the settlement is not made on holdings as above described, the assessment to be on separate fields, but single holders of separate fields, contiguous or otherwise, and holders of such is partnership, may seek a settlement on the principle of the preceding section, when the arrangement is declared by the Revenue officers to be free from objection.

14. Encouragement by composition as a general rule to be afforded to persons desirous of having large holdings.

15. Changes in the settlement of holdings, whether in consequence of the sub-division of large holdings or the formation of separate fields into a large holding, to be duly recorded in the field Registers.

16. The assessment of Government to be paid by instalments fixed by the Revenue authorities.

Chapter II. On the rights of holders of land paying assessment.

1. The settlement of the Government assessment, whether on single fields or on areas composed of several fields, to be made direct with the owners of such lands, or with their representatives.

2. All persons possessing stock to the extent of a pair of bullocks with a plough to be entitled to demand a settlement direct with the revenue officers if they desire it, and settlement to be made with them direct, unless a wish to the contrary is expressed.

3. It is optional with holders of land to settle direct with the revenue officers, or to be the under tenants of other persons. In the latter case, the right to the lands to be vested in the persons under whom the tenants hold.

4. Under tenants to be at liberty to separate from those under whom they cultivate, on the completion of their engagements, and to set up for themselves on other lands under a settlement direct with the officers of Government.

5. The occupation of land to be in no case compulsory, and holders of land at liberty to relinquish a part of their holdings, provided it be by entire areas, assessed as such, or by single fields separately assessed, but in the former case, sub-division to be permitted if approved by the Revenue officers, as desirable.

6. Holders of land settling direct with Government to be proprietors of such lands, and to be ejected only as provided by law.

7. All interference with the holders of land on the part of the Revenue officers, after settlement is made, to be prohibited. Provided that as the produce is answerable for the assessment, it shall not be finally removed from the threshing floor or other place where it may be stored, till arrangements shall have been made, for the satisfaction of the assessment, current and arrears.

8. Holders of land to be at liberty to grow any description of produce, and to use their lands in any way they please without hindrance, but not for building purposes, except with the concurrence of the Revenue officers.

9. Assessed land to be held on written engagements with the signature of the Collector or his Assistants.

10. In the absence of the proprietor of the land or his representative, the settlement may be made with the actual occupant, but the responsibility of the proprietor still to stand, if the produce is found to be insufficient to meet the demand of Government. As the land itself is liable for the balance, though the owner may be absent, the property of the actual occupant noticed in this section, not to be liable for the balance.

11. Where there is neither owner, nor representative, nor occupant, a temporary occupant to be found by the Revenue authorities. Where the owner has failed to make arrangements for

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the cultivation of his lands for 3 years consecutively, the lands liable to be made over to others permanently by sale or otherwise, by the Revenue officers.

CHAPTER III.

IV.

V.

VI.

VII.

VIII.

IX.

The matter generally of Mr. Stokes' Sketch Acts to be adopted with the following modifications.

CHAPTER III.

The jurisdiction of Collectors to be substituted for that of the Civil Courts in the case of Curpums in Zemindaries.

The duties of heads of villages, of Collector's Head Sheristadars, and of Tahsildars, might perhaps be mentioned.

The Collector's Head Sheristadar and Tahsildar not to be liable to dismissal without the sanction of higher authority.

CHAPTER IV.

The Tahsildars generally to exercise these powers.

As the produce is in fact mortgaged for the assessment of Government, the lien of Government, must be first satisfied, and the Revenue officers should have the power of detaining it, if necessary, wherever found.

I concur in the views expressed in para. 40 of Mr. Stokes' second Report, and think that the prohibition of defaulters and public servants being purchasers at public sales should be withdrawn.

I do not think that Collectors should have the power of selling real property without the previous sanction of the Board of Revenue or Commissioner exercising the powers of the Board of Revenue.

I do not see the necessity for security from landholders as provided in Section VIII. of the first Sketch Act.

I look with much fear at the introduction of a power like that contemplated in Section VII. of the first Sketch Act, unless it is explained under what circumstances it may be exercised. Experience I think is against rents or farms involving intermediate agency: the introduction of a middle man has generally been found prejudicial, and the law on the subject should be carefully worded. If the law provides for a Ryotwar settlement, making over of the ryots to a farmer of revenue can hardly ever occur.

It appears to me very important that the law should provide for the employment of persons called batta Peons. It is the duty of landholders to pay their instalments regularly; where this is not done, it is impossible to keep up a paid establishment for the special purpose of going to the villages for the collection of what is due. Peons, whose subsistence will be paid by defaulters, should be employed for the purpose, under fixed rules, and a penalty to attach to the Tahsildar if he employs them on insufficient grounds.

In the sale of estates for arrears of revenue, I think that all arrears of assessment due to the defaulting Proprietors by the landholders of the estate, should be included in the sale, so that all plea for interference on the part of the defaulter with the ryots after he loses his property should be taken away.

CHAPTER V.

Arrears accruing during minority are stated to be irrecoverable. This seems fair so long as the minority continues, but perhaps they should be declared recoverable after that, unless the proprietor can shew sufficient cause for their remission.

CHAPTER VI.

I concur in the amendments suggested by Mr. Stokes.

CHAPTER VII.

For reasons stated in my letter to Government accompanying an Act of the character of Regulation IX. of 1822 is no longer necessary.

The revised Code should however provide for the recovery in every case, on the offence being established on sufficient evidence, of sums of money corruptly received, illegally levied, and embezzled, with discretionary power to make restitution.

Lapse of time since the offence was committed to be no bar to recovery.

When punishment of the offenders is deemed necessary by the Revenue authorities, the parties to be forwarded to the Criminal Court under Act XIII. of 1850.

Recovery of money under this chapter to be adjudged by Tahsildars in the cases of public Revenue officers under that grade. By Head Sheristadar in the cases of all servants below them. In both cases on delegation of authority by Collectors, either generally or specially. The rule of regulating the extent of power of the adjudging officer by the amount on which judgment has to be passed, seems undesirable, partly because the officers in question are qualified to take up any case that is likely to come before them under the proposed rule, and partly because if the legislature can confide in them in a little they can do so in much. It seems therefore that the official grade of the offending party affords a better rule for fixing the extent of power of the investigating officer, than the amount that is to come under consideration.

CHAPTER VIII.

This is perhaps at first sight a difficult subject. The present Law Regulation V. of 1822 is only partially beneficial, first because it does not include every case between ryot and ryot unless it is to be referred to arbitration with the consent of both parties, though apparently intended to do so; and secondly, because the advantage of having cases decided at once in the villages where they occur, has been over-looked. Keeping these considerations in view, it seems desirable that all cases embraced by this chapter, should be investigated by the village Moonsiff with the aid of assessors belonging to the village or to neighbouring villages. The Moonsiff to have the power of requiring the attendance of persons to aid him as assessors. If the award is satisfactory to the parties concerned, it is only necessary that the case should be included in a periodical return to be made by the village Moonsiff to higher authority. If it is otherwise, the case with the opinion of the assessors should be sent to the Tahsildar, from whose decision an appeal lies to the Collector, and ultimately to the Board of Revenue.

An adjudicating Moonsiff, as proposed above, may be selected for a set of villages when convenient, instead of the village Moonsiff of each.

In cases where the village decision is unacceptable to either of the parties concerned, the Tahsildar, on receipt of the proceedings of the village Moonsiff, may, with the consent of both parties, refer the dispute to a District Punchayet, whose award shall be final, except for corruption.

The Tahsildar to bring the Punchayet together.

CHAPTER IX.

The Collector to be the appellate authority in all disputes between Zemindars and their ryots. To take no cognizance of cases between ryot and ryot in Zemindaries, except as an appeal from the award of the Zemindar.

CHAPTER X.

In Zemindaries the appointment to the office of Carnum to be made by the Zemindar, but the powers vested in Civil Courts by Regulation XXIX. of 1802 in regard to this office, to be transferred to the Collector.

The provisions regarding Carnums in ryotwari Districts as well as those regarding village offices generally, contained in Regulation VI. of 1831, to be embodied in this Chapter.

(Signed) J. GOLDINGHAM, Commissioner.

No. 2. Read the following Extract from the Proceedings of the Board of Revenue; dated 19th June 1856, No. 1884.

In continuation of their Proceedings of the 18th April last, No. 1169, the Board proceed with their review of Mr. H. Stokes' Revenue Code, and notice on this occasion "the sketch of an Act to be substituted for the present laws for regulating the powers and duties of the Revenue officers in the territories of the East India Company, subject to the Government of Fort Saint George."

BOARD OF REVENUE.

2. Sections 1 to 7 relate to the Board of Revenue, and are intended to be substituted for Regulation I. of 1803. They embody the material parts of that Regulation and omit those rules of office, which seem more fitted to be provided for by standing orders, issued with the sanction of the executive Government, than by formal legislative enactments. The Board concur in the propriety of this course.

3. The only observations which this portion of the Draft Act calls for, relate to the following three points.

I. Section II. gives the Board authority to "order the dismissal of any servant, not being a Covenanted Servant, for disobedience or neglect of duty." But as the Uncovenanted Agency is likely to be increased by the appointment of Deputy Collectors, it seems proper to except all these servants who in the language of Act 13 of 1843 are "not removable without the sanction of the Government."

II. The Draft Act does not state what number of members must be present to constitute a Board, and this is a point which should be determined by law. Section 7, Regulation I. of 1803, declares two members sufficient for the purpose, and might be embodied in the new Act.

III. Section IV. of the Draft Act directs that the Board is to use an official seal of a prescribed size and form; but no provision is made regarding the officer under whose signature its orders and communications are to be issued. Although the old law is equally silent on this point, it seems advisable for public information and convenience to rectify the omission, especially as the Board forms a Court of Wards, and its Secretary is also employed in that Department, where leases, receipts and other deeds have to be executed. A Section might be added to the Draft Act to declare that the orders of the Board are to be issued under the signature of its Secretary or Deputy Secretary, or, in their absence, under the signature of one of the members officiating for the Secretary.

COURT OF WARDS.

4. Section VIII. of the Draft Act provides that the Board of Revenue is to continue to exercise its powers as a Court of Wards under the enactments now in force. In their Proceedings of 6th November 1855, No. 2961, the Board submitted their opinion of the improvements which are required in the present law, and will not therefore repeat the subject now.

ENDOWMENTS, &c.

5. Sections IX. to XIV. of the Draft Act relate to endowments and escheats, and condense the provisions of Regulation VII. of 1817, which is one of those proposed for rescission. The rules which relate to escheats and the superintendence of buildings and establishments of public utility call for no special remark, except that in the Board's opinion the provisions of Section 13 might be advantageously extended. When an institution for which an endowment has been granted ceases to be of public utility, the Board consider that it should be competent to Government to transfer, at its discretion, the endowment to some other public purpose. The wishes of the community and of all parties interested would be always consulted as far as possible; but unless Government has an unfettered power to act, difficulties would arise, and the interests of the public would suffer, as the parties connected with these endowments are often opposed to any change from motives of self interest, though the institutions have ceased to be useful. The Board might instance the case of richly endowed choultries, which have become useless in consequence of a new line of road being opened, and yet the parties in charge of the endowments neither propose nor desire any change.

6. But the most important part of this portion of the Draft Act relates to the management of Hindoo and Mahomedan Religious Institutions, and the severance of Government from any connection with them. This subject is treated very shortly, and the law is in reality left much in its present state. In explanation of this brief legislation, Mr. Stokes observes in para. 48 of his report, "My own view is, that Government has no more right or rather infinitely less to interfere in regulating such a matter than between the congregation and vestry of one of our own churches. In this country we do not legislate for our own religion, and surely are not called on to do so for others."

7. In these views the Board cannot concur. The religious institutions of the people, with their buildings and endowments, form a public and corporate property; for the due protection of which, irrespectively of any question of religion, the community have a right to expect that there should be suitable laws. This property, until recently, was under the direct management of the local officers of Government, and on Government seeing fit to give up the charge, it seems to the Board an essential and simple act of justice that laws should be passed defining how the property is to be managed in future, and enabling the community to take measures for its protection.

8. It further appears to the Board, that there is an inconsistency between the wish which Mr. Stokes expresses to free Government from all interference with the religion of the natives, and the Sections of his Draft Act which relate to this subject. Section IX. places the endowments of Religious establishments, and the maintenance of all public buildings under the Board of Revenue, and though a note suggests that "religious buildings" may be excluded, the text is positive, and the note only suggestive. Sections X. and XI. make it incumbent on the Board to see that Trustees are appointed, and vacancies filled up; and Section XII. provides that Collectors shall hear and determine charges of breach of trust brought against Trustees of Endowment funds, including necessarily the endowments of religious institutions. Thus, it appears to the Board, that the tendency of the Draft Act is to perpetuate that interference of the Government officers with the management of Religious Institutions, which it has been pronounced desirable to terminate.

9. Instead of this legislation, the Board would prefer an Act dedicated entirely to this subject, and really freeing Government from all interference with Religious Institutions, by placing them, like other property, under the protection of the Civil and Criminal Courts, after defining the mode in which the community is to elect and dismiss Trustees, the responsibilities and duties of Trustees, and the course to be pursued against them for recovering embezzlements, and punishing breaches of trust. In the case

of Religious Institutions, at least acts of malversation on the part of Trustees and servants should, the Board think, be left to the Courts, instead of being "dealt" with as malversation connected with the revenue; but as the question of legislating on this subject has been already before Government, the Board will abstain from further remark.

* See Section XII. of Draft Act.

See Board's Proceedings of 21st November 1842, No. 315; reviewing a Draft Act prepared by the Sudr Udaulat. Also Ex. Mins. Cons. 17th July 1848, No. 762. Vol. 1 Board's C. O. Book, Page 466.

DUTIES OF COLLECTORS.

10. This part of the Draft Act occupies eight Sections (XV. to XXII.) and abridges very materially the old Regulations. The Board will first notice those Sections which call for observation.

11. Section XVI. seems to require some alteration in its wording. For example, the expression "The collection of the Revenues from whatever source" might be held to include the Post Office Revenue, with which Collectors are often unconcerned. The latter part of the Section might also be slightly changed. Government has decided against continuing loans for cultivation, and the object in view would be attained by Collectors being forbidden to make dis-

bursements for "public works" or "for any other purposes" without authority. The last expression appears preferable to that of "the previous sanction of higher authority," which seems to imply a specific order on each occasion, while Collectors often act under a general discretionary authority vested in them within certain limits.

12. Section XX. should, the Board think, be omitted, as advantage might be taken of it to call in question, without due cause, the legality of a Collector's acts, and the end in view could be provided for by a rule of office. But if some enactment on the subject is thought desirable, it might be declared that when a Collector is exercising judicial functions, his acts and proceedings shall be public.

13. Section XXII. requires alteration, as it would authorize a Collector to take the initiative in dismissing a Huzoor Sheristadar or a Talsildar which he is not now allowed to do. It also empowers a Collector to fine his subordinate servants for disobedience or neglect of duty to the extent of a month's pay, while the present rules limit his power of fining to Ropess. In a sufficient punishment for these offences which are intended to be noticed in this manner. While the Section thus enlarges a Collector's power in one direction, it diminishes it in another, by rendering it imperative on him to submit for the revision of the Board all the fines and dismissals which he orders, though hitherto this has not been necessary in the case of servants under a certain grade. It seems sufficient to enact that Collectors shall have power to discipline or fine servants for disobedience or neglect of duty within the limits fixed by Government and the Board of Revenue.

14. The Board will next remark on some of those parts of a Collector's duties, which have not been specially provided for. Many parts of Regulation 2 of 1803 have been properly left for office rules, such as the mode of keeping the cash chest (Section 12), sending the annual Revenue Reports to the Board (Section 13); applications for leave (Section 55) &c.; but there are some subjects which it seems essential to provide for by law, viz.

I. Keeping a Register of all lands, both paying assessment and exempt, to which parties interested are to have access, and in which sales, transfers, sub-division, &c. are to be noted. In the case of assessed lands, this register constitutes the legal ground on which a demand for land Revenue continues to be made until the registered proprietor shows that the land has been transferred to another party.

See Regulation 26 of 1802, Sections 2 and 3.

See Regulation 2 of 1803, Sections 23 and 24.

II. Collectors to be invested with formal power to appportion the assessment when estates or lands are sub-divided, and the Board's decision to be final in the event of an appeal (see Sections 16, 17 and 18, Regulation 2 of 1803.) To prevent doubt and litigation, it seems advisable that this point should be distinctly laid down.

III. It is declared by Section XV. Regulation II. of 1803, that persons deputed by a Collector to attach lands either for arrears of Revenue or in pursuance of a Decree or order of a Court of Judicature, are to have written authority under the seal and signature of the Collector. It seems advisable to retain this enactment for the information and protection of landowners.

IV. Section XX. Regulation II. of 1803 declares that Collectors are to comply with injunctions or orders from a Court of Judicature for attaching or selling lands. At present the Courts often sell Ryotwary lands through their own officers, though in the case of Zemindari lands they are obliged to apply to the Collector (see Section IV. Regulation XXVI. of 1802.) It seems to the Board that the Courts must often require the aid of Collectors in attaching and selling lands; and it is therefore advisable that Collectors should be formally and legally authorized in the new Code to act on the injunctions which they may receive.

V. It is declared in Sections 40 and 43, Regulation II. of 1803, that Collectors are not to alter the rates of assessment or grant cowles without authority. It may be considered that an office rule is sufficient for a Collector's guidance on these points; but a formal enactment has the advantage of freeing the Government from embarrassment by at once nullifying a Collector's unauthorized acts. The Board therefore think that these prohibitions should be retained, and they might be inserted in Section XVI. of the Draft Act.

VI. In Sections 66 and 68, Regulation 2 of 1803, it is ruled that Collectors are bound to make over the Government Records and Cash to their successors, and the Board observe that there is no Clause to this effect in the present Draft Act. Even without a formal enactment, Collectors are doubtlessly responsible to Government for the property placed in their charge;

but it is to be considered, whether if Government desired to indict an officer who left his station without making over the public money in his hands, difficulties might not occur, unless the law showed that he had thus committed a dereliction of a prescribed duty, and failed in his path of obedience.

COVENANTED SUBORDINATES.

15. The duties of Covenanted Subordinates are referred to in Sections 23, 24 and 25 of the Draft Act. These provisions are taken from existing Regulations, and call for no remark.

DISQUALIFIED LAND OWNERS.

16. Section 26 declares that Collectors are to manage the estates of disqualified landholders as prescribed by law or under the orders of the Court of Wards. The Board would propose to omit this Section, and leave the subject to be fully and entirely treated of under the head of the Court of Wards.

SUMMARY POWERS OF COLLECTORS IN CERTAIN CIVIL CAUSES.

17. The Sections of the Draft Act which relate to this part of a Collector's duties are only five in number (XXVII. to XXXI.) and in this space it is proposed to compress the substance of Regulation XII. of 1816 and Regulation V. of 1822. To this arrangement the Board consider that objection may be urged; for, desirable as it is to avoid all unnecessary legislation, it seems impossible to legislate successfully in so brief a manner for so extensive a subject. The summary suits to be heard by a Collector are of a very varied nature, comprising disputes about rent, wrongful distraint of property, occupancy of and dispossession from land, disputed boundaries, diversion of water, removal of crops, &c.; and it seems essential that the powers given to a Collector for bringing these suits to a decision, and enforcing his decrees should form a substantive part of the law, and be fully and clearly detailed in the Act, instead of being mainly left to be provided for by subsidiary rules to be framed by the local Executive Government.

18. There is one expression in Section 27 which calls for remark. Dispossession from the occupancy of "premises" is mentioned as one of the cases in which a Collector is authorized to adjudicate summarily. This would introduce a large number of disputes not connected with cultivation or the cultivating classes, such as the occupancy of houses or shops in towns, and the Board consider that the word "premises" should be omitted. The complaints of dispossession to be summarily investigated by the Collector would then be limited to dispossession from the occupancy of lands, trees and crops.

19. The Board will now proceed to notice briefly four important points connected with this branch of a Collector's duties.

I. Mr. Stokes proposes to limit a Collector's authority to deciding who is to enjoy the land, the water or the produce under dispute, until a Civil Court decides the matter, and he takes away the power which Regulation V. of 1822 gives to Collectors of awarding costs and damages. The Board are divided in opinion regarding the propriety of this course. The Acting 3rd Member considers that summary powers are given to a Collector, to provide for the cultivation of the land, the security of the revenue, and the preservation of the peace, and that it is therefore sufficient for him to decide the question of occupancy, leaving the Civil Courts to settle claims for damages and costs, if the complainant should see fit to file a regular suit for the purpose. As arguments for this course, the Acting 3rd Member points out that a Collector's time is already so occupied that he should be freed as much as possible from Judicial investigations, and that a complainant after being promptly restored to the possession of land or crops, of which he had been wrongfully deprived, can be left without injurious consequences to seek redress in the Civil Courts for any damages which he may claim.

The 2d member on the other hand, considers that the main object of a Collector's summary decision is to stop litigation in the Courts, by granting to complainants a prompt and "efficient redress" without the institution of a regular suit, "to the expense of which the means of the ryots are in general inadequate." This object cannot be attained unless a Plaintiff obtains redress from the Collector for the wrong done him. Restoration of the land, property or

produce under dispute is seldom a sufficient measure. Compensation is due for loss occasioned by wrongful dispossession from land or removal of produce, or for the unjust distraint of property; and if Collectors continue to possess the power of awarding damages, these wrongs are more likely to be less numerous by being more speedily dealt with.

II. The next point relates to the power of Tahsildars in investigating these suits.

Mr. Stokes' Draft Act* authorized them to hear and determine summary suits of petty value, subject to an appeal to the Collector. Other suits are apparently left for decision by the Collector after a personal investigation, as no authority is given him to direct a Tahsildar to investigate a complaint, and forward the record with his opinion for the Collector's disposal. The subject has recently

Board's Proceedings 23d April 1855, No. 968.

Extract Minutes Consultation 19th May 1855,

No. 604.

Letter of Board to Government 4th June 1855,

No. 1410.

Extract Minutes of Consultation 27th June 1855,

No. 774.

Board's Proceedings 21st July 1855, paras. 6 to 8,

No. 1841.

Extract Minutes Consultation 3d August 1855,

para. 5, No. 929.

led to a correspondence between Government and the Board, and it is sufficient for the Board to observe that they still hold the views expressed in their Secretary's letter of the 4th June 1855 and in their Proceedings of 21st July, *Idem*. They do not wish to oppose Tahsildars being vested with the actual disposal of petty suits, if this course is deemed advisable; but they are still of opinion that Collectors should be able to refer any summary suits to Tahsildars for enquiry and report, according to the Bengal system. They do not see objection to this course, because to adjudicate a case on the record forms an extensive part of our system of Civil and Criminal justice, and is only what the Collector would have to do on a suit coming in appeal before him after being first decided by a Tahsildar.

In the correspondence above referred to, the Board have given their reasons for proposing that the decision in these suits should be formally passed by the Collector and not by the Tahsildar. Their object is only to simplify and expedite justice, and instead of mistrusting Tahsildars, they seek to vest them with important and highly confidential functions by authorizing Collectors to pass decrees on their investigation and report.

III. The third point relates to cases in which Government is interested; such for example as the unauthorized occupancy of waste land, the diversion of water from public sources, &c. Hitherto these disputes have been settled like disputes between two private parties, or else the rights of Government have been protected by punishing infractions upon them under the

Ex. Min. of Cons. 8th May 1856, para. 3.

No. 474.

Magisterial laws against trespass. But Government when alluding to water disputes on the Neilgherries seemed to consider that special provisions ought to be made for the settlement of cases in which Government is interested, and the opinion of the Government Pleader has been asked on the point. That officer's reply will hereafter be laid before Government, and the Board presume that the course which is decided on for protecting the public interest on the Neilgherries, will be applicable to other localities.

IV. The last point relates to the settlement of boundary disputes when they occur between different Districts. The Collector* of South

* *Collector to Board 18th July in Consultation 18th August 1853, para. 9, submitted to Government on the 18th August 1853.*

Arcoot had recently occasion to point out the practical inconvenience felt from the absence of any effective law, when he was making preliminary preparations for Captain Priestley's survey, and so important a subject ought not to be left unsettled. It requires careful consideration in consequence of decisions on these occasions affecting private rights, as well as the limits of the jurisdiction of different tribunals and officers of Government. The Board will not however now dwell on the subject, as a Draft Act prepared by the Sadar Udawlat appears to have been transmitted to the Supreme Government.

See Ex. Min. of Cons. 10th Nov. 1853, Jnd. Dept. No. 846, Vol. 1, C. O. Book, page 194.

CRIMINAL POWERS OF COLLECTORS IN CASES OF MALVERSATION.

20. This part of the subject occupies Sections 32 to 40, and is drawn up in supersession of Regulations IX. of 1822, III. of 1823, and VII. of 1828, all of which are to be rescinded.

21. The first question to be considered is, whether it is necessary to continue penal powers to Collectors in these cases, or whether the punishment of offenders might not be left to the ordinary criminal tribunals.

22. On this point, the Board hold the opinion that in this Presidency, where the Ryotwary system brings the Collector and his servants into direct and individual contact with thousands of the cultivating class for the settlement of numerous matters connected with the revenue, which are generally of insignificant amount if taken separately, it is necessary that Collectors should have the power of punishing promptly petty cases of malversation, as they would otherwise be likely to escape without punishment, and thus increase in frequency and importance. At the same time, the Board think it desirable that all important cases should be left to the Criminal Courts, and approve the principle laid down by Mr. Stokes on this point in Section 35 of his Draft Act, though they would in some degree increase the Collector's power of punishment beyond what he there proposes.

23. In support of their opinion that Collectors require this power for the proper management of their Districts, the Board would refer to the Minute of Sir Thomas Munro on the state of the country dated 31st December 1824. In para. 34, after pointing out the ignorance and helpless character of the ryots, he observes, "as therefore they will not protect themselves by resisting injustice, we must endeavour to protect them by laws which would be unnecessary in England, or in almost any country not under a foreign dominion, and we must for this salutary purpose, invest the Collector and Magistrate, the person most interested in their welfare, with power to secure them from exaction by authorising him to make summary enquiry into all illegal exactions to recover the amount, to restore whatever is recovered to the Ryots, and to punish the offenders." In some of the Districts near Madras the people have since become better acquainted with their rights, and more accustomed to maintain them, but in general Sir Thomas Munro's remarks and reasoning are still applicable.

24. But the interests of Government are also to be considered, and it seems essential that in Ryotwary Districts the Collectors should have power to punish petty embezzlements in the collection of the revenue, and frauds in the preparation of the accounts connected with the annual settlement and other branches of the public revenue. As observed by the Board* on a previous occasion, investigations into frauds of this nature are often intricate and tedious, they cannot be brought to a speedy conclusion by courts who have many other cases and suits pressing on their attention." To this reasoning it may be added, that evidence would be often withheld, if the witnesses had to proceed to a distant Court, and that it seems most likely to be true when given on the spot in the presence of the witness' neighbours who are acquainted with the real facts. The Board cannot but also think that the investigation of these cases would naturally be distasteful to Judges whose time is fully occupied with what would appear to them more important public business, and who are not familiar with the details of revenue accounts and fiscal rules. The patient and minute enquiry which is necessary to ascertain the truth on these occasions, would therefore, the Board believe, be best secured by employing the Agency of the Collector.

25. The greater number of the convictions which have been passed under Regulation IX. of 1822 consist of sentences passed against Curnums for frauds in the annual accounts of lands under occupancy, or against servants of the Collector's office, deputed to examine the extent of cultivation, or report on asserted losses of crops from drought or inundation. These cases seem peculiarly fit for the Collector's examination and decision, and besides the beneficial effect which is produced by occasional instances of prompt punishment in this manner, the Board believe that dread of the power which is given to the Collector of proceeding against delinquents has a marked influence in restraining his servants and their relations and dependants, from acts of misconduct. In their letter to Government of 21st May 1829, when reporting on the working

of Regulation IX. of 1822, the Board observed in para. 13 "the Collectors unite in representing that the Regulation has had the desired effect of checking the crimes and offences which are cognizable under it."

26. With these brief remarks on the necessity of vesting Collectors with some power to punish cases of malversation, the Board will proceed to review the sections of Mr. Stokes' Draft Act which apply to this subject.

27. The wording of that part of Section 32 which describes the persons to be subject to the Collector's authority requires reconsideration. For instance, those Uncovenanted servants who "are not removable without the sanction of the Government" (see Act 13 of 1843) should be excluded and left to the laws which apply specially to them. The private servants of a Collector who are included in Section 2, Regulation IX. of 1822 have been omitted, and it seems advisable to include them for the repression and punishment of exactions when they accompany the Collector on his circuits. The remainder of the Section describes the offences to be made punishable, and on this part the Board will only offer one suggestion. In describing the 4th offence which relates to the fraudulent preparation of accounts, it seems highly advisable to include distinctly accounts connected with the cultivation, value, extent, classification and assessment of land.

28. Section 33 invests the Collector with power to procure the attendance of witnesses and obtain papers and documents. For this purpose it gives him the authority of a Magistrate. The only objection the Board see to this course is, that it differs from the one laid down in Section 27 for procuring the attendance of witnesses in summary suits. There the Collector is vested with the powers of the Civil Courts. Whichever course may be decided on, it is an improvement on the old law that the Collector should be able to take measures himself for procuring the attendance of witnesses, instead of having to apply to the Civil Judge, as at present, by Clause 2, Section 3, Regulation IX. of 1822.

29. Section 34 seems to the Board to require improvement in its wording. Its latter part is open to the grave objection of vesting Collectors with indefinite powers of fine and imprisonment, and this should be corrected. In reference to this and the next Section, the Board are of opinion that the clearer course would be first to declare the punishment fixed for each class of offence, and then to state in what cases the Collector can inflict the punishment, and in what cases it is necessary to commit the offender to the Criminal Court.

30. The Board think that it would be advisable to make the Collector's jurisdiction more extensive than Section 35 allows. For the three first classes of offences, they would allow the Collector to inflict a fine equal to double the amount, where the sum corruptly received or embezzled did not exceed Rupees 250, with a proviso that the imprisonment, on failure to pay the amount awarded, is not to exceed one year. The fine of 2 months' pay mentioned in the Section is clearly an inadequate power for a Collector to have, as the limit would be under 12 Rupees in the case of most Curnums. For the 4th and 5th offences, the Board would leave the Collector's power of punishment as at present,* viz. a fine of Rupees

500, or in default, imprisonment not exceeding 12 months. The object of the Board is to give Collectors power to dispose of all minor cases of malversation, especially such as occur in a single village, during the land revenue settlement, and to leave aggravated and systematic schemes of extensive frauds to be dealt with by the Criminal Courts. For the 3 first classes of offences, the Courts are to be empowered to impose a fine equal to double the sum embezzled or corruptly received, commutable to 5 years' imprisonment. For aggravated offences of the 4th and 5th classes, their powers of punishment might perhaps extend to a fine of Rupees 5,000, or, in default of payment, to 5 years' imprisonment.

31. Power is given to the Criminal Courts by Section 36 to punish parties who give a bribe to a public servant, by a fine of double the amount of the bribe, commutable to 1 year's imprisonment. This is a modification of the power given to the Criminal Courts by Sections 17 and 18, Regulation IX. of 1822. The Board are inclined to think that it might be advisable, instead of this Section, to declare that when the amount of a bribe is recovered from a public servant, it shall not be claimable by the briber, but is to be considered forfeited by him, and is to be paid into the public Treasury. If giving a bribe is made a punishable offence in se. this

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tends to protect public servants in misconduct by rendering parties afraid to complain against them, and such a result is the more undesirable, because bribes are often paid unwillingly, and for the performance of some act which ought to have been obtained without such means. Again, when the bribe is given to obtain for the donor some undue indulgence or advantage, the loss of the sum paid for the bribe, and the defeat of the end in view, seem a sufficient punishment; while if the bribe is given to annoy or injure another party, the donor is open to an indictment for wrongful conspiracy, besides losing the amount of the bribe.

32. Section 37 is useful and is framed on Section 6, Regulation IX. 1822.

33. It is declared in Section 38, that an appeal lies to the Board of Revenue from a Collector's decision within one month, and that the Board's decision is to be final. How far the right of appeal was to extend formed a great difficulty in framing the present laws. Thus the avowed object of Regulation IX. of 1822, was to give Collectors summary power to try cases with which they were thought more competent to deal than the regular Civil tribunals. But as these cases might often be of great magnitude and importance, it was necessary to provide for an appeal, and at first it was arranged that the appeal was to be heard by a Commission to be appointed by Government (see Sections 14 and 15, Regulation IX. 1822.) But as this plan was found inconvenient, it was declared by Regulation VII. of 1828, Section 6, that appeals are to lie first to the Board, and then to the Governor in Council, and the law appears to have been so construed as to give the appellant a right to bring the case before the Civil Courts, if neither of these 2 authorities gives him the redress he seeks. The Board believe that the law only intended these appeal cases to come before the Courts, when it appeared desirable to the Board or to the Government that they should do so; but whatever may be the right construction of Section 6, Regulation VII. of 1828, the result now is, that instead of a quick investigation and disposal, these cases are brought before the Courts after passing before the review of the different Revenue authorities and the Government. The object of our legislation is thus defeated, and unless improvement can be effected, it would seem advisable to rescind our present Regulations, and leave all these cases entirely to the Courts; but as the Masulipatam trials have brought the whole subject before Government, the Board need not dilate upon it. They will only express an opinion that under the limited jurisdiction which is now proposed to be given to Collectors, it seems advisable that the Board's decision in appeal should be final, except in being subject to such orders as Government might see fit to pass.

34. Before quitting the general subject, the Board will point out that since the publication of Regulations IX. of 1822 and VII. of 1828, several Acts* have been passed which will aid the punishment of delinquent servants in cases beyond a Collector's jurisdiction, especially those who are removable only by Government. There are also the general laws against frauds and embezzlements, but still it will be desirable in the new Revenue Code to state the precise powers of punishment to be vested in the Courts for those cases which are removed from the Collector's jurisdiction.

35. There is one subject, in connection with a Collector's powers and duties, which the Board deem right here to bring to the notice of Government, viz. the want of any present power to compel Zemindars, Enamdars, Shotriemdars, &c., to keep the irrigation works of their Estates in order.

36. With their letter of the 28th April last, No. 1260, the Board forwarded to Government the Draft of an Act, for compelling Zemindars and Enamdars to bear a portion of the expense of works which benefited their lands as well as those of Government. But no provision has yet been made for the maintenance of works which irrigate exclusively zemindary or enam lands, and it seems advisable to consider how far and in what way the want can be supplied, as the welfare of the land holders depends on irrigation works being kept in efficient order.

37. The subject was adverted to as far back as 1845, when the Supreme Government* recorded the following remarks:

* Letter from Secretary to Govt. of India dated 20th September 1845, received with Ex. Mins. Con. dated 8th April 1846.
"In parts of the country where cultivation depends chiefly on extensive works of irrigation, the Governor General in Council supposes that authority exists somewhere to ensure the

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"punctual repairs of reservoirs and tanks, whether the parties responsible for the same are Zemindars or Enamdars. The Temple lands will of course contribute their quota to the funds necessary for preserving these works in an efficient state. The most Noble the Governor or in Council will have observed that the Honorable Court have adverted to this point in the 7th para. of their Despatch, which is quoted in the margin* for easy reference.

38. Nothing has however since been done, though the decayed state of the tanks and channels in many zemindary and enam villages have given ground for just complaint on the part of the ryots. The omission should therefore in the Board's opinion be now supplied, as far as the subject is found to admit of legislation, either by a special Act or by an addition to that part of the proposed Revenue Code which refers to Zemindary and Enam lands. But the different interests concerned and the varying circumstances under which lands are held, make the subject one of difficulty, and its treatment would require much consideration and care.

(A true Extract.)

(Signed) G. S. FORBES, Secretary.

No. 3.

ORDER THEREON, No. 173; dated 18th February 1857.

Para. 1. In their Proceedings above recorded, the Board of Revenue submit their Report on Mr. Stokes' third Draft Act for the revision of the Revenue law of this Presidency, viz. that relating to the powers and duties of Revenue officers. The Board go through the Draft Act taking each part in its order; and the Government proceed to record their views on it, and on the remarks and suggestions of the Board, following the same order.

General powers of the Board of Revenue, Sections I. to VII.

2. The first part of the draft relates to the general powers of the Board of Revenue. The enactments proposed by Mr. Stokes on this subject, including the occasional nomination of a Commissioner, are comprised in Sections I to VII. These provisions are taken from Regulation I of 1803, and Act X. of 1849; the greater part of the former Regulation Mr. Stokes would omit as not proper matter for legislation; and a few Sections he omits as obsolete or unsuitable. The Board approve of this, suggesting only (para. 3) one correction required in the draft, and noticing two points omitted by Mr. Stokes, which they think ought to be included in the Act. These suggestions are approved by Government, and should be attended to in preparing the detailed Draft Act; the Government are further of opinion that it is no longer necessary or expedient that a Member of the Government should be President of the Board. The parts of Regulation I of 1803, not included in the Draft should be embodied so far as suitable, in a code of standing rules, to be submitted by the Board for the sanction of Government.

3. The second subject is the Court of Wards. The Board refer to their Proceedings of 6th November 1855 as embodying their views on this subject. In those Proceedings, which contain their reply to a reference respecting certain amendments which were about to be made in the Bengal Court of Wards law, the Board noticed some particulars in which Regulation V. of 1804 appeared to them to need amendment. But it appears from para. 11 of those Proceedings that the points so enumerated did not comprise all on which the Board thought that amendment was required. The Governor in Council does not consider it necessary however to discuss the subject here, being of opinion that it will be better to make the powers and duties of the Court of Wards the subject of a separate Act. The Board of Revenue will be pleased, in concert with the Government Pleader, to prepare and submit Draft of such a law; the general Act now under consideration may contain a Clause similar to Section VIII. of the Draft, simply declaring that the Board shall be a Court of Wards to act in certain cases.

4. The next subject is that of endowments, including those of Religious Institutions. As respects the endowments of Public Edifices, &c. other than Religious, the rules proposed in the draft are simple and unobjectionable, though perhaps wanting in detail. The Government see no reason whatever, as hinted by Mr. Stokes, for transferring the superintendence of such buildings to the Engineer Department. They consider the Board's proposition to extend Section XIII. so as to enable Government to divert to other public uses, the emoluments of buildings or institutions no longer useful, to be judicious and proper.

5. But the most important part of this portion of the subject is that which relates to Religious Edifices and Institutions. Mr. Stokes is very brief on the subject; he says in his Report (para. 48) that, as the Government in this country do not legislate for their own religion, he cannot see why they should do so for other religions. Yet, as the Board remark, the draft Act inconsistently contains provisions for direct interference in the management of Religious Institutions. Mr. Stokes' analogy is not a true one. The legislation proposed is not for religion, but for the custody and the administration of property constituting religious endowments; and property of that description is as much entitled to protection as other property. The Board's remarks on this subject are very just (paras. 6 to 9), especially those in para. 7 regarding the protection to be afforded to such endowments. The Board express a wish that a special enactment should be passed, defining and prescribing the mode of electing or appointing Trustees, Managers, &c., and the duties of such officers; the institutions to be then left to the protection of the Courts. Such a law appears to Government to be much required; as there seems reason to fear that, under the present system, endowments are much wasted and misappropriated. The Act now proposed, however, is not the place for such an enactment, as Revenue officers would have little or nothing to do under it. On the whole, the Government are of opinion that the present Act should contain provisions such as Mr. Stokes suggests, for endowments not of a religious character, and for escheats; but that Regulation VII. of 1817 should continue unrepealed, till the proposed Act for religious endowments shall be passed. The Board will be pleased to give the subject their consideration, and report what would be the best mode of accomplishing the object in view, as regards religious endowments.

6. Sections XV. to XXII. of the draft Act refer to the powers and duties of Collectors, and Sections XXIII. to XXV. to those of their Covenanted Subordinates. The Board object to the wording of Section XVI. as regards the expression "the collection of the revenues from whatever source," alleging that it might be held to include the Post Office Revenue; mistakes on this point may be guarded against by adding the words "except such as may be expressly entrusted to a separate agency." With regard to the amendment suggested by the Board in the latter part of the Section, the Government are of opinion that the object in view will be better attained by adding after the word disbursement, "without the previous sanction of Government, general or special."

7. The Board suggest that Section XX. of the draft Act should be omitted, adding that if some provision on the subject to which it relates should be considered desirable, the object in view might be met by declaring that the judicial acts and proceedings of a Collector shall be public. The distinction proposed appears to Government to be objectionable; and Government are of opinion that the Section should be omitted. The mode in which Collectors and their subordinates shall transact their duties, should be provided for, as in the case of the Board themselves, by a set of standing rules, to be submitted for the approval of Government.

8. The amendments suggested by the Board* in Section XXII. of the Draft are judicious and are approved. Mr. Stokes considers Section IX. Regulation II. of 1803 to be unnecessary, because no penalty is attached to the breach of it, but the Government do not concur in this opinion. They think that under the more exact and careful observance of the law now required, some provision should be

made giving the Collector specific power to summon zemindars, renters, and persons not directly under his control, whose presence he may require, and to inflict a fine on such persons for contumacious refusal or neglect to attend to his call, as provided in special cases in Sections XXVII. and XXXIII. of the draft. The Government concur with the Board in the necessity of providing by law for keeping Registers of lands; for retaining the substance of Sections XVI. to XVIII. of Regulation II. of 1803, as well as for requiring written authority to be given for making attachments as in Section XV. of the same Regulation. But they do not see the necessity for maintaining the provisions of Section XX.; or for inserting in Section XVI. of the Draft Act the prohibitions of Sections XI. and XLIII. They are of opinion that Section XVI. should be kept as general as possible; for if some special Acts only are specified, it will seem to sanction others not so particularized. They do not see the necessity for retaining the provisions of Sections LXVI. and LXVIII. of the same Regulation.

9. On the proposed enactments respecting the Covenanted subordinates the Board make no remark, and none seems called for here.

10. Section XXVI. of the Draft Act provides that Collectors shall manage the estates of disqualified Proprietors under the Court of Wards. The Board propose to omit this Section, and to treat the subject fully in the separate Act for the Court of Wards. The Government have already expressed their approval of the specific provisions under this head being included in a separate Act, but they are of opinion that as Section VIII. of the Draft is to be retained as defining one of the functions of the Board, so Section XXVI. should also be retained as specifying one of the duties of a Collector.

11. The next subject is one of much importance, viz. the judicial powers of Collectors in civil cases. The powers of this character now possessed by them are contained in two Regulations XII. of 1816 and V. of 1822. Under the former, Collectors are empowered to refer to Panchayets claims to lands or crops depending on an unsettled boundary, and also disputes between landholders and their ryots respecting the occupying, cultivating or irrigating of land; and by Section XVIII. Regulation V. of 1822, this power is extended to disputes of the same descriptions between ryot and ryot. The former Regulation, as Mr. Stokes truly says, from the complicated and tedious forms of proceeding which it requires, and from the small powers given by it to Collectors, has practically been very little used.

12. Regulation V. of 1822 gives power to Collectors to interfere between landholders and ryots in the matter of distraint and sale of property; of exactions by landholders from ryots, and of ouster of ryots by landlords.

Section XI. empowers a Collector to reinstate a ryot dispossessed by another ryot.

By Section XV. a Collector may refer disputes brought before him under this Regulation to a Panchayet, and by Section XVII. he may put one of the parties in possession in the meanwhile.

13. The state of the law at present is confessedly uncertain and unsatisfactory; Collectors do not exercise powers given by the law, and they exercise others which the law does not give them. Mr. Stokes' proposed enactments, in supercession of the Regulations above referred to, are contained in five Sections, XXVII. to XXXI.; and their object, as described in para. 50 of his third Report, is to leave all proper judicial work to the established Courts of the various grades. Mr. Stokes would make the order of a Collector passed as at present on a summary enquiry, binding till set aside by a Decree of some Court, in a suit to be instituted within a month after the order; Tahsildars in like manner to pass orders in cases not exceeding a certain value, to be binding unless appealed from within fourteen days to the Collector. He would also allow the Collector to refer cases to arbitration, with or without consent of the parties; in the former case the Decree to be final, in the latter an appeal to be open by suit in Court. In cases referred to a Panchayet, one party to be put in possession by the Collector.

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In Section XXVII. the cases in which Collectors and Tahsildars may thus pass decisions are defined in general terms. The remedy is to extend only to restoring possession, not to giving damages; the latter Mr. Stokes would leave to the Courts.

14. The Board's remarks on this part of the Act are contained in paras. 17 to 19 of their Proceedings. They think the mode of treatment too brief (para. 17) and they notice that the definition of cases given in the Draft would include some in which the revenue is not at all concerned, and which therefore they think should be excluded, (para. 18). The Government concur with the Board that the Sections under this head are too brief and superficial, and that they do not adequately provide for the effectual interposition of the Collector in the numerous disputes between ryot and zemindar, ryot and enamdar, farmers, &c. in which it is proper that he should have jurisdiction. More precision should certainly be given to this part of the enactment.

15. The Board* object to the use of the term "Premises" in Section XXVII. as introducing a large number of disputes not connected with cultivation or the cultivating classes. The objection seems well founded in the case of houses and shops in towns. But in agricultural villages, there are various kinds of tenement not comprehended under the term land, which yet are essential to a ryot's holding, and form part of his farming property; such are cattle sheds and stands, threshing floors, stackyards, &c. The Government Pleader will be requested, in preparing the Draft Act, to confine the meaning of the term to such buildings as may be connected with farming or agriculture.

16. The Board next proceed (para. 19) to notice four points connected with the Collector's jurisdiction in Civil Suits.

17. The first is whether a Collector should have power to give compensation for injury sustained (damages), or merely to restore possession. The 2d Member (Mr. E. Maltby) was in favor of the former course, the Acting 3d (Mr. Forbes) of the latter; and the reasons urged by both are stated. On this subject it may be remarked that, without such compensation the redress is incomplete; that the enquiry necessary to ascertain the wrong would usually be sufficient to determine also the measure of injury sustained; and that to require the sufferer to go to a second tribunal for the latter part of his remedy, would be to force him either to the cost and inconvenience of a second trial, or to an abandonment of that part of his right, to the gain of the wrong doer. For these reasons, the Government agree with Mr. Maltby that the Collector ought to be enabled to award damages for injury sustained, as well as to redress the wrong for the future.

18. The second point is whether Tahsildars shall enquire and decide, or only enquire and report for the Collector's decision. The Draft Act provides that Tahsildars may decide up to a certain value; and above that value may enquire and report for the decision of the Collector, in cases referred by him. This question came under the consideration of Government in 1855; and they then held the opinion (in opposition to that expressed by the Board,) that it would be for the interests of justice to empower Tahsildars to decide, and not merely to report for the decision of the Collector.

In their Proceedings now under notice, the Board adhere to the opinion which they held last year, with some modification; they say "they do not wish to oppose Tahsildars being vested with the actual disposal of petty suits, if this course is deemed advisable; but they are still of opinion that Collectors should be able to refer any summary suits to Tahsildars for enquiry and report. Under such a law, as it seems, Tahsildars would be empowered to hear and decide suits preferred to them, up to a certain limit as to amount; but a Collector might refer to the Tahsildar for enquiry and report, any suit preferred to himself, no matter how small the value of the thing sued for. The Government however see no reason to depart from the views before expressed by them. They are decidedly of opinion that Tahsildars should have the power of deciding cases up to a certain amount, and which limit as in Bombay, (as noted by Mr. Stokes,) might be 500 Rupees value; and they are also of opinion that Collectors should be empowered to refer cases up to any amount to the Tahsildars, but always

Pro. Bd. of Rev. 23d April 1855, No. 968
Ex. Min. Cons. 19th May " " 604
From Bd. of Rev. 4th June " " 1410
Ex. Min. Cons. 27th " " " 774.

NOTE.—This appears to be the actual state of the law at Bombay, as mentioned in the latter part of para. 50 of Mr. Stokes' Report.

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for enquiry and disposal, and not for report. The decisions of a Tahsildar under this rule should be open to appeal to the Collector or his Assistant, within one month; and the appellate authority should be required, on the application of either party, to examine the evidence anew, but not to record it afresh, except when discrepancies might appear.

19. It is very clear, as noticed in the orders of Government last year, that there is much want of system in the Proceedings of Collectors in the exercise of their civil power; and the Governor in Council considers it therefore very desirable that provision should be made in the Draft Act for the transmission to the Sudr Udalt of monthly Returns of all cases decided by Collectors, and also by the Tahsildars under the powers now proposed to be given to them. The Returns should be much in the same forms as those which exhibit the operations of the Civil Courts.

20. The third point noticed by the Board relates to cases wherein Government is interested, as the unauthorized occupation of waste land, or the unauthorized appropriation of water from a Government work. As respects the appropriation of water, provision for the prevention or redress of all such wrongs is made in Section I. of the Draft Act for the protection of Irrigation Works now before the Legislative Council; or the offender may be sued in the Civil Courts. With regard to the occupation of waste land, the Government are of opinion that a power of ejectment should be vested in the Collector, who is the officer in charge of Government lands; and provision should accordingly be made in the present Draft Act. The Government do not find that in their order of 8th May, they expressed such an opinion as the Board suppose in Clause III. of para. 19 of their Proceedings.

21. The fourth and last point noticed is the settlement of boundary disputes when they occur between villages of different districts. The Board remark that this subject requires careful consideration, but they forbear to dwell upon it for the reason that a Draft Act on the subject was sent to the Supreme Government in 1835, or 21 years ago. The Draft referred to, however does not in fact provide for the settlement of boundary disputes at all; its purport, so far as it relates to this subject, is to provide (Sections VII. and VIII.) that, in a claim to land, or respecting the occupying, cultivating, or irrigating of land, on the borders of a District, where doubts may exist as to the district to which the land belongs, jurisdiction shall be exercised by the Court or the Collector, (according to the nature of the case) whose Court or head stations shall be nearest to the spot. This Draft never became law. The Board however appear to have overlooked the late Act for the settlement of boundaries, No. 20 of 1855; which in the opinion of Government fully provides for the case now stated by them. In Section I. of that Act it is enacted that it shall be lawful for any Revenue officer appointed by Government for the purpose, to fix the boundaries of estates, or villages; and this applies to villages on the borders of a district as well as elsewhere. The Government are however of opinion that provision might be conveniently made in the Act now proposed, for the Collector or any one of his subordinates to be nominated by him, being always the officer to decide boundary disputes between villages within his district, the provisions of Act. XX. of 1855 being left applicable to disputes between villages situated in different districts.

Criminal powers of Collectors, Secs. XXXII. to XLII.

22. The last part of the Draft Act relates to the criminal powers of Collectors, viz. their powers of punishing cases of malversation in their subordinates.

The offences cognizable are described in terms similar to those of Regulation IX. of 1822, but much more concisely, and with some omissions which might be dangerous; for example, in the fourth item, the making false entries in the accounts or records, the mention of the "extent, value, classification or assessment of land" is omitted, being apparently intended to be included in the general term "property under the Collector's superintendence." In a criminal law conciseness is dearly bought at the expense of clearness; yet for the sake of saving two lines, the

legal meaning of this passage is seriously compromised. The omission should be supplied in the draft.

For procuring the attendance of parties and witnesses, Collectors are to have the powers of Magistrates.

In general the substantive provisions of the draft resemble those of the existing law, but there are a few important differences. In the first place, the Collector's power of punishment is proposed to be limited, in bribery or embezzlement, to cases where the amount proved does not exceed 100 Rupees; and in falsification of accounts or records, to a fine of two months' pay or imprisonment for two months. In all other cases, the offenders are to be committed to the Criminal Court.

Cases within the Collector's jurisdiction, and decided by him, to be appealable to the Board of Revenue only.

The act of giving a bribe is also made a punishable offence.

The two concluding Sections re-enact concisely the provisions of certain Regulations and Acts enabling Collectors to inflict punishment in certain cases, and to initiate proceedings against District Moonsiffs for malversation.

23. The Board's remarks on this part of the Draft are contained in paras. 20 to 24 of their proceedings. For the most part they agree with Mr. Stokes; but they differ on some minor points.

They first consider the question whether it is necessary that Collectors should possess any penal powers over their subordinates, other than those of heads of offices generally; and they arrive at the conclusion, for the reasons stated in paras. 22 to 25, that such power is necessary, but that it should be confined to cases of minor importance, those of greater magnitude being committed to the Criminal Courts.

In para. 27, they suggest amendment of Section XXXII. of the draft, so as to make it include the private servants of a Collector, and exclude those classes of officers who are not removable without the sanction of Government; they also notice the omission already adverted to in the definition of the offences punishable. The amendment here suggested should be made, the private servants of officers engaged in the Public Works Department being also made amenable to this part of the Act. The term "Uncovenanted Servant on his Establishment," the Government presume, includes Magisterial as well as Revenue servants. Yet as the expression may give rise to disputes similar to those which have arisen under the old law, it is desirable that it should

be distinctly explained to include the members of both Establishments, as well as servants of a similar class in the Department of Public Works.

* Para. 28. The Board* object that the powers given to Collectors in Section XXXIII. for compelling the attendance of parties and witnesses are those of Magistrates, while those given in Section XXVII. are those of the Civil Courts. There is a reason for this difference, however, viz. that in the first mentioned case the proceedings are of a Criminal character, and in the latter of a Civil; and it appears to Government that the provisions of the Draft should remain unaltered in this respect.

† Para. 29. The Board† object to Section XXXIV. that it gives the Collector the power of unlimited fine and imprisonment; this however is an oversight, it has escaped the Board's notice that the succeeding Section fixes a precise limit.

24. Section XXXV. determines the power of punishment to be possessed by the Collectors and by the Criminal Courts, respectively. Collectors are to be allowed, as already said, to punish in cases of bribery and embezzlement when the proved amount does not exceed 100 Rupees; and in cases of fraud in respect of accounts or records, to fine to the extent of two months' pay or to imprison for a period not exceeding two months. The powers of the Criminal Courts to extend to levying double the proved amount corruptly received, or to imprison for not more than five years, with or without hard labour. In the second class of offences the only punishment allowed is imprisonment not exceeding five years; no power of fining is given, probably by an oversight.

The Board think the powers thus given to the Collector insufficient. They would give him jurisdiction in cases of bribery and embezzlement to the proved extent of 250 Rupees, involving a power of levying 500 Rupees fine; with a proviso that the imprisonment in default should not exceed one year. In the second class of offences, they would leave him his present powers, viz. a fine of 500 Rupees, or imprisonment for twelve months. The Government concur in the expediency of extending the Collector's powers as recommended by the Board. They would thus generally include all offences by village officers and inferior revenue servants, which it is desirable should be settled by the Collector at once.

The Board propose to supply the apparent omission in the Draft Act by giving the Criminal Courts power to fine to the extent of 5,000 Rupees in cases of the second class, viz. fraud in the matter of accounts and records, the fine to be commutable to imprisonment not exceeding five years. To this proposition the Government see no objection.

25. The Board object to the power of punishing for the giving of a bribe, provided in Section XXXVI. as being likely to impede justice by deterring parties from complaining. They think that instead of this Section, it might be advisable to declare that when the amount of a bribe is recovered from a Public servant, it shall not be claimable by the briber, but shall be considered forfeited, and be paid into the Treasury. The Government fully agree with the Board in disapproving of the provision of the draft in this particular; and they are disposed to regard even the modified penalty on the briber proposed by the Board as impolitic. They consider that it will be better to provide for the refund to the briber of any sum recovered from the taker, when circumstances, in the opinion of the Collector, make that course proper.

26. In para. 33, the Board take up the important subject of the appellate authority in the case of sentences by Collectors against Public servants; and they notice the inconvenience resulting from the present state of the law, in that, instead of prompt decision, the proceedings are in fact almost incapable of final settlement. The Draft Act would remedy this by making the Board's decision final in the petty cases which it would leave to the Collector's primary adjudication; and the Board, while so greatly enlarging the scope of the Collector's powers, propose still to make their own decision on appeal final, subject only to the orders of Government. The Government do not think however that it would be found to give satisfaction that the power of final decision to so large an extent should be vested in the head of that Department of the administration which in fact is the prosecutor in such cases. They are of opinion, that, to the extent proposed by Mr. Stokes as the limit of the Collector's original jurisdiction, that officer's decision should be final, and that all more serious cases decided by a Collector within the limit proposed by the Board of Revenue should be appealable, not to the Board of Revenue, but to the Sessions Judge. Cases which in the opinion of the Collector require punishment beyond the limit fixed by the Board of Revenue, will be committed to the Civil Court.

27. In the close of their Proceedings (paras. 35 to 38,) the Board advert to a subject not found in Mr. Stokes' Draft Acts, but on which they think it necessary to legislate, viz. the fair liability of Zemindars and Enamdars to keep in repair works of irrigation on their properties. The Board point out that the neglect of these works may and does injuriously affect the interests of the ryots who hold land dependant on them; and that though a wise regard to self interest would lead the proprietors to keep the works in repair, yet as a fact that motive is not sufficient. They argue therefore for a law on the subject, but they give no opinion as to the scope and pro-

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visions of such a law, merely saying that its treatment would require much consideration and care. This subject was brought before the Board by the Collector of Madura in a letter* which they lately submitted to Government with their review of Mr. Stokes' Draft Act on the subject of enams, where- in they noticed a second suggestion in the same letter.

28. The views stated by Mr. Parker and supported by the Board appear undeniably sound; though certainly so far as concerns Zemindars holding under permanent suzerainty, they seem to be opposed to those maintained lately by the Board on the question of the liability of Zemindars to make and maintain roads. The Govt. Bd. of Rev. 21st Aug. 1856, No. 2660, P. 2 to 7. Government are of opinion that the necessary enactment for giving these views effect might be introduced without much impropriety in the present Act, among the duties of Collectors; and the Board will be good enough to submit for the approval of Government a detail of the provisions which they would propose to include in the Act on this subject.

29. The second point alluded to in Mr. Parker's letter (para. 7) is the inconvenience experienced by Revenue officers in cases where a village is held in shares by a number of enamdars, from there being no one who can transact business on behalf of the whole. Mr. Parker proposes therefore that in such cases, the Collector shall be empowered to call on the share-holders to elect a Manager for the transaction of the village affairs with the Revenue officers. The suggestion appears a good one; and the Government are of opinion that the provision would come better in the present Act than in that for enams, the chief scope of which will be the investigation of titles. The details might be settled in a few sections; and the Board are requested, as in the previous case, to submit a draft of the provisions which they would propose. The Collector should be empowered to nominate a Manager for the enamdars himself, in the event of the share-holders failing to make the nomination within a certain fixed time after proper notice given.

30. With the Report from the Board of Revenue above recorded, the Government have also had under consideration a letter† from the late Commissioner in the Northern Circars, containing his review of Mr. Stokes' propositions and Draft Acts, in pursuance of the requisition contained in Extract Minutes Consultation of the 10th January 1856. That letter is designed to take in the whole subject, while the Board's present Report comprehends only one of the three parts in which they have treated it. But Mr. Goldingham does not notice the third of those parts, viz. enam law; he only treats of the settlement and collection of the revenue, and the powers and duties of Revenue officers. After some preliminary remarks, Mr. Goldingham observes in paras. 5 and 6 that the arrangement of the Acts might have been more lucid; and he submits a skeleton Draft designed to accomplish such clearer arrangement. He then considers two points, viz. whether appeal to the Courts should be allowed in Civil cases wherein Revenue officers have primary jurisdiction; and whether it is necessary to give the Collector Criminal powers for the punishment of malversation by his subordinates. The Report closes with some remarks in explanation of the skeleton Draft Act. These two points, as well as the others treated of more briefly by Mr. Goldingham, have already been considered above in connection with the Board's observations; and the Government therefore do not consider it necessary to review the paper in detail.

31. The Government resolve to communicate the foregoing remarks to the Government Pleader, together with copies of Mr. Stokes' third Report and Draft Act, and of the Proceedings of the Board of Revenue above recorded, with the request that he will, with as little delay as possible, prepare a Draft Act in accordance with the views expressed by Government, for transmission to the Madras Member of the Legislative Council. Mr. Dale will communicate freely with the Board of Revenue on any point whenever he may be at a loss how to proceed, and will submit his draft to Government through the Board when completed.

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

N^o. 60

13th / 13
Circular Office
Madras
27th May 1856

From
J. Goldingham Esq.
Collector for the Northern Circars

To
J. C. Beurdillon Esq.
Secretary to Government
Fort St. George

Sir

I have the honor to acknowledge the receipt of the following letter from the Secretary of the Revenue Code of this Presidency as regards the Extract Minutes of Consultation 10th Jan. 1856 N^o. 33.

2. I fully concur in the views that the proposed revision should be carried out and that Mr. Stokes has wisely selected the Bombay Code as a model for the purpose. I am fully impressed with the importance of Government in regard to the importance of formal legislation contained in Part 5 of Extract Minutes of Consultation 5th October 1855 N^o. 1115.

3. The year 1802 was peculiarly marked. The Legislature proposed to itself as the period two chief objects viz the establishment of a permanent property in the land and the withdrawal of judicial functions altogether from Collectors. Both have been found to be failures, proceeding from the real proprietors or land holders having been entirely overlooked. Regulations V of 1822 were enacted to correct the mistakes of 1802, experience thus showing that the rights of the occupants of the land should be the first thought of the Legislature and that the Court of the Collector is the only place where those rights can be suitably protected. It appears important to bear these facts in mind in the proposed revision of the Revenue Code.

See I. Brown on the State of the Country and Condition of the People at 5 December 1824. Para 26. Rev. Act. vol. III. Page 625.

4. Like 1802 the present period has special claims on the Legislature but with a vast amount of experience behind its deliberations.

5. The 3 Sketch enactments proposed by Mr. Storer bring together the scattered parts of the Law, but it seems open to consideration whether a more lucid arrangement might not be adopted by confining to each head of enactment what

14-2
what properly belongs to it. Thus the first clause of Section II of the first Sketch Act is no part of the Settlement of the Land Revenue but belongs to the head of Officers by whom the Revenue administration shall be conducted. Section VIII and following of the same Act belong to the powers of Collectors as treated of in the 2^d Sketch Act. In the last mentioned Sketch Act, the powers of the Boards of Revenue as a Court of Wards, and their powers as well as those of Collectors in matters of Endowment and Escheat are introduced in the midst of the rules prescribing the duties of the Boards of Revenue and Collectors. The duties and powers of these functionaries should rather have been disposed of under distinct heads.

6. The first Sketch Act is intended to refer to the "Settlement of the land revenue," but very little is said on that subject, and no notice is taken of the rights of the occupants of land.

7. Looking to the foregoing considerations perhaps the most lucid form of arrangement is that adopted by the Indian Law Commissioners in their preparation of

of the Penal Code. It appears one act, as it were, consisting of a series of chapters, a separate chapter being appropriated to each subject: such an arrangement seems to have suggested itself to Mr. St. Leger at one time.

Mr. St. Leger?
Report Para 26

8. Two points remain for consideration.
1st Whether appeals shall lie from the decisions of the Revenue Authorities in any case to the Courts, and to what extent, if at all, cases of Malversation shall be enquired into by Revenue Officers.

9. Experience seems to have shown that a class of cases incidental to the state of relationship of the people to Government can only be successfully investigated and disposed of by the Revenue Authorities. The chain of enquiry is completely provided for. The Collector may be appealed to in cases decided by his subordinate Officers, and the Board of Revenue and Government are always open to appeals from the acts of their Officers. As a general rule then, it seems desirable that cases cognizable by the Revenue Officers should be finally disposed of in that Department. In regard to cases of Malversation

Mr. Purvis
Mr. Sutherland
Mr. Muir.

Mr. Purvis
16th February 1856
at 1st 15.

Mr. Purvis
10th March 1856
at 1st 15.

Thompson's
malversation coming under Regulation IX of 1822, the rule of allowing an appeal to the Civil Court of the District have been seen lately in the Masulipatam trials.

10. The other point is to what extent, if at all, cases of malversation shall be disposed of by the Revenue Authorities. The Collectors of Rajahmundry and Masulipatam and the Acting Collectors of Guntur were consulted as to the expediency of removing the offences cognizable under Regulation IX of 1822 from the Revenue Authorities to the Courts. All three Officers point out the great defect of the present law in allowing appeals to the Courts, and are of opinion that a Law embracing the offences in question administered by the Revenue Authorities is necessary for the protection of the Ryots.

Mr. Purvis is of opinion that any system would be better than that which at present obtains, whereby public Servants, notoriously corrupt, are convicted after the fullest investigation, of bribery and corruption by the local Revenue Officers of the District and the decisions confirmed on appeal by the Controlling Authority, are often retrieved from the penalty attaching to their misconduct on a further appeal to the Court. Mr. Sutherland

recommends

expressed himself in strong terms on the defect
of the present law and enclosed extracts from J. Coll. 18th March
letters he had addressed to Government 2^d March
1854. N^o 18 Para 18 & 21, and 18th December 1854. J. Coll. of G. and L.
N^o 20 Para 17. Mr. Newell refers to the fact that 9th February 1856.

How seldom stand the test of trial before
the Court and accounts for it partly from sympathy
of the Court Servants, also engaged in similar
practices, with the accused parties, and partly
in consequence of Judicial Officers, from deficiency
of knowledge of the subject, being unable to
discern what constitutes a fraudulent entry
in the public accounts concerning the extent,
value, classification, and appurtenance of lands; or
what is, or is not an extra collection, or what parties
or Servants are responsible for the accuracy
of the accounts. It might be very inconvenient,

Mr. Newell adds, to say the least for the Judges
to have to pronounce upon the correctness or
otherwise of such entries in the accounts,
which he could not perhaps well do without
the assumption of revenue powers and thus coming
into conflict with the duties of the Revenue
Officers.

The question generally is argued
the Board of Revenue in their Proceedings Rev. Selection Vol.
III Page 550.
dated

Marjor.

16-4
date 24th November 1830. The general tenor
of that paper is to shew that there is a class
of cases which can be satisfactorily disposed
of by the Revenue Authorities only. Regu-
lation V and IX of 1822 embrace those cases.

12. The offences declared by Regulation
IX of 1822 are 1. Bribery, 2. Keeping unauthorized copies,
3. Embezzlement or fraudulent misappropiation
of public money or public property, 4. Fraudulent
entries in the public accounts or other records,
and 5. falsifying, destroying or concealing public
documents of any kind. The punishment
of the 3rd, 4th and 5th classes of offences mentioned
above is also provided for by act XIII of 1830,
but the corrupt receipt of money and keeping
unauthorized copies do not fall within the
scope of this Act.

13. The descriptions of persons
amenable to Regulation IX of 1822 are also
enumerated in that enactment. They embrace
all persons, whether in the public service
of Government, or otherwise, but in the latter
case, pretending to act with the authority
of public Officers.

Persons in the public Service may
be divided under two general heads. 1st Village
Servants as Gurnams and Heads of Villages, and

2ndly Those on the other establishments generally of the Collector. The returns of Officers and embrace for the most part the village servants, and the offences chiefly under the 3rd, 4th and 5th classes above enumerated, while the other class of servants is comparatively seldom found in the returns of trials and sentences, though it is well known that they are not less corrupt than the village servants. In their case, corrupt receipt of money is generally the offence committed.

14. In regard to village servants, dismissal from office and a small fine would, in most cases, be a sufficient punishment. The moral aspect of a conviction under act XIII of 1850 would also be greater than several judgments under Regulation IX of 1822, but that act should not be resorted to, except where there is sufficient evidence to insure conviction, and where the punishment of award is called for. With these views, of course, an enactment like Regulation IX of 1822, so far as regards the 3rd, 4th and 5th classes of offences enumerated, is not required. The Revenue authorities would, on charges embracing such offences being proved, deprive the parties with

17-
with or without a small fine, or forward the case to the Criminal Court for trial. This course would apply to charges involving the 3rd, 4th and 5th classes of offences against all classes of public servants.

15. In cases of embezzlement, it is important that under criminal prosecution, the liability of the accused to make good any loss that may be sustained in consequence of misconduct should not be overlooked, but this liability is declared in Section XVI of act XIII of 1850.

16. In the event of Regulation IX of 1822 being declared to be no longer necessary, cases of corrupt receipt of money and of levying extra cesses have to be provided for. I do not see why they should not be treated like cases of embezzlement. The parties should be liable to a criminal prosecution as well as to make restitution. Thus in all charges of bribery and extra cesses, the Revenue authorities should, on proof, proceed at once to recover from the parties convicted the full amount of the money or monies received, with power to make restitution, when proper, to the parties aggrieved. It does not seem to be at all necessary that the Revenue authorities

authorities should proceed further in the punish-
ment of the offenders. Their attention is to be
confined simply to the recovery of the money.
if further proceedings are necessary, the
case will be prosecuted criminally. The raising
of money is the foundation of this species
of corruption, and it should therefore be a
main object of the Legislature to get back
what has been corruptly received. If this
course is invariably followed, public servants
would perhaps grow weary of laying them-
selves out to obtain money in these ways - a
well sustained criminal prosecution under
circumstances requiring such a course would
also have a powerful effect in deterring others
from similar practices; but it is obviously not
desirable that this should be adopted except
on sufficient grounds. The observations of the
Law Commissioners in Note A quoted in the
margin above guide me in making these remarks.
Recovery of money corruptly received and
restoration, when proper, to the sufferers is
what the Law Commissioners would term
"satisfactory" to the offenders and should
that reason be enforced.

Accompanying is a Skeleton sketch
of a Revenue Code, prepared as suggested in
the

See Penal Code
Note A on the
Chapter of Punish-
ments Page 67.

the foregoing Paras. It is a mere skeleton
the details can alone be filled up by a person
who can give exclusive attention to the subject
for a few weeks. The principles on which
it is based are however set forth.
18. Chapter I and II declare the
principles according to which the Settlement
of the Land Revenue should be made
the rights of the Land holders. The Board
of Revenue more than 30 years ago drew
something similar, embodying a few remarks
by Colonel (Sir Thomas) Munro, which was
intended to be a Ryotwar Regulation; the
paper was printed, but has remained
untouched among the records of the Board
ever since. Shortly after the preparation of
that Paper, the administration of Ryotwar
was marked by the introduction of Restrictions
and rules varying in every District, fettering
the action of the Land holders, and perhaps
to this circumstance is to be attributed
chiefly the difficulty experienced when
there was a disposition to consider the
subject, in framing a Law which would
be suited to all Districts. To postpone
the consideration of this important matter
any longer, after the recent explicit declaration

of enlightened views by Government and
the Honorable Court, appears to be incor-
porated and injurious to the prosperity of
the Country and the interests of Govern-
ment. The description given of develop-
ment of Farms and estates in Europe, where
the owner is satisfied with a reduced in-
terest and an insolvent state of the
Farms, rather than adopt measures,
whether by outlay of money, or otherwise
for the improvement of the property,
not infrequently applies to the state
of the lands and condition of the land holders
in this Country. The present administration
of Ryotwar may perhaps be designated
that of petty fields. To parcel out the
Country into large farms would be perhaps
the opposite error. A light assessment
will lead to an extensive occupation of
lands, and when the owners of large
holdings find that their lands may
become valuable properties, it seems
certain that the present class of petty
occupants will either become large holders
themselves, or gain a subsistence as the under-
tenants of their more substantial brethren.

Sections

19-19-19
Sections 12, 13 & 14 of Chapter I are intended
to afford facilities to the growth of large
land holders.

19. The use of indefinite terms
as local usage in Section IV of Mr.
Stokes first Sketch seems very un-
desirable. Its tendency is only to breed
disputes. It was wisely adopted in
the earlier periods of legislative action
to cover a want of local knowledge, is
necessarily incidental to the first ac-
quisition of a Country.

20. In regard to the additional impost
on account of water furnished by Govern-
ment, it is proposed in Chapter I that
lands under wells, so situated as to draw
off public water, shall be liable to the
rate of tax for water, unless specially
declared to be exempt by the Controlling
Revenue Authorities of a District. It
will seldom be desirable to enforce this
provision, but its existence is necessary
in case a large abstraction of Government
water in this way so as to cause a serious
loss of Revenue, should, at any time,
take place. If the loss of Revenue
is not great, it would be better not
to

to enforce the restriction -
21. The remaining Chapters of the
proposed Sketch do not call for
much remark. It will be seen that
as the several classes of cases belong
peculiarly to the Revenue Administration,
there is no appeal allowed in any case
to the Civil Court of the District. Cases
coming under Chapter VIII are now settled
on the evidence of Members of the Village
Community, who are called away to a
distance from their homes for the pur-
pose. The proposed Law acts on that
source of information, but under an
arrangement more suited to the convenience
of the parties concerned as well as to pro-
mote the ends of Justice.

22. The Zemindary Law, or Re-
gulation XXV of 1802 will of course remain
as it is, notwithstanding its defects both
as respects the rights of the Ryots
and the succession in Well Zemindaries,
as well as in others also, which requires
the heir in the ordinary legal sense and
not the fittest Member of the Family
to assume the management, it may seem
as

20
at first that the terms of the Permanent
Sannud might be declared open to mo-
dification when the interests of the State
required it, and on their application
I think however, on considering the
matter, that it would be dangerous
to make any alteration of the Rule
and that probably greater evils would
follow a change than any that are
now feared.

23. With the sentiments above
expressed, Chapters I, II and VIII appear
to me very important. I would wish
to see the same practiced hand engaged in
drawing up their provisions as was employed
in preparing the new forms of Revenue
accounts.

24. No States Sketch act for
example the lands might also form
a Chapter of the proposed Code.

Commissioner's Office
Vizagapatnam
24 May 1856. I have the honor to be
Sir
Your most Obedt Servant

To
J. C. Dowdillon Esq. Commissioner
Secretariat to Government
Fort St. George.
J. Goldingham

Cons 15th January 56 37/7

Revenue 1856 Dept 5
D to Cons 24th February 57
No 650

From
The Commissioner
Northern Circars

To
The Secretary to Govt
Isst Secy Secy

Dated 27th May 1856
Recd June 5th

With our Enclosure
S.C. No 173 - 18 Feb
No 60

Submitting remarks on
the revision of the Revenue
Code of the Madras
Presidency and the Sketch
not prepared by Mr Stokes

21
Sketch of a Code for the administration of the land
Revenue and for declaring the duties and powers
of Revenue Officers.

Chapter I. On the Settlement of the Land Revenue.

— II. On the rights of the Holders of Land.

— III. On the officers entrusted with the administration
of the Revenue and their duties.

— IV. On the powers of Revenue officers in the
Collection of the Revenue.

— V. On the powers of the Board of Revenue as a
Court of Wards, and on those of the Revenue
officers acting under them in their capacity
as a Court of Wards.

— VI. On the powers of Revenue officers in cases
of Instruments and Encroachments.

— VII. On the duties of Revenue officers in cases of receipt
of money, keeping extra copies, and employment
of public money and public property.

— VIII. On the duties of Revenue officers in cases of disputes respecting
the occupancy, cultivation, and irrigation of land,
and possession of Crops in Ryotwar Districts,
and generally in all disputes connected with
the land between Ryot and Ryot in the same
Districts.

On

Cons 13th Sept 57 37/7

Chapter II. On the powers of Revenue Officers in cases of disputes between Zemindars and their Ryots, in Zemindari villages, also respecting rates of assessment and areas of soil or revenue, and respecting the occupancy, cultivation, and irrigation of land and possession of Crops, and generally of all disputes connected with the land between Ryot and Ryot under Zemindari tenure.

X. On the office of the Revenue Officer in regard to the office of Revenue, and in cases of claims to the possession of, or succession to hereditary village or other offices in the Revenue and Police Departments, or to the enjoyment of any of the emoluments annexed thereto.

Chapter I. On the Settlement of the Land Revenue.

Section I. art III. of a H. Statute first sketch out to be retained, the former relates to occupied land and the latter to unoccupied.

Land is either unirrigated or irrigated. In the Revenue sense, land is irrigated when the water for the purpose is supplied by Government. Irrigation furnished by private outlay does not take the land so watered from the unirrigated class for purposes of assessment.

Rates of assessment to be in money, regulated with reference to the productive power of the soil, irrespective of the product grown.

Note. In Tangore and Annamally a standard grain demand has been fixed which is annually commuted to money at the current market prices of grain, but this arrangement was intended to give way to fixed rates. A considerable portion of Tangore is settled according to fixed rates but the work was suspended under the orders of the Board of Revenue and Government.

A division of the produce commuted to money at the current market rate is possible only as a temporary arrangement under special circumstances, till fixed rates can be established.

5. Rates of Assessment to be moderate and fair in Number. The assessment of Government to be generally about 1/3 of the gross produce. A scale of rates of assessment to be prepared for each District, to be brought into use under the sanction of the Governor in Council.

6. The Assessment thus fixed to be subject to no increase, unless the land is watered from sources supplied by Government outlay, and unless the prices of produce undergo a permanent change.

7. When land is watered from sources furnished by Government, such land will be liable to additional impost on that account, either at a uniform rate per acre, or according to one of the rates of a fixed scale, as sanctioned by the Governor in Council.

8. To meet the contingency of a permanent change in the prices of produce, the rates of assessment to be reviewed once every 15 years, but with reference to such changes only.

9. Improvements effected by Holders of land, whether by sown or outlay of Capital, or in any other mode, at their own cost, to belong to them.

Wells may be constructed without the previous permission of the Revenue authorities and without subjecting the lands watered by them to additional impost, provided the wells are not so placed as to draw off the water furnished by Government, or the latter case, additional impost will be charged or otherwise as the local authorities by Government may be moved or little, but generally exemption shall be allowed, if compatible with the interests of Government water other than wells to be constructed only with the concurrence of the Revenue authorities, in order that the interests of the Country generally and those of the Revenue, may be duly attended to.

10. A field is a portion of land varying in extent from the fraction of an acre to several acres and is known by the vernacular terms, Khut, Chow and Nyl.

11. Subdivisions of the village area, each composed of several fields, are also found. The assessment will be found on the subdivisions, as a whole, or on its component fields separately as hereafter provided.

12. A Village, or the subdivision of a village composed of several fields, if held by a single individual or by more persons than one in partnership, may be assessed as a whole, without a detailed assessment of its component fields. In such

23-23-11
In such cases, the entire holdings will be assessable for the assessment thus fixed without reference to joint rights when such may exist, and such holdings if sold or transferred, whether by private arrangement or publicly for areas of Revenue, shall be thus transferred or sold, in the, unless it shall be shown to the Revenue authorities that subdivision may be made with obvious benefit to the people and the Revenue. The same rule to apply to the partners in holdings of this description, when desirous of dissolving partnerships.

13. When the settlement is not made on holdings as above described, the assessment to be on separate fields, but single holders of separate fields, contiguous or otherwise, and holders of such in partnership, may seek a settlement on the principle of the preceding section, when the arrangement is declared by the Revenue officers to be free from objection.

14. Encouragement by acquisition as a general rule to be afforded to persons desirous of having large holdings.

15. Changes in the settlement of Holdings, whether in consequence of the subdivision of large holdings or the formation of separate fields into a large holding, to be duly recorded in the field registers.

16. The assessment of Government to be paid by institutions fixed by the Revenue authorities.

Chapter II. On the rights of holders of land paying assessment.

1. The settlement of the Government assessment, whether on single fields or on areas composed of several fields, to be made direct with the owners of such lands, or with their representatives.

2. All persons possessing stock to the extent of a pair of bullocks with a plough to be entitled to demand a settlement direct with the Revenue officers if they desire it, and settlement to be made with them direct unless a contrary is expressed.

3. It is optional with holders of land to settle direct with the Revenue officers, or to be the under tenants of other persons. In the latter case, the right to the lands to be vested in the persons under whom the tenants hold.

4. Under tenants to be at liberty to separate from those under whom they cultivate, on the completion of their engagements, and to set up for themselves on other lands under a settlement direct with the officers of Government.

5. The occupation of land to be in no case compulsory, and holders of land at liberty to relinquish a part of their holdings, provided it be by entire areas, assessed as such, or by single fields separately assessed, but in the former

case

Revenue.

24-1/2
case. Sub division to be permitted if approved by the Revenue officers, as desirable.

6. Holders of land settling direct with Government to be proprietors of such lands, and to be registered only as provided by Law.

7. All interference with the holders of land on the part of the Revenue officers, after settlement is made, to be prohibited. Provided that the Produce is answerable for the assessment, it shall not be finally removed from the threshing floor or other place where it may be stored, till arrangements shall have been made, for the satisfaction of the assessment, current and arrears.

8. Holders of land to be at liberty to grow any description of produce, and to use their lands in any way they please without hindrance, but not for building purposes, except with the concurrence of the Revenue officers.

9. Assessed lands to be held on written engagements with the signature of the Collector or his Assistants.

10. In the absence of the Proprietor of the land or his representative, the settlement may be made with the actual occupant, but the responsibility of the Proprietor shall be stand, if the produce is found to be insufficient to meet the demand of Government. As the land itself is liable for the Balance, though the owner may

be

be absent, the property of the actual occupant, not in this section, not to be liable for the Balance.

11. Where there is neither owner, nor representative nor occupant, a temporary occupant to be found by the Revenue authorities. Where the owner has failed to make arrangements for the cultivation of his lands for 5 years consecutively, the lands liable to be made over to other permanently by sale or otherwise, by the Revenue officers.

Chapter III

IV.

V.

VI.

VII.

VIII.

IX.

The matter generally of Mr Stiles' Sketch Acts to be adopted with the following modifications.

Chapter III.

The jurisdiction of Collectors to be substituted for that of the Civil Courts in the case of Criminal in Land Revenue.

The duties of Heads of Villages, of Collectors, Head Sheristadars, and of Tahsildars, might perhaps be mentioned.

The

L. C. Collection

25-1/325

The Collector, Head Sheristadar and Tahsildar not to be liable to dismissal without the sanction of higher authority.

Chapter IV.

The Tahsildars generally to exercise these powers.

As the produce is in fact mortgaged for the revenue of Government, the law of Government must be first satisfied, and the Revenue officers should have the power of detaining it, if necessary, whenever found.

I concur in the views expressed in para 10 of Mr Stiles' second report, and think that the prohibition of defaulters and public servants from purchasing at public sales should be re-iteration.

I do not think that Collectors should have the power of selling real property without the previous sanction of the Board of Revenue or Commission. Concerning the powers of the Board of Revenue.

I do not see the necessity for security from land holders as provided in Section VIII of the first Sketch Act.

I look with much fear at the introduction of a power like that contemplated in Section VIII of the first Sketch Act, unless it is explained under what circumstances it may be exercised. Experience I think is against rents or farms involving intermediate agency; the introduction of a middle man has generally been found prejudicial, and the law on the subject should be carefully revised. If the Law provides for a Ryotwar Settlement,

making

making one of the Ryots to a farmer of
Rurima can hardly ever occur.

It appears to me very important that
the law should provide for the employment
of persons called Batta Pious. It is the duty
of land holders to pay their instalments regularly.
where this is not done, it is impossible to keep
up a paid Establishment for the special purpose
of going to the villages for the collection of which
is due. Pious, whose subsistence will be paid
by Defaulters, should be employed for the pur-
pose, under fixed rules, and a penalty to attach
to the Tahildar if he employs them on in-
sufficient grounds.

In the sale of Estates for arrears of
Rurima, I think that all arrears of assessment
due to the defaulting Proprietor by the Land
holders of the Estate, should be included in
the sale, so that all plea for interference
on the part of the defaulter with the Ryots
after he loses his property should be taken
away.

Chapter V.

Arrears accruing during minority are
stated to be irrecoverable. This seems fair
so long as the minority continues, but perhaps
they should be declared recoverable after that,
unless

S. Wilson,

26-11-25
unless the proprietor can show sufficient cause
for their remission.

Chapter VI.

I concur in the amendments suggested
by Mr. Stokes.

Chapter VII.

The reasons stated in my letter to Govern-
ment accompanying an Act of the character
of Regulation IX of 1832 is no longer necessary.

The revised Code should however provide
for the recovery in every case, on the officer being
established on sufficient evidence, of sums of
money corruptly received, illegally levied, and
embezzled, with discretionary power to make
restitution.

Save of time since the offence was committed
to be no bar to recovery.

When punishment of the offenders is
deemed necessary by the Rurima Authorities,
the parties to be forwarded to the Criminal Court
under Act XIII of 1850.

Recovery of money under this Chapter
to be adjudged by Tahildars in the cases of
public Rurima officers under that class. By
Head Sheristars in the cases of all servants
below them. In both cases on delegation
of authority by Collector, either generally or
specially. The rule of regulating the recovery
of

of part of the adjudicating officer by the amount on which judgment has to be passed, seems undesirable, partly because the officers in question are qualified to take up any case that is likely to come before them under the proposed rule, and partly because if the Legislature can confide in them in a little they can do so in much. It seems therefore that the official grade of the adjudicating party affords a better rule for fixing the extent of power of the investigating officer, than the amount that is to come under consideration.

Chapter VIII.

This is perhaps at first sight a difficult subject. The present Law Regulation V of 1822 is only partially beneficial, just because it does not include every case between Ryot and Ryot unless it is to be referred to arbitration with the consent of both parties, though apparently intended to do so, and secondly because the advantage of having cases decided at once in the villages where they occur, has been overlooked. Keeping these considerations in view, it seems desirable that all cases embraced by this Chapter, should be investigated by the Village Moonsiff with the aid of assessors belonging to the Village or to neighbouring

27-157
neighbouring villages. The Moonsiff to have the power of requiring the attendance of persons to aid him as assessors. If the award is satisfactory to the parties concerned, it is only necessary that the case should be included in a perisepul to be made by the Village Moonsiff to higher authority. If it is otherwise, the case with the opinion of the assessors should be sent to the Tahsildar, from whose decision an appeal lies to the Collector, and ultimately to the Board of Revenue.

An adjudicating Moonsiff, as proposed above, may be selected for a set of villages when convenient, instead of the Village Moonsiff of each.

In cases where the village decision is unacceptable to either of the parties concerned, the Tahsildar, on receipt of the proceedings of the village Moonsiff, may, with the consent of both parties, refer the dispute to a Panchayat, whose award shall be final, except for corruption.

The Tahsildar to bring the Panchayat together.

Chapter IX.

The Collector to be the appellate authority in all disputes between Zemindars and their Ryots. To take no cognizance of cases between Ryot and Ryot in Zemindaries, except as an appeal from the award of the Zemindar.

Chapter X.

In *Simindaries* the appointment to the Office of *Cumma* to be made by the *Simindar*, but the powers vested in Civil Courts by Regulation XXIX of 1802 in regard to this Office, to be transferred to the Collector.

The provisions regarding *Cummas* in *Registan Districts* as well as those regarding Village officers generally, contained in Regulation VI of 1831, to be embodied in this Chapter.

J. L. Cunningham
Commissioner

Comp?
H. H. H. H.

28

Enclosure in a letter
from the Commissioner Northern
Circars to the Secretary to
Government dated 27th May
1856 No 60.

Re 650/56.

In Reply 57.
In P. 1856.

Sketch of a Code
for the administration
of the Land Revenue and
for declaring the duties
and powers of Revenue
officers.

Revenue Department.

N^o 1334

Extract from the Proceedings of the Board
of Revenue, dated 19th June 1856.

In continuation of their Proceed-
ings of the 18th April last, N^o 1169, the
Board proceed with their review of Mr.
H. Stokoe's Revenue Code, and notice on
this occasion the Sketch of an Act to be
"substituted for the present Laws for regu-
lating the powers and duties of the Revenue
Officers in the Territories of the East India
Company subject to the Govern-
ment of Great Britain."

BOARD of REVENUE

2. Sections 1 to 7 relate to the Board
of Revenue, and are intended to be sub-
stituted for Regulation I of 1803. They
embody the material parts of that Regulation
and

and omit those rules of office, which seem more fitted to be provided for by standing orders, issued with the sanction of the Executive Government, than by formal legislative enactments. The Board concur in the propriety of this course.

3. The only observations which this portion of the Draft Act calls for, relate to the following three points.

1. Section II gives the Board authority to "order the dismissal of any servant, not being a Covenanted Servant, for disobedience or neglect of duty". But as the Uncovenanted Agency is likely to be increased by the appointment of Deputy Collectors, it seems proper to except all those servants who in the language of Act 13 of 1813 are not removable without the sanction of the Government.

4. The Draft Act does not state what number of Members must be present to constitute a Board, and this is a point which should be determined by law.

Section

Streenevasser,

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Section 7, Regulation I of 1803, declares two Members sufficient for the purpose, and might be embodied in the new Act.

III. Section IV of the Draft Act directs that the Board is to use an official seal of a prescribed size and form; but no provision is made regarding the officer under whose signature its orders and communications are to be issued. Although the old law is equally silent on this point, it seems advisable for public information and convenience to rectify the omission, especially as the Board forms a Court of Wards, and its Secretary is also employed in that Department, where leases, receipts and other deeds have to be executed. A Section might be added to the Draft Act to declare that the orders of the Board are to be issued under the signature of its Secretary or Deputy Secretary, or, in their absence, under the signature of one of the Members officiating for the Secretary.

Court

COURT of WARDS.

Section VIII of the Draft Act provides that the Board of Revenue is to continue to exercise its powers as a Court of Wards under the enactments now in force. See their Proceedings of 6th Novem. 1855, No 2981, the Board submitted their opinion of the improvements which are required in the present law and will not therefore repeat the subject now.

ENDOWMENTS &c.

Sections IX to XIV of the Draft Act relate to Endowments and Schools, and condense the provisions of Regulation VII of 1817, which is one of those proposed for rescission. The rules which relate to schools and the superintendence of buildings and establishments of public utility call for no special remark, except that in the Board's opinion the provisions of Section 13 might be advantageously

advantageously extended. When an institution for which an endowment has been granted ceases to be of public utility, the Board consider that it should be competent to Government to transfer, at its discretion, the endowment to some other public purpose. The wishes of the community and of all parties interested would be always consulted as far as possible, but unless Government has an unfettered power to act, difficulties would arise, and the interests of the public would suffer, as the parties connected with these endowments are often opposed to any change from motives of self interest, though the institutions have ceased to be useful. The Board might instance the case of richly endowed Choultries, which have become useless in consequence of a new line of road being opened, and yet the parties in charge of the endowments neither propose nor desire any change.

b. But the most important part of this

This portion of the Draft Act relates to the management of Hindoo and Mahomedan Religious Institutions, and the severance of Governments from any connection with them. This subject is treated very shortly, and the law is in reality left much in its present state. In explanation of this brief legislation, Mr. Stokes observes in Para. 18 of his report: "My own view is that Government has no more right or rather infinitely less to interfere in regulating such a matter than between the Congregation and Vestry of one of our own Churches. In this country we do not legislate for our own religion, and surely are not called on to do so for others."

In these views the Board cannot concur. The religious institutions of the people, with their buildings and endowments, form a public and corporate property, for the due protection of which, irrespectively of any question of religion, the community have a right to expect that there should be

To Government
dated 1st Decr 1855

be suitable laws. This property, until recently, was under the direct management of the local Officers of Government, and on Government seeing fit to give up the charge, it seems to the Board an essential and simple act of justice that laws should be passed defining how the property is to be managed in future, and enabling the community to take measures for its protection.

8. It further appears to the Board that there is an inconsistency between the wish which Mr. Stokes expresses to free Government from all interference with the religion of the natives, and the Sections of his draft Act which relate to this subject. Section IX places the endowments of religious establishments, and the maintenance of all public buildings under the Board of Revenue, and though a note suggests that "religious buildings" may be excluded,

excluded, the text is positive, and the
note only suggestive. Sections X and XI
make it incumbent on the Board to see
that Trustees are appointed, and
vacancies filled up, and Section XII provides
that Collectors shall hear and determine
charges of breach of trust brought against
Trustees of Endowment funds, including
necessarily the endowments of religious
institutions. Thus it appears to the Board
that the tendency of the Draft Act is to
perpetuate that interference of the Govern-
ment Officers with the management
of Religious Institutions, which it has
been pronounced desirable to terminate.

9. Instead of this legislation the Board
would prefer an Act dedicated entirely to
this subject, and really freeing Government
from all interference with Religious Insti-
tutions, by placing them, like other property,
under the protection of the Civil and
Criminal Courts, after defining the mode
in which the community is

to elect and dismiss Trustees, the
responsibilities and duties of Trustees,
and the course to be pursued against
them for recovering embezzlements, and
punishing breaches of trust. In the
case of Religious Institutions, at
least acts of malversation on the
part of Trustees and servants should,
the Board think, be left to the Courts,
instead of being "dealt with as mal-

See Section II of
Draft Act.

The Board's Proceedings of 21st
November 1862, reviewing a
Draft Act prepared by the
Sudr Udaulat.
Also En. Min. Cont. 17th July 1868, p. 7.
Vol. I, Bd. C. O. Book, Page 466.

versation connected
with the revenue; but
as the question of
legislating on this sub-
ject has been already before Government,
the Board will abstain from further
remark.

DUTIES of COLLECTORS.

10. This part of the Draft
Act

act occupies eight Sections (XV to XXII)
and abridges very materially the old
Regulations. The Board will first
notice those Sections which call for
observation.

11. Section XVI seems to require
some alteration in its wording. For
example the expression "The Collec-
tion of the Revenues from whatever
source" might be held to include
the Post Office Revenue, with
which Collectors are often uncon-
cerned. The latter part of the
Section might also be slightly
changed. Government has de-
cided against continuing loans
for cultivation, and the object
in view would be attained by
Collectors

Gregory

34-

For this phrase
see Section 59,
Regulation 2 of 1803.

is required
without the
previous sanction
of the Board
of Revenue

Collectors being forbid to make
disbursements for "public works"
or "for any other purposes" without
authority. The last expression ap-
pears preferable to that of "the pre-
vious sanction of higher authority,"
which seems to imply a specific
order on each occasion, while Col-
lectors often act under a general
discretionary authority vested in
them within certain limits.

12. Section XX should, the
Board think, be omitted, as ad-
vantage might be taken of it
to call in question, without due
cause, the legality of a Collector's
acts, and the end in view could
be provided for by a rule of Office.
But

But if some enactment on the
subject is thought desirable, it
might be declared that when a Col-
lector is exercising judicial functions,
his acts and proceedings shall be pub-
lished.

13. Section XXII requires alter-
ation, as it would authorize a Col-
lector to take the initiative in dismis-
sing a Muzoon Sheristadar, or a Sah-
sildar which he is not now allowed
to do. It also empowers a Collector
to fine his subordinate servants for dis-
obedience or neglect of duty to the extent
of a month's pay, while the present rules
limit his power of fining to Re-
pees 10, a sufficient punishment
for those offences which are intended
to be noticed in this manner.
While the Section thus enlarges a
Collector's

the act of
the collector
in the exercise
of his judicial
functions
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the collector
in the exercise
of his judicial
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the act of
the collector
in the exercise
of his judicial
functions

Collector's power in one direction, it di-
minishes it in another, by rendering
it imperative on him to submit for
the revision of the Board all the
fines and dismissals which he orders,
though hitherto this has not been ne-
cessary in the case of servants under a
certain grade. It seems sufficient to
enact that Collectors shall have power
to dismiss or fine servants for disobedience
or neglect of duty within the limits
fixed by Government and the Board
of Revenue.

14. The Board will need re-
mark on some of those parts of a
Collector's duties which have not been
specially provided for. Many parts of
Regulation 2 of 1803 have been properly
left for Office rules, such as the mode
of keeping the Cash Chest (Section 12), send-
ing the Annual Revenue Reports to the
Board (Section 13), applications for leave
(Section 18), but there are some subjects
which

which it seems essential to provide for by law. Viz:-

Keeping a Register of all lands, both paying *Afsement* and *Emam*, to which parties interested are to have access, and in which sales, transfers, subdivisions &c. are to be noted. In the case of *Afsement* lands this register constitutes the legal ground on which a demand for land revenue continues to be made until the registered proprietor shows that the land has been transferred to another party.

See Regulation 26 of 1802, Sections 2 and 3.

" Regulation 2 of 1803, Sections 23 and 24.

II. Collectors to be invested with formal power to apportion the *Afsement* when estates or lands are subdivided, and the Board's decision to be final in the event of an Appeal (see Sections 16, 17, and 18, Regulation 2 of 1803). To prevent doubt and litigation, it seems advisable that this point should be distinctly laid down.

III. It is declared by Section IV, Regulation II,

36-
II of 1803, that persons deputed by a Collector to attach lands either for arrears of Revenue or in pursuance of a Decree or order of a Court of Judicature, are to have written authority under the seal and signature of the Collector. It seems advisable to retain this enactment for the information and protection of landowners.

IV. Section XV, Regulation II of 1803 declares that Collectors are to comply with injunctions or orders from a Court of Judicature for attaching or selling lands. At present the Courts often sell Ryotwary lands through their own Officers, though in the case of *Demundary* lands they are obliged to apply to the Collector (see Section IV, Regulation 26 of 1802). It seems to the Board that the Courts must often require the aid of Collectors in attaching and selling lands; and it is therefore advisable that Collectors should be formally and legally authorized in the new Code to act on the injunctions which they may

may receive.

IV. It is declared in Sections 40 and 43, Regulation II of 1803, that Collectors are not to alter the rates of Assessment or grant Cawles without authority. It may be considered that an Office rule is sufficient for a Collector's guidance on these points, but a formal enactment has the advantage of freeing the Government from embarrassment by at once nullifying a Collector's unauthorized act.

The Board therefore think that these prohibitions should be retained, and they might be inserted in Section XVI of the Draft Act.

VI In Sections 66 and 68, Regulation II of 1803, it is ruled that Collectors are bound to make over the Government Records and Cash to their successors, and the Board observe that there is no clause to this effect in the present Draft Act. Even without a formal enactment, Collectors are doubtlessly responsible to Government

Government for the property placed in their charge, but it is to be considered, whether if Government desired to direct an Officer who left his Station without making over the public money in his hands, difficulties might not occur, unless the law showed that he had thus committed a dereliction of a prescribed duty, and failed in his oath of obedience.

COVENANTED SUBORDINATES

15. The duties of Covenanted Subordinates are referred to in Sections 23, 24 and 25 of the Draft Act. These provisions are taken from existing Regulations and call for no remarks.

DISQUALIFIED LAND OWNERS

16. Section 26 declares that Collectors are to manage the Estates of disqualified landholders as prescribed by Law or under the orders of the Court of Wards. The Board would propose to omit this Section, and leave the subject to be fully and entirely

treated

treated of under the head of the Court of Wards.

SUMMARY POWERS of COLLECTORS IN CERTAIN CIVIL CAUSES.

The Sections of the Draft Act which relate to this part of a collector's duties are only five in number (XXVII to XXXI), and in this space it is proposed to compress the substance of Regulation XII of 1816 and Regulation V of 1822. To this arrangement the Board consider that objection may be urged; for, desirable as it is to avoid all unnecessary legislation, it seems impossible to legislate successfully in so brief a manner for so extensive a subject. The summary suits to be heard by a collector are of a very varied nature, comprising disputes about rent, wrongful distraint of property, occupancy of and dispossession from land, disputed boundaries, diversion of water, removal of crops, and

London,

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and it seems essential that the powers given to a collector for bringing these suits to a decision, and enforcing his decrees should form a substantive part of the law, and be fully and clearly detailed in the Act, instead of being mainly left to be provided for by subsidiary rules to be framed by the local Executive Government.

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There is one expression in Section 27 which calls for remark. Dispossession from the occupancy of "premises" is mentioned as one of the cases in which a collector is authorized to adjudicate summarily. This would introduce a large number of disputes not connected with cultivation or the cultivating classes, such as the occupancy of houses or shops in Towns, and the Board consider that the word "premises" should be omitted. The complaint of

of disprofession to be summarily investigated by the collector would then be limited to disprofession from the occupancy of lands, trees and crops.

19. The Board will now proceed to notice briefly four important points connected with this branch of a collector's duties.

20. Mr. Stokes proposes to limit a collector's authority to deciding who is to enjoy the land, the water or the produce under dispute, until a Civil Court decides the matter, and he takes away the power which

Regulation V of 1822 gives to collectors of awarding costs and damages. The Board are divided in opinion regarding the propriety of this course. The 3^d Member considers that summary powers are given

See marginal note to Section 27 of the Draft Act.

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given to a collector, to provide for the cultivation of the land, the security of the revenue, and the preservation of the peace, and that it is therefore sufficient for him to decide the question of occupancy, leaving the Civil Courts to settle claims for damages and costs, if the complainant should see fit to file a regular suit for the purpose. As arguments for this course, the Acting 3^d Member points out that a collector's time is already so occupied that he should be freed as much as possible from Judicial investigations, and that a complainant after being promptly restored to the possession of land or crops, of which he had been wrongfully deprived, can be left without injurious consequences to seek redress in the Civil Courts for any damages which he may claim.

claim.

The 2^d Member on the other hand considers that the main object of a Collector's summary decision is to stop litigation in the Courts, by granting to complainants a prompt and "efficient redress" without the institution of a regular suit, "to the expense of which the means of the ryots are in general inadequate". This object cannot be attained unless a Plaintiff obtains redress from the Collector for the wrong done him. Restoration of the land, property or produce under dispute is seldom a sufficient measure. Compensation is due for loss occasioned by wrongful dispossession from land or removal of produce, or for the unjust distraint of property; and if Collectors continue to possess the

Preamble to Regulation V of 1822.

Section 29.

By Sec. 27 of the Act of 1822, it is provided in Section 27. In the 1st part of the Act.

Board's Proceedings 23^d April 1853. 1853.
Extract Minutes for 19th May 1854. 1854.
Letter of P. to Government 6th June " 1854.
Extract Minutes of Govt 24th June " 1854.
Board's Proceedings 21st July 1855. 1855.
Extract Minutes for 22nd 3rd August 1855. 1855.

the power of awarding damages, these wrongful acts seem likely to be kept numerous by being more speedily dealt with.

II The next point relates to the power of Tahsildars in investigating these suits.

Mr Stokes' Draft Act authorized them to hear and determine summary suits of petty value, subject to an appeal to the Collector. Other suits are apparently left for decision by the Collector after a personal investigation, as no authority is given him to direct a Tahsildar to investigate a complaint and forward the record with his opinion for the Collector's disposal. This subject has recently led to a correspondence between Go.

vernment and the Board, and it is sufficient for the Board to observe that they still hold the views expressed in their

their Secretary's letter of the 4th June 1855 and in their Proceedings of 25th July Idem. They do not wish to oppose Tahsildars being vested with the actual disposal of petty suits, if this course is deemed advisable, but they are still of opinion that Collectors should be able to refer any summary suits to Tahsildars for enquiry and report, according to the Bengal system. They do not see objection to this course, because to adjudicate a case on the record forms an extensive part of our system of civil and criminal justice, and is only what the collector would have to do on a suit coming in appeal before him after being first decided by a Tahsildar.

In the correspondence above referred to the Board have given their reasons for proposing that the Decision in these suits should

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should be formally passed by the Collector and not by the Tahsildar. Their object is only to simplify and expedite justice - and instead of mistrusting Tahsildars, they seek to vest them with important and highly confidential functions, by authorizing Collectors to pass decrees on their investigation and report.

III The third point relates to cases in which Government is interested such for example as the unauthorized occupancy of waste land, the Diversion of water from public sources &c.

Hitherto these disputes have been settled like disputes between two private parties, or else the rights of Government have been protected by punishing infringements upon them under the Magisterial laws against trespass.

Contract Minutes
of Consultation 8.
May 1856 Para 3.
11/4/74.

But Government when alluding to water disputes on the Kalgherriest seemed to consider that special provision

provision ought to be made for the settlement of cases in which Government is interested, and the opinion of the Government Pleader has been asked on the point. That Officer's reply will hereafter be laid before Government, and the Board presume that the course which is decided on for protecting the public interests on the Neilgherries, will be applicable to other localities.

IX. The last point relates to the settlement of boundary disputes when they occur between different Districts. The Collector of South Arcot had recently occasion to point out the practical inconvenience felt from the absence of any effective law, when he was making preliminary preparations for Captain Priestley's Survey, and so important a subject ought not to be left unsettled. It requires careful consideration in consequence of

Collector to Board
19 July 1853
August 1853, Bangalore
Submitted to Govt.
on the 18 August 1853

See Eschsch Min.
of Cois, 10 Novem
Ber 1835 Judicial
Departt N. 826,
Vol. 1, C. A. Book,
Page 194.

42-14
of Decisions on these occasions affecting private rights, as well as the limits of the jurisdiction of different tribunals and officers of Government. The Board will not however now dwell on the subject, as a Draft Act prepared by the Sudder Uchawlut appears to have been transmitted to the Supreme Government.

CRIMINAL POWERS OF COLLECTORS IN CASES OF MALVERSATION.

20. This part of the subject occupies Sections 32 to 40, and is drawn up in supersession of Regulations IX of 1822, III of 1823 and VII of 1828, all of which are to be rescinded.

21. The first question to be considered is, whether it is necessary to continue penal powers to Collectors in these cases, or whether the punishment of Offenders might not be left to the ordinary Criminal tribunals.

22. On this point the Board hold the opinion that in this Presidency where

where the Ryotwary system brings the Collector and his servants into direct and individual contact with thousands of the cultivating class for the settlement of numerous matters connected with the revenue, which are generally of insignificant amount if taken separately, it is necessary that Collectors should have the power of punishing promptly petty cases of malversation, as they would otherwise be likely to escape without punishment, and thus increase in frequency and importance. At the same time the Board think it desirable that all important cases should be left to the Criminal Courts, and approve the principle laid down by Mr. Stokes on this point in Section 35 of his Draft Act, though they would in some degree increase the Collector's powers of punishment beyond what he there proposes.

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inches
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23.
Vide "Selections of
Papers from
the Records
of the East
India House"
Vol. 3, page 627.

In support of their opinion that Collectors require this power for the proper management of their Districts, the Board would refer to the Minute of Sir Thomas Munro on the state of the country dated 31st December, 1824. In Para 34, after pointing out the ignorance and helpless character of the ryots, he observes, "as therefore they will not protect themselves by resisting injustice, we must endeavour to protect them by laws which would be unnecessary in England, or in almost any country not under a foreign dominion. and we must for this salutary purpose, invest the Collector and Magistrate, the persons most interested in their welfare, with power to secure them from exaction by authorising him to make summary enquiry into all illegal exactions to recover the amount, to restore what seized is recovered to the Ryots, and to."

"to punish the offenders". In some of the Districts near Madras the people have since become better acquainted with their rights, and more accustomed to maintain them, but in general Sir Thomas Munro's remarks and reasoning are still applicable.

24. But the interests of Government are also to be considered, and it seems essential that in Ryot. many Districts the Collectors should have power to punish petty embezzlements in the collection of the revenue, and frauds in the preparation of the accounts connected with the annual settlement and other branches of the public revenue. As observed

by the Board on a previous occasion, ^{Letter to Government 30 May 1822} ^{Para 2} ^{Remarks on Section 16 of Draft Act.} investigations into frauds of this nature "are often intricate and tedious. they cannot be brought to a speedy conclusion by Courts who have many other cases and suits pressing on,

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-44-
"on their attention". To this reasoning it may be added, that evidence would be often withheld, if the witnesses had to proceed to a distant Court, and that it seems most likely to be true when given on the spot in the presence of the witness' neighbours who are acquainted with the real facts. The Board cannot but also think that the investigation of these cases would naturally be distasteful to judges whose time is fully occupied with what would appear to them more important public business, and who are not familiar with the details of revenue accounts and fiscal rules. The patient and minute enquiry which is necessary to ascertain the truth on these occasions, would therefore, the Board believe, be best secured by employing the Agency of the Collector.

25.

The greater number of

of the convictions which have been
passed under Regulation IX of 1822
consist of sentences passed against
Curnums for frauds in the annual
accounts of lands under occupancy,
or against servants of the Collector's
office, deputed to examine the extent
of cultivation, or report on as-
serted losses of crops from
draught or inundation. These
cases seem peculiarly fit for
the Collector's examination, and
decision, and besides the bene-
ficial effect which is produ-
ced by occasional instances of
prompt punishment in this
manner, the Board believe
that dread of the power which
is given to the Collector of pro-
ceeding against delinquents has
a

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-45-
a marked influence in restrain-
ing his servants and their relations
and dependents, from acts of mis-
conduct. In their letter to Govern-
ment of 21st May 1829 when re-
porting on the working of Regu-
lation IX of 1822, the Board observed
in Para 13 "the Collectors unite
"in representing that the Regulation
"has had the desired effect of
"checking the crimes and offences which
"are cognizable under it."

26. With these brief remarks
on the necessity of vesting Collectors
with some power to punish cases
of malversation, the Board will
proceed to review the sections of
Mr. Stokes' Draft Act which apply
to this subject.

The

27. The wording of that part of Section 32 which describes the persons to be subject to the Collector's authority requires reconsideration. For instance, those Unconquered Servants who are not removable without the sanction of the Government (see Act 13 of 1843) should be excluded and left to the laws which apply specially to them. The private servants of a Collector who are included in Section 2, Regulation IX of 1822 have been omitted, and it seems advisable to include them for the repression and punishment of exactions when they accompany the Collector on his Circuits. The remainder of the section describes the offences to be made punishable, and

46- 18
and on this part the Board will only offer one suggestion. In describing the 1st offence which relates to the fraudulent preparation of accounts, it seems highly advisable to include distinctly accounts connected with the cultivation, value, extent, classification and assessment of land.

28. Section 33 invests the Collector with power to procure the attendance of witnesses and obtain papers and documents. For this purpose it gives him the authority of a Magistrate. The only objection the Board see to this course is, that it differs from the one laid down in Section 27 for procuring the attendance of witnesses in Summary Suits. There the Collector is vested with the powers of the Civil Courts. Whichever course may be decided on, it is an improvement on the old law that the Collector should be

be able to take measures himself
for procuring the attendance of wit-
nesses, instead of having to apply to the
Civil Judge, as at present, by Clause 2,
Section 3, Regulation IX of 1822.

29. Section 34 seems to the
Board to require improvement in
its wording. Its latter part is open
to the grave objection of vesting
Collectors with indefinite powers
of fine and imprisonment, and
this should be corrected. In reference
to this and the next section, the Board
are of opinion that the clearer
course would be first to declare
the punishment fixed for each
class of offence, and then to state
in what cases the Collector can
inflict the punishment, and in what
cases it is necessary to commit the
offender to the Criminal Court. They

30.

The Board think that it
would be advisable to make the Col-
lector's jurisdiction more extensive
than Section 35 allows. For the three
first classes of offences, they would
allow the Collector to inflict a fine
equal to double the amount, where
the sum corruptly received or embe-
zled did not exceed Rupees 250, with
a proviso that the imprisonment, on
failure to pay the amount awarded,
is not to exceed one year. The fine of
2 Months pay mentioned in the Sec-
tion is clearly an inadequate power
for a Collector to have, as the limit
would be under 12 Rupees in the case
of most bunnies. For the 4th and 5th
offences the Board would leave the
Collector's power of punishment as
at present. Viz. a fine of Rupees 500,
or, in default, imprisonment not ex-
ceeding 12 Months. The object of
the Board is to give Collectors power
to dispose of all minor cases of
malversation

In Clause 4,
Section 3, Regulation
IX of 1822.

They also have the
power of disposing
of all minor cases

of malversation of any fixed limit
as provided in the Regulation. They also have the power to commit the offender to the Criminal Court.

malversation, especially such as occur
in a single Village, during the land
revenue Settlement, and to leave ag-
gravated and systematic schemes
of extensive fraud to be dealt with
by the Criminal Courts. For the 3
first classes of offences, the Courts are
to be empowered to impose a fine
equal to double the sum embezzled
or corruptly received, commutable to
5 years' imprisonment. For aggravated
offences of the 4th and 5th Classes,
their powers of punishment might
perhaps extend to a fine of Rupees
100, or, in default of payment, to 5
years' imprisonment.

Power is given to the Cri-
minal Courts by Section 30 to punish
parties who give a bribe to a public
servant, by a fine of double the amount
of the bribe, commutable to 1 year's im-
prisonment. This is a modification
of the power given to the Criminal
Courts by Sections 17 and 18, Regulation
of 1822. The Board are inclined to
think

48 20
think that it might be advisable,
instead of this Section, to declare that
when the amount of a bribe is re-
covered from a public servant, it
shall not be claimable by the briber,
but is to be considered forfeited by him,
and is to be paid into the public
treasury. If giving a bribe is made
a punishable offence in se, this tends
to protect public servants in miscon-
duct by rendering parties afraid to
complain against them, and such
a result is the more inadvisable,
because bribes are often paid unmit-
tingly, and for the performance of
some act which ought to have been
obtained without such means.
Again. When the bribe is given
to obtain for the donor some undue
indulgence or advantage, the loss of
the sum paid for the bribe, and the
defeat of the end in view, seem a suf-
ficient punishment, while if the
bribe is given to annoy or injure
another party, the donor is often to
an

an indictment for wrongful conspiracy,
besides losing the amount of the bribe.

32. Section 37 is useful and is
framed on Section 8 Regulation IX of 1822.

33. It is declared in Section 38
that an appeal lies to the Board of
Revenue from a Collector's decision with-
in one month, and that the Board's
decision is to be final. Now far the
right of appeal was to extend farmed
a great difficulty in framing the pre-
sent laws. Thus the avowed object
of Regulation IX of 1822 was to give
Collectors summary powers to try cases
with which they were thought more
competent to deal than the regular
Civil Tribunals. But as these cases
might often be of great magnitude
and importance, it was necessary to pro-
vide for an appeal, and at first it
was arranged that the appeal was to
be heard by a Commission to be ap-
pointed by Government (See Sections
14 and 15, Regulation IX of 1822). But as
this plan was found inconvenient, it
was

49- 43 21
was declared by Regulation VII of 1823,
Section 6, that appeals are to lie first
to the Board, and then to the Governor
in Council, and the law appears to
have been so construed as to give the
appellant a right to bring the case
before the Civil Courts if neither of
these 2 authorities gives him the re-
dress he seeks. The Board believe that
the law only intended these appeal
cases to come before the Courts when
it appeared desirable to the Board
or to the Government that they should
do so, but whatever may be the right
construction of Section 6 Regulation VII
of 1823, the result now is, that instead
of a quick investigation and disposal,
these cases are brought before the
Courts after passing before the review
of the different Revenue Authorities and
the Government. The object of our leg-
islation is thus defeated, and unless
improvement can be effected, it would
seem advisable to rescind our present
Regulations and leave all these cases
entirely

entirely to the Courts but as the Mar.
subordinate trials have brought the
whole subject before Government, the
Board need not debate upon it. They will
only express an opinion that under the
limited jurisdiction which is now pro-
posed to be given to Collectors, it seems
advisable that the Board's decision on
appeal should be final, except in being
subject to such orders as Government
might see fit to pass.

34. Before quitting the general
subject the Board will point out that
since the publication of Regulations IX
of 1822 and VII of 1828, several Acts have
been passed which will aid the pun-
ishment of delinquent servants in
cases beyond a Collector's jurisdiction.
especially those who are removable only
by Government. There are also the
general laws against frauds and em-
bezzlements, but still it will be des-
irable in the new Revenue Code to
state the precise powers of punishment
to be vested in the Courts for those
cases

Act 13 of 1825
12 of 1851
13 of 1851
32 of 1852

50. 52 22
cases which are removed from the Col-
lector's jurisdiction.

35. There is one subject in con-
nection with a Collector's powers and
duties, which the Board deem right
here to bring to the notice of Govern-
ment. viz. the want of any present
power to compel Zemindars Enam-
dars, &c. to keep the ir-
rigation works of their Estates in order.

36. With their letter of the 28th
April last, N. 1200, the Board forward-
ed to Government the Draft of an Act
for compelling Zemindars and Enam-
dars to bear a portion of the expenses
of works which benefited their lands
as well as those of Government. But
no provision has yet been made for
the maintenance of works which ir-
rigate exclusively Zemindary or Enam
lands. and it seems advisable to con-
sider how far and in what way the
want can be supplied, as the welfare
of the landholders depends on ir-
rigation works being kept in efficient
order.

order.

37.

The subject was adverted to as far back as 1848, when the Supreme Government recorded the following remarks.

Letter from Secretary of Government of India dated 26th September 1848, received with Govt. Secretariat of Government dated 8th April 1849.

In parts of the Country where cultivation depends chiefly on extensive works of irrigation, the Governor General in Council supposes that authority exists somewhere to ensure the punctual repairs of reservoirs and tanks, whether the parties responsible for the same are Zemindars or Omardars.

The Temple lands will of course contribute their quota to the funds necessary for preserving these works in an efficient state. The most noble the Governor in Council will have observed that the Honorable Court have adverted to this point in the 7th Para of their Despatch, which is quoted in the margin for easy reference.

It is not our intention that the Revenues of Mosques and Pagoda Temples should be exempted from any charges for irrigation and for the general management of the Districts wherein they are situated to which they may justly be liable, and we desire that provision may be made for defraying such charges if the revenues are applied to other purposes.

Nothing has however since been done, though the decayed state of the tanks and channels in many Zemindary.

Zemindary and Omard Villages have given ground for just complaint on the part of the ryots. The omission should therefore in the Board's opinion be now supplied, as far as the subject is found to admit of legislation, either by a special Act or by an addition to that part of the proposed Revenue Code which respects Zemindary and Omard lands. But the different interests concerned and the varying circumstances under which lands are held, make the subject one of difficulty, and its treatment would require much consideration and care.

(Attest Contract)

E. O. Evans
Secretary.

J. D. Boardillon Esq.
Secretary to Government,
Revenue Department.

Copy to Mr. Whalley

Copy an d G. S. to E.
d/ 18 May 1857. N^o 19.
Paras 9 to 12.

Revenue 1856 Department
D^{to} Gov 24 February 1857.

N^o 724

Extract from the Proceedings
of the Board of Revenue

Dated 19th
Received 19th June 1856

N^o 1884

With Enclosures
S. E. No. 173 - 18 Feb.

(Reviewing Mr. H. Stokes
Sketch of an Act to be
substituted for the present
Laws for regulating the
powers and duties of the
Revenue Officers in the
Territories subject to the
Government of Fort St.
Georges.)

N^o 2.

c13th Sept 1857

the former Reg. Mr. St. H.
would not be out of proper
matter for legislation, and
a few sections he made an
object to insert. The
Board approve of this, sug-
gesting only that if one
correction required in the
draft and in taking care points
mentioned by Mr. St. H., which
they think ought to be in-
cluded in the Act. Their
suggestions appear judicious.

The remaining parts of Reg.
I of 1860, as far as suitable
should be embodied in a
code of standing rules.

3. The second subject
is the Court of Wards. The
Board refer to their Proceed-
ings of 1860, Vol. 6, p. 50, as
containing

So far as
he thought

Court of
Wards

containing their views on the
subject. In these Proceedings
which contain their sugges-
tions and amendments, which
were about to be made in
the Bengal Court of Wards
law, the Board make four
points, in which Reg. V of
1860 needs amendment.

Para 415

1st To determine the
appointment of a guardian
to a disqualified proprietor
in certain cases.

Para 6

2nd To determine the pro-
cess by which the estate
of a disqualified proprietor
can be taken charge of by
the collector. In Bengal
it is after inquiry by the
Jillah Court, or the District
Court, or after Report

to Government by the Col-
lector through the Board.

To define clearly the
cases in which the Board
of Commissioners may interfere.

To give the Board
jurisdiction in the case of
Estates purchased, as well

as of those inherited. The
exclusion appears to have
been intentional, but the
reason of it is not apparent.

To alter the law as
to other guardians to be
also managers in certain cases.

It appears from T II
that the foregoing points do
not comprise all in which
the Board thought amend-
ment necessary. They
might however be requested
to introduce any such in
the

the draft, but I think it
may be an matter for considera-
tion whether this draft
should form a part of the
general Revenue Survey or
whether the law on the sub-
ject of the Court of Wards
will not be better as a se-
parate act.

I think a separate
act is desirable
on the subject of the
Court of Wards
and the law on the subject
of the Court of Wards
will not be better as a se-
parate act.

The next subject is
the important one of Endow-
ments, including those of
Religious Institutions. As
respect the Endowments
of Public Edifices &c. other
than Religious, the rules
in the Draft Act are simple
and appear unobjectionable,
though perhaps rather too meagre.
There seems no reason whatever
as hinted by Mr. Stoker for
transferring the Superintendence
of such Buildings to the
Engineers

Engineer Department
The Board proposed in Para 8
of the L. 30. is an admirable
provision to direct both
public and the management
of Religious Institutions
in larger capital, even for
education as a proper

part of the most im-
portant part of the per-
son of the subject is
that which relates to the
Religious edifice and
ordinance. Mr. Stokes was
brief on the subject; he
says in his Report (Para 8)
that as Govt in this country
do not legislate for their own
Religious, he cannot
see why they should do so
for other Religions. Yet as
the

56
the Board remark, the Draft
Act inconveniently contains
Provisions for direct interper-
ence in the management
of Religious Institutions.
Mr. Stokes analogy is cer-
tainly not a true one. The
legislation proposed is not
for Religion, but for the
custody and due administra-
tion of Property consist-
ing Religious Indow-
ments which is as much
entitled to protection as other
Property. The Board's
remarks on this subject
are very full (Para 10 & 11)
especially those in Para 10.
The Board express a wish
for a special enactment
which should define and
prescribe the mode of
electing

in either. The Board make
a few partial laws in which some of the
the Section in the collection
duties need amendment,
and point out some provisions
which they think
should be added. These
remarks in general seem
to be judicious in both
subjects as respects both
collectors and their subor-
dinate. A set of standing
rules require to be drawn
up as already presented
with respect to the Board
on the proposed amend-
ments respecting the Board
granted Subordinate. The
Board make no remarks
and none seem called for
here.

Section 26 of the proposed Disqualified
Act

act provides that Collectors
shall manage the estates
of disqualified Proprietors
under the Court of Wards.

The Board properly remark
that this provision should
be included in the proposed
Act for the Court of Wards.

In their Proceedings of the
6th November 1850, they expressed
the opinion that Reg. V of 1804
would best be amended in
the revision of the Revenue
Law, but perhaps a more
convenient course will be to
have a separate Act.

Judicial Powers
of Collectors in
Civil Cases.

8 The next subject is
one of importance, viz. the
judicial powers of Collectors
in Civil cases. The powers
of this character now pos-
sessed by them are contained

in the Regulations of 1822
and 1824. Under these
provisions, the collector is
empowered to refer to the
Panchayat, claims to lands or
rights depending on an
established boundary, and also
disputes between landholders
and their Nyots, respecting
the occupying, cultivating
or irrigating of land. The
Regulations of 1822, Sec. 18, says
from the complicated
and tedious forms of pro-
ceeding which it requires,
and from the small powers
given by it to Collectors,
has practically been very
little used.

Reg. 8 of 1822 gives
power to Collectors to inter-
fere between Landholders
and

and by Sec 18 Reg
of 1822. This power
is extended to the
disturbance of the same
descriptions below
Reg. 1 & 1820.

Sec. III 6 M
Sec. VII
Sec. VIII

and Nyots in the matter of
disputes and sale of property
of exaction by landholders
from Nyots, and of suits
of Nyots by landholders.

Sec. XI empowers a Col-
lector to remove a Nyot
dispossessed by another Nyot.

By Sec. XV a collector
may refer disputes brought
before him under the Reg.
to a Panchayat, & by Sec. 17,
he may put one of the par-
ties in possession in the
meanwhile.

9. The state of the law
at present is confessedly un-
certain and unsatisfactory.
Collectors do not exercise
powers given by the law,
and they exercise others
which the law does not give
them.

himself. He has proposed
measures to improve
of the Reg. as far as referred
to, are contained in French
Sections, 27 to 31. and their
object as described in Para 38
of his third Report, is to
leave all proper judicial
work to the established
Courts of the various grades.
He would make the order of
Collectors passed as at present
sent on a summary enquiry
binding till set aside by a
decree of some Court, in a suit
to be instituted within a
month after the order, Sah-
sildars in like manner
to pass orders in cases not
exceeding a certain value,
to be binding unless appealed
from within fourteen days
to

60-
to the Collector. He would
also allow the Collector to
refer cases to arbitration,
with or without consent of
the parties; in the former
case the decree to be final,
in the latter an appeal to
be open by suit in Court.
In cases referred to a Div.
Schahet, one party to be
put in possession by the
Collector.

In Sec: XXII the cases in
which Collectors and Sah-
sildars may thus pass
decisions are defined in
general terms. The remedy
is to extend only to restoring
in possession not to giving
damages, the latter Mr.
Horne would leave to the
Courts.

The

11. The Board is of the opinion that the part of the Act which contained in Section 14 of the Insurance Act.

They think the mode of treatment to be given is a superfluous (para 17) and they notice that the definition of cases would include some in which the Marine is not at all concerned, and which therefore they think should be excluded. Para 18.

They then proceed (Para 19) to notice four points connected with the subject.

11. The first is whether a Collector should have power to give compensation for any sustained damage, or merely to restore property. The 2^d Member was

in favour of the former course, the acting Secy Mr. Forbes of the latter, and the reasons urged by both are stated. On the subject it may be remarked that without such compensation the redress is certainly incomplete; that the enquiry necessary to ascertain the wrong would usually be sufficient to determine also the measure of injury sustained; and that to require the sufferer to go to a second tribunal for the latter part of his remedy, would be to force him either to the cost and inconvenience of a second trial, or to an abandonment of that part of his right, to the gain of the wrong doer. The

I agree
with
the
Board
I would give the
power of granting
compensation to the
Collector - Mr. L.

The second point is whether Tahildars shall inquire and decide, or only inquire and report for the collector's decision. The Draft Act provides that Tahildars may decide up to a certain value, and above that value may inquire and report for the collector's decision, in cases referred by him. This question came under the consideration of Govt last year, and they then held the opinion in opposition to that of the Board, that it would be for the interests of justice to enable Tahildars to decide, and not merely to report for the decision of the collector. This appears to be the actual state

Drafts 13% of Rs
 April 20/55
 C. M. C. C.
 May 19
 From 13th June to
 C. M. C. C.
 June 27

state of the law at Bombay, and latter part of Para 50 of Mr. Stokes's Report. It may be proper as Mr. Stokes proposes to fix a money limit to the suit which Tahildars may decide, as is the case with Moonsiffs. The Board adhere to the opinion which they expressed last year, viz that Tahildars ought

to be restricted to reporting each case for the orders of the collector. The Government is of opinion that the Government is not satisfied with the present system, and requires in this point. It is very clear no notice in the orders last year, that there is much want of system in the proceedings of collectors in the

all such wrong is made in
Sec. I. of the Draft Act for the
protection of irrigation works
now before the legislative
Council; or the offender
may be sued in the Civil
Courts. With respect to the
occupation of waste land,
I do not clearly see that
any special power of eject-
-ment is necessary; but, at
all events such a power
should be given to the Ma-
-gistrate and not to the
Collector, and the enact-

ment would have no proper
place in the Revenue laws.

I do not find that on
the order of the 8th May,
Government expressed
such an opinion as the
Board suppose. The

Pava 19-III.

The

16 The fourth and
last point is the settlement
of boundary disputes when
they occur between villages
of different Districts. The
Board remarks that the
subject requires careful
consideration, but they for-
bear to dwell upon it, for
the reason that singular rea-
son that a Draft Act on
the subject was sent to the
Supreme Govt. in 1835, or
twenty one years ago. The
draft, ^{referred to} ^{in fact} does not provide for
the settlement of boundary
disputes as all its purport
as far as it relates to this
subject, is to provide ^{for} ^{the} ^{settlement} ^{of} ^{land}
that a claim to land or
respecting the occupying,
cultivating, or irrigating of
land

64-
land, on the borders of a Dis-
trict, where doubt may ex-
ist as to the District
to which the land belongs,
jurisdiction shall be
exercised by the Court or
the Collector (according
to the nature of the case)
whose Court or Head Station
shall be nearest to the
spot. This draft never
became law. The late Act
for the settlement of
boundaries, No. 20 of 1855, seems
to provide fully for the case
now stated by the Board.
In Sec. 1 it is enacted that
it shall be lawful for any
Revenue Officer appointed
by Govt. for the purpose, to
fix the boundaries of Estates
or villages; and this applies
to

to villages in the borders of
a District as well as elsewhere.
where all that will be
required in such cases is
that Government should
name the officer, and his
decision thereunto shall be
legally valid.

15. The last part of
the Draft Act relates to the
criminal powers of Collectors
viz. their powers of punishing
cases of malversation
in their subordinates.

Criminal powers
of Collectors
Sec. 32 to 42.

The offences cognizable
are described in terms similar
to those of Reg. IX of 1822,
but much more concisely,
and with some omissions
which might be dangerous,
for example, in the fourth
item the making false
entries

15
entries in the accounts or records
the mention of the "extent,
value, classification, or assess-
ment of land" is omitted,
being apparently intended
to be included in the general
term "property under the
Collector's superintendence".

In a criminal law commission
is dearly bought at the ex-
pense of clearness; yet for
the sake of saving two lines,
the legal meaning of this
passage is seriously com-
promised.

It should be
understood that
the law now
proposed is
not to be
applied to
the case of
the Collector
himself.

For procuring the
attendance of parties and
witnesses Collectors are to have
the powers of Magistrates.

In general the anti-
retentive provisions of the
Draft

Draft resemble those of the
present law, but there are
few important differences.

In the first place the
collective power of punish-
ment proposed to be
limited in bribery & in cases
of embezzlement where the
amount proved does not
exceed \$1000, and in falsi-
fication of accounts or
perjury, to a fine of five
months' pay or imprisonment
for two months. In all other
cases, the offenders are to be
committed to the Superior
Court.

Cases within the collec-
tive jurisdiction, and decided
by him, to be appealable to
the Board of Revenue only.

The act of giving a bribe

65
is also made a punishable
offense.

The two concluding sec-
tions re-enact concisely
the provisions of certain
Regulation Acts enabling
Collectors to inflict pen-
al punishment in certain
cases, and to initiate pro-
ceedings against District
Munsiffs for malversation
16.

The Board's remarks
on this part of the Draft
are contained in Paras 20
to 34 of their Proceedings. For
the most part they agree
with Mr. Storer, but they
differ on some minor points.

They first consider
the question whether it is
necessary that Collectors
should possess any penal
powers

power over their subordinates,
other than those of heads
of offices generally, and they
arrive at the conclusion for
the reasons stated in Paras
22 to 25 that such power is
necessary, but that it should
be confined to cases of minor
importance, those of greater
magnitude being committed
to the Criminal Courts.

In Para 27 they sug-
gest an amendment of sec 32
of the Draft, so as to make
it include the private
servants of a collector, and
exclude those classes of
officers who are not removable
without the sanction of Govt.,
they also notice the omis-
sion already adverted to
in the definition of the
offences

Para 28.

67-
offences punishable.
They notice that in
Section 33 the powers given
to Collectors for compelling
the attendance of parties
and witnesses are those of
Magistrates, while those
given in Section 27 are those
of the Civil Courts. There
is a reason for this differ-
ence, however, viz that
in the first mentioned
case the proceedings are
of a criminal character,
and in the latter of a civil,
and it will perhaps be well
to let the provisions of the
Draft remain unaltered
in this respect.

Para 29.

The Board object to sec
34 that it gives the collector
the

On the power of unlimited fine
and imprisonment, there
however is a mistake, as
the succeeding section fixes
a precise limit.

17. Section 35 deter-
mines the power of im-
prisonment to be possessed
by the Collectors and by
the Criminal Courts res-
pectively. Collectors are to be
allowed, as already said, to
punish in cases of bribery
and embezzlement when the
proved amount does not exceed
100 Rs.; and in cases of fraud
in respect of accounts or records,
to fine to the extent of two months
pay, or imprisonment for a period
not exceeding two months. The
powers of ^{the} Criminal Courts to
extend to levying double
the proved amount
corruptly

18.
corruptly received, or imprisonment for five
years. In the second class of offences
the only punishment allowed is im-
prisonment not exceeding 5 years; no
power of fining is given, probably by an
oversight.

The Board think the pow-
ers thus given to the Collector insuffi-
cient. They would give him jurisdic-
tion in cases of bribery and embezzle-
ment to the proved extent of 250 Rs.
involving a power of levying 500 Rupees
with a proviso that the imprisonment
in default should not exceed one
year. In the second class of offences,
they would leave him his present
powers, viz: a fine of 500 Rupees, or im-
prisonment for twelve months. This
would in practice leave the powers
of the Collectors almost exactly as they
are at present; for offences of such
magnitude as not to be included
within

True like this
proposed

Board
The Board think
the powers given
to the Collector
insufficient. They
would give him
jurisdiction in
cases of bribery
and embezzle-
ment to the
proved extent
of 250 Rs.
involving a
power of levying
500 Rupees
with a proviso
that the im-
prisonment
in default
should not
exceed one
year.

within the powers just stated are very rare.

The Board propose to supply the apparent omission in the Draft Act, by giving the criminal court power to fine to the extent of 5000 Rs. in cases of the second class viz. fraud in the matter of accounts and records, the fine to be commutable to imprisonment not exceeding five years.

18. The Board object to the power of punishing for the giving of a bribe, as being likely to impede justice by deterring parties from complaining. This objection might probably be removed by confining the liability to punishment to bribers failing to give information either voluntarily within a certain time, or when called upon. But I much doubt whether any practical good would attend the liability to punishment, and

V

I think it might be omitted. I have doubtfully as to the means suggested of removing the ill effect anticipated by the Board, because that effect would depend not on the real provisions of the law, but on the common idea of them; and it is probable that the public sense would be aware of the penalty, but would not fully apprehend the exception.

19. In Para 33 the Board take up the important subject of the appellate authority in the case of decisions by Collectors, and they notice the inconveniences resulting from the present state of the law, in that instead of prompt decision the proceedings are in fact almost incapable of final settlement. The draft act would remedy this by making the Board's decision final in the petty cases where it would leave to the collectors primary adjudication; and the Board while

Examination

examination and this I believe to
be often the fact, but to my view
it constitutes a reason for opposing
the proceedings to such examination,
not for shielding them from it.

20. In the close of their pro-
ceedings (Para 35 to 38) the Board
advent to a subject not found
in Mr Stokes' Draft act, but on
which they think it necessary to
legislate viz the fair liability of Zemindars
and Ewansdars to keep in repair
works of irrigation on their properties.
The Board point out that the neglect
of these works may and does ruin the
Ryots who hold land dependent
on them; and that though a wise
regard to self interest would lead
the proprietors to keep the works in
repair, yet as a fact that motive
is not sufficient. They argue there-
fore for a law on the subject,
but

Para 38

October 23rd 1856

71-
but they give no opinion as to the
scope and provisions of such a law,
merely saying that its treatment
would require much consideration
and care. This subject was brought
before the Board by the Collector
of Madras in a letter which they
lately submitted to Government
with their review of Mr Stokes' Draft
act on the subject of Enam, wherein
they noticed a second suggestion
in the same letter.

21. The views stated by
Mr Parker and supported by the
Board appear undeniably sound,
though certainly so far as concerns
Zemindars holding under perma-
nent Sanads, opposed to those
maintained lately by the Board
on the question of the liability of
Zemindars to make and maintain
roads. The necessary enactment
for

for giving these views effect might
be introduced without much
impropriety in the present act,
and if the Government approve, the
Board may be directed to draft
sections for the purpose, or as a
preliminary to state for approval
what they would suggest as their
general purport, whichever they
might prefer. There would be time
to do the latter and receive the
orders of Government, while the re-
mainder of the Draft Act was
being drawn up.

22. The second point alluded
to in Mr. Parker's letter (Para 7) is
the inconvenience experienced by
Revenue Officers in cases where
a Village is held in shares by a
number of Quandars, from there
being no one who can transact
business on behalf of the whole.

Mr.

They seem to me
to fall more pro-
perly under the
Act for the re-
form of titles
of Village & District
titles.

Mr. Parker proposes therefore that
in such cases the Collector shall
be empowered to call on the
share holders to elect a Manager
for the transaction of the Village
affairs with the Revenue Officers,
and also it should be added, to
appoint one himself, in the event
of the share holders failing to make
the nomination within a certain
fixed time after proper notice is
given. The suggestion appears a
good one, and I think the provi-

sion would come better in the
present Act than in that for-
mer. The chief scope of which
will be the investigation of
titles. The details will require
to be settled in a few sections,
and the Board might be desired,
as in the previous case, to propose
their general terms or submit drafts
at

at once, as they find most con-
venient.

23.

With the Report from

the Board Sales circulate
a letter from the late Com-
missioner in the Northern
Circuit containing his review
of Mr. Storke's proposition
and Draft Act. This letter
is designed to take in the
whole subject, while the Board's
present Report comprehends
only one of the three parts
in which they treated it.

But Mr. Goldingham does
not notice the third of these
parts, viz. Custom Law, he
only treats of the Settlement
and Collection of the Revenue,
and the Powers and duties
of Revenue Officers. After
some preliminary remarks,
Mr. Goldingham observes in

the, any occasion
the full of the
the, any occasion
the full of the
the, any occasion
the full of the
the, any occasion
the full of the

12

73

73-

in Paras 5 and 6 that the ar-
rangement of the Act might
have been more lucid, and
he submits a skeleton draft
designed to accomplish
such clearer arrangement.
He then considers two points,
viz. whether appeal to the
Court should be allowed in
civil cases wherein Revenue
Officers have primary juris-
diction, and whether it is
necessary to give the Collector
criminal powers for the pun-
ishment of malversation
by his Subordinates. The
Report closes with some re-
marks in explanation of the
skeleton Draft Act.

The two points dis-
cussed by Mr. Goldingham
have already been considered
about

above in connection with the
Board's observations. On the
first point Mr. Goldingham
differs both from Mr. Stok
and from the Board, he would
allow no appeal whatever
to the Courts, making the
decision of the Revenue officers
final. The civil cases are
divisible by the Revenue of
ficers he divides into two
classes, those in Nyotwar
Tolooks and those in Zamindaries,
which are treated
respectively in Chapters 8 & 9
of the Madras Code. The
former gives primary cognizance
in all disputes between Nyots,
to the Village Munsiff, aided
by a Panchayat from that
or neighbouring villages. An
appeal it seems to be from
the award of

thus

on this body, the Tahsildar,
from the Tahsildar to the
Collector, and from the
Collector to the Board of
Revenue. or by consent of
the appellant and respondent,
the dispute may be
referred, ^{by the Tahsildar} to a District Panchayat,
to be assembled
by himself, or by whose
award shall be final.

25 Section 9 provides
that the Collector shall be
the appellate authority, or
rather it would seem the
Court of first resort, in all
disputes between Zamindars
and Nyots, and as respects
disputes between Nyot and Nyot
in Zamindaries, the Collector
to have cognizance only of
appeals from the decisions
of

of the zamindar.

26. The second point, viz, whether any law of the nature of Reg. IX of 1822 is necessary for punishing malversation, is discussed in Paras 10 to 16. On this question Mr. Goldingham took the opinions of the Collectors of Rajahmundry, Channarayana, and the Acting Collector of Guntoor, and all three of -ficers were strong on the affirmative side; they were also against ^{giving} an appeal to the Courts from the Collectors' decisions. Mr. Goldingham's own opinion is given in Para 12 & 13. He divides the offences punishable under Reg. IX of 1822 into two general classes,

75- 75
1st Bribery, and extortion; 2nd Embezzlement, and making fraudulent entries in Public accounts or documents, or falsifying or making away with such documents; and he observes that offences under the second head are punishable also under Act VIII of 1850. He then states his opinion that for offences of this 2nd class a special penal Act is not required, that in minor cases the Collector should dismiss the offender, with or without a small fine, for which latter he apparently forgets that an Act would be necessary, while in graver cases he should be committed to the Criminal Court. In the case of offences of

of the 1st Class, viz. bribery and
exaction, he proposes that
the Collector should be em-
powered to recover the proved
amount received, and that
the offender should be
punishable by the Criminal
Court.

27. Mr. Goldingham ap-
pears to be under a mistake
as to the extent of Act III of
1850, as I understood it,
it provides for punishing bribe
-takers by Government
servants, but not fraudulent
entries &c. as Accountant
-generals, Mr. Goldingham's opinion
is that penal powers in
cases of malversation need
not at all be given to Collec-
tors in cases of malversation
except to the extent of improving

Para 11

in questionably
then

76
a small sum in case of the
second class, but only the
power to recover the amount
proved to have been exacted
completely received, or embe-
zled. The course proposed
by him is open to the objection
noticed above in the matter
of civil suits, viz. that it
makes two investigations
necessary. The course ad-
vised by Mr. Stokes and
the Board seems better, viz.
to give complete jurisdic-
tion both to recover the
sum received, to restore it
to the payer, and to inflict
punishment to the Collector
up to a certain point, and to
the Court above that.

28. The remainder of the
Report Para 14 to the end is
occupied

occupied with remarks on
the skeleton Code. That Code
is divided into ten chapters,
the titles of which are enu-
merated at the beginning of
the Draft or sketch. For
the most part the Pro-
visions agree with those
of Mr. Storer's Draft Act,
which are proposed to be
taken as the ground work.
The chief difference is that
two Chapters are proposed,
Chapter 1 and 2 containing
rules for the settlement of
the Revenue and defining
the rights of the holders
of land. These subjects are
omitted or treated briefly
by Mr. Storer on the ground
that they belong to adminis-
tration and not to legislation,
but

It is not by
sanctioning

Mr. M.

8 Dec IV Regⁿ 27 4/1802

C. Q. Board of Rev
April 20/53 Para 3.

77-
but it may be proper that
standing Rules should be
drawn up and sanctioned
by Government on these as
well as on other subjects
above noticed.

29. In Chapter 4 it is
proposed that Batta Mous
shall be employed in the
collection of the Revenue,
not paid Mous, their batta
being leviable from the
defaulters. The existing
law provides already for the levying
of batta on defaulters, but I apprehend it is not
usual to enforce it except in the case of Zemindars,
though it is among the powers specially ordered
last year to be fully put in force.

30. The Draft of a
Regulation Regⁿ prepared in
1820, to which Mr. Goldingham
refers in Para 18 of his letter
is circulated herewith. It contains
many useful rules; but for
the

the most part its provisions
are such as may more
properly be made the
subject of standing orders
than of a legislative enact-
ment. Other parts are
included in Mr. Storer's
Drafts

[Signature]

Sept. 13.

78-

Memo

Oct. 24. Delap/5-7. 11/52

N^o 3.

13 Sept.

No 173
Extract from the Minutes of Consultation
Under date the 18th February 1857

Read the following

Papers.
From the Commissioners at Corsica

H

(Hove enter 27 May 1856)

Ex. Pro. Board of Revenue

(Hove enter 19 June 1856)

1854

Regle 3.

for the revision of the Revenue
Law of this Presidency,

In their Proceedings,
above recorded the Board
of Revenue submit their re-
port on Mr. Stokes' third
Draft Act, viz that relating
to the powers and duties of
Revenue Officers, in the
Presidency. The Board go
through the Draft, taking
each part in its order; and
the Government proceed to
record their views on it and
on

on the remarks and suggestions
of the Board, following the same
orders.

2. The first part, ^{of the draft} relates
to the general powers of the
Board of Revenue. The
enactments proposed by Mr
Stokes on this subject, in-
cluding the occasional no-
mination of a Commissioner,
are comprised in Section
6.7 of the Draft Act.

These provisions are taken
from Regulation 1 of 1803
and Act X of 1849; the greater
part of the former Regu-
lation Mr. Stokes would
omit as not proper matter
for legislation; and a few
sections he omits as obso-
lete or unworkable. The
Board approve of this, sug-
gesting only para 3 of one
section required in the
draft, and noticing two
points

General powers of the Board
of Revenue, Section 1
VII.

In para 3 of the Third
Chapter

Rebut

-80-

points omitted by Mr. Stokes,
which they think ought to be
included in the Act. These
suggestions are approved by
Government and should be
attended to in preparing the
detailed Draft Act; the Govern-
ment are further of opinion
that it is no longer necessary,
or expedient that a member
of the Government should be
President of the Board. The
parts of Regulation 1 of 1803, not
included in the Draft
should be embodied so far
as suitable, in a Code of Stand-
ing rules, to be submitted by the
Secretary of Government.

Court of wards
Section VIII

3. The second subject is
the Court of wards. The Board
refer to their Proceedings of 6th Nov
1855 as embodying their views
on this subject. In those
Proceedings which contain their

reply,

reply to a reference respecting certain amendments which were about to be made in the Bengal Court of Wards Law, the Board noticed some particulars in which Regulation V of 1804 appeared to them to need amendment.

But it appears from para 11 of those proceedings that the points so enumerated did not surprise all on which the Board thought ^{that} amendment was required.

The Governor in Council does not consider it necessary however to discuss the subject here, being of opinion that it will be better to make the powers and duties of the Court of Wards the subject of a separate Act. The Board of Revenue will be pleased to propose and submit draft of such an Act, the general Act now under consideration may contain a clause similar to Section 11th, simply declaring that the Board shall be a Court of Wards to act in certain cases.

in concert with the Genl Secy,
to the Govt of Bengal
to draft the
Bill in accordance with
the instructions of the
Govt of Bengal

The

Endowments and Echeats 4
Section IX to XIV

in writing
or not sufficient
of itself

The next subject is that of endowments, including those of Religious Institutions. As respects the endowments of Public Religious ^{other than} Religious, the rules proposed in the draft are simple and unobjectionable, though perhaps ^{requiring in} ~~detail~~ ^{detail}. The Government see no reason whatever, as hinted by Mr. Stokes, for transferring the superintendence of such buildings to the Engineer Department. They consider the Board's proposition to extend Section 11th so as to enable Government to divert to other public uses the endowments of buildings.

buildings or Institutions no longer useful, to be judicious and proper.

5. But the most important part of this portion of the subject is that which relates to Religious Reliques and Institutions. Mr. Stokes is very brief on the subject, he says in his Report (para 48) that as Governors in this Country do not legislate for their own religion, he cannot see why they should do so for other religions. Yet as the Board remarks, the draft Act inconsistently contains provisions for direct interference in the management of Religious Institutions. Mr. Stokes' analogy is certainly not a

Endowment

82-4

a true one. The legislation proposed is not for religion, but for the custody and due administration of property constituting Religious Endowments; and property of that description is as much entitled to protection as other property. The Board's remarks on this subject are very just (para 6 to 9) especially those in para 7 regarding the protection to be afforded to such endowments. The Board express a wish that a special enactment should be proposed, defining and prescribing the mode of electing or appointing Trustees, Managers &c, and the duties of such officers, the Institutions to

to be then left to the protection
of the Courts. Such a law
appears to Government to be
much required, as there
seems reason to fear that
under the present system
endowments are much
wasted and misappropri-
ated. The spot now proposed
however, is not the place for
such an enactment, as
Revenue Officers would have
little or nothing to do under
it. On the whole, the Govern-
ment are of opinion that
the present act should con-
tain provisions such as
Mr Storer suggests, for en-
dowments not of a religi-
ous character and for in-
heritance, but that Reg. VII
of

Powers and Duties
of Collectors and their
Covenanted subordi-
nates.

+ Isaac 83
of 1817 should continue
unrepealed, till the pro-
posed act for religious endow-
ments shall be passed.
The Board will be pleased
to give the subject their
consideration, and report
what would be the best
mode of accomplishing
the object in view, as re-
gards religious endowments.
6. Sections XV to XXII
of the draft act refer to the
powers and duties of Co-
ollectors, and sections XXIII
to XXV to those of their co-
venanted subordinates.
The Board object to the
wording of section XVI
as regards the expression
"the collection of the
Revenue"

Revenue from whatever source," alleging that it might be held to include the Post Office revenue, as an illustration on this point may be guarded against by adding the words "except such as may be expressly entrusted to a separate agency." With regard to the amendment suggested by the Board in the latter part of the section, the Government are of opinion that the object in view will be better attained by adding after the word disbursements without the previous sanction of Government general or special.

The Board suggests that the word "or" of the Draft Act should be omitted, adding that if some provision on the subject to which it relates should be considered desirable, the objection

in view might be met by declaring that the judicial acts and proceedings of a Collector shall be public. The distinction proposed appears to Govt. to be objectionable,

as implying that equal publicity is not necessary in respect to a Collector's revenue acts, and Govt.

men are of opinion that the section should be omitted. The mode in which Collectors and their subordinates shall transact their duties, should be provided for, as in the case of the Board themselves, by a set

set of standing rules to be
submitted for the approval
of Government.

8 The amendments
suggested by the Board in
Sec. XXII of the Draft are
judicious and are approved.

Mr. Stokes considers Sec. IX

Reg. II of 1803 to be unnecessary,
because no penalty

is attached to the breach
of it, but the Govt. do not con-

cur in this opinion. They

think that under the
more exact and careful

observance of the law now
required, some provision

should be made giving

the Collector specific

power

Para. 13

Cornelius

85
8-11
power to summon freeholders, Parsons, and persons
not directly under his
control, whose presence
he may require, and to
inflict a fine on such persons
for contumacious re-
fusal, ^{or neglect} to attend to his calls,
as provided in special cases,
in Secs. XXVII and XXXIII of
the Draft. The Govt. concurs
with the Board in the
necessity of providing by
law for keeping Registers
of lands; for retaining the
substance of Secs. XVI to XVIII
of Reg. II of 1803, as well ^{as} for
requiring positive authority to be
given for making attachments

—ments

ments in sec. ~~XX~~ of the
same Regulation. But
they do not see the neces-
sity for enacting
the provisions of sec. ~~XX~~;
or for inserting in sec. ~~XVI~~
of the Draft Act the pro-
hibitions of sec. ~~XX~~ and ~~XXIII~~.
They are of opinion that
sec. ~~XVI~~ should be kept as
general as possible; for
if some special acts only
are specified, it will seem
to sanction others not so
particularized. They do
not also see the necessity
for retaining the provisions
of sec. ~~XXVII~~ and ~~XXVIII~~ of the
same Regulation in question.

as the case referred by
the Board could be heard
by courts.

9 On the proposed
enactments respecting
the Covenanted Subordi-
nates the Board make
no remark, and none
seems called for here.

Disqualified Proprietors

10 Sec. XXVI of the
Draft Act provides that
collectors shall man-
age the Estates of
disqualified Pro-
prietors under the
Court of Wards.
The Board propose
to omit this section,
and to treat the sub-
ject fully in the Sepa-
rate Act for the Court of
Wards.

Wards. The Government
have already expressed their
approval of the specific
provisions under this
head being included
in a separate Act, as
but they are of opinion
that as it has been
resolved to retain Sec.
XIII of the Draft, as stipu-
lating one of the functions
of the Board, so Sec. XXV
should also be retained
as specifying one of the
duties of a Collector, ~~and~~
~~that of acting as the~~
~~Agent of the Board of~~
~~Wards~~

The next subject ^{much} Judicial powers of
Collectors in Civil cases
is one of importance, viz
the judicial powers of
Collectors in Civil cases.
The

Colon 87-9

The powers of this character
are now possessed by them
are contained in two
Reg. III of 1816 and V of 1822.
Under the former, Collectors
are empowered to refer to
Chincha's claims to
lands or crops depending
on an unsettled boundary,
and also disputes between
land holders and their Ryots
respecting the occupying
cultivating, or irrigating
of lands; and by Sec. XVIII
Reg. V of 1822, this power is
extended to disputes of
the same descriptions
between Ryot and Ryot.
The former Regulation,
as

as Mr Stokes truly says,
from the complicated
and tedious forms of
proceeding which it
requires, and from the
small powers given by
it to collectors, has
practically been very
little used.

2 Regulation V of
1822 gives power to Collect-
ors to interfere between
land holders and Ryots
in the matter of distraint
and sale of property; of
exactions by land holders
from Ryots, and of
transfer of Ryots by
land lords.

Section

See III to VI

See VII

See VIII

Humphreys 88-10

Section XI emp

owers a Collector to rein-
state a Ryot dispossessed
by another Ryot.

By section XII
a Collector may refer
disputes brought before
him under this Regula-
tion to a Panchayat,
and by Sec: XIII he may
put one of the parties
in possession in the
meanwhile.

13 The state of the
Law at present is con-
fessedly uncertain and
unsatisfactory; Collect-
ors do not exercise powers
given by the law, and
they

they exercise others which
the law does not give
them. Mr Stokes' pro-
posed Enactments, in
supersession of the Regu-
lations above referred to,
are contained in five
sections, XXVII to XXXI, and
their object as described
in Para 50 of his third
Report, is to leave all
proper judicial work
to the established Courts
of the various grades.
^{Mr Stokes}
~~He~~ would make the
order of a Collector
passed as at present on
a summary enquiry,
binding till set aside
by

89-
by a Decree of some
Court, in a suit to be
instituted within a
month after the order.
Tahsildars in like man-
ner to pass orders in cases
not exceeding a certain
value, to be binding
unless appealed from
within fourteen days to
the Collector. He would
also allow the collector
to refer cases to arbitra-
tion, with or without
the consent of parties; in
the former case the Decree
to be final, in the latter
an appeal to be open by
suit in Court. In cases
referred

referred to a time here, one party to be put in possession by the collector.

In Section XXVII the cases in which Collectors and Tahsildars may thus pass decisions are defined in general terms. The remedy is to extend only to restoring possession not to giving damages; the latter Mr Stokes would leave to the courts.

14. The Board's remarks on this part of the act are contained in Paras 17 to 19 of their Proceedings. They think the

90-
the mode of treatment too brief / Para 17 / and they notice that the definition of cases given in the Draft would include some in which the revenue is not at all concerned, and which therefore they think should be excluded. Para 18. The Government concur with the Board that the sections under this heading are too brief and superficial, and that they do not adequately provide for the effectual interposition of the Collector in the numerous disputes between Ryot and Zemindar, Ryot and Munsif, Ryot and

in which it is proper that
he should have jurisdiction.
More precision
should certainly be given
to this part of the enact-
ment.

15 The Board object
to the use of the term
"Premises" in Sec. XXVII, as
introducing a large
number of disputes or
not connected with
cultivation or the cultiva-
ting Clases. The objection
seems well founded
in the case of Houses
and Shops in Towns.
But in Agricultural
Villages, there are vari-
ous kinds of tenement
not comprehended in
under the term land,
which yet are pertinent
to

Para 18

The Gov^t Pleader will
be requested, in pre-
paring the draft act,
to confine the mean-
ing of the term to
such buildings as
may be connected
with farming or
agriculture

only not even the definition
of the word premises
in the act

28

91-
to a Ryot holding and for
part of his farming pro-
perty; such are Cattle sheds
and stables, threshing floors,
stack yards, &c. It appears
to Government that
the word may stand,
with the insertion of
the term "Agricultural",
so as to confine it to
premises connected with
agriculture.

16 The Board next pro-
ceed / Para 19 / to notice
four points connected
with the Collector's ju-
isdiction in Civil Suits.

17 The first is whether
a Collector should
have power to give in-
compensation for in-
jury sustained (claim-
ages) or merely to restore
possession

proposition. The 3^d Member
(Mr. G. Maltby) was in
favor of the former course,
the Acting 3^d (Mr. Forbes)
of the latter, and the
reasons urged by both
are stated. On this sub-
ject it may be remarked
that without such com-
pensation the redress is
incomplete; that the
enquiry necessary to
ascertain the wrong
would usually be suf-
ficient to determine
also the measure of
injury sustained;
and that to require the
sufferer to go to a second
Tribunal for the latter
part of his remedy,
would be to force him
either to the cost and

inconvenience of a second
trial, or to an abandon-
ment of that part of his
right, to the gain of the
wrong doer. For these rea-
sons, the Government
agrees with Mr. Maltby that
the Collector ought to be
enabled to award damages
for injury sustained, as
well as to redress the
wrong for the future.
18 The second point
is whether Tahsilदार
shall enquire and decide,
or only enquire and report
for the Collector's decision.
The Draft act provides
that Tahsilदार may
decide up to a certain
value, and above that
value may enquire
and report for the decision
of

of the Collector, in cases referred by him. This ques-

tion came under the consid-

eration of Government

in 1858; and they then

held the opinion (in oppo-

sition to that expressed by

the Board,) that it would

be for the interests of justice

to empower Tahsildars to

decide, and not merely

to report for the decision

of the Collector. In their

Proc. B^d of Res. 23^d April /55 at 468.
By Memo. Comm. 19 May " " 606.
Form B^d of Res. 4 June " " 1410.
By Memo. Comm. 27 " " 774.

Note

This appears to be the actual state of the law at Bombay, as mentioned in the latter part of Para 60 of Mr. Stokes' report.

state of opinion is that they
be able to refer any summary
suits to Tahsildars for enquiry
and report. Under such a law,
as it seems, Tahsildars would
be empowered to hear and
decide suits preferred to them,
up to a certain limit as
to amount, but a Collector
might refer to the Tahsil-
dar for enquiry and Report,
any suit preferred to himself
no matter how small the
value of the thing sued for.
The Government however see
no reason to depart from the
view before expressed by
them. They are decided of
opinion that Tahsildars should
have the power of deciding
cases up to a certain amount,
and which ^{limit} as in Bombay (as
noted by Mr. Stokes,) might be
500 Rupees value; and they are
also of opinion that Collectors
should be empowered to refer
cases

cases up to any amount
to the Tahsildar, but al-
ways for enquiry and dis-
posal and not for report.
The decisions of a Tahsil-
dar under this rule should
be open to appeal to the
Collector or his Assistant,
within one month; and the
appellate authority should
be required on the applica-
tion of either party to examine
the evidence anew but not
to record it afresh except
when discrepancies might
appear.

19. It is very clear, as
noticed in the orders of the
Government last year, that
there is much want of regu-
larity in the proceedings of Collectors
in the exercise of their civil powers,
and the Local Council considers
it therefore very desirable that pro-
vision should be made in the draft
act

This is a copy of some
two pages of the draft
which remains to be
done.

Mr. [unclear] is
now at the [unclear]
[unclear]

94-16
Thompson
act for the transmission
to the Sudr Nadwat of
monthly Returns of all
cases decided by Collectors,
and also by the Tahsil-
dars, under the powers
now proposed to be given
to them. The Returns
should be prepared much
in the same form as
those which exhibit the op-
erations of the civil courts.

20. The third point
noticed by the Board re-
lates to cases wherein
Govt. is interested, as
the unauthorized occu-
-pation of waste land,
or the unauthorized ap-
-propriation of water
from

from a Govt. work-
As respects the appro-
-priation of water,
provision for the pre-
-vention or redress of
all such wrongs is
made in Sec. I of the
Draft Act for the protec-
-tion of Irrigation works
now before the Legisla-
-tive Council, on the
offender may be sued
in the civil courts.
With regard to the
occupation of Waste
land, the Govt. are of
opinion that a power
of Ejectment should be
vested in the collector,
who

95.
Halyburton
who is the Officer in
charge of Govt. lands,
and that provision
should accordingly be
made in the present
Draft Act. The Govt.
do not find that in
their order of 8th May, they
expressed such an opi-
-nion as the Board suppose
in Clause III of Para 19 of their Resolutions
21. The fourth and
last point noticed is the
settlement of boundary
disputes when they occur
between Villages of differ-
ent Districts. The Board
remark that this subject
requires careful considera-
-tion, but they for bear
to

to dwell upon it for the
~~some what singular~~ ^{reason}
reason that a Draft act
on the subject was sent
to the Supreme Court in
1835, or 21 years ago.

The Draft referred to,
^{however} does not in fact provide
for the settlement of
boundary disputes at
all; its purport, so far
as it relates to this
subject, is to provide
(Secs. VII and VIII) that
in a claim to land, or
respecting the occupying,
cultivating, or irrigating
of land, on the borders
of a District, where
doubts

90 18
96-
doubts may exist as to
the District to which
the land belongs, juris-
-diction shall be ex-
-ercised by the Court or
the Collector (according to
the nature of the case)
whose Court or head
station shall be near-
est to the spot. This

Draft never became
law. The Board however appear to have
overlooked the late act for
the settlement of bound-
-aries, No 20 of 1855;

which in the opinion
of Govt. ^{fully provides} for the case now
stated by them. ⁱⁿ
^{of that act}
In Sec. I, it is enacted
that it shall be lawful
for

for any revenue Officer appointed by Govt. for the purpose, to fix the boundaries of estates, or Villages; and this applies to Villages, on the borders of a District as well as elsewhere. All that will be required in such cases, is that Govt. should name the Officer, and his decision will then be legally valid.

22. The last part of the Draft act relates to the Criminal powers of Collectors, viz their powers of punishing cases

The Govt are however of opinion that provisions might be conveniently made in the act and no-based, for the Collector, or any one of his subordinates, to be nominated by him being always the officer to decide boundary disputes between villages within his District, the

it will be better must this power in the Collector can any officer appointed by him without requiring a reference to Govt.

the only remedy for accepting a claim of a village or estate in the act.

Criminal powers of Collectors See XXXII to XLII.

Provisions of Act XX of 1855 being left applicable to disputes between villages situated in different districts.

97- cases of malversation in their subordinates.

The offences cognizable are described in terms similar to those of Regulation IX of 1822, but much more concisely, and with some omissions which might be dangerous, for example, in that fourth item, the making false entries in the accounts or records, the mention of the "extent, value, description or assessment of land" is omitted, being apparently intended to be included in the general term "property under the Collector's superintendence." In a criminal law commission is dearly bought at the expense of clearness; yet for the sake of saving two lines, the legal

legal meaning of that
passage is seriously com-
promised. The omission
should be supplied in
the draft.

For procuring
the attendance of parties
and witnesses, Collectors
are to have the powers of
Magistrates.

In general the
substantive provisions of
the draft resemble those
of the existing law, but
there are a few important
differences. In the first
place the Collector's power
of punishment is proposed
to be limited, in bribery
or embezzlement, to cases
where the amount proved
does not exceed 100 Rupees;
and in falsification of
accounts or records, to a
fine of two months pay

98-
or imprisonment for two
months. In all other cases,
the offenders are to be
committed to the Criminal
Court.

Cases within the
Collector's jurisdiction, and
decided by him, to be
appealable to the Board
of Revenue only.

The act of giving
a bribe is also made a
punishable offence.

The two concluding
Sections re-enact concisely
the provisions of certain
Regulations and Acts
enabling Collectors to in-
flict punishment in
certain cases, and to
institute proceedings
against District Munsiffs
for malversations.

23 The Board
must look to the remarks on this part of
the printings

the Draft are contained
in pages 20 to 34 of their
proceedings. For the most
part they agree with
Mr. Storer; but they
differ on some minor
points.

They first consider
the question whether it
is necessary that Collectors
should possess any penal
powers over their subor-
dinated, other than those
of heads of Office gene-
rally; and they arrive
at the conclusion for
the reasons stated in
pages 22 to 25 that such
power is necessary, but
that it should be confined
to cases of minor im-
portance, those of greater
magnitude being com-
mitted to the Criminal
Courts.

In

to be in the
the title to the Legislative
Commission

If such a change of
terminology is made, it

will be inserted gene-
rally, that the term

is not to be used

in the title to the

Commission

to be inserted in

the title to the

Commission

to be inserted in

the title to the

Commission

to be inserted in

the title to the

Commission

to be inserted in

the title to the

Commission

to be inserted in

the title to the

to this meaning

*
the private servants of
Commissioned Officers
employed in the Public
works & establishments
being also made
amenable to the Act
of the Act.

Page 99 - 99 21

In para 27 they
suggest amendment of
Section XXXII of the draft,
so as to make it include
the private servants of a
Collector, and exclude those
classes of Officers who are
not removable without
the sanction of Government;
they also notice the omission
already adverted to in
the definition of the
officers punishable. The
amendment here sug-
gested should be made;
The term "Unsubordinated
Servant on his Establish-
ment", the Government
presumes includes Magis-
terial as well as Revenue
Servants. Yet as the
expression may give rise
to disputes similar to those which
have arisen under the old law,
it is desirable that it
should

should be distinctly explained
to include the members of
both Establishments, as well as
servants of a similar class in the
D. of W. The Board object
that in section ~~XXXIII~~

powers given to Collectors
in sec. ~~XXXIII~~
for compelling the attendance
of parties and witnesses
are those of Magistrates,
while those given in sec.
tion ~~XXVII~~ are those of
the Civil Courts. There
is a reason for this dif-
ference, however, viz that
in the first mentioned
case the proceedings are of
a Criminal character, and
in the latter of a Civil; and
it appears to Government
that the provisions of the
Draft should remain
unaltered in this respect.

The Board object
to section ~~XXXIV~~ that it
gives the Collector the power

which would not be
well to make the provisions
of this part of the Act
applicable to Members
of the Board; as they
are subject to law
Para 28. have no
other
office

The Criminal

Para 29

100-
of unlimited fine and
imprisonment; this how-
ever is an oversight it has
escaped the Board's notice, that
the succeeding Section A
fixes a precise limit.
24. Section ~~XXXV~~ de-
termines the power of
punishment to be possessed
by the Collectors and by
the Criminal Courts, res-
pectively. Collectors are
to be allowed, as already
said, to punish in cases
of bribery and embezzle-
ment when the proved
amount does not exceed
100 Rupees; and in
cases of fraud in respect
of accounts or records,
to fine to the extent of
two months pay or to
imprison for a period
not exceeding two months.
The powers of the Criminal
Courts to extend to levying
double

double the proved amount
corruptly received, or to
imprison for ~~five years~~
In the second class of
offences the only punish-
ment allowed is impris-
onment not exceeding
five years; no powers of
fining is given, probably
by an oversight.

The Board think
the powers then given to the
Collector insufficient. They
would give him juris-
diction in cases of bribery
and embezzlement to the
proved extent of 250 Rupees,
involving a power of
levying 500 Rupees ^{fine} with
a proviso that the im-
prisonment in default
should not exceed one
year. In the second
class of offences, they
would leave him his
present

not more than five years with
or without hard labour
not more than

with or without hard labour

50
of

Thompson 10-23
present powers, viz a
fine of 500 Rupees, or
imprisonment for twelve
months. The Government
concur in the expediency
of extending the Collector's
powers as recommended
by the Board. They would
thus generally include
all offences by Village
Officers and inferior
Revenue Servants, -
which it is desirable
should be settled by
the Collector at once.

The Board pro-
pose to supply the
apparent omission in
the Draft Act by
giving the Criminal
Courts power to fine
to the extent of 500
Rupees in cases of
the second class, viz
fraud

found in the matter of
accounts and records,
the fine to be commu-
table to imprisonment
not exceeding five years.
To this proposition the
Government see no objec-
tion.

15 The Board object
to the power of punishing
for the giving of a bribe,
provided in Section
~~XXXVI~~, as being likely to
impede justice by deterring
parties from complaining.
They think that instead
of this Section, it might
be advisable to declare
that where the amount
of a bribe is recovered
from a public servant,
it shall not be claimable
by the briber, but shall
be considered forfeited,
and

102- 24
and be paid into the
Treasury. The Government
fully agreed with the
Board in disapproving
of the provision of
the draft in this par-
ticular; and they
are disposed to regard
even the modified
penalty on the briber
proposed by the Board
as impolitic. They
consider that it will
be better to provide
for the refund to the
briber of any sum
recovered from the
taker, ~~except~~ where

Section must not
be - 18

~~particular circumstances~~
as the opinion of the Collector
~~may exist~~ to make
that course proper.

26 In para 33
the Board take up
the important subject
of

27. In the close of
their Proceedings (paras
35 to 38) the Board ad-
vert to a subject not
found in Mr. Stokes'
Draft Act but on which
they think it necessary
to legislate, viz. the fair
liability of zemindars
and Enamdars to keep
in repair works of
irrigation on their pro-
perties. The Board
point out that the neglect
of these works may and
does injuriously affect the
interests of the ryots who
hold land dependant
on them; and that
though a well regulated
self interest would lead
the proprietors to keep
the works in repair, yet
as a fact that motive
is not sufficient. They
argue

104-26
argue therefore for a
law on the subject, -
but they give no opi-
nion as to the scope
and provisions of such
a law, merely saying
that its treatment
would require much
consideration and care.
This subject was
brought before the Board
by the Collector of
Madura in a letter
which they lately sub-
mitted to Government
with their review of
Mr. Stokes' draft act
on the subject of Enams,
wherein they noticed
a second suggestion
in the same letter.
28. The views stated
by Mr. Parker and
supported by the Board
appear undeniably
sound.

seem, though certainly
so far as concerns ge-
mundars holding under
permanent tenure, do
they seem to be opposed
to those maintained
solely by the Board on
the question of the
liability of zemindars to
make and maintain
roads. The Govt are of
opinion that the neces-
sary enactment for
giving these views effect
might be introduced
without much improperly
in the present Act,
among the duties of
Collectors, and the
Board will be good
enough to submit for
the approval of Govt
a detail of the pro-
visions which they
would propose to include

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N 2660 P 2 to 7.

in

105
in the Act on this subject
29. The second point
alluded to in Mr. Parker's
letter (para 7) is the in-
convenience experienced
by Revenue Officers in
cases where a Village
is held in shares by a
number of zemindars,
from there being no one
who can transact business
on behalf of the whole.
Mr. Parker proposes
therefore that in such
cases the Collector
shall be empowered to
call on the share hold-
ers to elect a Manager
for the transaction of
the Village affairs with
the Revenue Officers.
The suggestion appears
a good one, and the
Govt are of opinion that
the provision would
come better in the
present

present act than in
that for Enams, the
chief scope of which will
be the investigation of
titles. The details might
be settled in a few sec-
tions, and the Board
are requested, as in
the previous case, to
submit a draft of the
provisions which they
would propose. The
Collector should be
empowered to nominate
a Manager for the Enams:
~~and also should~~
~~be added, to appoint~~
~~and~~ finally, in the event
of the share-holders
failing to make the no-
mination within a
certain fixed time after
proper notice given.

30 With the report
from the Board of Revenue
above

27 May 56 No 60.

106
above recorded, the Govt.
have also had under
consideration a letter
from the late Commis-
sioner in the Northern
Circuit, containing his
review of Mr. Stiles' pro-
positions and Draft Acts,
in pursuance of the
requisition contained
in Extract from Board
of the 10 January 1856.
That letter is designed
to take in the whole
subject, while the Board's
present report compre-
hends only one of the
three parts in which
they have treated it.
But Mr. Goldingham does
not notice the third of
those parts, viz Enam
law; he only treats of
the settlement and
collection of the Revenue,
and

and the powers and
duties of Revenue Officers.
After some preliminary
remarks, Mr. Golding-
ham observes in paras
5 and 6 that the ar-
rangement of the Acts
might have been more
lucid, and he submits
a skeleton Draft designed
to accomplish such
clearer arrangement.
He then considers two
points, viz^t whether
appeal to the Courts
should be allowed in
civil cases wherein
Revenue Officers have
primary jurisdiction,
and whether it is neces-
sary to give the Collector
criminal powers for the
punishment of malver-
sation by his subordinates.
The report closes with
some

107-
some remarks in expla-
nation of the skeleton
draft Act. These two
points, as well as the
others treated of
more briefly by Mr.
Goldingham have al-
ready been considered
above in connection with
the Board's observations,
and the Gov^t therefore
do not consider it ne-
cessary to review the
paper in detail.
34. The Gov^t resolve
to communicate the pre-
going remarks to the
Gov^t Pleader, together
with copies of Mr. Stokes'
Third Report and
Draft Act and of the
Proceedings of the Board
of Revenue above recorded,
with the request that
he will with a little
delay

delay as possible prepare
a draft Act in accordance
with the views expressed
by Govt for transmission
to the ^{Members of the Legislative Council} ~~House of Lords~~. c. 112. Dale D. 11
~~By~~ will communicate
freely with the Board
of Revenue on any point
wherever he may be at
a loss how to proceed, and
will submit his draft
to Govt through the Board
when completed.

Sgt
J. P. H.
Jany 8

1-108-

Me. 1857 Deput
By to Cons. 24 Feb
N 173

Extract from the
Min. of Cons.

Dated 18th February

Extract from Vol. 15th of the
N 575 of Cons.

Communicating to
Government Pleader, certain
together with copies of all
3rd Report and Draft of
of the Proceedings of the
Revenue, on the Revision of
Law of this Presidency, and
ing him to prepare a Draft
in accordance with the view
Government, for transmission
the Chattras Members of the
Native Council.

N^o 1 to 3

END

11-7-01
11-5-12
16-6-13
13/3/16 ✓