Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 1623

DATED 22nd May 97.

[Despatch Abstract.]

Copy of papers noted on the 21st instant regarding the Kamudi-Kapa Tenure question & Mr Brodribb's visit thereto &c.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I,

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjām.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, *dated* 21*st April* 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Revenue (189) Department.

CURRENT No. 1177

From

The Govt. Solicitor,
Madras

der this c

No. 307

Dated 17th May 1897

Received

Registered

Enclosures 7

Spare copies

SUBJECT.

Forwarding his opinio
re: the defence of the suit
instituted by the Zemind
of Parla against the
Fund Board of the
&c.

BACK PAPERS.

G.O.	No	Department	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date

Emergent.

O P I N I O N

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Re

The defence of the Suit instituted by the Zemindar of Parla against the Local Fund Board of the Ganjam District for the recovery of certain amount of land cess collected from him (G.O. Mis No 2221 dated 8th May 1897 Revenue Department)

.....$$$.....

1. The Plaintiff is of course, a land holder as defined in Section 6 (XI) of Madras Act V of 1894, in respect of the Zemindari of Parla. But the real question is whether he is Zemindar or landholder quoad the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement to the Plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under Section 1 of Regulation XXV of 1802, the permanent assessment of the land tax was made exclusive of lakhiraj lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit rents, the Government having reserved to itself absolutely the right to be done or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXVI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on Zemindari tenure under the Permanent settlement is the one

interest of land since the lands were alienated. Whether the lands had been granted wholly free of rent [illegible] a suit rent is immaterial, for both these descriptions of land were, under Section 4 of Regulation XXX of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. At the time of the permanent settlement any suit rent was payable to the Zemindar, but [illegible] was continued in the [illegible] as not liable to be enhanced, and, as a matter of right, it was expressly so provided in the Sanads. The alienees so long as Government continue the exemption, are landholders, whether the lands be enfranchised or not. The definition of land-holder (Section 2 (11) of Act X of 1859) includes [illegible] landholders and the term [illegible] the Plaintiff [illegible] the Zemindar; and the alienees [illegible] prior to the permanent settlement in the interior and [illegible] liable to pay [illegible] portion of the rent payable (i.e., [illegible]) for the [illegible] proceeds of the [illegible] but, [illegible] of [illegible] to [illegible] or, under the [illegible] the [illegible] exemption from [illegible] evident that Act X of 1859 does not exhaust [illegible] The definition of [illegible] the latter Act [illegible] not, as in the [illegible] from [illegible] but [illegible] fines [illegible] as a [illegible] to pay rent to [illegible] the latter Act defines him as a person occupying lands [illegible] land-holder, whether paying rent to [illegible] land-holder or not. [illegible] by the Plaintiff in this case, to [illegible] all other attributes [illegible] that the [illegible] in the [illegible] of the [illegible] the [illegible] is [illegible] There is nothing [illegible] Regulation [illegible] of 1859 or in any other [illegible] to the [illegible]

basis on which the permanent assessment was to be fixed. In some cases, probably in the majority of cases, the [illegible] a certain percentage on the estimated receipts realizable by the Zemindar. But in other cases the [illegible] was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject matter of the permanent settlement are defined by Section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

[illegible] alienated by the Collector in the alleged exercise [illegible] the Zemindar while [illegible] alienated prior to the permanent settlement [illegible] unable to decide to [illegible] Regulations [illegible] of more as [illegible] -lately [illegible] Government [illegible] the basis on which land pays its royalty to the [illegible] land represents substantially the relation [illegible] public may have assessable on the land, [illegible] possibly have any [illegible] interest therein; and even the land itself would not revert to the Zemindar in the absence of the heirs of the last holder, but would escheat to Government. (vide I. Act. c 28) There are, no doubt, instances of Zemindars [illegible] recently acquired, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled Zemindari but on the same terms and subject to the same liabilities as [illegible] persons from whom they acquired the same held.

[illegible]

[illegible] Barclay

Government Solicitor

Madras.

[illegible] Secretary to Government

Revenue Department.

Fort St. George.

[illegible] 14th May 1897.

[illegible].

No. 307.

[illegible] forwarded with enclosure a reference to the order of [illegible] Government Miscellaneous No. 2321 dated 8th May 1897 Revenue Department.

Ernest Barclay

for Government Solicitor

18/5/97

[illegible] Revenue (1897) Department

GOVT. OF MADRAS

18 MAY 97

Ernest Barclay

Government Solicitor

Madras.

The Secretary to Government

Revenue Department.

Fort St. George.

[illegible] 14th May 1897.

[illegible].

No. 307.

[illegible] forwarded with enclosure a reference to the order of [illegible] Government Miscellaneous No. 2321 dated 8th May 1897 Revenue Department.

Ernest Barclay

for Government Solicitor

18/5/97

Read again G.O. No 2324 & 8.5.18
C. No 4177

Hon: Mr Grose C. J. E

G.O. Misc. No. 2623 of 22nd May '97.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Hon'ble the Advocate General herein transmitted.

21/5/97

21/5/97

CJR.
20/5

Mr. Reid (L. R.)

Mr. Ends returned with the Advocate General's opinion (in original below returned)

Note.

The Advocate Genl is of opinion that the suit is likely to be thrown out on technical grounds though on the merits of the case he considers that in respect of two of the villages the land cess is not leviable from the Zemindar.

keeping 6
21/5/1897

5/97

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Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1148, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor)

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant,-not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

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To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, *dated* 21*st April* 1897.

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2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

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* I.L.R., XVI Madras, 40.

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2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } 1877. *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (*Land Revenue*), *Mis. No.* 1448, *dated* 21*st April* 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjām.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, *dated* 21*st April* 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (*Land Revenue*), *Mis. No.* 1448, *dated* 21*st April* 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, *dated* 21*st April* 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 17 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

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Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

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(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

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(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the aliences were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The aliences so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alience thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } 1877. *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd.	1877.	*Enclosures*
Read.		*Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1148, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } 1877. *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjām.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1853, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjam, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1861 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1861, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector". The suit as now framed is not a suit against the Collector, and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15th May 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers:—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper:—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper:—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1852, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjam.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjām.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

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G.O. No. 2623, 22nd May 1897.

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2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15th May 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } 1877. *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver. \

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-1-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjam.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokbassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } 1877. *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1148, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, *dated* 21*st April* 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1852, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjam.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd.	1877.	*Enclosures*
Read.		*Spare copies*

G.O. No. 2623, 22nd May 1397.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers:—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper:—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper:—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } 1877. *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (*Land Revenue*), *Mis. No.* 1448, *dated* 21*st April* 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjām.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, *dated* 21*st April* 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjam.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 1 of Regulation XXV of 1802, excluded from the permanently settled estate and the aliences were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The aliences so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alience thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjam for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector". The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1881. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } 1877. *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1148, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1148, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj* or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the aliences were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The aliences so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alience thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 619.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector." The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1397.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such land-holder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor)

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector". The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd.	1877.	*Enclosures*
Read.		*Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers:—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper:—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1148, dated 21st April 1897.

Read—the following paper:—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1148, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 1 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjam.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor)

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the aliences were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The aliences so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alience thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjam District Local Fund Board" instead of against the Collector of Ganjam. Even if the plaint were allowed to be amended by substituting the Collector of Ganjam for the District Board of Ganjam the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1861 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1861, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 619.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector." The suit as now framed is not a suit against the Collector, and the suit is only against the District Board of Ganjam which is a body incorporated under section 17 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjam; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15th May 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1852, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15th May 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1397.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

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Read—the following papers :—

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Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

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2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjam.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (*Land Revenue*), *Mis. No.* 1448, *dated* 21*st April* 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjām.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, *dated* 21*st April* 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such land-holder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alience thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } 1877. *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, *dated* 21*st April* 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1850, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjam.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd.
Read.
1877.
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G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

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G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

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To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, *dated* 21*st April* 1897.

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2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.
,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1881 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1881. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1148, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjam.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor)

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the aliences were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The aliences so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjām.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such land-holder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 1 of Regulation XXV of 1802, excluded from the permanently settled estate and the aliences were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alience thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector, and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

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Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, *dated 21st April* 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjām.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent. I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd.	1877.	*Enclosures*
Read.		*Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjām.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjām.

No. 2623, Revenue, 22nd May 1897.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honorable the Advocate-General (through the Government Solicitor).

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 1 of Regulation XXV of 1802, excluded from the permanently settled estate and the aliences were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The aliences so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alience thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent-value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd.	1877.	*Enclosures*
Read.		*Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1448, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjam.

No. 2623, Revenue, 22nd May 1897.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 1 of Regulation XXV of 1802, excluded from the permanently settled estate and the aliences were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The aliences so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alience thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } 1877. *Enclosures*

Read. } 1877. *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Lôcal Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

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Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

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2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

" Collector of Ganjām.

Order—*Mis. No.* 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor)

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act. V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1884).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector". The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd.	1877.	*Enclosures*
Read.		*Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1148, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, *dated* 21*st April* 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit. As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but, that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 10.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

" Collector of Ganjām.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor)

II

Letter —from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1881).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjām District Local Fund Board" instead of against the Collector of Ganjām. Even if the plaint were allowed to be amended by substituting the Collector of Ganjām for the District Board of Ganjām, the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land-cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as it it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector" The suit as now framed is not a suit against the Collector; and the suit is only against the District Board of Ganjām which is a body incorporated under section 17 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjām; and the written statement should be on behalf of the defendant, not defendants.

Madras.
15th May 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Read. } 1877. *Enclosures*

Read. } *Spare copies*

G.O. No. 2623, 22nd May 1897.

Sanctioning, with remarks, the defence of the suit instituted by the Zamindar of Tarla against the Local Fund Board of the Ganjām district.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following papers :—

I

G.O. Mis. No. 2321, Revenue, dated 8th May 1897.

Read—the following paper :—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1148, dated 21st April 1897.

Read—the following paper :—

Letter—from H. D. Taylor, Esq., I.C.S., Acting Collector of Ganjam.
To—the Secretary to the Commissioners of Land Revenue and Forests.
Dated—the 23rd March 1897.
No.—Ref. on C. 21-Ver.

Resolution—Mis. No. 1448, dated 21st April 1897.

Submitted to Government.

2. The Zamindar of Tarla has instituted a suit against the Local Fund Board of the Ganjām district praying for the refund of Rs. 1,031-4-0 levied from him as land-cess due on the villages of Kambarigam, Rittapadu and Chinanchala, and for the payment of interest or damages at the rate of 1 per cent. per mensem from the date of collection. He alleges that Kambarigam and Rittapadu had been granted as jaghir villages before the date of permanent settlement, that the third village Chinanchala was also recently declared by the High Court to have been assigned for the maintenance of certain relatives of the zamindar before the permanent settlement, and that whether the villages were granted subsequent to the date of permanent settlement, as assumed by the Local Fund Board, or before that date, the land-cess due thereon should have been levied from the present holders thereof and not from him.

3. The local Government Pleader, who was consulted in the matter, states that the suit is defensible only in so far as the levy of land-cess on the village of Chinanchala, which was described as jeroyati at the time of the permanent settlement, is concerned, and that the High Court's judgment referred to in the plaint is not binding either on Government or on the Local Fund Board as they were not parties to the suit As regards the other two villages which were described as jaghir (or mokhasa) at the time of permanent settlement, the Local Government Pleader is of opinion that they fall under the class of *lakhiraj*, or favourably assessed lands, which were excluded from the permanent settlement under section 4 of Regulation XXV of 1802, and that the right to fully assess such lands or villages having been reserved to Government under sections 12 and 13 of the regulation, the jaghirdars must be taken to be holding the villages under Government, and to be liable to pay land-cess on the villages direct to Government, and not through the intervention of the zamindar. He adds that the High Court's judgment communicated with Board's Proceedings No. 55, dated 13th February 1897, does not give any reasons for the finding regarding the liability of inamdars holding lands from a zamindar free of rent to pay one-half of the local cess under section 73 of the Local Boards Act, but that it appears, from the circumstances of the case, to refer only to inams granted subsequent to and not before the permanent settlement. As the question involved is one of general importance, the Collector suggests that the opinion of the law officers of Government may be obtained in the matter.

4. The Collector quotes Board's Proceedings No. 9052, dated 26th December 1868 (relating to the Hantghur mokhasas suit), as laying down that zamindars possess a reversionary right to jaghirs granted prior to permanent settlement and that so far as the Ganjām district at any rate is concerned, the peshkash was based on a rough estimate of the revenue of the zamindaris as a whole, but not upon any detailed account. The orders of Government on this point not being traceable in his office, the Collector holds that the question whether the reversionary right to jaghir villages granted before the permanent settlement rests in Government or in the zamindar of the estate, in which they are situated, has not yet been definitely settled; but, being personally of opinion that such villages should, except as a matter of grace, revert to Government and not to the zamindar, he considers that the only defence to the present suit lies in the position that the kattubadi payable to the zamindar by the holders of the jaghirs having been included in the assets on which the peshkash was based, the zamindar is liable to pay revenue to Government in respect of the jaghir villages and, as such, is a landholder liable to pay land-cess on the jaghirs within the meaning of section 3 (XI) of Act V of 1884. Mr. Taylor requests that the opinion of the Government Pleader may be obtained as to the sustainability of this position.

5. Though the report of the Advocate-General and the Government Pleader, which are referred to in G.O. No. 690, dated 15th March 1869, passing orders on the subject of the resumption of mokhasa villages in the Hantghur estate have not been communicated to the Board, it appears to have been definitely settled that the right to fully assess jaghir villages, granted before the permanent settlement, vests legally in Government and not in the zamindar. Further, this right having been exercised by Government in the case of two villages situated in the Tarla zamindari now in question so early as 1850 (*vide* paragraph 9 of Mr. Forbes' letter No. 149, dated 2nd September 1858, disposed of in Board's Proceedings, No. 4173, dated 10th November 1858, and paragraph 3 of G.O. No. 1626, dated 6th December 1858), it is not now open to Government to contend that the reversionary right vests in the zamindar for the reasons given in Board's Proceedings No. 9052, dated 26th December 1868, referred to in paragraph 4 above. It thus appears that the suit, in so far as it relates to the levy of land-cess on the jaghir villages of Kambhangam and Rittapadu, can be defended only on the ground urged by the Collector. The Hon'ble Mr. V. Bhashyam Aiyangar has in another connection given it as his opinion that in the case of a rent-free grant made by the Zamindar of Biredi in the Ganjām district before the permanent settlement, land-cess on the lands granted is by law leviable only from the holder thereof or the grantee of the lands and not from the grantor. The question involved in the present case thus resolves itself into this: viz., whether the mere circumstance of the inclusion in the assets of the zamindari of the kattubadi or favourable rent on jaghir villages payable to the zamindar makes a difference as regards the liability of the zamindar to pay land-cess on the villages. The High Court has held * that, for the purposes of the Rent Recovery Act, a person holding inam lands, subject to payment of kattubadi to a zamindar, is a tenant of such landholder. But under section 3 (XII) of Act V of 1884, a tenant is a person who not merely pays rent to a landholder (as under the Rent Recovery Act) but also occupies land under such landholder; and the question arises whether a mokhasadar, who pays kattubadi to a zamindar and can be made to pay the difference between the full assessment and the kattubadi to Government at its will, can be said to be occupying land under the zamindar, until Government exercises its right to levy full assessment. As the value of the suit exceeds Rs. 1,000, the papers are submitted for the orders of Government; the question involved being one of general importance, the Board requests that the advice of the Honourable the Advocate-General may be obtained in regard to the defence of the suit, of which the first hearing has been fixed for 1st June 1897.

* I.L.R., XVI Madras, 40.

(True Extract.)

R. C. C. Carr,
Secretary.

To the Secretary to Government, Revenue Department, with Collector's letter and its five enclosures in original to be returned.

,, Collector of Ganjam.

Order—Mis. No. 2321, *Revenue, dated 8th May* 1897.

The Honourable the Advocate-General will be requested to favour the Government with an expression of his views in regard to the defence of the suit. The first hearing has been fixed for the 1st of next month.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Honourable the Advocate-General (through the Government Solicitor).

II

Letter—from Ernest Barclay, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—Ootacamund, the 17th May 1897.
No.—307.

Abstract.—Forwarding with enclosures with reference to the Order of Government, Mis. No. 2321, Revenue, dated 8th May 1897, the following opinion of the Advocate-General, Madras:—

Opinion.

The plaintiff is, of course, a landholder as defined in section 3 (XI) of Madras Act V of 1884, in respect of the zamindari of Tarla. But the real question is whether he is zamindar or landholder *quoad* the three villages in respect of which land-cess has been levied from him. In my opinion he is not, if the villages had been alienated prior to the permanent settlement by the plaintiff's predecessors in interest, reserving only a quit-rent denominated either jodi or kattubadi. Under section 4 of Regulation XXV of 1802, the permanent assessment of the land-tax was made exclusive of *lakhiraj* lands (or lands exempt from the payment of public revenue) as also of other lands paying only favourable quit-rents, the Government having reserved to itself absolutely the right to continue or not such entire or partial exemption of payment of the public revenue. The effect of this is that the estate which is permanently settled is the estate exclusive of the said two descriptions of lands, that is, lands wholly or partially exempt from liability to pay public revenue. The preamble to Regulation XXXI of 1802, which was subsequently passed prescribing rules for trying the validity of the titles of persons holding or claiming to hold lands exempt from the payment of revenue and for determining the assessment to be imposed thereon, expressly declares that the permanent settlement under Regulation XXV of 1802 was exclusive of lands of every description alienated prior to such settlement. The estate, therefore, held on zamindari tenure under the permanent settlement is the old zamindari of Tarla *minus* the lands thus alienated. Whether the lands had been granted wholly free of rent or reserving a quit-rent is immaterial, for both these descriptions of lands were, under section 4 of Regulation XXV of 1802, excluded from the permanently settled estate and the alienees were thereafter to hold those lands under Government in the sense that Government might at its discretion either continue their exemption from or assess them to public revenue. If at the time of the permanent settlement any quit-rent was payable to the zamindar, that alone was continued in his favour as a *rent charge* which was not liable to be enhanced, and, if I remember right, it was expressly so provided in the sunnads. The alienees so long as Government continue the exemption are inamdars, whether the inams be enfranchised or not. The definition of landholder [section 3 (XI) of Act V of 1884] includes amongst others zamindars and inamdars. *Quoad* these villages the plaintiff is not the zamindar; and the alienee thereof prior to the permanent settlement is the inamdar and as such the landholder liable to pay land-cess for the villages. According to the decision of the High Court (I.L.R., 16 Madras, p. 40) for the purposes of the Rent Recovery Act, an inamdar subject to payment of kattubadi to a zamindar is a tenant of such landholder.

Under the same Act, the inamdar is the landholder and the ryots in occupation of the lands are his tenants. But it is evident that Act V of 1884 does not contemplate such state of things. The definition of landholder in the latter Act does not, as in the Rent Recovery Act, include persons farming lands from zamindars, inamdars, etc. The former Act defines a tenant as a person bound to pay rent to a landholder; whereas the latter Act defines him as a person occupying lands *under* a landholder, whether paying rent to such landholder or not.

2. The admission by the plaintiff in this case, to which the Collector attaches importance, namely, that the kattubadi was included in the assets on the basis of which the peshkash was fixed is immaterial. There is nothing prescribed in Regulation XXV of 1802 or in any other regulation as to the principle and basis on which the permanent assessment was to be fixed. In some cases, no doubt and probably in the majority of cases, the peshkash was fixed at a certain percentage on the estimated gross receipts realizable by the zamindar. But in other cases the peshkash was fixed on other considerations without any reference to such estimated receipts. What rights Government reserved to itself and what alone was the subject-matter of the permanent settlement are defined by section 4 of the Regulation. The fact that certain receipts are included in the assets or excluded therefrom cannot decide what was legally included in the permanent settlement and what was legally excluded therefrom; but it will be relevant in determining whether an alienation in question was made prior or subsequent to the permanent settlement. Probably, in several cases in estimating the assets of the estate which was the subject-matter of the permanent settlement, receipts from articles of revenue which by law were reserved to Government and were excluded from the permanent settlement were erroneously included, just as receipts from lands included in the permanent settlement might have been erroneously excluded.

3. Another point referred to by the Collector is the alleged reversionary right of the zamindar of the mokhassa villages which I take to be villages alienated prior to the permanent settlement, reserving only a quit-rent I am unable to see how he can have any reversionary right in articles of revenue which by law were absolutely reserved to Government. The basis on which land-cess is payable is the rent value of the land representing substantially the melvaram or public revenue assessable on the land. He cannot possibly have any reversionary interest therein; and even the land itself would not revert to the zamindar in the absence of the heirs of the last holder but would escheat to Government (*vide* 3, Appendix I, page 92). There are, no doubt, instances of zamindars subsequently acquiring, by purchase or otherwise, lands which had been alienated prior to the permanent settlement. But such lands are held by them not as part of their permanently settled zamindaris, but on the same tenure and subject to the same incidents as the persons from whom they acquired the same held.

4. Under Act V of 1884, the land-cess in respect of the villages in question should be levied under section 64 (ii) and section 73, from the inamdar; and he in his turn, will, under the proviso to section 73, be entitled to recover from his tenants, if any, one-half of the amount of such cess as if it were in arrear of rent due to him. In cases in which the inamdar has to pay jodi to a zamindar, the land-cess payable on that portion of the rent value which is equal to the amount of jodi should, in justice and equity, be contributed in equal shares by the tenant, if any, of the inamdar and the zamindar to whom the jodi is paid. In any revision of Act V of 1884 provision might be made for this by enabling the inamdar to deduct from the jodi one-half of the land-cess assessable on the jodi.

5. If, as stated, one of the three villages was in reality alienated subsequent to the permanent settlement, though in a certain suit between a zamindar and a third party it was erroneously decided otherwise by the High Court, the plaintiff, and not the alienee, so long as it is not separately registered and assessed, will be the landholder in respect of that village for the purposes of the cess leviable under Act V of 1884. A reference to section 3 (XI) will show that none of the classes of persons therein enumerated except the zamindar can possibly be regarded as the landholder of such village. And section 57 (i) clearly lays down that the land-cess is leviable on the annual rent value *of all occupied lands on whatever tenure held*.

Being part of the estate which was permanently settled and not having been separately registered and assessed with the proportionate peshkash payable in respect thereof (in which case it will become a separate zamindari and the owner thereof a landholder), the plaintiff as the zamindar is the landholder thereof within the meaning of the Act. Though it may, in fact, be held under the zamindar by a person who pays him no rent or only a favourable rent, the land cannot be regarded as inam because it is liable to the payment of the public revenue, namely, the peshkash fixed on the zamindari of which it is a part, and the holder thereof is therefore not an inamdar within the meaning of the regulations or of the Act (V of 1881).

6. There is one point which will probably prove fatal to the suit and that is that the suit is brought against the "Ganjâm District Local Fund Board" instead of against the Collector of Ganjâm. Even if the plaint were allowed to be amended by substituting the Collector of Ganjâm for the District Board of Ganjam the suit as against the Collector would be deemed under section 22 of the Indian Limitation Act XV of 1877 to be instituted only when he is so made a party. Under the Act though the levy of the tax is determined upon with the approval of the Governor in Council by the District Board, yet the tax is levied by the Collector and payable to him, and the decision of the Collector as to the rent value of the land is appealable to the Board of Revenue. And the instalments for payment of the land-cess are fixed by the Collector under the general orders of the Board of Revenue, without reference to the District Board. And section 73 expressly says that the land cess is payable to the Collector or other officer empowered by him to receive it. No doubt section 149 imposes upon the Collector the obligation of paying to the District Fund the land-cess collected under the authority conferred on him by the Act. Other taxes under the Act are levied and collected by the Local Board itself and not by the Collector. So far as the land-cess is concerned, which is levied by the Collector and on default of payment realized as if it were an arrear of land revenue, he cannot be regarded in law as acting as an agent of the District Board. The scheme of the Act seems to be that the Collector of the district as such is authorized to take all the preliminary steps for assessing the land-cess and to levy and collect the same.

7. Viewing the suit as one against the Collector and not against the District Board, the special period of limitation of six months prescribed by section 156 of Act V of 1884 is inapplicable to the suit for the simple reason that it is not a suit against the Local Board. Neither will the same special period of limitation prescribed by section 59 of Madras Act II of 1864 govern the suit unless the cess was realized only after issue of process under the same Act. But even this period will have expired long before the substitution of the Collector for the District Board. If the suit be not governed by section 59 of Act II of 1864, it will be governed by the general law of limitation, Act XV of 1877; and article 2, schedule II, which prescribes a period of ninety days would seem to be applicable to the case. (*Vide* Mitra on limitation, 3rd edition, page 649.) If so, a suit against the Collector would have been barred nearly three months before the present plaint was presented. Article 16 of the same schedule seems inapplicable for two reasons: first, because the suit against the Collector cannot be regarded as one against the Government, and secondly, because it does not appear and it is not stated that the cess was paid under protest.

8. I observe that the draft written statement which I find among the papers sent to me is signed by Mr. D Srinivasa Rao "for Collector". The suit as now framed is not a suit against the Collector, and the suit is only against the District Board of Ganjâm which is a body incorporated under section 27 of Act V of 1884. Under sections 115 and 435 of the Code of Civil Procedure, the written statement should be subscribed and verified on behalf of the corporation by any director, secretary, or other principal officer of the corporation. If the Collector as the principal officer of the corporation and able to depose to the facts of the written statement, subscribes and verifies the written statement, he should describe himself not as Collector but as President of the District Board of Ganjâm; and the written statement should be on behalf of the defendant, not defendants.

Madras,
15*th May* 1897.

V. Bhashyam Aiyangar,
Ag. Advocate-General.

Order—No. 2623, Revenue, dated 22nd May 1897.

The defence of the suit is sanctioned.

2. The draft written statement should be amended in accordance with the opinion of the Honourable the Advocate-General herewith forwarded.

(True Extract.)

G. Stokes,
Secretary to Government.

To the Board of Revenue (Land Revenue) with enclosures returned.