

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 3745

DATED 20th July 97.

[Despatch Abstract.]

Recording P. P. issuing certain instructions to the Col. of Mysore in regard to the levy of land & village cesses on occupations of village side & on the rental of trees & lands leased out by the Local Boards & the P. W. D. respectively & considering that village side lands occupied by Local Boards for profitable purposes should be charged with assessment.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

1897.

Board of Revenue

(Land Revenue),

MADRAS.

Printed June 26th.

Proceedings, No. 191, 3rd June 1897.

JUNE.

Issuing certain instructions to the Collector of Kistna in regard to the levy of land and village cesses on occupations of village site and on the rental of trees and lands leased out by the Local Boards and the Public Works Department, respectively, and considering that village site lands occupied by Local Boards for profitable purposes should be charged with assessment.

C.O. (mm) no. 3745 of 20th July 97

Recorded.

1877/57

8/14/97

Let the Dept. be continued

1877/57

16 July 97

C16/7/97

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

READ—the following letter from J. N. ATKINSON, Esq., Collector of Kistna, to the Secretary to the Commissioners of Land Revenue, dated Masulipatam, 12th April 1897, R.C. No. 81-Ver. :—

I have the honour to solicit the Board's instructions on the following points :—

1. *Are occupations of village site otherwise than for cultivation, such as by a fence, house, wall, &c., liable to village-cess ?*—I have not been able to trace any ruling of the Board expressly laying down that village site is chargeable or not chargeable. Board's Proceedings, No. 131, Revenue Settlement, dated 10th March 1894, page 23, says that village-cess should be charged on all items on which land-cess is. The accuracy of this statement is doubtful seeing that the Board's Proceedings, No. 88, dated 16th January 1880, which is quoted as authority for the said proposition, deals not with "all items" but only with the four mentioned in Board's Proceedings, No. 2392, dated 18th August 1879. Turning to Act IV of 1893, we find that the lands to be charged with village-cess are (section 7)—

- (a) land under ryotwari tenure ;
- (b) inams situated within the limits of a ryotwari village ; and
- (c) inam villages which are clubbed with ryotwari villages.

I doubt if village site occupations of the kinds under consideration fall under any of the above classes. In this state of things, Board's Proceedings, No. 282, Land Revenue, dated 24th July 1896, lays down that if quit-rent is charged, land and village cesses should be levied. Is it to be understood that the imposition of a charge, whether quit-rent or penal charge for an encroachment, brings the case under class (a) above mentioned and that village-cess is not chargeable so long as no charge is made.

2. *Is land cess chargeable on the class of land referred to in paragraph 1 above ?*—Board's Proceedings, No. 964, dated 11th June 1872, exempts village sites from land-cess, but if quit-rent is charged, land-cess should also be (Board's Proceedings, No. 282, Land Revenue, dated 24th July 1896). I request to be informed if it is also to be charged on occupations of village site other than for dwelling houses :

(1) if charge is not made on them, for example, attached backyards not exceeding 25 cents—Board's Proceedings, No. 297, Revenue Settlement, dated 17th July 1893 ; and

(2) if any charge is imposed (such as the said backyards exceeding 25 cents or an encroachment by a fence or pial).

3. If the village site is cultivated, I consider it to be chargeable. But I am in doubt whether the backyard cultivation exempted by Board's Standing Order No. 37 (4) from assessment should also be charged cesses.

4. *Are portions of village site in the occupation of Local Funds chargeable with village-cess, land-cess having been exempted in Board's Proceedings, No. 227, Land Revenue, dated 20th June 1896 ?*—Board's Proceedings, No. 388, Land Revenue, dated 16th October 1896, says that Local Fund bungalows situated on village sites are chargeable. This order was passed on the Ganjam Collector's reference, but it does not seem to have been based on his reasoning, for that has reference to poramboke other than village site in general, not village site in particular. This Proceedings appears to have been influenced by the Government Order, No. 32, Revenue, dated 21st January 1896, embodied in Board's Proceedings, No. 113, Land Revenue, dated 24th March 1896, which says that bungalow sites, whether exempted from payment of assessment or not, are liable to cesses. But this Government Order does not take account of the class of land on which the bungalow is situated. In Board's Proceedings, Mis. No. 5820

Land Revenue, dated 20th November 1895, the Board held that lands referred to in paragraph 1 of Board's Standing Order No. 12-A were exempt from cesses, and when this opinion went up to Government, it in the Government Order above quoted expressed no opinion about the correctness or otherwise of the Board's opinion, but contented itself with saying that bungalows are not exempt from cesses though exempt from assessment. Hence a doubt arises whether this ruling of Government applies to other kinds of occupations of village site by Local Funds, say a school, an hospital, an office, &c. It is doubtful if it does. For when it is borne in mind that Board's Standing Order No. 12-A refers to revenue-paying lands transferred to Local Funds for a public purpose, there is no reason to treat less favourably lands from which Government never intended to derive any revenue. If a charge were made, the anomaly would arise that a private person who builds a theatre and makes a handsome income will be exempt from village cess, while the Local Fund Board which builds a school has to pay it.

5. *Are portions of village site occupied by Local Boards for a profitable purpose to be charged assessment under Board's Standing Order No. 12-A ?*—This Board's Standing Order appears to relate to assessed lands and not to village site. If it is otherwise, the anomaly arises that the Local Funds are treated less favourably than a private person.

6. In Board's Proceedings, No. 154, Land Revenue, dated 12th April 1894, the sale-proceeds of the usufruct of Local Fund trees was held not liable to cesses on the ground that the sale-proceeds cannot be held to be assessment payable to Government. This is a reason to exempt the lessee, but not the Local Fund Board which may be considered as a holder of land under ryotwari tenure under Board's Proceedings, No. 183, Land Revenue, dated 26th May 1896. I solicit the Board's instructions.

7. The Department of Public Works has leased out land on the Nizampatam canal to boat-owners for two warehouse huts. The Tahsildar of Tenali asks me if cesses may be charged on the huts on the rental of Rs. 24 paid to the Public Works Department. As the lessees have occupied Government lands, they clearly appear to be liable. I solicit orders.

RESOLUTION—No. 191, dated 3rd June 1897.

With reference to paragraphs 1 to 3 of the above letter, the Board observes that all village site lands held under Government subject to the payment of assessment or quit-rent must be taken to be held on ryotwari tenure, within the meaning of the definition of the term given in Board's Proceedings, No. 161, dated 12th March 1891, printed as appendix to Board's Proceedings, No. 183, dated 26th May 1896. It follows therefore that cesses are leviable on the quit-rent charged on lands used for building purposes and on the ordinary assessment of lands, the occupation of which is treated as an encroachment and is consequently penalised, e.g., occupation by enclosing vacant sites by a wall or fence, or cultivation of backyards beyond the recognised limit, and that they are not chargeable on backyard cultivation exempted from assessment by Standing Order No. 37 (4) and by Board's Proceedings, No. 297, Settlement, dated 17th July 1893.

2. On the question raised in paragraph 4 of the above letter, the Collector will be informed that lands utilised by Local Boards for schools, hospitals and other public purposes analagous to those for which lands are set apart in villages for communal purposes under the head of poramboke are exempt from cesses. Sites occupied by Local Fund bungalows are however in a different position. They are all liable to assessment and are in individual cases exempted from it only because the income derived from them does not come up to a fixed standard. This circumstance does not, however, affect the claim of Government to cesses on the sites of even exempted bungalows.

3. With reference to paragraph 5, the Board considers that village site lands occupied by Local Boards for profitable purposes should be charged with assessment. The fact that the lands so used were acquired by the Local Boards from private individuals or were assigned to the Boards by Government without a formal transfer to assessed waste cannot affect the liability of the lands to assessment.

4. No cesses are leviable on the income derived by the Local Boards from the leases of trees referred to in paragraph 6, if the trees stand on lands vested in the Boards revenue—free for public purposes. Where, however, the lands are held subject to assessment, cesses are leviable on the assessment itself.

5. The occupants of the lands belonging to the Public Works Department referred to in paragraph 7 of the above letter are liable to pay cesses on the rents paid by them.

(True Copy and Extract.)

W. Woodie
Acting Secretary.

To the Collector of Kistna.

Copy to other Collectors, except Madras.

„ the Secretary to Government, Revenue Department,
with copies of certain Board's Proceedings.

PROCEEDINGS OF THE BOARD OF REVENUE.

RESOLUTION—dated 18th August 1879, No. 2392.

On examining the land-cess statements received from districts, it is observed that there is a diversity of practice in charging land-cess in the case of some tenures and that the cess is not always calculated in conformity with the provisions of Act IV of 1871; the following instructions are therefore issued for the guidance of Collectors.

2. Where the land assessment is not levied but revenue is collected in the shape of tope rents or grass rents, the cess should be calculated on the amount of such rental; it cannot, of course, be levied during the currency of existing leases if it has not been hitherto charged, but when topes and grazing lands are leased out in future, it should be notified that the lessee will be liable to the charge for land-cess in addition to the rental.

3. Where a separate tree-tax is levied the land-cess should be calculated on the amount of such tree-tax.

4. When prohibitory assessment is charged the cess should be calculated with reference to the ordinary and not the penal assessment.

5. Land occupied by bungalows and gardens subject to payment of quit-rents is liable to land-cess which should be calculated on the quit-rent, not on the assessment which the land would bear, if it had not been subject to quit-rent.

(A true Extract.)

(Signed) C. GALTON,
Acting Secretary.

To all Collectors.

Exd. W. J. Lewis.

1879.
Board of Revenue,
MADRAS.

Printed April 9th, 1890.

Proceedings, 18th August 1879, No. 2392.

Land-cess—Issuing instructions to Collectors
for charging—in the case of some tenures.

No. 88.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 16th January 1880.

Read the following letter from J. B. PENNINGTON, Esq., Collector of Tinnevely, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Kalakad Koilpati, 4th December 1879, No. 800 :—

With reference to Board's Proceedings, No. 2,392, dated 18th August 1879, issuing instructions as to the charge of *land cess* in the case of certain tenures, I have the honor to request that I may be informed if the *village service cess* should also be imposed on similar miscellaneous sources of land revenue.

2. In their Proceedings, No. 2,529, dated 10th December 1873, paragraph 2, the Board remarked that they "did not see how a cess on tree tax could be imposed under Madras Act IV of 1864;" but the terms of the Local Funds Act are very similar, and if the cess can be imposed in the one case, there does not seem to be any reason why it should not in the other.

The village service cess should be imposed on all sources of land revenue on which land cess is charged under the Board's Proceedings, No. 2,392, dated 18th August 1879.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

To the Collector of Tinnevely.

Copy to the Collector of Godávári.	
" " " of Kistna.	
" " " of Nellore.	
" " " of Kurnool.	
" " " of Chingleput.	
" " " of South Arcot.	
" " " of Trichinopoly.	
" " " of Salem.	

Exd. A. Grubert.

PROCEEDINGS OF THE BOARD OF REVENUE
(REVENUE SETTLEMENT, LAND RECORDS AND AGRICULTURE).

READ—the following letter from A. T. ARUNDEL, Esq., Collector of Kistna, to the Secretary to the Commissioner of Revenue Settlement and Director of the Department of Land Records and Agriculture, dated Masulipatam, 2nd May 1892, No. 3433 :—

In forwarding herewith a copy of letter No. 451, dated 13th April 1892, from the Sub-Collector, I have the honour to state that in reply to a reference from the Collector of Gódvári, the Board in paragraph 2 of its Proceedings, dated 12th December 1884, Mis. No. 11790, laid down that the excess above the recognized limit of backyards should be assessed whether cultivated or not and without reference to the nature of the crops raised on any part of the yard. But the practice obtaining in most parts of this district has been to charge backyards attached to houses in excess of a limit of 25 cents, only when cultivated, and to charge detached yards or enclosures when cultivated, without reference to extent; the charge in either case being the highest dry rate of the village. No charge is made on waste or on attached backyards below 25 cents.

2. The Sub-Collector now brings to notice that the recognized limit of 25 cents is inadequate for the farm-yard of a well-to-do ryot, and that it is advisable from a sanitary point of view, to encourage the extension of farm-yards instead of trying to curtail them.

3. I am entirely at one with the Sub-Collector in this view and think that every effort should be made to encourage and help the ryots to obtain sufficient yards for their cattle, their ricks and their manure heaps. In the numerous village and town extensions that have been effected in this district, the poorest people have had 5 cents allotted and the better classes from 10 to 20 cents, but these have usually been officials or traders with only a few cows, &c., for domestic use. A farmer with from 50 to 100 cattle requires ample space not only for the health of his cattle, but also for that of himself and his family. The constant deposit of dung, filth and manure of all kinds in pits adjoining the dwelling-house is a practice sadly detrimental to the health of the inmates and should be discouraged by greater facilities for the formation and extension of yards.

4. I beg therefore that the Board will be good enough to sanction the existing practice of this district and remove the restriction limiting free backyards to 25 cents, leaving it to the District officers to assign such area as is required for *bond fide* farm purposes. Any cultivation above 25 cents in a backyard attached to a building, and any cultivation at all in a detached yard, will continue to be charged.

5. I should not have troubled the Board with this reference had not the Board's Proceedings, quoted in paragraph 1, been brought now to my notice, as it was to Mr. Higgins' during my absence on leave last year, and been found at variance with the practice of the greater part of the district.

ENCLOSURE.

From F. E. K. WEDDERBURN, Esq., Acting Sub-Collector of Kistna, to the Collector of Kistna, dated Guntúr, 13th April 1892, No. 451.

The Board have fixed, as the recognized limit of a backyard, 25 cents in their Resolution of 27th July 1886, No. 5635, and have ordered that the excess, whether cultivated or not, should be charged with assessment, and in letter No. 4563, dated 17th June 1891, you directed that the course prescribed by the Board should be followed.

1880.
Board of Revenue,
MADRAS.

To
THE COLLECTOR OF TINNEVELLY.

Dated January, 16th.

Printed 29th.

Received

PROCEEDINGS, 16TH JANUARY 1880, No. 88.

JANUARY.
No. 88.

Village Service Cess.—Informing Collector of Tinnevelly that — should be imposed on all sources of land revenue on which land cess is charged under Board's Proceedings, No. 2,392, dated 18th August 1879.

2. One of the chief features which strike the new comer in the Kistna district is the care taken by the ryots of their cattle.

3. Many of the cattle sheds and yards compare very well with a Scotch farm-yard.

4. The Board have frequently drawn attention to the sanitary defect of keeping the cattle in dwelling-houses. From every point of view it appears to me to be advisable to encourage the extension of farm-yards instead of trying to curtail them.

5. The recognized limit of 25 cents is quite inadequate for the yard of an ordinary ryot.

6. Many ryots possess over 100 head of cattle.

7. Under the present system as soon as a ryot extends his yard on to peramboke whether he erects a cattle shed, digs grain pits or builds straw ricks, he is charged prohibitory assessment. There are many ryots who already possess more than 25 cents as farm-yard. To measure all these cases will be a work of great labour and will cause much discontent among the ryots.

8. I may point out that in Guntur extension, persons have purchased plots exceeding 25 cents and the land has been transferred to village-site, &c. Is the excess to be charged in those cases?

9. I would propose at all events that land occupied by cattle sheds, grain pits, and straw ricks should be exempted from the recognized limit and that every encouragement should be given to ryots to extend their farm-yards and give fresh air to men and herd-beasts.

RESOLUTION—dated 17th July 1893, No. 297.

In exceptional cases the Collector may relax the rule restricting the extent of free backyards attached to houses to 25 cents and assign such area as may be actually required for *bona fide* farm purposes. It is presumed, however, that such cases will be few.

2. In regard to detached yards in village sites, no charge need be made on the extent actually used for cattle sheds, straw yards and the like. These plots will seldom be available for cultivation.

3. Any excess over the extent assigned, as above stated, should be charged whether cultivated or not.

4. It is observed that the average extent of backyards cultivated and charged in the district during the past five years was under 22 acres, and the largest area 28 acres.

(True Copies and Extract.)

(Signed) P. RAJARATNA MUDALIAR,
Secretary.

To the Collector of Kistna.

1893.

Board of Revenue

(Revenue Settlement, Land Records
and Agriculture),

MADRAS.

Printed July 28th.

Proceedings, 17th July 1893, No. 297.

Passing orders on letter from the Collector of Kistna requesting the Board to sanction the existing practice in his district in regard to assessing backyards and to remove the restriction limiting free backyards to 25 cents, leaving it to District officers to assign larger areas for *bonâ fide* farm purposes.

BOARD OF REVENUE (LAND REVENUE), 12TH APRIL 1894, No. 154.

PROCEEDINGS OF THE BOARD OF REVENUE (LAND REVENUE).

READ—the following letter from W. H. MICHAEL, Esq., Sub-Collector in charge, Gódvári District, to the Secretary to the Commissioners of Land Revenue, dated Cocanada, 12th March 1894, No. 291-Eng. :—

The usufruct of palmyra and date trees on Government waste and poramboke lands and of those in charge of the Public Works and Local Fund Departments has been sold together and the sale-proceeds distributed among the several departments in proportion to the number of trees belonging to each. Under Board's Proceedings, dated 18th January 1892, No. 30 (Land Revenue), cesses have been levied only on the amount going to the credit of "Land Revenue." I solicit orders whether the portions of the rentals credited to the Public Works and Local Fund Departments are also liable to the charge of cesses.

RESOLUTION—dated 12th April 1894, No. 154.

Land-cess being charged on topes on porambokes leased out by the Revenue Department, the Board sees no reason why it should not be charged on the sale-proceeds of the usufruct of trees on porambokes in charge of the Public Works Department also.

2. In the case of sale-proceeds of the usufruct of trees, payable to the Local Fund Department, however, no cess can be levied as such sale-proceeds cannot be held to be assessment payable to Government.

3. The levy of village-cess follows that of land-cess.

(True Copy and Extract.)

(Signed) L. M. WYNCH,
Secretary.

(True Copy.)

(Signed) C. CLARK,
Registrar.

To the Collector of Gódvári.
Copy to other Collectors.

Exd A. Grubert.

1894.
Board of Revenue.
(Land Revenue),
MADRAS.

Printed April 25th.

Proceedings, 12th April 1894, No. 154.

Passing orders on letter from the Collector of Gódvári regarding levy of cesses on the sale-proceeds of usufruct of trees belonging to the Public Works and Local Fund Departments.

BOARD OF REVENUE (LAND REVENUE), No. 188, 26th May 1896.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

READ—the following letter from W. J. H. LE FANU, Esq., Collector and District Magistrate of Salem, to the Secretary to the Commissioners of Land Revenue, dated 19th April 1896, Ref. on No. 260-B. and G.:—

I have the honour to submit the following for the orders of the Board.

2. A question has been raised as to whether land and village cesses should be charged on—

- (1) the rent of Government topes, and
- (2) the rent of minor forest produce.

Under section 57 of the Local Boards Act V of 1884, land cess is leviable on the annual rent value of all *occupied* lands on whatever tenure held. The question is whether the lessees of Government topes and of minor forest produce are to be considered to be in occupation of *land*. In Board's Proceedings, No. 133, dated 6th March 1890, printed in Board's Proceedings, No. 324, dated 11th June 1890, the Board observed with reference to its ruling in Board's Proceedings, No. 2392, dated 18th August 1879, that "it may be held that the lessee of the usufruct of a tope is in occupation of land and that he is therefore liable to pay road-cess."

3. As regards the rent of minor forest produce, it is not stated specifically anywhere that the lessee may be held to be in occupation of land under section 57 of Act V of 1884. But in Board's Proceedings, No. 155, dated 20th May 1895, the Board has ruled that "where the usufruct of trees is leased out, the lessee *deals* with the trees as the owner for a year and land cess is rightly charged on the amount for which the usufruct is sold." On the authority of the above Board's Proceedings, land cess was ordered to be charged on the rental of toddy-yielding trees on Government waste and poramboke lands for 1895-96. The lessee of the produce of minor forest—only a tope on a large scale—, who enjoys the trees for one year, is in the same position as the lessee of toddy-yielding trees and the lessee of Government topes and appears to be liable to pay land cess. In Board's Proceedings, No. 3140, dated 19th October 1883, however, the Board has ruled that land cess need not be charged in cases where the minor forest products are leased. I request to be informed whether the Proceedings last quoted may be taken to be superseded by Board's Proceedings, No. 155, dated 20th May 1895.

4. The next question for consideration is whether village cess should be charged on—

- (1) the rent of Government topes, and
- (2) the rent of minor forest produce.

Village cess is now levied from the lessee of minor forest produce—with reference to the opinion of the Advocate-General communicated in Board's Proceedings, No. 324, dated 11th June 1890. In paragraph 2 of his opinion, the Advocate-General states that the question of charging village cess depends upon the meaning of the words "holders of lands" used in, but undefined by the Act (IV of 1864). He thinks that the lessees of usufruct of trees standing on waste lands are holders of land within the meaning of Madras Act IV of 1864 and are liable to pay village cess. In Government Order, No. 884, dated 18th September 1891, embodied in Board's Proceedings, No. 624, dated 17th October 1891, the wording of which Government Order is, however, very general, it is stated that the lessees of trees are *not* holders of lands. The discrepancy between the opinion of the Advocate-General and the order of Government is explained in Board's Proceedings, No. 30, dated 18th January 1892. These rulings were given before Act IV of 1893, which has repealed Act IV of 1864, came into force. In the later Act, the classes of persons on whom village cess may be imposed are defined as under—

- (1) all holders of land under *ryotwari* tenure;
- (2) holders of inams situated within the limits of a *ryotwari* village;
- (3) holders of inam villages which are grouped with *ryotwari* villages.

I beg to enquire whether the lessees of Government topes, of the usufruct of toddy-yielding trees on Government waste and poramboke lands and of minor forest produce can be taken to be holders of lands on *ryotwari* tenure and village cess levied from them. I assume not, but, as the question is of considerable importance, and the rulings do not seem to conform to the Act, I think it better to have the matter settled.

5. For a similar reason I would enquire whether *land* cess is *legally* leviable from the lessees of Government topes, of the usufruct of toddy trees, and of minor forest produce. Under section 57 of Act V of 1884, *land* cess is leviable on the annual rent value of occupied *lands* and the lands are enumerated in section 64, and are *lands* held direct from the Government under a *ryotwari* settlement. The term "Land-holder" is also defined in section 3, so as to include holders of lands under *ryotwari* settlement. I doubt whether the lessees referred to above can be held to be holders of lands under *ryotwari* settlement, in which case alone *land* cess can be levied from them. If it be decided that *land* or village cess is not leviable from such lessees, Government will not probably be a loser, for what is likely to be realized in the shape of cess will in future form a portion of the bid amount.

RESOLUTION—No. 183, dated 26th May 1896.

The Collector will be informed that the orders contained in Board's Proceedings, No. 154, dated 12th April 1894, and No. 155, dated 20th May 1895, directing the levy of cesses from the lessees of the usufruct of trees on Government lands must be held to supersede the instructions to the contrary previously issued.

2. In regard to the other question raised by the Collector, viz., whether the lessees of Government topes, &c., can be taken to be holders of land on *ryotwari* tenure, he will observe from Board's Proceedings, No. 161, dated 12th March 1891, that the Board has already answered the question in the affirmative. Both the *land* and village cesses are therefore leviable from the lessees.

3. The Board's Proceedings of 1891 quoted above will be printed as an appendix to these Proceedings.

(True Copy and Extract.)

(Signed) R. C. C. CARR,
Acting Secretary.

(True Copy.)

(Signed) S. ANNASWAMY,
Ag. First Assistant.

To the Collector of Salem.
Copy to other Collectors.

APPENDIX.

Proceedings of the Board of Revenue (Land Revenue), No. 161, dated 12th March 1891.

Read—the following letter from V. A. BRODIE, Esq., Acting Collector of South Canara, to the Secretary to the Commissioners of Land Revenue, No. 4617, dated Golihole, 29th November 1890 :—

I have the honour to seek the instructions of the Board regarding the levy of the *land* and village service cesses in the case of certain forest tracts in this district leased out to private individuals at stipulated rents for the cultivation of cardamoms and the growing of pepper, &c.

2. There are several leases of the kind granted in 1885 and 1886 and drawn up in the form prescribed in village sheet, dated 4th July 1885, page 44 to 48 (enclosed), published with the District Gazette. The leases specify the rent annually payable to Government (*vide* paragraphs 5 and 6 of the form at page 47), but they contain no stipulation regarding the payment of the *land* and village cesses under Act V of 1884 and Act IV of 1864, respectively, and the lessees are reported to object strongly to pay these cesses upon this ground and these items form the greater part of the outstanding arrears in the Uppinangadi taluk.

3. From the wording of section 57 (i) of Act V of 1884 and under section 3 of Act IV of 1864, it is clear that these leased forests are not exempt from liability to pay these cesses. This question is disposed of by Board's Proceedings (Land Revenue), dated the 11th June last, No. 324, and if the question were whether these cesses are payable or not, I should not trouble the Board with this reference; but the question now raised is who is to pay them, the lessees or Government in the Forest Department?

4. For the lessees it may be said that they are not "land-holders" under section 3 (xi) of Act V of 1884, as their rents are credited to "Forests" and not "Land Revenue," though they are unquestionably "holders of land" within the meaning of section 3 of Act IV of 1864.

(2) Under section 64 (iii) of Act V of 1884, it seems doubtful whether Government is not liable to pay the *land* cess under the circumstances.

(3) Lastly, what the lessees say in effect is that these cesses are included in the rent they pay and must come out of it and not be levied from them in excess. Had they leased these forests from any zemindar or other person than Government under the same circumstances, it would never have been presumed that they were liable to pay the cesses under the sale notice, and it is hard this presumption should be raised because they happen to have Government for their landlord.

5. On the other hand, it may be argued that no specific contract is necessary to create a liability to pay these cesses, that liability being one created by law though a contract is essential to secure *rents* which are created not by law, but by mutual agreement.

6. Should the question whether these *rents* include cesses or cesses are excluded go to the civil courts, and it very possibly may, because owing to the heavy fall in the price of cardamoms and bad crops every one of these lessees is losing money instead of making it, it is difficult to say how it will be decided. It is for this reason that I ask instructions, for I am inclined to think any suit would result unfavourably to Government and the courts would hold that the *rent* is all the lessee is liable for, and Government itself must apportion that rent between "Forests," "Land cess" and "Village Service cess," not collect the latter in excess of the rent.

7. Meanwhile as these cesses were imposed at jamabandi, I have directed the Tahsildar of Uppinangadi to collect them forthwith on the understanding that they will be refunded if the Board should hold they are not leviable or credited towards the next instalment of rent.

P.S.—Since writing the above, this office letter No. 2877, dated 27th July 1889, disposed of in Board's Proceedings, dated 21st August 1889, Disposal No. 4987, has been brought to my notice, but I am not quite satisfied with the opinion of my predecessor and think the question might with advantage be referred to the Advocate-General. If the Courts construe these contracts according to the intention of the contracting parties at the time, I am afraid their decision would not be in favour of Government as the cesses were not demanded during the first 3 years of these leases.

Resolution—No. 161, dated 12th March 1891.

The Board considers these lessees to be holders of land under a *ryotwari* settlement. They are therefore land holders under section 3 (xi), Act V of 1884, subject to *land* cess under section 57 (i) and assessable under 64 (i). The amount of the tax should be entered in the patta or lease under section 72. "Ryotwari settlement," it may be noted, means nothing but settlement with individuals occupying land in contrast with a village settlement or a zamindari settlement; hence these lessees are liable to *land* cess. As regards village service cess, the Act has been extended to South Canara, so they are subject to that also.

2. The Board cannot alter the law, but if the Collector thinks there is anything in the circumstances which warrants an application under section 63, he can make it.

(True Copy and Extract.)

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

Exd. P. Seetharam.

1896.
Board of Revenue
(Land Revenue),
MADRAS.

Printed June 15th.

Proceedings, No. 183, 26th May 1896.

Informing the Collector of Salem that the orders contained in Board's Proceedings, No. 154, dated 12th April 1894, and No. 155, dated 20th May 1895, directing the levy of cesses from the lessees of the usufruct of trees on Government waste lands must be held to supersede the instructions to the contrary previously issued and that the question whether the lessees of Government topes, &c., are holders of land on ryotwari tenure has already been answered in the affirmative in Board's Proceedings, No. 161, dated 12th March 1891.

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Revenue (1897) Department.

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Land Rev.

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