

Department
Revenue (1897) Department.

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G.O. No. *4*

DATED *4th* Jan'y: 1897

[Despatch Abstract.]

Subject:

Madras Survey Bill

PRESS SERIES.

G.O., No. 4

"
DATED 4 Jan'y 1891

[Despatch Abstract.]

Madras Survey Bill.

Considering that, in view of the delay which has already taken place in the preparation of the —, it should be transferred to the Legislative Deptt. forthwith, and that any further criticisms which the Govt. may desire to offer should be communicated to the Legislative Council for consideration by the Select Committee, and requesting the Govt. of India to sanction the proposed repeal of Act XXVIII of 1865.

[illegible]

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

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Recd 5-6-96

Proceedings, No. 181, 22nd May 1896.

Submitting its remarks on the draft Bill to
among the Boundary Marks Act.

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PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

READ—the following Government Order, No. 823, Revenue, dated 18th December 1895:—

Read—Proceedings of the Board of Revenue (Land Revenue), No. 390, dated 3rd July 1893.

ABSTRACT.—Submitting, with remarks, a bill to amend the Boundary Marks Act, with Statement of Objects and Reasons.

Order—No. 823, Revenue, dated 18th December 1895.

With its Proceedings read above, the Board submits a draft Bill “to amend and consolidate the law relating to the establishment and maintenance of boundary marks and the settlement of boundary disputes in the Presidency of Madras.” This Bill has been drawn up in compliance with the orders contained in Government Order, No. 13, Legislative, dated 10th March 1890, which was communicated to the Board in Government Order, No. 2002, Revenue, dated 24th March 1890, and, in pursuance of those orders, embodies the several amendments of the law which have been suggested from time to time since the enactment of Act XXVIII of 1860 and Madras Act II of 1884. These Acts are both brought within the scope of the Board’s Bill and the sections are re-arranged and amended, but the draft Act is in the main a re-production of the existing law.

2. Before proceeding to discuss the changes which the Board proposes to effect by the contemplated legislation, it must be premised that the Government is unable to accept the draft Bill now submitted. As stated above, the Board has acted in compliance with the orders of Government and has endeavoured to frame a Bill on the lines of the two Acts, which at present constitute the law on the subject. His Excellency the Governor in Council desires to thank the Board for the action taken under Government Order, No. 13, Legislative, dated 10th March 1890, but is of opinion that it is virtually impossible to legislate on the lines of the existing Acts, the earlier enactment being admittedly ill-drawn and unsuited to present requirements. His Excellency in Council has accordingly resolved to frame an entirely new Bill, and a draft has been prepared which will now be forwarded to the Board for its opinion before being transferred to the Legislative Department.

3. The Government will now indicate the more prominent features of the new Bill and will pass orders upon the proposals made in the Board’s Proceedings read above. It is unnecessary to deal with the Board’s Bill in detail, but in some instances the sections have been utilized in the new draft.

4. The most important innovation proposed by the Board was to extend the application of the law to zemindari and other proprietary estates and to render it

lawful for the Government to undertake the survey of such tracts "either with or without the consent of the zemindar or proprietor." (Paragraph 11 of Statement of Objects and Reasons). The Government does not consider that such a survey is in all cases essential in the interests of those connected with the land, and is not prepared to advocate legislation which would make lawful the compulsory survey of private estates in all cases. It has recently been held that Act XXVIII of 1860 does apply to zemindaries, but the opposite opinion has also been subscribed to by the Government law officers on former occasions, and His Excellency the Governor in Council considers that it is most important that the law, as amended, should be precise upon this point. In the new Bill a separate Chapter is accordingly provided, which deals with "the survey and demarcation of lands other than Government lands." (Chapter IV). This Chapter gives the Government power to order the execution of a survey in a permanently-settled or any other estate *on the application of the proprietor*, and provides for the conduct of such survey. Power is also taken to order a compulsory survey whenever such a course is deemed necessary "to prevent a disturbance or a dispute likely to involve a disturbance." (Section 26). The succeeding Chapter makes it clear that the law relating to the settlement of boundary disputes is the same for proprietary estates as for Government lands. These provisions will, in the opinion of the Government, meet all the requirements of the case, and render unnecessary the adoption of so sweeping a measure as that advocated by the Board.

5. The next most important alteration contained in the Board's proposals is the recommendation that the proceedings of officers engaged in the settlement of boundary disputes shall be summary, but shall be governed, so far as may be practicable, by certain sections of the Code of Civil Procedure. The Board has in this matter abandoned the position adopted by it in former years, and its grounds for so doing are stated in paragraph 4 of the resolution. The Government fully concurs in the Board's reasons for desiring that such investigations should "proceed at the outset on the basis of a formal and thorough inquiry," and should be as judicial in character "as is of Civil Procedure to inquiries into boundary disputes." The application of the Code been adopted in the new Bill; but the Government is unable to agree to the Board's proposal to the effect that such proceedings should be summary. This latter provision seems to be inconsistent with the condition that the investigation should be of a thoroughly judicial character, and the new Bill provides for the method of settlement. It has been thought better to exclude the determination of the exact rules of procedure from the scope of the Act itself, and to leave this matter to be settled by rules issued under the Act. In the new Bill the provisions of section 37, which is based upon section 32 of the Burma Boundaries Act, 1880, gives the Government power to make "rules for the regulation of all proceedings to be taken under the Act," and it is intended that such rules should be framed as soon as the new law is enforced. These rules can be altered from time to time, as experience dictates, and should obviate the evils indicated by the Board as resulting from the present rough and ready method of procedure. It is not intended that the whole Code of Procedure enacted for the guidance of the ordinary Civil Courts should be imposed upon Survey officers, but, as the Board points out, the object of a settled procedure is to equip the investigating officer with "the best means for obtaining reliable evidence," and the rules framed under the Act should be as simple as is compatible with the conduct of a judicial inquiry. In this connection the Government agrees with the Board in thinking that it is better to utilize the ordinary rules of procedure, than to formulate a new law for the special use of officers inquiring into boundary cases. The Government also concurs in the Board's opinion that the provision in the existing law, making a Settlement officer's decision liable to revision by his departmental superior, should be dispensed with. Inquiries conducted under the new law are intended, as above stated, to be of a strictly judicial nature, and it is, therefore, right that the remedy allowed to parties aggrieved thereby should be an appeal to the Civil Courts by regular suit. Paragraph 4 of the Board's Statement of Objects and Reasons states the position correctly and has been re-produced in the statement to accompany the Government's Bill.

6. The decision to make use of the Code of Civil Procedure for the purposes of the new survey and boundary law renders unnecessary the somewhat clumsy sections in Act XXVIII of 1860 regarding a reference to arbitration, for Chapter XXXVIII of the Code of Civil Procedure contains the required provisions in this respect. In the same manner the penalty clauses contained in Act XXVIII of 1860 have been omitted altogether from the new Bill, for, as explained in paragraph 8 of the Board's Statement of Objects and Reasons, the Indian Penal Code and Code of Civil Procedure provide the necessary powers in this respect.

7. The necessary powers have been taken under the Government Bill for the recovery of costs incurred by Government on the survey and demarcation of Government lands and on the maintenance of boundary marks. Similar provisions are made in Chapters IV and V for the recovery of costs incurred on lands other than Government lands and during the settlement of boundary disputes. The question of recovering the costs of sub-dividing portions of survey fields applied for by darkhastdars is dealt with by the Board under Chapter III (b); and the Government concurs in the Board's conclusion to the effect that no special legal provision is required for this purpose.

8. The revised Bill is based largely upon the Burma Boundaries Act, 1880, though the Bengal and Bombay Acts (Bengal Act V of 1875—Bombay Act V of 1879) have also been referred to. The Bombay law, however, relates to settlement as well as to survey, and the Bengal Act is far too elaborate for the requirements of this Presidency. The sections of the various Acts on which the provisions of the revised Bill have been framed are noted on the margin of the draft.

9. As regards the arrangement of the Government's Bill, it will be seen that it is proposed to divide the Act into six Chapters. Chapter I is preliminary. Chapters II and III then provide for the survey and demarcation of Government lands, which term is defined in section 3 (3). The survey and demarcation of lands other than Government lands are dealt with in Chapter IV, while the settlement of boundary disputes, whether arising in Government lands or not, is provided for in Chapter V. Some miscellaneous provisions are embodied in Chapter VI.

10. The Statement of Objects and Reasons has been slightly modified to conform with the changes effected in the Government draft Bill.

11. The Board is now requested to consider the Bill and to submit its criticisms thereon at an early date, in view to the introduction of the measure during the present Legislative Session.

(True Extract.)

(Signed) E. GIBSON,
Secretary to Government.

To the Board of Revenue (Land Revenue).

APPENDIX.

WHEREAS it is expedient to make better provision for the carrying out of surveys, for the erection, repair, restoration and maintenance of survey marks, and for the determination of boundary disputes; it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Madras Survey Act, 189." Title and extent. It extends to the whole of the Presidency of Madras.

2. Act XXVIII of 1860 and Madras Act II of 1884 are hereby repealed. Repeal of enactments.

3. In this Act unless there is something repugnant in the subject or context— Interpretation clause.

(1) "Survey mark" means any mark made, erected or placed above or below the surface of any land, whether on or within the boundaries thereof, for the purpose of indicating survey points or lines, by or by order of any officer of Government legally authorized to make a survey of such land.

(2) "Survey Officer" means a Survey Officer appointed under this Act.

(3) "Government land" means all land other than land forming an estate as defined in section 4 of Madras Act II of 1894 as amended by section 2 of Madras Act III of 1895.

(Burma Act V of 1880, section 2.)

4. (1) The Local Government may appoint any person to be a Survey Officer, and may suspend or remove any person so appointed. Power to appoint Survey Officers.

(Burma Act V of 1880, section 2.)

(2) Every person so appointed shall, subject to the control of the Local Government, or of any officer appointed by it in this behalf, exercise and perform, within such local limits as the Local Government may direct, the powers conferred and the duties imposed by this Act or by the rules made hereunder, on such officers respectively. Functions of such officers.

(3) The Local Government may delegate its powers under this section to the Board of Revenue.

CHAPTER II.

THE CADASTRAL SURVEY OF GOVERNMENT LANDS AND THE SETTLEMENT OF THE BOUNDARIES THEREOF.

5. It shall be lawful for the Local Government, when- (Section 95 of Bombay Act V of 1879.)

Power to order survey. ever it may be considered expedient, to direct, by notification the survey of any Government land with a view to the settlement of the revenue thereon, to the record and preservation of rights, or to the settlement or prevention of boundary disputes, or for any other similar purpose. Such survey may extend to the lands of any village, taluk, or district generally, or to such land only, as the local Government may direct.

6. It shall be lawful for a Survey Officer, (Section 28 of Act 28 of 1860 and section 7 of Board's Bill.) and for all persons acting under the orders of such officer, whenever it may be necessary, in the performance of their duty, to enter upon, examine and measure all lands whatever, whether such lands be the property of Government or not.

7. A survey and demarcation conducted under the provisions of this and the following chapters (Section 119 of Bombay Act V of 1879.)

Determination of boundaries. shall proceed according to occupation. If, at the time of a survey, the boundary of a field or holding be undisputed, and its correctness be affirmed by the village officers then present, it may be laid down as pointed out by the holder or person in occupation, but if disputed, or if the said holder or person in occupation be not present, it shall be fixed by the Survey Officer according to the village records, and according to occupation, as ascertained from the village officers and the holders of adjoining lands, or on such other evidence or information as the Survey Officer may be able to procure.

8. From the decision of the Survey Officer in any dispute arising under section 7, an appeal Appeals from the Survey Officer's decision under section 7.

shall lie within three months of the date of his order to the authority to whom that officer is immediately subordinate. The decision of the Survey Officer, or in the event of an appeal being filed the decision of the appellate authority, shall be final unless reversed or modified by a decree of a Civil Court. An appeal shall lie to the Civil Courts provided it be filed within six months from the date of the decision.

CHAPTER III.

THE CONDUCT AND MAINTENANCE OF SURVEYS OF GOVERNMENT LANDS.

(a) THE CONDUCT OF A SURVEY AND THE ERECTION OF SURVEY MARKS.

(Section 5 of Act V of 1880, Burma.)

9. When a survey has been ordered in accordance with the provisions of Chapter II, the Survey Officer shall issue a general notification addressed to all persons owning, occupying or otherwise interested in the said lands and to all persons employed in, or connected with, the management of such lands, calling upon them to attend either personally or by agent, at such places and at such times as may be stated in the aforesaid notification, for the purpose of pointing out the boundaries and of supplying information in connection therewith, of rendering such aid as may be necessary in setting up or repairing the Survey marks, and of affording such other assistance as may be needed for the purposes of survey or demarcation.

(Section 8 of Board's Bill.)

Such notification shall be held to be good and sufficient notice to every person having any interest in any of the lands mentioned therein.

(Section 7 of Burma Act V of 1880.)

10. The said notification shall further require all owners or occupiers of the lands in question, within a date to be specified therein, to clear the boundaries or other lines which it may be necessary to clear for the purposes of survey or demarcation, by cutting down and removing any trees, jungle, fences, standing crops, or other obstructions, to provide labour by furnishing flag-holders or chainmen and otherwise to assist in the survey and demarcation of such lands.

(Section 8 of Burma Act V of 1880.)

11. If any demand for compensation is made in respect of the clearance of any line in accordance with a requisition under section 10, the Survey Officer shall determine and record the value of any trees, jungle, fences or standing crops, which may have been cut down or removed, and shall pay or tender

to the owners thereof the amount of compensation which in his opinion should be allowed therefor.

Any dispute arising concerning the sufficiency of the amount so paid or tendered shall be determined by the District Collector upon application made to him for that purpose by any party to such dispute.

12. The Survey Officer may also issue a special notice to any of the persons specified in section 9 requiring them to attend, personally or by agent, before him on or before a specified date, which shall not be less than fifteen days after the service of the notice, at such place as may be stated in the notice; and any person upon whom such special notice shall be served shall be legally bound to attend.

13. When the periods specified in the notification issued under sections 9 and 10 and in any special notice issued under section 12 have elapsed, the Survey Officer may proceed with the survey and demarcation of the land. In the event of the persons to whom such notification may have been addressed failing to comply with the requisitions made therein the Survey Officer may employ hired labour for these and other similar objects connected with the survey or demarcation. All costs so incurred shall be equitably apportioned by the Survey Officer on the lands, of which the boundaries have been cleared or distinguished by the survey marks set up, and shall be charged to the persons possessing a right of ownership or occupancy in such lands, in such manner as the said officer may consider just.

(Section 9 of Board's Bill, section 7 of Burma Act V of 1880.)

14. When the owners or occupiers specified in the preceding section may generally express their wish that the survey marks should be erected by Government agency, the Survey Officer may proceed, without the previous notification prescribed in section 9, to act under section 13.

(Section 7 of Act XXVIII of 1860, section 10 of Board's Bill.)

15. In the case of unoccupied Government lands, the cost of clearing, survey, and erection of survey marks shall be paid by Government.

(Section 8 of Act XXVIII of 1860, section 13 of Board's Bill.)

(b) THE REPAIR, RESTORATION AND MAINTENANCE OF SURVEY MARKS AFTER THE ORIGINAL SURVEY HAS BEEN COMPLETED.

(Section 1 of Act II of 1884.)

16. Every owner or occupier of land shall be responsible for the repair, restoration and maintenance of the survey marks on or within the boundaries of his holding, and for any charges reasonably incurred by Government on account of the same.

(Section 27 of Burma Act V of 1880.)

17. (1) It shall be the duty of every village headman and of every curnam, or village accountant—

(a) to prevent, as far as possible, the destruction, injury, or alteration of any survey mark within the limits of his jurisdiction; and

(b) whenever he becomes aware that any such mark has been destroyed, injured, or altered, to report the fact immediately to the officer in charge of the nearest police station, or to the nearest Magistrate or Survey Officer.

(2) Whoever, being a village headman or curnam or village accountant, knowingly fails to discharge any duty imposed on him by this section shall be punished with fine which may extend to fifty rupees.

(Section 2 of Act II of 1884, section 15 of Board's Bill.)

18. When the survey of any village of a district shall have been completed, the officer in charge of such survey shall report the completion thereof to the District Collector and thereupon the charge of all the survey marks within such village shall devolve upon such Collector, and it shall be his duty to take measures for their maintenance and repair.

(Section 3 of Act II of 1884, section 16 of Board's Bill.)

19. It shall be lawful for the Collector or for any Survey Officer to cause to be constructed, renewed, or repaired all survey marks of villages or of occupied lands comprised in survey numbers, whether cultivated or uncultivated, and to assess all charges incurred thereby rateably on the owners or occupiers of lands in such villages. In the exercise of the powers granted to him by this section, a Collector or Survey Officer may direct that the survey marks shall be of such material and shall be erected in such manner and such numbers as may be determined by the Collector or Survey Officer under the direction of the Board of Revenue or the Superintendent of Revenue Survey respectively.

20. Such officer may by notification require owners or occupiers to construct or repair their own survey marks within a reasonable time to be specified, and, on their failure to comply with the requisition so made, the officer aforesaid shall cause the survey marks to be constructed or repaired.

(c) THE RECOVERY OF CHARGES INCIDENTAL TO SURVEY AND TO THE REPAIR, RESTORATION AND MAINTENANCE OF BOUNDARY MARKS.

21. The proceedings of the Survey Officer imposing charges under sections 13, 14 and 19, shall be recorded in writing and shall be subject to appeal within one month of the passing of the order to the authority to whom the officer in question is immediately subordinate. The decision of such authority on appeal shall be final.

22. When the apportionment of costs has been made, or, in the event of an appeal having been filed, when the orders of the appellate authority have been received, the Collector shall, at the instance of the Survey Officer, issue to each person concerned a demand notice specifying the amount of the demand, and declaring that, in the event of the sum in question remaining unpaid at the expiry of one month from the date of the service of the notice, the said amount will be recovered in the same manner as arrears of land revenue.

When the amount due shall not have been paid in accordance with the terms of the demand notice and no arrangement for securing the same shall have been entered into to the satisfaction of the Collector, the said amount and costs (if any) incurred in recovering the same shall be recoverable from the person concerned or from any person who has become surety for the payment thereof, in the same manner as arrears of land revenue.

CHAPTER IV.

THE SURVEY AND DEMARCATION OF LANDS OTHER THAN GOVERNMENT LANDS.

23. When the proprietor of any estate not being Government land consisting of one or more whole

Application from proprietor for survey.

villages, expresses a desire to have a survey made of the whole or any part of his estate, the Governor in Council may order the execution of such survey by Government agency.

The application of such proprietor for such survey must be made in writing and must expressly state that the said proprietor is prepared to defray the whole cost incidental to the survey and demarcation of his lands.

(New.)

24. In the event of an application made under the last section being complied with, the Local Government shall proceed to appoint a Survey Officer and to notify such survey in the manner prescribed in Chapter II. The proceedings of the Survey Officer shall be governed by the provisions of Chapter III (a) in regard to the conduct of the survey and to the erection of survey marks.

(New.)

25. On the application of the proprietor of the land under survey, the Survey Officer shall apportion the costs incidental to the survey and demarcation amongst the occupiers of the land in the manner prescribed in the case of Government lands, and the amounts so apportioned shall be recoverable by the proprietor as if they were arrears of rent. Provided that such costs shall in no case exceed the amount which such occupiers would have to pay under section 13 if they were holding the land directly under Government.

(New.)

26. It shall further be lawful for the Local Government to order, in the manner prescribed in section 5, the survey of any estate or portion of an estate, whenever such survey is considered necessary to prevent a disturbance or a dispute likely to involve a disturbance. Such survey shall be conducted in the manner prescribed in this Chapter for the conduct of surveys of estates on the application of the owners, and the charges incurred shall be similarly apportioned and recoverable.

(New.)

27. All charges payable to Government under the provisions of this Chapter shall be recoverable in the manner provided in section 22.

CHAPTER V.

THE SETTLEMENT OF BOUNDARY DISPUTES
WHETHER ARISING IN GOVERNMENT
LANDS OR IN PROPRIETARY ESTATES.

28. In the event of any dispute arising, (New.) otherwise than in

Application for settlement of boundary dispute. the course of a survey, as to the

boundaries of any lands, any one or more of the parties may apply to the District Collector having jurisdiction over the lands in question to have the dispute decided under the provisions of this Act. The District Collector may also of his own motion order that such a dispute shall be settled under this Act.

29. On receipt of an application under (New.) the last section, or

Appointment of Survey Officer for settlement of dispute. upon the issue of an order on his own

motion, for the settlement of a dispute, the District Collector shall proceed to deal with it himself or shall appoint one of his subordinates not below the rank of a Tahsildar as Survey Officer to dispose of the case. Provided that Local Government may appoint any other person for this duty, or direct the Collector to dispose of the case himself, where the issues involved are of sufficient importance.

30. On the date fixed for an inquiry (New.) under this Chapter

Investigation and decision of boundary disputes and demarcation of boundaries. the Collector or the Survey Officer as the case may be shall

proceed to investigate the claims of the various parties and shall record the evidence of all persons examined by him. At the close of the investigation, he shall record in writing his decision and the reasons upon which it is based, and, after duly informing the parties of the same, and intimating to them the date on which he intends to demarcate according to his decision, shall proceed to mark out the requisite boundaries conformably with the decision, and shall enter on the record the date of the completion of the demarcation. The decision so arrived at shall be final and conclusive, unless reversed or modified by the decree of a Civil Court.

31. In the case of any disputes settled under the provisions

Recovery of cost of settlement. of this Chapter, the costs of settlement

shall be apportioned by the Collector or the Survey Officer as provided by sections 13 and 21 and shall be recoverable in the manner prescribed in section 22.

Section 25
of Act XXVII
of 1860 and
Section 22
of Board
Bill.

(Section 25 of Act XXVIII of 1860 and section 22 of Board's Bill.)

32. An appeal shall lie to the Civil Courts by regular suit, provided it be preferred within six calendar months from the date of the decision recorded by the Survey Officer.

Provided also that at any time within one year from such date it shall be lawful for the Local Government, upon just and reasonable cause being shown, to extend, for such time as it may think fit, the period for preferring such appeal.

CHAPTER VI.

MISCELLANEOUS.

(New.)

33. The Proceedings of Survey Officers under this Act shall be governed, so far as may be practicable, by the Code of Civil Procedure.

34. For the purposes of any inquiry under this Act, the Survey Officer shall have power to summon and enforce the attendance of parties and witnesses, to compel the production of documents, to examine witnesses and generally to conduct the inquiry, so far as may be, by the same means and in the same manner as is provided in the Code of Civil Procedure.

(Section 15 of Burma Act V of 1880.)

35. The Survey Officer, whenever he thinks fit, may, with the consent of all the parties concerned, refer to arbitration any dispute as to a boundary.

The procedure laid down in Chapter XXXVII of the Code of Civil Procedure shall apply (as far as may be) to such references.

(New.)

36. In computing the periods of limitation for appeals prescribed by this Act the provisions of the Indian Limitation Act, 1877, shall apply.

(Section 32 of Burma Act V of 1880.)

37. The Local Government may from time to time after previous publication make rules consistent with this Act—

(a) for the collection and record of any information in respect of any land;

(e) regulating the delegation to subordinate officers of the powers and duties conferred and imposed upon Survey Officers by this Act or by the rules made thereunder.

(d) for the proper performance of all things to be done and for the regulation of all proceedings to be taken under this Act;

(e) for the publication, issue and service of all notices, whether general or special, to be published, issued or served under this Act;

(f) for carrying out generally the purposes of this Act.

38. No suit or criminal prosecution shall lie against any officer specially empowered under this

Immunity for acts done in good faith.

Act for anything done in good faith under this Act.

(Section 24 of Board's Bill.)

STATEMENT OF OBJECTS AND REASONS.

The law relating to the demarcation and survey of boundaries and to the settlement of boundary disputes is contained in Government of India Act XXVIII of 1860 and Madras Act II of 1884, the latter enactment having been framed in order to amplify the provisions of the former in regard to the maintenance of boundary marks already erected. The existing law contains no provision enabling a Boundary Settlement officer to summon and enforce the attendance of witnesses or to require the production of documents, and does not require him to record the evidence upon which his decision is based. The Act of 1860 contemplates a rough and ready settlement of boundary disputes, and with a view to expediting the conduct of survey operations, it leaves the Boundary Settlement officer free to arrive at his decision without any definite method of procedure.

2. It is desirable to amend this law in many essential respects. The older enactment is devoid of logical arrangement, and while the more recent law, as contained in Act II of 1884, has been practically reproduced in the present Bill, the provisions of both have been consolidated and amended, and the law recast in a manner more suited to present requirements. Experience has shown that the existing provisions in regard to the settlement of boundary disputes have worked badly, and in several cases the Government has been put to considerable loss by the irresponsible and unsatisfactory nature of the original decision. The sections of the former law providing for a reference to arbitration have been excised. It has been found that these sections are never or very rarely used in practice, and the decision of a non-official jury or committee is in any case likely to lack promptitude and precision. The Bill accordingly proposes to submit the decision of all disputes to the Boundary Settlement officer in the first instance, and prescribes the method in which he shall adjudicate thereon: it however enables him to refer any dispute to arbitration, if he considers it desirable to do so, under the provisions of the Code of Civil Procedure.

3. In order to remedy the evils noted above, the Bill proposes to enact that the decision of the Boundary Settlement officer who is now styled "Survey Officer" shall be arrived at in a judicial manner. It is declared that the Survey Officer shall conform, as far as may be practicable, to the main provisions of procedure ordinarily followed in the civil courts and the Code of Civil Procedure is made applicable to proceedings under the new Act. Power is taken to make rules for the regulation of all such proceedings.

4. With the same object the rule making the decision of the Survey Officer subject to revision by his departmental superior has been abrogated, and the original decision is thus rendered final until reversed or modified by means of a regular suit in a civil court. This alteration is also desirable in view of a ruling recently promulgated by the High Court, to the effect that the decision against which an appeal is allowed in the form of a regular suit is the original decision of the Survey Officer and not that of his superior passed on revision.

5. Under the "Miscellaneous" chapter of the Bill, a section has been inserted securing to the Collector or Survey Officer immunity for anything done or omitted in good faith under the Act.

6. The definition of Survey Officer has been framed so as to enable the Government to select any person it may think fit for this duty, and the section relating to the conferring of powers under the Act has been remodelled accordingly. This power has been taken in view of the fact that doubts have from time to time been raised as to whether an officer such as the Manager of an estate under the Court of Wards could legally be appointed as a Survey Officer under the Act, and it is accordingly deemed advisable to leave the hands of Government entirely unfettered in this respect.

7. As already noted, the provisions relating to the maintenance of boundary marks have been taken practically as they stand from Act II of 1884. The sections under the heading "Erection of boundary marks" have, however, been slightly amplified, in order to meet the difficulty brought to notice by the Superintendent of Revenue Survey, in regard to the levy of survey charges from the owners and occupiers of lands surveyed. In the survey of a village the labour of chainmen and flagmen for Field Surveyors has hitherto been supplied by the villagers, while the labour of these individuals when required for Deputy or Head Surveyors or for Sub-Assistants has recently been charged to the State. This forms a heavy additional item in the cost of survey, and in view of the fact that difficulty is now experienced in obtaining such labour free, even when required for Field Surveyors, the existing law has been amended and brought into conformity with the law relating to this subject in the Bombay Presidency (Bombay Act V of 1879, section 97).

8. The provisions contained in Act XXVIII of 1860 prescribing penalties for disobeying summons, for making false statements, for erasing, altering, removing or injuring, boundary marks, and for obstructing operations undertaken under the Act, have been omitted as superfluous. In like manner, the sections of the same Act declaring Regulations IX of 1823 and VII of 1828 applicable to persons acting under that Act have been omitted. The Indian Penal Code and Code of Civil Procedure provide the necessary powers in these respects, and the provisions of the said Codes are simple in their procedure and final in their effect.

9. Advantage has at the same time been taken of the present opportunity to extend the application of the law relating to survey and to the settlement of boundary disputes to lands in the interior of permanently settled or other estates. This power has been held to be non-existent under the present law (Government Order, No. 1228, dated 25th September 1880), and it is especially desirable that the provisions of this law should apply to lands comprised in estates under the management of the Court of Wards. The want of this power has in many instances caused considerable inconvenience to the efficient administration of such estates, and while the main object of the present extension is to include the estates of incapacitated owners, it is desirable that the Government should have a similar power in regard to all zemindari lands. The Act is now declared by Section 1 to extend to the whole of the Presidency of Madras, and a separate chapter is provided for the survey and demarcation of lands other than Government lands.

RESOLUTION—No. 181, dated 22nd May 1896.

The Board submits its remarks on the draft Bill to amend the "Boundary Act" forwarded with the Government Order read above.

2. Section 4 of the Bill—provides for a Survey officer being appointed by Government or by the Board, to which the Government may delegate its powers under this section. Section 29, however, states that the District Collector may himself deal with a boundary dispute or appoint one of his subordinates as Survey officer to dispose of it, the power of the Local Government to appoint any one it pleases being reserved. The two sections are not necessarily inconsistent, but the Board would add to the last clause of section 29 a reference to section 4.

3. Section 7.—As an appeal lies from the decision of a Survey officer in any dispute settled by him under this section, the Board considers that there should be a distinct provision in the section that this decision should be recorded in writing, and that it of Objects and Reasons premises that the decision of a Survey officer shall be arrived at in a judicial manner, and in the case of disputes settled under Chapter V of the Bill it is distinctly stated that the finding shall be reduced to writing—vide section 30.

4. Section 11.—The Board considers that the decision of the District Collector under this section should be declared to be final. The time within which applications should be made to the Collector should also be fixed: the Board would enter it as one month from the date of the payment or tender of compensation.

5. Section 12 does not, like section 6 of the Burma Act, from which it has been copied, specify the purposes for which persons interested may be required to attend. The Board recommends that the words "and for such of the purposes aforesaid" may be added after the words "at such place."

6. Section 13 authorises the Survey officer to charge the costs of survey and demarcation to "persons possessing a right of ownership or occupancy" in the lands surveyed. As Chapter III (a), in which this section is found, relates to the conduct of surveys of Government lands, the Board presumes that by the words "persons possessing a right of occupancy" reference is made to the tenants or lessees of ryotwari lands. If so, it is desirable to express the meaning more clearly and to reproduce section 7 of Act II of 1884 as an additional section. Otherwise there will be no provision enabling the tenant or lessee to deduct the amount of costs recovered from him by Government from the rent payable by him to his landlord. A similar provision was contained in the draft Bill submitted by the Board—vide section 11 of the Bill at page 9 of Board's Proceedings, No. 390, dated 3rd July 1893. The Board assumes that charges connected with survey and demarcation should ultimately fall on the landholder.

7. Section 17—Clause (1) requires village officers to report the destruction, injury or alteration of survey marks to the officer in charge of the nearest police station or to the nearest Magistrate. But the action to be taken by either officer is not stated. The Board suggests the following addition to section 17, clause (1):—"The officer to whom reference is made by the village officer shall report the matter to the authority competent to take action under section 19."

8. Section 21 provides for appeals from orders passed by the Survey officer under sections 13, 14 and 19, but not from orders passed by a Collector under section 19. The Board considers that the defect may be removed by inserting the words "or Collector" in the section after the words "the Survey officer." But a better plan would be to add a new clause to section 3 (2) as follows:—"The term 'Survey officer' in sections 21 and 33 to 35 includes also a Collector."

9. Section 23.—The Board presumes that if a proprietor withdraws his application after the survey has been commenced, work should be discontinued and considers that this point should be specifically provided for.

10. Section 24.—The manner in which the Government should notify a survey of Government lands is specified in Chapter III (a) and not in Chapter II. The words "in the manner prescribed in Chapter II" should therefore be omitted or reference should be made to Chapter III (a). It should, however, be distinctly stated that the proceedings of the Survey officer taken under Chapter IV must be governed by the provisions of Chapter II.

11. Section 29.—The Board considers that provision should be made for the Local Government delegating its power under this section to the Board as in section 4, clause (3).

12. Section 30.—The decisions passed by a Collector or Survey officer under this section are final and conclusive, unless modified by the decree of a Civil Court, while in the case of disputes arising in the course of survey and dealt with by a Survey officer under section 7, a departmental appeal lies to the authority to whom the Survey officer is subordinate—vide section 8. The Board considers that such a distinction is right, but it must be noted that it deviates from paragraph 4 of the Statement of Objects and Reasons and from paragraph 5 of the Government Order.

13. Section 32.—The time for appealing to the Civil Courts should, in the Board's opinion, be calculated from the date of completion of the demarcation and not from the date of the decision; for, until the boundaries are marked out on the spot, the parties are not likely to know how far the decision is unfavourable to them. The

Bill, as drafted by the Board, provided for this—*viz* section 22 of the Bill at page 11 of Board's Proceedings, No. 390, dated 3rd July 1893—and the Government Order does not declare why this provision has been amended.

14. *Section 33.*—The Government has negatived the Board's proposal that proceedings under the Act should be summary, and observes that such a provision is inconsistent with the declaration that the investigation should be of a thoroughly judicial character. The Board would respectfully submit that the proposal involves no real inconsistency. The proceedings of a Small Cause Court or of a Collector acting under Madras Act VIII of 1865 are summary, but they are none the less judicial on that account. The Board's object was to provide for a speedy settlement of disputes and it considered that a Survey officer should not be hampered by elaborate rules of procedure. The Board doubts whether it is advisable to leave this question to be settled by rules under section 37 of the Act.

15. In paragraph 6 of the Statement of Objects and Reasons, the second clause of the first sentence should be omitted, as there is no section in the Government Bill "relating to the conferring of powers under the Act." In line 3 of paragraph 7, the words "Erection of boundary marks" should be replaced by "The conduct of a survey and the erection of survey marks." The Board considers that paragraph 9 should be amended so as to agree with paragraph 4 of the Government order.

16. The Board regrets the delay in the submission of this report. The Government order was received in the Board's office at the commencement of the Christmas holidays, and as the subject was of considerable importance, it was hardly possible for the Board to submit its criticisms on the new Bill in time to allow of the measure being introduced during the Legislative Session of 1895-96. The Board is of opinion that the Bill, as modified above, is a great improvement on the existing enactments, and would recommend that early steps may be taken to pass it into Law.

(True Copy and Extract.)

Racm
Acting Secretary

To the Secretary to Government, Revenue Department. ✓

M. I. - 17
The Madras Survey Bill

Sigs. No 4
4.1.97.

Honble Mr. Grose C.I.E.

Honble Mr. Blyth C.I.E.

Honble Mr. ...

For ...

c4/9. Recd 9/10
19/10.

Each page in the note is numbered variably in red pencil & the sections of the revised bill draft with are shown in blue pencil at the top left.

4. Section 1. It is customary to specify the title of an Act in a separate sub-section, hence the division of this section.

Section 3. The interpretation clause has been modified by the introduction of definitions of the terms "Estate" "Proprietor" and "Survey" and by alterations in the existing definitions of "Survey Mark" and "Govt. land"

The definition of "Estate" has been taken from that contained in sec. 4 of Madras Act II of 1904 as amended by sec. 3 of Madras Act III of 1905. The word "estate" is used in several places in Chap. III of the Bill and the insertion of the definition of it renders it possible to define Govt. land in such a way as to render unnecessary reference to the two Madras Acts quoted in the definition contained in the Bill referred to the Board.

The definition of "proprietor" is identical with that contained in sec. 4 of Madras Act II of 1904 and is required in consequence of the liabilities imposed on the proprietor of an estate which has been surveyed.

The definition of "survey" is not exhaustive and is introduced for the purpose of avoiding the expressions "Survey" and "demarkation" which is used in several places in the Bill referred to the Board. The wording of the Act is thus shortened and the definition renders it impossible for the Courts to draw a distinction between "demarkation" which is one of the processes of a survey, and "survey". The definition of "survey mark" has been altered,

(1) by the insertion of the word "on" between the words "above" and "or below" so

The additions & modifications are a great improvement

Good

Good

* cf. sec. 7, 9, 10, 11

Good

The words underlined have been inserted so as to bring marks laid down under the provisions of Chapter II (Settlement of boundary disputes) within the def. of "survey mark"

Good

I don't doubt the phrase "land" implies the ownership of land & has descended from the writer of this note. I don't say land not included in estates. I don't say "land" but "land" is defined, the expression cannot be used. I think the Hon. General Secy. is right in this question. A. G. Havelock A. G. H.

as to provide for the case of a survey mark made on the surface of, say, a flat rock; (2) by the omission of the superfluous words "whether on or within the boundaries thereof"; (3) by the substitution of the words "by a person duly authorized to make a survey of such land or to settle the boundaries thereof on behalf of Govt." for the words "officer of Govt. legally authorized to make a survey of such land." It is possible that an individual not in the service of Govt. might be appointed to conduct a survey; thus in a recent case the Lieut. Governor of Bengal appointed a private individual named Taylor to conduct a survey of the boundary between the Ganjam Agency and a tributary state in Orissa. Mr. Taylor though performing work on behalf of Govt. could perhaps hardly be described as an officer of Govt. The explanation to this definition has been added for the purpose of making it clear that the expression "Survey mark" includes marks laid down in the case of a survey of an estate or of a settlement of a boundary dispute when the fact that the survey is conducted at the instance of the proprietor or on the application of the parties to the dispute might raise doubts as to whether such survey was conducted "on behalf of Govt."

7. Section 4. The wording of sub-section (2) has been altered in such a way as to make its meaning more clear. An addition has been made to sub-sec.

sub-section 3 in order to meet the objection raised in para 2 of the current. The Board points out that in sec. 4 the appointment of a survey officer is made by Govt. or by the Board of Rev., whereas in sec. 29 it is stated that the D^y. Collector ^{may} in certain cases appoint one of his subordinate officers as survey officer. The addition now made brings into one section No. 4 all cases of the appointment of a survey officer.

8. Chapters II and III. These two chapters have been combined, because they relate to one major head, namely, the survey of Govt. lands, and because the arrangement of the sections in the Bill referred to the Board was hardly logical. Thus sec. 6 relates to the examination of all lands and not merely that of Govt. lands. It should consequently find place in the general chapter at the end of the Bill and not merely in a chapter relating to the survey of Govt. lands. Again secs. 7 & 8 describe the procedure which the survey officer must adopt in fixing boundaries and dealing with appeals against his decisions whereas the subsequent sections 9-14 deal with proceedings which are preliminary to the actual fixing of boundaries.

The new chapter has been divided into 3 major heads, namely, (a) the initiation and conduct of surveys of Govt. lands, (b) the maintenance of completed surveys of Govt. lands

and

Approved but I have proposed a verbal alteration in sec. 4

It was meant to refer only to the purchase of Govt. lands as defined in the Bill with some private property.

24/1/1902. But another clause had to be substituted for the above.

and (c), the revision and recovery of charges imposed on account of the conduct and maintenance of surveys of Govt. lands. These headings correspond roughly to the sub-divisions of chap. III in the Bill referred to the Board except that heading (a) has been amplified by the introduction of the word "initiation" which is intended to cover sec. 5 (the provision empowering Govt. to direct a survey). Heading (c) has also been altered by the introduction of the "revision of charges" for the purpose of covering sec. 19 and the wording of all 3 headings has been somewhat simplified.

9. Section 5. The words "whenever it may be considered expedient" have been omitted with reference to sec. 1 of the Madras General Clauses Act II of 1891 which lays down that "Where an Act confers a power, that power may be exercised from time to time as occasion requires."

The words "or for any other similar purpose" have been left out, because it is difficult, if not impossible, to conceive of any purpose similar to the settlement of the revenue, the record and preservation of rights and the settlement or prevention of boundary disputes; the expressions used are of such a general character that the words struck out appear unnecessary. The concluding sentence of this section, namely, "Such survey may extend to the lands of any village, taluk, or district generally or to such land only as the

local

Approved

I have separately proposed the omission of all this

23
7 local Govt. may direct. has been omitted as unnecessary in view of the fact that the first portion of the section empowers the local Govt. to direct the survey of any Govt. land. The other alterations made in this section are purely verbal.

10. Section 6. This corresponds to sec. 9 of the Bill referred to the Board which has been brought in to its proper place. It has been divided split up into two sub-sections for convenience of reference and in accordance with the usual method of legal drafting. The other changes are purely verbal. The only one which requires notice is the substitution of the words "all persons directly or indirectly interested in such land" for the lengthy phrase "all persons owning or occupying or otherwise interested in the said lands and to all persons employed in or connected with the management of such lands".

11. Section 7. This corresponds to sec. 10 of the Bill referred to the Board. The alterations made are verbal with perhaps the substitution of the word "holders" for owners. It is thought that Govt. is the owner of Govt. land and that the correct term throughout the Act is "holder". The words "cutting down" are included in the word "removing" and need not be retained; and the words "and demarcation" before "of such lands" are unnecessary in view of the definition of survey.

12.

Approved but the phrase "cut down" is altered. *by leave*

No. I don't object to this dissent *by leave*

Approved *by leave*

Govt. is not the owner of all the lands but are Govt. lands as defined in Sec 3.

Is this so? I may suggest for *by leave* the purpose of the survey to cut a line down without removing it, generally it is sufficient.

Approved, but I don't dissent to the word, owners before holders. *by leave*

24
12. Sec. 8. This corresponds to sec. 11 of the Bill referred to the Board but has been simplified by being split up into three sub-sections. In the first sub-section the superfluous words "or" are removed and the words "or other obstructions" are introduced after the words "standing crops" in order to provide for payment of compensation in respect of "other obstructions" removed under sec. 7.

Sub-sec. 2 provides for an appeal as regards the amount of compensation awarded under sub-sec. (1) and in accordance with the suggestion made in para 4 of the current the period of limitation is fixed at one month within which such appeal should be preferred.

Sub-sec. (3) *by leave* it contains the Board's suggestions made in the same para that the *by leave* the District Collector's decision in an appeal under sub-sec. 2 should be declared final and further provides that the decision of the Survey Officer under sub-sec. (1) shall be final, if not appealed against. It is presumed that appeal should only be allowed in regard to the sufficiency of the amount awarded, and that, if there is any dispute as to the ownership of the trees, jungle, fence, etc. removed, the parties should be referred to the Civil Courts for settlement thereof.

13. Secs. 9 & 10. Sec. 9 corresponds to sec. 13 of the Bill referred to the Board and sec. 10 corresponds to sec.

12

same of the Bill. Sec. 9 however does not contain the requirement that the Survey Officer should not proceed with the survey until the periods specified in any special notice issued under sec. 12 has elapsed. This alteration has been necessitated by the revision of sec. 12 (now sec. 10). It is not clear for what purpose it was proposed to issue notices under sec. 12. The Board has drawn attention to this in para 5 of the current and recommended that the words "and for such of the purposes aforesaid" should be added after the words "at such place". It follows the wording of sec. 6 of the Burma Act V of 1890, but omits the provision contained in that sec. which requires persons to whom special notices are issued for this purpose to comply as far as possible ^{with} the requisitions made therein. The Board's addition would presumably refer back to secs. 9 & 10 which specify the various purposes for which persons interested in the land under survey should be called upon to attend in the general notification issued preliminary to the commencement of survey. This long list of purposes may however be summed up in the expression "for the purpose of assisting in the survey" and these words have accordingly been introduced in sec. 10 in lieu of the Board's phrase ^{the meaning of which} would not at first sight be understood. It is thought however that the provision now contained in sec. 15 empowering the survey

Survey Officer to employ hired labour, if the persons to whom the notices are addressed fail to comply with the requisition to assist in the survey, shows that it is not the intention of Govt. to follow the precedent of the Burma Act in rendering such persons legally bound to assist in clearing the land, putting up survey marks etc. "as far as lies within their power". For this reason sec. 10 merely requires that the person on whom a special notice is served shall be required to attend, ^{but not} ~~and also~~ to comply with ^{any other} ~~the~~ requisition made therein. It should be noted that sec. 31 ³³ empowers the Survey Officer to summon and examine witnesses, if necessary, for the purpose of any enquiry connected with the survey. ^{the} object of sec. 10 would therefore ^{is} ~~seem to~~ ^{apparently} be merely to give the holders or occupiers of particular lands a special notice enabling them, if they so choose, themselves to assist in the clearance and survey of the boundaries of their lands and erection of survey marks therein, and thus to ^{escape from} ~~save themselves from~~ the liability to pay charges on account of hired labour employed for this purpose. In this idea it has been provided that such special notices may be issued at any time during the course of the survey and accordingly sec. 9 omits the provision prohibiting a Survey Officer from commencing the survey until the periods specified in special notices issued under sec. 10 have elapsed. If as is usually the

the case, the Govt. were to direct by notification under sec. 5 the survey of a district, it will be impossible to attempt to serve special notices on the hundreds of thousands of persons interested in the land about to be surveyed before the commencement of the survey, yet it will surely be desirable as the Survey Officer came to each village that special notices should be given to the holders or occupiers of the land about to be surveyed in time to permit of their assisting in the survey. It might be desirable by executive order to expressly require Survey Officers to adopt this procedure. The only other change made in these two secs. which is not purely verbal is the omission of the words "or before" in the phrase "on or before a specified date" in sec. 10. The Survey Officer might not be at the specified place throughout the period between the issue of the notice and the date fixed therein and if it is desired to give the person on whom it is served an opportunity of ^{suiting} his own convenience as to the date of his attendance, there is no reason why the notice should not specify more than one date. Under clause (36) of sec. 3 of the Madras General Clauses Act, words in the singular include the plural and there is therefore no reason to alter the word "date" which is in the singular.

14. Section 11. This corresponds to the last two sentences of sec. 15 and to sec. 15 of the Bill referred to the Board

It must be used to special purpose
28

When they want special purpose to attend - it will not be often
29

X

Approved
29

Board. The provisions have been split up into two sub-sections.

The first of these is altered by a reference to the notice issued under sec. 10 in consequence of the mention in that section of the purpose for which special persons served with special notices are required to attend. Next the simple expression "the purposes of the survey" has been substituted for the phrase "these and other similar objects connected with the survey and demarcation."

In sub-sec. 2, care has been taken to make it clear that the only ^{change} costs which can be debited to the ryots are costs incurred on account of hired labour, the employment of which is necessitated by their failure to assist in the survey, and expenses incurred in procuring survey marks. As sec. 15 stands at present, the expression "all costs so incurred" must refer to hired labour only and would not cover expenditure on the purchase of boundary stones from the nearest quarry, if situated in a zamindari. The expression "holders or occupiers" has been substituted for "persons possessing right of ownership or occupancy." There appears no reason why a person in wrongful occupation of the land surveyed should not be called upon to pay for the cost of the survey if the rightful holder or occupier cannot be readily traced. The explanation added to this sub-section replaces sec. 15 of the Bill referred to the Board.

I have noted elsewhere in this
28

Approved, but the word "owners" should be inserted before "holders" & in the explanation I put "owner" instead of "holders". 29

12 24
15 Section 12. This corresponds
to sec.7 of the Bill referred to the
Board, but has been somewhat amplified
and is divided into five sub-sections.
The first of these corresponds
to the first sentence of sec.7, but
has been modified by the insertion of
the word "ordinarily" so as to provide
for cases in which it might not be de-
sirable for the survey to proceed
according to occupation. The scope of
this particular provision has further
been limited to surveys of Govt. lands
in order to avoid a reference to sub-
sequent chapters which would be out of
place. In sec.22 (2) it has been pro-
vided that this general rule shall
apply to the case of survey of estates
(Chap. III) and it has been designedly
omitted from Chap. I which relates to
the settlement of boundary disputes
arising otherwise than in the case of
a survey where occupation is less likely
to be a criterion of right.

Sub-sec (2) follows the first part of
second sentence of sec.7 but omits the
requirement that the correctness of the
boundary lines should be affirmed by the
village officers then present. If the
only village officer present were the
toti or thalavari, his word might be
of little value and, if the village
officers disputed the correctness of
the boundary as pointed out by the
holder or the occupier, the survey
officer would proceed under sub-sec.3.

Sub-sec.3 corresponds to the
latter

2. *Land is included in estate.*
Place

*Instead of ordering it to be
communicated 'to the holder or
occupiers of the land affected',
I had ordered it to be communicated
to all persons known to have any
interest direct or indirect in
the land.*

80
latter part of sec.7 but has been safe-
guarded by the introduction of the
words "as nearly as may be". In many
cases the village records would not
be consistent with the occupation or
with the evidence available. The words
"or occupiers" have been added to hold-
ers as the former are quite as likely
to be able to give valuable evidence as
the latter.

Sub-sec.4 adopts the suggestion
made by the Board in para 5 of the cur-
rent that the ^{Survey Officer's} decision in a case of dis-
pute should be recorded in writing and
communicated to the ^{landholders &c} authorities concern-
ed. It is necessary that not only the
actual parties to the dispute but
also the holders or occupiers of the
land affected should receive intimation
of the orders passed. If it is thought
that the expression "holders or occupiers"
is too vague, the difficulty might prob-
ably be met by a ^{rule} ~~rule~~ issued under sec.
36 prescribing the procedure to be taken
by the Survey Officer for the purpose
of communicating his decision in the case
of lands which are in the holding of one
man and occupied by another or in that
of lands in the holding or occupation
of more than one individual. It would
not be easy to provide in the body of
that Act for all cases which might arise,
under the wording of a comprehensive
section-provision ^{which would be very difficult} ~~it will be by no means~~
^{matter to settle} ~~easy to settle~~. It is for this reason
that the ^{word} "holders or occupiers" has been
inserted

inserted instead of holders and occupiers, which might be taken to require a Survey Officer to search out absentee holders who had no real interest in the matter. The difficulty might ^{however} be met by substituting for the words "holders or occupiers" the words "so far as may be practicable to the holders or occupiers".

Sub-sec. 5. provides for the issue of a notification of the fact that the demarcation of a particular area is completed. The object of this provision is to fix a date from which an appeal shall lie in a case regarding ^{has been} which there ~~is~~ no dispute at the time of the survey, owing possibly to the unavoidable absence of the interested parties. It is only fair that an appeal should be allowed in such circumstances. As regards the expression "any village or other conveniently defined local area", it is to be noted that in some cases a portion only of a village might be under survey or possibly a tract comprising portions of two adjoining villages. It is therefore impossible to take the village as the unit in every case. Rules ³⁶ might be laid down under sec. 50(4) or executive orders issued regulating the proceedings of the Survey Officer in such matters.

16. Sec. 15. This corresponds to sec. 8 in the Bill referred to the Board with the exception of the last sentence. It provides for an appeal against the orders passed under sec.

I don't see the use of the word conveniently: It is for the court to divide what has been area can be defined.

Agreed

Agreed generally, but see above

Agreed

12 in which it will be noticed that the word ^{"order"} ~~"or"~~ has been used for the sake of clearness in sub-secs. (2), (3) & (4). The appeal time is fixed differently in the case of disputed and undisputed boundaries. In the latter case, as explained above, it is necessary to fix some date from which the appeal time shall be counted and, as there is no need ^{written} ~~to~~ to appeal against, that date has been fixed subsequently to the completion of the demarcation which would constitute the first intimation to the persons concerned of the nature of the Survey Officer's order. In a case, however, of disputed boundaries a written decision is communicated to the parties and there is no reason why they should not be required to proceed more expeditiously with any appeal which they may wish to prefer. In doubtful cases it is possible that the survey Officer might find it ^{sometimes} convenient to postpone demarcation until the decision of the appeal against his orders.

Agreed
Agreed

17. Sec. 14. This corresponds to the concluding sentence of sec. 8 in the Bill referred to the Board but makes it clear that an appeal lies to the Civil Courts in the case of both original and appellate orders in regard to disputed boundaries and also provides for ^{recourse} ~~to the~~ ~~costs in~~ Civil Courts in cases where, through ^{or some other reason} the unavoidable absence of the parties, the boundary was not disputed at the time ~~of~~ of survey. The limitation period is prescribed on the same principles as in the preceding section.

Agreed
Agreed

18. Sec. 15. This section which corresponds to sec. 16 of the Bill referred to the Board is the first of those relating to the maintenance of completed surveys in Govt. lands. Sec. 16 refers to "lands" and was apparently intended to cover Govt. lands ^{only} as otherwise it would have found place in Chap. VI and not in Chap. III. It is a matter for consideration to what extent this section which fixes the responsibility for the maintenance of survey marks upon the holders or occupiers of Govt. lands and the succeeding secs. 16-19 should be made to apply to the case of estates which have been surveyed under Chap. III or to that of marks erected in the demarcation of disputed boundaries under Chap. IV. It would suffice here to remark that it was thought better to deal with each case separately and for this reason general provisions in regard to the maintenance of survey marks were not drawn up. This makes the Act perhaps a little longer, but as some difference in treatment appears to be called for ^{with reference to the} ~~generally under~~ circumstances in which the survey marks are erected, it seems preferable to deal with each case separately. The Bill would probably be somewhat less clear if a separate chapter on the maintenance of survey marks were drawn up as it would be necessary to split up the subject into so many ^{sub-}divisions as to render the matter of some difficulty to at once find out the liabilities and

This phrase, "Govt. lands," is from the object stated above (I observe that the provision is extended to Surveyed estates by Sec. 25.)
J. Grose

Approved, but see above.
J. Grose
and under "owner" before "holder" + other two places, "Govt. lands"
J. Grose

The words "over Govt. lands" at the end of Sec. 16 (1) (a) may be omitted.
A. T. Arnold
Note: The words "Govt. lands" were inserted to make it obvious from the wording of the section itself that the provisions were intended to apply only to survey marks on Govt. lands, & to exclude the possibility of their being applied to regulate the conduct of village officers in zamindari tracts which have been surveyed on the application of the provisions (Sec. 21 (b)). This is true that the heading of Chapter II (b), & the wording of section 25 imply this, but I was not certain to what extent a "heading" limits the meaning of a section, & thought it better to make the intention of section 16 clear per se, rather than to leave it to be inferred from a comparison with section 25. The result has been the clumsy phrase "jurisdiction over lands" which does not exactly suit a...

34
and responsibilities of the several persons concerned in regard to the maintenance of survey marks erected under varying sets of circumstances. The question of providing for the maintenance of survey marks erected in the course of the survey of an estate or for the settlement of a boundary dispute will however be discussed fully in connection with Chapters III & IV.

Turning now to sec. 15 the only other alteration which calls for remarks is the substitution of the word "holder" for "owner" This follows sec. 11.

19. Sec. 16 The words "curman or" have been omitted throughout. Village Accountant is the term used in the Proprietary Estates Village Service Act and Hereditary Village Offices Act.

Subsec. (1) (a) has been amended by the insertion "on or" after the "survey mark" in order to provide for cases of village boundary stones ^{should be added} but not wholly within the limits of a village officer's jurisdiction.

clause (b) has been altered so as to require the report of the village officers to be made to the Dt. Collector or the nearest Survey Officer instead of to the nearest Station House Officer or Magistrate. The latter provision which has been taken from sec. 27 of the Burma Act V of 1830 is practically useless in this Presy. inasmuch as mischief by destroying or removing a landmark is not a cognizable offence under (sec. 434 of the I.P.C.) and the offence defined in sub-sec. (2)

of sec. 16 is also non-cognizable. The reference to the Magte. in the Burma Act is due to the fact that under sec. 23 of that Act a Magte. of the First or Second Class is empowered to replace boundary marks, the Police being under his authority, and the report to a Station House Officer is presumably directed on the ground that such officer is to some extent subordinate to the nearest Magte. Station House Officers in this Presy. could take no action on any reports submitted to them under this section (vide sec. 157 Cr. P.C.), and in a great majority of cases it seems probable that there is would be sufficient evidence to warrant a Magte. taking cognizance under sec. 191 of the Cr. P.C. As a rule the individual by whom survey marks have been altered or destroyed could not be traceable. It is submitted therefore that that the Board is right in its suggestion (para 7 of the current) that the Village Officer's report should be communicated to the authority competent to take action under sec. 18, that is to say, the Dt. Collector or the Survey Officer, who could take steps to repair or renew the damaged or lost survey marks. There is however no reason why such reports should pass through the hands of a Station House Officer or a Magte. and the section has been accordingly altered so as to require the report to be submitted direct by the village officers to the Dt. Collector or the nearest Survey Officer having jurisdiction.

Description of the functions of the Magte. as an individual as a village officer. This can be avoided by substituting the following wording:-
Section 16(4) ... Survey marks on, or below the surface of any land, or within the limits of any land, I think it will be better simply to leave out the words "as a village officer".
J. G. Rose

Rights of the Magte. - see other
late
W. M. M.

I have also omitted the word "immediately" which in the phraseology of legislature means "as soon as may be. If allowed to remain in the section, this would require that every village officer should submit a separate report on every occasion when he finds a damaged survey mark and the amount of time and labour and stationery which would be wasted in preparing and disposing of such reports would be something enormous. It would be competent for Govt. to lay down rules directing the village officer to submit monthly or quarterly statements. It is for consideration if it is decided to retain this section, whether the Village Officers should not be required to submit their reports to the Tahsildar of the Taluk in which the village is situated. This object might of course be secured by appointing the Tahsildar to be the Survey Officer for the purpose of this section.

Certainly so
If the section only referred to the survey marks and the survey officer, the provision would be left for execution in order, but it also applies to the case where the survey is in progress.
J. G. Rose

I don't see the use of the words, "conveniently", & it may give rise to doubt
J. G. Rose

20. Section 17 corresponds to sec. 18 of the Bill referred to the Board and has only been slightly altered. It is desirable here also to provide for the case in which a portion of the village is surveyed and the words "or that conveniently defined local areas" have accordingly been inserted.

21. Section 18 corresponds to secs. 19 & 20 of the Bill referred to the Board which have been divided into three subsections. The wording of the two sections is not quite clear. Sec. 19 empowers the Collector or the survey officer to cause survey

survey marks to be constructed, renewed or repaired. Sec. 16 permits him to require the owners or occupiers to undertake the construction or repair thereof and if they fail to do so, requires him to execute the work. It is thought that in every case the holders or occupiers of the land affected should be given the option of themselves taking the necessary step for the repair of the survey marks situated on their land and sub-sec. 1 of sec. 18 is worded accordingly. Sub-sec. 2 corresponds to sec. 20 with the exception that the Survey Officer is not positively required to repair the survey marks if the holders or occupiers of the land failed to do so; circumstances might arise rendering such repair unnecessary.

Sub-sec. (3) corresponds to the last sentence of sec. 13, but has been worded more simply. It is for consideration whether Rev. Divisional Officers should not be given the same powers as the Dt. Collector in regard to the maintenance and repair of survey marks; but if it is thought desirable, there is no need to amend the Act, for Divisional Officers might all be appointed ex-officio survey officers.

21. Sec. 19. This corresponds to sec. 21 of the Bill referred to the Board. It has been divided into three sub-sections. The first of these remedies the defect pointed out in para 8 of the current so as to provide for an appeal to the Board of Rev. against the order passed by the Dt.

I approve of the form of the new section generally, but I would leave out District before 'Collector', & alter the phrase, 'the lands'.

Geo. C.

I would strike out 'District' before 'Collector' in clauses (1) & (3) & insert 'if an appeal is not preferred after' 'Collector' in cl (3)

Geo. C.

This is perhaps better than relying on the rule 'qui facit per aliam a facit per se'.

The Collector should give notice that the amount demanded and the cost will be recovered as arrears of land revenue.

Geo. C.

Dt. Collector under sec. 18. It further provides for the communication to the parties concerned all orders passed under that section.

Sub-sec. (2) provides for appeals and sub-sec. (3) declares the finality of the original orders which have been passed appealed against and to appellate decisions.

22. Sec. 20 corresponds to sec. 22 of the Bill referred to the Board and has been divided into two sub-sections.

Sub-sec. 1, by substituting "may" for "shall" after "the Collector" permits that officer to exercise his discretion in regard to the issue of demand notices, a course which might not be desirable in the case of persons of some standing whom for the sake of courtesy it would be preferable to address in the first instance by means of a letter. The addition of the words "of his own motion" or after "the Collector may" permits that officer to take action otherwise than at the instance of the Survey Officer and the substitution of the words "cause to be issued" makes it clear that he can enable him to delegate the task of sending out demand notices to a subordinate.

The expression at the end of this section "recovered in the same manner as arrears of land revenue" has been amplified so as to make it clear as ^{how} charges imposed on account of the conduct and maintenance of survey should be treated in exactly the same way as revenue due upon the lands concerned.

Sub-sec. (2) omits the reference to

to arrangements for securing the payment of a demand and recovering from persons who become surety therefor, as superfluous. Secs. 9, 26 and 50 of Madras Act II of 1864 cover the same ground and can be applied if necessary, and, inasmuch as the provision contained in sub-sec. (1) is itself permissive, it will always be open for the Collector to accept security at the first instance if he thinks fit.

A proviso has been added to this sub-section on the lines suggested in para 6 of the current. The words "tenant & rent" should leave no doubt that the proviso refers to individuals other than those holding directly or indirectly from Govt. for though a holder might be described as a tenant of Govt. the sum payable by him on account of the land to Govt. ^{shall} be "revenue" and not "rent".

23. Chapter III. The heading of this chapter has been simplified.

24. Sec. 21 combines secs. 23 & 26 of the Bill referred to the Board. The arrangement which is more concise as it prevents a repetition of the descriptive procedure applicable to such surveys. The words "by notification" also cover the same ground as the first sentence of sec. 24.

2. Sec. 22 corresponds to sec. 24 of the Bill referred to the Board, but is divided into two sub-sections. The first of these calls for no remark. The second makes it perfectly clear that the procedure to be followed in taking the survey

unnecessary

Ript.

g. 2. 2

Approved but I have seen
222 to sec 24. The effect has been a
provision which draws his application away
(2) which will be discontinued

g. 2. 2

survey of an estate is identical with that prescribed in the case of Govt. lands except as regards ^{the} recovery of charges which is specially dealt with in secs. 23 & 24.

26. Sec. 25 makes clear what was presumably the intention of sec. 27 of the Bill referred to the Board.

27. Sec. 24 corresponds roughly to sec. 25 of the Bill referred to the Board, but, instead of making it compulsory upon the Survey Officer to apportion the costs incidental to survey and demarcation among the occupiers of the land and giving the proprietor in every case power to recover such costs as if they were arrears of rent, ^{it} is provided that the local Govt. "may direct" such apportionment upon the application of the proprietor if it sees fit. It is possible that in the case of minor estates where the tenants are rack-rented it might be inexpedient or unjust to compel them to pay the whole of the costs which ^{shall} be recoverable from them if they were ryots in a Govt. village. The local Govt. is further directed empowered to direct the Survey Officer to assess a specific proportion of the costs upon the tenant ^{in order} thus to provide for a case in which it ^{might} be desirable to levy a part but not the whole of such costs from them. Sub-sec. (2) provides for an appeal against the apportionment of charges in the same manner as in the case of Govt. land.

28. It is for consideration whether

Approved g. 2. 2
For the word "Heron" at the end
of Sec 23 read "Such estate."
cf. Proviso to sec 25.
I agree g. 2. 2

Approved g. 2. 2

29
41

Whether any provision should be made for the maintenance of surveys carried out in estates or whether that is a matter which should be left entirely to the proprietor. Where a survey is made on the application of a proprietor it may be argued that it is his business to see to the repair, renewal and maintenance of the survey marks erected, but, where the survey of an estate is ordered by Govt. for the purpose of preventing breach of the peace, it would seem that measures should be taken for the maintenance thereof. This object is secured by the addition of sec. 23 which imposes on the tenant and village officers within the limits of such an estate the responsibilities which would devolve upon them if the estate were Govt. lands. ^{and} Sub-sec. 2 requires the Dt. Collector or a Survey Officer to take measures for the maintenance, renewal and repair of the survey marks, ^{the latter} and sub-sec. 3 makes the proprietor of an estate liable for the cost of the maintenance of the survey, ^{to last provision seems} which is desirable in order to secure that his influence is properly exercised. In order however to provide for cases in which the holders or occupiers rather than the proprietor are responsible for the damage which the survey marks suffer, the Dt. Collector or the Survey Officer is empowered to recover the costs or a portion of them from the holders and occupiers by restraint and sale of their moveables and, if necessary, by fine and imprisonment.

Opinion that maintenance should be made into a legal provision, & it is very necessary. Sec. 15-19 (substituting the words, 'Proprietor for Collector') to survey, both under Sub-sections (a) & (b) of Sec. 28

Please see

42

29. Before passing on to Chap. IV it is to be noticed that Chap. III & IV to some extent cover the same grounds, as the survey of an estate or a portion thereof for the purpose of settling a dispute is a matter which might be dealt with under the provisions of Chap. IV. In the latter chapter however there is no mention of "survey" and it is clear that its chief object is to provide for the settlement of particular boundaries in small tracts. On the other hand it might be desirable to invoke the provisions of Chap. III so as to prevent the constant recurrence of disputes between the proprietor and his tenants as ^{the} the area of the lands held by the latter.

Approved. J. Grove

30. Chap. IV. The heading of this chapter has been simplified.

Approved. J. Grove

31. Sec. 26 corresponds to sec. 28 of the Bill referred to the Board but is more carefully worded.

32. Sec. 27 corresponds to sec. 23 but the proviso which forms the second sentence ^{of the Bill} is brought into the commencement of the section. Clause (5) renders it necessary to empower the Collector before he could himself appoint a Survey Officer for the purpose of settling a boundary dispute. This follows sec. 4. It will of course be possible for Govt. to empower every Dt. Collector in virtue of his office to appoint Survey Officers under sec. 4(5). I would suggest that for "Tahsildar" should be substituted "Mr. Tahsildar". In Zamindari sub-divisions it might frequently be desirable to

This a Dep. Secy. as he is of sufficient rank in all lands. J. Grove

Certainly. H. M. S. A. M. S.

39
43
appoint the Dt. Tahsildar in charge, as the Survey Officer.

33. Sec. 28 corresponds to sec. 50 of the Bill referred to the Board except that it provides for due notice of the time and place at which the enquiry regarding a boundary dispute will be held and requires ^{that} the date on which the demarcation is completed shall be communicated to the parties, a provision which is necessary in order to facilitate ^{an} appeal.

34. Sec. 29 corresponds to sec. 7, 32 of the Bill referred to the Board. It does not accept the Board's suggestion that the appeal time should be calculated from the date of the completion of the demarcation and not from the date of the decision, vide para 15 of the current, as the boundary is ex hypothesi disputed and a written decision is ^{not} described. Such a decision would surely be worded, with sufficient clearness to enable the parties to decide whether an appeal is necessary. If so, there is no reason why an unnecessary extension of time in which to prefer an appeal should be permitted. Further in doubtful cases the Dt. Collector or the Survey Officer might wish to defer the demarcation pending the decision of an appeal on an important point. If however the wording of the written decision is not sufficiently clear, the proviso to sec. 28 renders it possible for the local Govt. to grant an extension of the appeal

Approved by Secy
Sec 29. lines 23 + 25
Sec 30. line 45 } for
"order" & "order" read "decision"
& "decisions."
As per Sec 29

29 by Secy

44

appeal time on application submitted within six months from the date on which the demarcation was completed.

31. Section 30 corresponds to section 31 of the Bill referred to the Board, but has been amplified in order to make the intention more clear and so as to provide for an appeal against the apportionment of costs. The ap-

peal is a departmental one; I am inclined to think it should lie to the Civil Courts; a complete change in the decision in consequence of the appellate order of the Civil Court might render necessary a revision of the apportionment of costs. Such a case might

- (a) be met (a) by making the appeal lie to the Civil Courts, or (b) by adding a proviso to sec. 30(2) thus:- "Provided that it shall be competent for the Civil Courts to revise any original or appellate order apportioning the costs of settlement, on application made within one month of the date of such order"; or (c) by adding a similar proviso empowering the appellate departmental authority to revise his decision with reference to the appellate order of the Civil Court under section 29.

Course (c) seems the most suitable; (a) and (b) are more logical but (a) would mean delay in the recovery of costs & (b) might be taken to empower the courts to issue injunctions staying the recovery of costs. Course (c) on the other hand follows the analogy of Madras Act II of 1864 in excluding the

Civil

For this reason (c) seems on the whole preferable, but for "empowering" read "requiring". This

Civil Courts from interference with the recovery of arrears which are treated as arrears of land revenue. If course (c) be adopted, the departmental appellate authority might be trusted (or compelled) to stay execution in doubtful cases and to treat defaulters with consideration in exceptional cases.

A point which requires to be provided for relates to the recovery of the costs due from tenants in zamindari tracts. This difficulty has been met by providing that the cost of settlement shall be assessed upon individuals and not upon the land itself and that the recovery of the charges imposed shall be regulated by the position of the assessee. Thus the proprietor of an estate and the holders and occupiers of Govt. lands, disputed boundaries of which have been settled, will be liable to make good such charges as if they were arrears of land revenue, but in the case of tenants in zamindari tracts a similar provision would be less effective, since no proceedings could be taken against the person of the defaulter, for the tenant has no obligation to pay revenue to Govt. in respect of the land, and proceedings against the person of a revenue defaulter cannot be taken until the land itself has been proceeded against, vide sec. 48 of Madras Act II of 1864. In the case therefore of tenants in a zamindari tract, it is provided

alteration however might lead the Civil Court to issue an order on the subject, instead of leaving the matter to the appellate authority.

MR.

This settlement is not subject to section 48 of the Act.

This section allows an owner to sue for the recovery of the property of the defaulter, & the land is not his property.

provided that the cost of settlement shall in the first place be recovered by the distraint and sale of their moveable property in the same manner as if the amount due were an arrear of land revenue, and, secondly, if the recovery by this means is impracticable, recourse to a criminal prosecution is permitted. In this latter respect the section follows the analogy of the procedure laid down with regard to the recovery of municipal taxes. The tenant is placed in very much the same position as a Govt. ryot for he is not liable to conviction except for wilful failure to satisfy the demand made, and in default of payment of the fine imposed, is subject to the period of imprisonment permissible in the case of a revenue defaulter under sec. 48 of Madras Act II of 1864. The imprisonment is imposed by the Dt. Collector, and not by the Magistrate, so as to make the procedure more similar to that applicable to the case of revenue defaulters. It is thought inadvisable to confer this power upon a Survey officer also, for a Tahsildar may and probably will frequently be appointed as Survey officer and it is thought desirable that this means of coercion should only be placed in the hands of an officer of some position. Under the Revenue Recovery Act of 1864 it is only the Collector who wields this power. It is true that the term "Collector" included Divisional Officers, but as recourse to imprisonment in such cases would probably

107 G
Sec. III of
Madras Act II of 1864

I do not if any criminal prosecution is necessary or desirable (as above) I think it would be on the 6th of Dec (3) "as some are of land revenue", but not all that follow in this section.

Sec. 48 of
Madras Act II of 1864

47
probably be exceedingly rare, there
is perhaps no sufficient reason to
empower Divisional Officers. This
might be done if thought desirable,
by substituting "Collector" for "Dis-
trict Collector" in sub-section (i)
or by inserting after "District Col-
lector"

the

148
the words "or Survey Officer empowered
on this behalf by the local Govt." The
former would be a simpler method except
that it might be argued from ⁵ refer-
ence to Dt. Collector in the preceding
sections that Collector in sec.30 meant
Dt. Collector and not Divisional Offi-
cers also. It is submitted however that
the provisions of clause (6) of sec.3 of
the Madras General Clauses Act, 1891,
would over-rule this construction.

36. Sec.31 provides for the
maintenance of survey marks erected in
the course of a demarcation conducted
under Chap.IV.

37. Chapter V. Sec.32 cor-
responds to sec.55 of the Bill referred
to the Board for remarks, but the general
rule that the proceedings of Survey Offi-
cers shall be governed so far as practi-
cable by the Code of Civil Procedure as
has been modified by a proviso permit-
ting Govt. to make subsidiary rules.
Without this proviso no rule could be
made under sec.30 materially modifying
the general applicability of the C.C.P.,

for such a rule would be inconsistent
with sec.32. *The section has been made
applicable to the case of a District Collector also.*
Attention is invited to para 14

of the current in which the Board depre-
cates the idea of leaving the method of
procedure to be settled by rules issued
under the Act. It is submitted that much
more elasticity of procedure will be
secured by empowering the Govt. to modify
the general principle that the proceed-
ings of Survey Officers shall be governed
by

Approved
H. G. Rose

Approved
H. G. Rose

by the Code of Civil Procedure.

36. Sec.35 corresponds to ^{6 &}sec.34 of the Bill referred to the Board which have been amalgamated. It is desirable to insert the words "Survey or" before "enquiry" in sec.34 not only to cover clause (a) which relates to the examination of lands -- but also to prevent the Courts from holding that the Survey Officer is only entitled to summon parties and witnesses for the purpose of a formal enquiry. The scope of Madras Act III of 1869 has been somewhat narrowed by the special meaning ^{also has} by the Courts to the word "enquiry" in section thereof. The words "and generally to conduct an enquiry" have been omitted as vague and dangerous, as it does not find place in the section of the Furma Act on which this provision is based.

39. Sec.34 corresponds to sec. 35 of the Bill referred to the Board for remarks, but gives the District Collector ^{the same} powers as the Survey Officer. ^{Section 35 is identical with section 36}
40. Sec.36 has merely been rearranged and simplified by the omission of a few superfluous words and substitution of the phrase "notification and notice" for "notice, whether general or special. It is for consideration whether clause (c) is of any use and ^{since} whether the Act itself does not provide in general terms for the delegation of powers. It is questionable whether rules to this effect would have any force. What is required is a general section in some such terms as the following:--

The

I think so

11 of 69 improves the Officer's name

Approved generally but I would like to see the property of Govt or not after land the power to enter on private land is very exceptional & should be made quite clear.

Approved
the same powers as the Survey Officer.
the Bill is improved

They probably would not.
M. S. S. S. S.

*I think a phrase is missing
the effect is wanted.*
Agree

vide sec. 5 of the Indian Councils Act, 1892

It should be submitted for sanction at once.
Agree

The alterations we have been suggested & the new arrangement of the sections are a great improvement. The subject is a most important one & it is worthy of the time & trouble that have been spent upon it, though that is saying a great deal.
Agree

M. S. S. S. S.
16/9/96

I think the Bill should be revised by the Secretary General before it is sent to the Govt. of India. There are faults of drafting which will

50

"The local Govt. may empower a Survey Officer to delegate to his subordinates such of the powers and duties conferred and imposed on him as it may think fit."

41. Sec.37 corresponds exactly to the concluding section of the Bill referred to the Board.

42. The sanction of the Govt. of India will be required for three reasons, firstly because it purports to repeal Act XXVIII of 1860 which was passed in the Supreme Legve. Council; secondly because Act XXVIII of 1860 has been applied by notification to the province of Coorg, vide footnote at the page flagged A in the Coorg Code and thirdly because it contains penal clauses embodied in sec. 16, vide para 2 of the Legve. standing orders on page 4 of the Legve. pamphlet containing the Indian Councils Act, etc.

43. The statement of Objects and Reasons has been slightly altered so as to provide bring it into accordance with the Bill as amended, but a complete revision will probably be necessary before the final publication of the Bill.

M. S. S. S. S.
3.9.96

will. Another point. The sections 7, 10 and 11, persons are required to do certain things. These things might be more clearly defined. In section 16, there is mention of the infliction of a fine, but it is not read

51

who is to have the power of inflicting it. This should be amended.

It is suggested that Section 32 would entail too elaborate a form of procedure, and that the procedure under the Act, might be more conveniently settled by Rules.

22.9.96

BOUNDARY MARKS

(FOR ORDERS)

W.M.

Madras Survey Bill
Hon. Mr. Grose
Mr. Bliss.
all V. S.
Mr. Kullang The Commr.

Am also ask him had to be prepared. I am on his side & also look instructions about it from an official line.
J. Grose

19/10/96

I think so. The A.C. is not a drafting officer, & we know much more about such a Revision about how he does
J. Grose

22.9.96

Rev. dept.

FOR ORDERS

The papers relating to the Madras Survey Bill are recirculated to the Hon'ble Mr. Grose for perusal of the notes recorded by the Hon'ble Mr. Bliss and M.E. the Governor.

3. With reference to the Hon'ble Mr. Bliss's enquiry as to the delay in issuing G.O.No. 623, d/ 10th Decr. 1895, I have been unable to trace the progress of the Bill during the period December 1894 to Decr. 1895 and have directed an examination of the office arrears lists for the purpose of ascertaining with whom the papers were pending. A note in the matter will be submitted as soon as this information has been collected.

3. Attention is invited to M.E. the Governor's suggestion that the bill should be revised by the A.C. before it is sent to the C. of L. - vide page 37 of the note. The points to which attention is specially drawn by M.E. will be noted on below in their appropriate places, where it is submitted that the a reference to the A.C. would be premature until a decision has been arrived at in regard to the various matters of principle upon which Hon'ble members have expressed different opinions.

4.

that the A.C. should advise on this question.

(iii) The attention of the Hon. Mr. Pliss is invited to the Hon. Mr. Pliss red ink addition empowering the Collector to enquire who is the senior joint owner of an estate. As the term "Collector" is defined in the General Clauses Act, it would perhaps be preferable to retain the expression Collector of the Dt.

(v) The Hon. Mr. Pliss proposes to omit the words "on behalf of Govt." in the definition of "Survey mark" as also the "Explanation". It is submitted that these alterations would have the effect of including in the definition of "survey mark" any marks set up for the purpose of indicating survey land by a private individual upon his private land as the owner of such lands he would be "duly authorized" if he thought fit, to make a survey of them. Thus if the Ootacamund Gymkhana Club chose to survey the Tobart Park, any marks they might erect for the purpose of indicating survey lines would fall within the definition of "survey mark" and the provisions of sec. 16 would render the village officers liable to a criminal conviction for failure to prevent injury to such survey marks. For these reasons it would seem preferable to restrict the application of the term "survey mark" to boundary marks set up under the orders of Govt. It is the use of the words "on behalf of Govt." in the definition which

Class

I approve of the addition
Nandidev
17/10/26

2
17/10/26

I submit that if this word "under this Act" an addl. offr. duly authorized the expression "on behalf of Govt." and the "Explanation" may be omitted. I am in opinion with the suggestion, & don't think the alteration proposed by Sec. 16 is an improvement. To submit this Hon. Mr. Pliss's objection under Section 15. The word "hereafter" or "herein" is inserted in the 16th line before "made". I think the definition of "Survey mark" is apt. If word "on behalf of Govt." is added to the Sec. 16 it is in accordance with the Sec. 16th points.

Question which phrase was the proper one to use why the question was referred to the Govt. Sec. 16. I think I should have "Govt. land" as being short. 17/10/26

Section 3
I don't think any alteration is desirable. The clause is meant to refer to whole villages held in common tenure & inside a Jamindary. Sec 21 allows any portion of such a tract to be surveyed.

This will meet my view - I did not state it before. I like the phrase "Govt. land" but not "land not of village". The phrase "Govt. land" seems to be a claim of ownership. If the phrase "Govt. land" is used, it is not a claim of ownership. I submit that Govt. land is being defined precisely in the Act. The expression can not lead to any doubt. If the expression "land not being estate" is used the definition of "Govt. land" is the same.

The attached memorandum shows the various points in regard to which Hon'ble Members differ, or further comments appear to be called for.

MEMORANDUM

Sec. 3 (i) The Hon. Mr. Pliss would alter sub-clause (e) of the definition of "estate" so as to make that expression include any portion of the class of estates specified in sub-clauses (a) & (d). The object of this alteration is to enable Govt. to deal with "a portion and not a whole village or villages of an estate". It is respectfully submitted that the change is unnecessary in view of the fact that sec. 21 empowers the local Govt. to direct the survey of "any estate or portion of an estate".

(ii) The Hon. Mr. Pliss would retain the expression "Govt. land" and the Hon. Mr. Grose would substitute for it the expression "lands not being estates". H.E. the Governor suggests that

which necessitates the addition of the
Explanation.

Section 4. The Hon. Mr. Grose's
attention is invited to the Hon. Mr. Bliss's
addition of the word "dismiss" in
sub-sec. (1)

Section 5 The Hon. Mr. Bliss
would refrain from specifying the
objects for which the local Govt. may
direct the survey of Govt. land.

Section 7 (a) In this section and in
sec. 8 the Hon. Mr. Bliss would substitute
the expression "cutting down or removing"
for "removing" on the ground that for
the purposes of a survey it may suffice
to cut a tree down without removing it
and generally would so suffice. The words
"cutting down" were struck out at the
Secy's suggestion. I believe his view
was that, on the analogy of the defi-
nition of theft in sec. 379 of the M.C.
to cut down a tree was equivalent to
removing it though the tree might not be
moved beyond the place in which it fell.
Section 7
The Hon. Mr. Bliss notes that this defini-
tion requires persons to do certain
things and considers that those things
might be more clearly defined and the
same remark is made with reference to
secs. 10 & 11. It is difficult to suggest
any specific form of wording in lieu
of general phrases "to assist in the sur-
vey for the purpose of assisting in the
survey."

Section 4

I see no objection to the insertion of
the word. Jg.

Section 5

In sub. A. appended.

He has Mr. Bliss's report. It should be omitted.

Section 7 & 8

Jg.

In sub. 8 I think the point
that the Court Christian is
Section 7 is fatal only as regards the

amount awarded and this
on other points.
This point is the reason why
Civil Court should find a place
in the section.

The section seems more appropriate
as it stands. Jg.

Section 11. The Hon. Mr. Bliss
takes exception to the expression "in
such manner" in sub-sec. (2) and further
to the sub-section as a whole on the
ground that it deals with two subjects
which should be kept distinct, namely,
(1) the recovery of expenses incurred in
consequence of neglect to supply labour,
and (2) the cost of provision of survey
marks. The Hon. Member would have the
liability to provide for survey marks
definitely stated and not left to infer-
ence. This view would seem to necessitate
an additional section between secs. 11 &
12, which might run as follows:--

"If the owners, holders, or occupiers
do not provide suitable survey marks to
the satisfaction of the Survey Officer,
such officer may himself procure such
marks and the cost of procuring them
shall be apportioned on the land and
charged to the owners, holders, or occu-
piers thereof in accordance with the
provisions of sub-sec. (2) of sec. 11."

It will of course be necessary
to make consequential alterations in the
succeeding sections of the Bill.

For the expression "in such
manner" it is submitted that the words
"in such proportions" should be substi-
tuted. This is, as the Hon. Member re-
marks, to some extent covered by the
word "apportioned" in the earlier part of
the sub-section, but the apportionment
therein mentioned is made with reference
to the lands and it is conceivable that
the

These sections speak of charges
being apportioned but it is
not clear claim would be
that should and such charges
are to be apportioned. I think it
may be as I think within the
provision now with the intent
of the clause. I think this
is a very necessary but
that it should remain part of
Section 11 I do not think it.
Sub-section (1) and omit
from it all reference to
the apportionment of cost.
The present sub-section 2 will
become 3. and will now be new
down to "have been surveyed"
and "equitably and offi-
cially" the words
"proportionately to their relative
value" being inserted. The latter part
of the sub-section being omitted.
There is a most pernicious system
now prevalent in the Survey Dept
whereby they make a large
to much an area and village

Section 15. The Hon: Mr. Bliss notes that it should be ^{made} clear somewhere that the provisions relating to the maintenance of completed surveys on Govt. land

Section 13. is an area of 10 square miles.
It is certainly desirable that Survey officers
should use all cases of provision ^{but may except} _{the cost according to}
Section 13. in or other local area as
defined by the Survey Officer.
H. I think he substituted for the
provision, as follows:

1864 Sept 6.
I submit that this change
under this letter will be

Section 10 (2). The Hon. Mr. Bliss
takes exception to the phrase "in such
manner" which should for the reasons given
above under sec. 11 be replaced by "in such
a manner".

proportions"

Section 20. The addition proposed by the Hon. Mr. Grose to sub-sec. (1) would, it is submitted, come in more euphonically after the word "recovered," thus "it will be recovered, together with the costs (if any) incurred in recovering it,"

Section 21. (a) The Hon. Mr. Bliss notes that it is not sufficient to empower Govt. of its own motion to direct the survey of an estate for the purpose of preventing a breach of the peace or a dispute likely to result in a breach of the peace. The Hon. Member does not state how far he would extend the power to be conferred on the local Govt. and the section in this respect only follows sec. 24 of the draft Bill on which the Hon. Members noted, vide flag C

With reference to the Hon. Mr. Grose's desire that a third sub-clause should be added to this section stating that survey work should be discontinued if the proprietor withdraws his application, it is submitted that a provision to this effect was designedly omitted, because the Secy. thought it might in certain cases be desirable in the public interests to continue the survey of an estate against the wishes of the proprietor.

Section 22. At page 23 of the office note, the Hon. Mr. Grose accepts the Secy's suggestion to substitute the words

just by the and removed from the position where marks have been placed. It is known to whom by the rule of the lower number now followed in the survey dept. and the same will no doubt be furnished under the 3rd of the course. 11/10/96.

Section 21. I submit that this section is quite unnecessary. If it is provided that charges for fixing and maintaining survey marks are to be recoverable in like manner as arrears of rent, they will be recoverable under Act 11 of 1864 of which the provisions of this section are but a very poor imitation. Except the

Section 21. I think the section is unnecessary. I think the section is unnecessary. I think the section is unnecessary.

Section 21. I think the section is unnecessary. I think the section is unnecessary. I think the section is unnecessary.

Section 21. I think the section is unnecessary. I think the section is unnecessary. I think the section is unnecessary.

In Sec 23 for this chapter should be substituted "Sub Sec (a) of Sec 21 for the purpose of such estates."

I submit that this is the most objectionable. The proprietor has tenants who will be bound to put up with this without any hand.

In Sec 21 it is proposed to add a clause (a) for clause (b) in Sec 15-19 inclusive. I have very much to say about this. I have very much to say about this. I have very much to say about this.

60

"on such estate" for the words "thereon" at the end of this section, but on the proof the Hon. Member notes that the words "due thereon" are not needed. It is submitted that it is desirable to retain the expression "on such estate" in order to make it clear that any other estate, and not merely the fact suggested is possessed by the same individual should not be proceeded against.

Section 25. The Hon. Mr. Grose proposes to insert the phrase "substituting the word proprietor for the word 'collr.'" immediately after the word "inclusive". The effect of this change is to place the proprietor in the position of the collector for the purposes of secs. 16, 17, 18 and 19 when their provisions are applied to a surveyed estate, that is to say, (1) it would be by law the duty of village officers to report the destruction or injury of survey marks to the proprietor, (2) the Survey Officer would be bound to report the completion of the survey to the proprietor, (3) the proprietor would be empowered to issue a notification requiring his tenants to repair their survey marks and (4) in default on their part, himself to repair such marks and further to charge the cost of such repairs to the tenants in such manner as he might choose. It is for consideration whether the power of apportioning costs should be conferred on every petty proprietor. If it is so conferred, difficulty arises in connection with the wording of sec. 19. There is no "authority" to whom

Again with reference to the
 note on the margin of page 24 of
 the note for orders, it is presumed
 that the words "clause (a) of " should
 be omitted from sec. 25 (lines 56 : 57
 page 9 of the proof).

Section 26 In this section and
in secs. 24, 28, 30, 32, 33 & 34, the
word: "Mr. Bliss would substitute "Collector"
for "Dt. Collector"

given the powers exercised under Madras Act VIII. of 1865 by a landlord when recovering arrears of rent from his tenant. The practical difficulties in the way of devising a provision such as this are inconsiderable and it was for this reason that the procedure laid down for the recovery of municipal taxes was followed in the draft. Madras Act VIII. of 1865 places the Collector in the position of

Dec 18 I happily modified to
meet the circumstances of
Catalpa & make that Dec
9 shall be held to apply.

The delegation B.
have been in such un-
derstandable manner
that they may be able
to get them from
anyone - part of the
other - partly some more
than - C.

I think it well to ^{10/10/18} keep the ps
as they are, leaving the indication where to cross
you can designate his power many 2) (b) 29
submit that this latter part.

of the 30 is unnecessary. In the case
of East Land this work may be
reverted ~~from the~~ in the same
way as the other survey of
Koronia & in the case of

an estate from the proprietor
in the same manner
giving him the same powers
of conveyance as he has in regard
to the lands of his own
manor under the 14th.

Perhaps it will be best with
 the Pachian stand as it is.

William John Brown
 17.10.96

judge and arbitrator between the tenant and the landlord and it would seem anomalous, by extending the provisions of that Act to the case under consideration, to place the collector in the position of both complainant and judge.

sec. 32 would entail too elaborate ^a form of procedure and that the procedure under the Act might be more conveniently settled by rules. It is respectfully submitted that the first clause of this sec. namely, "subject to such rules as the local Govt. may prescribe" gives power to settle the whole procedure by rules.

Section 55 a) The Hon. Mr. Grose would add the words "whether the property of Govt. or not" after the word "land" in line 4 on page 15 of the proof. The Hon. Mr. Flis. would prefer to add "whether Govt. land or not".

Yes, I think so.
 10/10/96
 If we are going to proceed by Rules, this
 section seems unnecessary.
 17.10.96
 This will do.
 10/10/96

The Hon. Mr. Whitt asks. how the
 Survey of the Town of Kinnear
 is to proceed in of necessity? I
 submit that this question points
 to a serious omission in the Act.
 and a perfectly needless one. There
 is nothing in the Shipping Act which
 prevents Ex^t ordering the Survey
 of any part of the Territory it
 places: but in this Bill it
 can only order the Survey of ^{an estate} any
 part of an estate. In certain
 purposes which are specified
 in Section 21. Wholly ^{or} to prevent
 a breach of the peace (b) or
 the application of the provisions
 It submits that this limitation
 of the power of Ex^t to order a
 Survey is unnecessary & ^{impolitic} ~~unjust~~
 * It may be necessary for various
 purposes to visit the town &
 ascertain the amount of water
 rates for I believe that it is
 a serious omission in the Bill
 in Salem & in this District
 a large amount of water rates
 will be brought to book. It may
 be necessary to order the Survey
 of a portion of an estate for

with various purposes. It may be necessary to add the survey of unimproved lands within States.

I do not however advocate that Govt. should have the power to call on the proprietors to pay for such survey. Such liability the attach I think only as provided in the Bill in Section 21.

I think Section 5 should be removed from where it is in Chapter 11. and put in Chap. 1. and that it should read.

The local Govt. may by notification at any time direct the survey of any estate or any portion thereof or of any Govt. land.

Provided that the cost of survey of any estate or portion thereof or of any Govt. land shall be borne by Govt. except as hereinafter provided. and the effect of the amending Bill will be to leave the changes as revised from 21st & also Sec 21. which however will need the following addition viz. the following addition viz. the following addition viz.

The object is good, but I think ss 5 & 21 should remain where they are & the object obtained by altering them. Survey of Estates & land not belonging to estates are treated in separate chapters, & I think rightly.

Ag. 10/10/96 A. H. 7.10.96

any survey is made under this section the proprietors shall defray the whole cost thereof.

Int. B.

I submit that a Survey when completed is always a benefit of great magnitude and that experience hitherto has shown this fact manifestly - for the surveying its results. This is the provision incorporation that the Govt. should be empowered to do. and under him on the village officers to maintain the books and there is no necessity in the case of a survey of a Zemindari tract as it is in the case of Govt. land. I think therefore that it should be made plain that this Act is intended to be applied to all in Zemindari tracts and that all reference to Govt. land in this Chapter should be omitted as well as anything tending to show that the responsibility is so limited since in future all surveys will proceed on a completion or not on how an arbitrary unit, the survey field, the value will be a hundred times greater than now and the

66
necessity for preserving faithfully
the result. with be a hundred
times as great.

11/10/96

I w^d make this clear by
adding in these sections of the
land the word whether
"Est. land or situated in an
estate"

11/10/96

Est. land & other lands
shd be treated separately.

JG:
10/10/96

67
Note C..
I submit that it is very
undesirable to extend the
power of taking up boundary
disputes to Rev^d officers as
proposed by the Hon. Mr. Whist.
At present: no Revenue officer
can take up a boundary dispute
between two Pattadars. This is
most necessary in the civil court
can settle the matter and if
the revenue officer intervened it
w^d mean much corruption.
As between Teram lake &
Patta the Revenue officers
only settle the boundary for the
purpose of revenue. It is open
to the Pattadar to establish his
right in the civil court. Such
boundary disputes as between
a proprietor & Est. sh^d only
be allowed to be opened with-
out reluctance & with due
deliberation. When once opened
they are most difficult to
settle and give trouble for
years & years. They are very
profitable and Rev^d officers
sometimes rush into them
without knowing what

1874/86.

Wm. L. Garrison
No. 10, N. 2nd St. N. York

Jayne
J. S. Cook
10/10/96

THE MADRAS SURVEY BILL.
CONTENTS.

CHAPTER I.

CHAPTER II.

The survey of Government lands—

- (a) The initiation and conduct of surveys of Government lands.
- (b) The maintenance of completed surveys of Government lands.
- (c) The revision and recovery of charges imposed on account of the conduct or maintenance of surveys of Government lands.

The survey of estates.

CHAPTER IV.

The settlement of boundary disputes arising otherwise than in the course of a survey.

CHAPTER V.

Miscellaneous.

Q. 2. 24/10/2016

There is to be a comma after survey.
J. George

Comma after as in
J. George

These estates held over by the Government. We are not saying "land" but "estates" meaning Government lands.
J. George
"Govt. lands" is shorter & I don't adhere to the expression. M. Lio

The Bill demands all land who "estates" & other land. I don't know if it means any smaller than other land. Govt. land then expression.
(Madras Act II of 1894, section 4.)

Land specified in clause (a) (b) (c) (d) of the above defn of estates after estates. I don't agree. Why not? J. George

WHEREAS it is expedient to make better provision for the carrying out of surveys, for the erection, repair, restoration and maintenance of survey marks, and for the determination of boundary disputes; It is hereby enacted as follows:—

CHAPTER I.
PRELIMINARY.

- 1. (1) Title.—This Act may be called "The Madras Survey Act, 1894."
- (2) It extends to the whole of the Presidency of Madras. 10
- 2. Act XXVIII of 1860 and Madras Act II of 1884 are hereby repealed.
- 3. In this Act unless there is something repugnant in the subject or context—

- (i) "Estate" means—
 - (a) any permanently-settled estate, whether a zamīn-20 dārī, jāghīr, mittā or pālāiyam;
 - (b) any portion of such permanently-settled estate which has been separately registered in the office of the Collector;
 - (c) any unsettled pālāiyam or jāghīr;
 - (d) any inām village of which the grant was made or confirmed by the British Government;
 - (e) any portion consisting of one or more villages of any of the estates specified above in clauses (a), (b) and (c), which is held on a permanent under-tenure.

(ii) "Government land" means any land other than land forming an estate as defined in clause (i). 40

(iii) "Proprietor" means any person in whose name any estate is for the time being registered in the office of the

Why the limitation in 4.3(i)(e)? Why may want to deal with a portion, not a whole village or villages, of an estate—should be correct as shown in red ink—M. Lio

Collector of the district wherein the estate is situated and, in respect of an estate specified above in clause (e) of the definition of "estate," the holder thereof.

- 5 Where an estate is so registered in the names of two or more persons as joint owners thereof, the proprietor shall, for the purposes of this Act, be the person who is recognized by the other joint owners as
10 the manager of the estate or who, in case of dispute, is recognized and registered by the Collector as senior joint owner *for the purposes of this Act, after such inquiry as he shall see fit.*

(iv) "Survey"

"Survey." includes demarcation.

15

(v) "Survey mark" means any mark made, erected or placed above, on or

below the surface of any land for the purpose of indicating survey points or lines by or by order of any person duly authorized to make a survey of such land or to settle the boundaries thereof [on behalf of Government.]

- 25 *Explanation.*—A survey of an estate or a settlement of a boundary-dispute conducted under the orders of any duly authorized Government officer shall be deemed to be made on behalf of Govern-
30 ment, notwithstanding that it is made on the application of the proprietor of the estate or of a party to the dispute.

(vi) "Survey Officer" means a Survey Officer appointed under this Act.

35

4. (1) The Local Government may *(Burma Act V of 1880, section 2.)* appoint any person to be a Survey Officer, and may sus-

40 pend or remove any person so appointed.

(2) Every person so appointed shall *(Burma Act V of 1880, section 2.)* exercise and perform the powers conferred and the duties im-

45 posed upon him by this Act or by the rules made thereunder subject to the control of the Local Government or of any officer appointed by it in this behalf, and within such local limits as the Local Gov-
50 ernment may direct.

(3) The Local Government may delegate its powers under this section to the Board of Rev-

55 nue, and for the purposes of section 27 to a District Collector.

come after situated

The question is whether in cases of dispute, the Collector has not been empowered to decide, for the purposes of the Act, who is the senior joint owner. I think he should not after as shown in evidence.

omit [] - understood

not needed, I think

come after Government

dismiss, this

I was, within such local limits as the Local Govt may direct after perform.

Only old be inserted after

27

fences, standing crops or other obstructions, which may have been removed, and shall pay or tender to the owners thereof the amount of compensation which, in his
5 opinion, should be allowed therefor.

(2) From any award made under subsection (1) an appeal as regards the sufficiency of the amount awarded shall lie to the District Collector, if preferred within 10 one month of the date of payment or tender of such amount.

(3) The award made by the Survey Officer under sub-section (1), or, in the event of an appeal being filed, the decision of the District Collector, shall be final as regards the sufficiency of the amount awarded.

9. When the period specified in the notification issued (Burma Act V of 1880, section 7.)

20 When survey may be under section 6 has commenced. elapsed, the Survey Officer may proceed with the survey.

10. The Survey
 25 Special Officer may issue notice to procure attendance of interested persons.

Officer may, at any time during the survey, issue a special notice to any person directly or indirectly

(Burma Act V of 1880, section 6, and Bengal Act V of 1875, section 7.)

interested in the land which is being surveyed, requiring him to attend, in person or
30 by agent, for the purpose of assisting in the survey, at a specified place and on a specified date, which shall not be less than fifteen days after the service of such notice; and any person upon whom such notice is
35 served shall be legally bound to attend.

11. (1) If the persons to whom the ^{(Burma Act}
^{V of 1880,}
^{section 7.)}
 notification under
 section 6 and any
 notices issued under
 section 10 have been
 addressed fail to comply with the requisitions made therein, the Survey Officer may employ hired labour for the purposes of the survey.

45 (2) The cost of such labour and all expenses incurred on
Costs to be charged to holders or occupiers of lands surveyed. procuring survey marks shall be
equitably apportioned by the Survey Officer
50 on the lands which have been surveyed,
and shall be charged to the holders or occupiers of such lands in such manner
as the said officer may consider just.

Explanation.—For the purposes of (Act XXVIII of 1860, section 8.)
55 sub-section (2) the Government shall be deemed to be the holder of unoccupied Government lands. * * 9

I understand that "reference" would understand
"in subscription" but that is contrary to the record
"affiliated" above I don't like the subsection about
however - holds with two subjects (1) the recovery part & in
concerning many people - The two subject analysis
the division of very marks - the ability to provide
which kept records and the likelihood of finding
everywhere (i.e. others) should be definitely stated
subject to approval and present H.H.'s

XVIII
8.) For the reason given above
(Ecc^a) I think it wd be
better to ^{insert} ~~use~~ two words,
"owners" ~~being~~ ^{before} "holders".

* I wd say "owner" W.S.

George
H. Lewis

(Bombay Act
V of 1879,
section 119.)

74
5
12. (1) A survey conducted under the provisions of this Chapter shall ordinarily proceed according to occupation. 5

(2) If, at the time of survey, the boundary of a field or holding is undisputed, the Survey Officer may order that it shall be laid down 10 as pointed out by the holder or occupier, being present.

(3) If neither the holder nor the occupier is present, or if the boundary is disputed, the Survey Officer shall order it to be laid down, as nearly as may be, in accordance with the village records, the occupation as ascertained from the village officers and the 20 holders or occupiers of adjoining lands, and such other evidence as the Survey Officer may be able to procure.

(4) The order passed by the Survey Officer in the case 25 of any dispute under sub-section (3) shall be recorded in writing and communicated to the parties to the dispute and to the holders or occupiers of the lands affected. 30

(5) When the boundaries of any village or other conveniently defined local area forming part of the land under survey have been 35 demarcated in accordance with the orders passed under sub-sections (2), (3) and (4), the Survey Officer shall notify that the demarcation of such village or other local area has been completed. 40

13. (1) From any order passed by the Survey Officer under section 12 an appeal shall lie to the authority to whom he is immediately sub- 45 ordinate provided that it be filed,—

- (a) in the case of a dispute decided under sub-section (3) of section 12, within three months of the date of the order recorded in writing under sub-section (4) of that section, and
- (b) in the case of any other order, within three months of the date upon which the notification 55 prescribed by sub-section (5) of section 12 was published.

In place of the words underlined
I think we should have "all persons
known to have an interest
direct or indirect in"
I don't see the use of the
word "conveniently" & it may
give rise to doubts
S. M. S. S. S.

(2) The decision of the appellate authority shall be recorded in writing and communicated to the parties to the dispute, if any, and to the holders or occupiers of the lands affected.

(3) The order of the Survey Officer, or in the event of an appeal being filed, the decision of the appellate authority, shall be final unless reversed or modified by a decree of a Civil Court.

14. An appeal shall lie to the Civil Courts by regular suit against any order passed under section 12 or any decision given under section 13, provided that it be filed,—

- (a) in the case of any order or decision recorded in writing under sub-section (4) of section 12 or sub-section (2) of section 13, within six months of the date of such order or decision, and
- (b) in the case of any other order, within six months of the date on which the notification prescribed by sub-section (5) of section 12 was published.

(b) The maintenance of completed surveys of Government lands.

15. Every holder or occupier of Government land shall be responsible for the maintenance, renewal and repair of the survey marks on or within the boundaries of his holding, and for any charges reasonably incurred by Government on account of the same.

16. (1) It shall be the duty of every village headman and of every village accountant—

- (a) to prevent, as far as possible, the destruction, injury, or alteration of any survey mark, on or within the limits of his jurisdiction over Government lands; and
- (b) when he becomes aware that any such mark has been destroyed, injured, or altered, to report the fact to the District Collector or the nearest Survey Officer having jurisdiction.

as above I was by all persons known to having an interest direct or indirect in

18.11.12

See above

I think owner, and the one who had before had dev.

18.11.12

over the lands and be omitted.

18.11.12

"If his immediate official superior, I think, say, why should not the Chs. be called on to make more the Dist. Chs. be called on to make reports direct from Kurnool?"

18.11.12

It should be made clear here that such provisions as these apply to surveys of Govt. lands.

18.11.12

(Madras Act II of 1884, section 1.)

(Burma Act V of 1880, section 27.)

(2) Whoever, being a village headman or village accountant, knowingly fails to discharge any duty imposed on him by this section shall be punished with fine which may extend to fifty rupees.

(Madras Act II of 1884, section 2.)

I don't see the use of the word, 'conveniently' - it may give rise to disputes.
M. S. S. S. S.

17. When the survey of any village or other conveniently defined local area has been completed, the officer in charge of such survey shall report the completion thereof to the District Collector and the charge of all the survey marks on or within the boundaries of such village or other local area shall thereupon devolve upon such Collector, and it shall be his duty to take measures for their maintenance, renewal and repair.

(Madras Act II of 1884, sections 3 and 4.)

He has written I wd leave out District before Collector in order that Divisional Officer may have to prepare, but he is not attending to it.
M. S. S. S. S.

18. (1) The District Collector or a Survey Officer may, by notification, require the holders or occupiers of Government lands, within a reasonable specified period, to construct, renew or repair the survey marks on or within the boundaries thereof.

(2) If such holders or occupiers fail to comply with such requisition, the District Collector or Survey Officer may himself cause the survey marks to be constructed, renewed or repaired, and shall equitably apportion all costs thereby incurred on the lands, the survey marks on which have been constructed, renewed or repaired, and charge such costs to the holders or occupiers in such manner as he may consider just.

See note on S. 11(2) - There is only one manner of carrying out, i.e., by making the map first. ~~But the District Collector may require the holders or occupiers to construct, renew or repair the survey marks on or within the boundaries thereof.~~
M. S. S. S. S.

(3) In the exercise of the powers granted to him by this section, the District Collector or Survey Officer may, subject to the control of the authority to whom he is immediately subordinate, direct that the survey marks shall be of such material and shall be erected in such manner and such number as he may think fit.

(c) The revision and recovery of charges imposed on account of the conduct and maintenance of surveys of Government lands.

(Act XXVII of 1860, section 26.)

I wd strike out District
M. S. S. S. S.

19. (1) Every order of a Survey Officer or District Collector imposing charges under section 11 or section 18 shall be recorded in writing and communicated to the persons affected.

Ja
M. S. S. S. S.

(2) An appeal against any such order shall lie to the Appellate authority. the officer passing it is immediately subordinate, provided that it be filed within one month of the date of such order.

(3) The order of the Survey Officer or District Collector, or, in the event of an appeal being filed, the decision of the appellate authority shall be final.

20. (1) When the apportionment of costs has been made, or, in the event of an appeal having been filed, when the orders of the appellate authority have been received, the Collector may, of his own motion or at the instance of the Survey Officer, cause to be issued to each person concerned a demand notice specifying the amount due from him and declaring that, if such amount remains unpaid at the expiry of one month from the date of the service of such notice, it will be recovered in the same manner as if it were an arrear of land revenue due on the land in respect of which the charge was imposed.

(2) If the amount due is not paid in accordance with the terms of the demand notice, it shall be recoverable, together with the costs (if any) incurred in recovering it, in the same manner as if it were an arrear of land revenue due on the land in respect of which the charge was imposed.

Proviso.—Provided that if any amount be paid by or recovered from a tenant in satisfaction of such demand, such tenant shall be entitled to deduct the amount so paid or recovered from the rent payable by him on account of the land in respect of which the charge was imposed.

CHAPTER III.

THE SURVEY OF ESTATES.

21. The Local Government may, by notification, direct the survey of any estate or portion of an estate,—

(a) for the purpose of preventing a breach of the peace or a dispute likely to result in a breach of the peace, or

every *W. L. S.*

I had strike out District & went after "Collector", if an appeal is not preferred *W. L. S.*

I had went after it, together with the costs (if any) incurred in recovering it. *W. L. S.*

W. L. S.

This is a means of preventing a breach of the peace or a dispute likely to result in a breach of the peace. It is a means of preventing a breach of the peace or a dispute likely to result in a breach of the peace. *W. L. S.*

I think a sub clause (c) should be added to Sec 21. Nothing but if a Proprietor introduces his application work as he is disallowed. Vide para 9 of the current. B.H.'s 2/10/00

These words "and the Proprietor" are not needed. 2/10/00

had added and the Proprietor of the Collector. 2/10/00

9

(b) on the application in writing of the proprietor of such estate, accompanied by a written statement of his consent to defray the whole cost of the survey. 5

22. (1) On the issue of a notification under section 21, a Survey Officer shall be appointed for the purpose of carrying out the survey therein directed. 10

Survey Officer to be appointed ad hoc.

(2) Except as hereinafter provided in sections 23 and 24, the conduct of such survey and the proceedings of such officer shall be regulated by the procedure laid down in sections 6 to 14 inclusive with regard to the survey of Government lands. 15

Procedure to be observed during survey.

23. All costs incurred by Government on account of a survey conducted under this Chapter shall be recoverable from the proprietor of the estate, the whole or a part of which has been surveyed, in the same manner as if they were an arrear of land revenue due thereon. 20

Cost of survey recoverable from proprietor.

24. (1) On the application of the proprietor of an estate under survey, the Local Government may direct the Survey Officer to apportion the whole or a specified proportion of the cost of hired labour employed for the purposes of the survey and of the expenses incurred on procuring survey marks among the tenants holding the lands which have been surveyed. 30

Local Government may direct apportionment of particular costs among tenants.

(2) Such apportionment shall be made in the manner prescribed in section 11 and shall be subject to appeal in the manner prescribed in section 19. 40

(3) The amounts so apportioned shall be recoverable by the proprietor from the tenants concerned in the same manner as if they were arrears of rent due on the lands surveyed. 45

Costs so apportioned recoverable by proprietor from tenants.

25. When an estate or a portion of an estate has been surveyed in pursuance of a notification issued under clause (a) of section 21, the Survey Officer shall report the completion of the survey to the District Collector, and the provisions of 55

Maintenance of an estate survey conducted in order to prevent a breach of the peace.

sections 15 to 19 inclusive shall thereupon be applicable, *mutatis mutandis*, for the maintenance of the survey.

5 *Proviso.*—Provided that all charges incurred on account of the construction, renewal or repair of survey marks under sub-section (1) shall be recoverable from the proprietor of the estate as if they were arrears of revenue due thereon, unless the District Collector or Survey Officer directs the recovery of the whole or a portion of such charges from the holders or occupiers of the lands concerned in the manner hereinafter provided in sub-sections (3) (4) and (5) of section 30.

CHAPTER IV.

THE SETTLEMENT OF BOUNDARY DISPUTES ARISING OTHERWISE THAN IN THE COURSE OF A SURVEY.

26. The District Collector may,—
Collector may direct settlement of boundary-dispute.

(a) of his own motion, or,
20 (b) on the application of any of the disputants,

direct that any dispute, arising otherwise than in the course of a survey, as to the boundaries of any lands shall be decided under the provisions of this Act.

25 27. Unless the Local Government or the Board of Revenue appoints a Survey Officer under section 4 for the purpose of settling such
30 dispute, the District Collector shall thereupon—

(a) proceed to deal therewith himself, or,
35 (b) if empowered under sub-section (3) of section 4, appoint one of his subordinates not below the rank of Tahsildar as Survey Officer to deal therewith.

40 28. (1) The District Collector or Survey Officer, as the case may be, shall, after giving due notice of the time and place at which his inquiry will be held, proceed to investigate the claims of the various
45 parties and record the evidence of all persons examined by him.

had inserted, substituting the word "Proprietor" for the word "Collector" W. H. G. 1900

had inserted "Govt" W. H. G. 1900

Shipping to the, in my opinion, to drag the District Collector into every petty boundary dispute W. H. G. 1900

I think Deputy Tahsildar should be authorized for Tahsildar in boundary and revenue cases as no Tahsildar ever else where the position of Deputy Tahsildar is sufficiently high for such duties W. H. G. 1900

(2) At the close of the investigation, he shall record in writing his decision and the reasons upon which it is based, and, after duly informing the parties of the same, and intimating to them the date on which he intends to demarcate according to his decision, shall proceed to mark out the requisite boundaries conformably therewith. 10

(3) The date on which the demarcation is completed shall be entered on the record of the case and forthwith communicated to the parties. 15

(4) The decision so arrived at shall be final unless reversed or modified by the decree of a Civil Court.

(Act XXVIII of 1860, section 25.)

29. An appeal shall lie to the Civil Courts by regular suit against any order passed under section 28, if preferred within six months from the date of the order. 25

Proviso.—Provided that at any time within six months from the date on which the demarcation was completed, the Local Government may upon just and reasonable cause being shown, extend, for such time as it may think fit, the period for preferring such appeal.

(Act XXVIII of 1860, section 25.)

30. (1) In the case of any dispute settled under the provisions of this Chapter, the costs of settlement shall be apportioned by the District Collector or the Survey Officer among the parties to the dispute and the proprietors, holders or occupiers of the lands the boundaries of which were disputed in such proportions as may seem to him just. 35

(2) Appeals against orders passed under sub-section (1) shall be governed by the provisions of section 19. 45

(3) Costs apportioned under this section shall be recoverable, 45

(a) in the case of the proprietor of an estate, or a holder or occupier of Government land, as if such costs were an arrear of revenue due thereon;

(b) in the case of a holder or occupier of land forming part of an estate, by distraint and sale of 55

As the appeal is against what is called in Sec 28 a decision, the word decision should be substituted for order.

The Secretary suggests the decision should be substituted for order, but I don't think this is necessary here.

I think the words "as owner of land revenue" should be added after "recoverable", & that the rest of the Section should be left out. The U.S. suggests that they are necessary because the land of a tenant cannot be proceeded against, as it is not his property, but after sale of property the court can cause an arrear to be paid under Sec 48 of Act II of 14. 55

But the tenant may have occupancy rights which are recoverable. I don't see how, in the case of a tenant, you can recover as arrears of land revenue. This would mean that you could sell the land outright. What right should there be in such a case is to recover arrears of rent. 55

his movable property in the same manner as if such costs were an arrear of land revenue due from him.

5 *Proviso.*—Provided that if for any reason the distraint or a sufficient distraint of such property is impracticable, the District Collector or Survey Officer may
10 cause the defaulter to be prosecuted before a Magistrate.

(4) Every person who is prosecuted under the proviso to clause (b) of sub-section (3) shall be liable, on proof to the
15 satisfaction of the Magistrate that he has wilfully or negligently omitted to pay the amount due from him or that he has wilfully prevented distraint or a sufficient distraint, to pay a fine not exceeding twice the
20 amount due from him together with the costs, if any, of distraint and prosecution.

(5) If any fine imposed under sub-section (4) be not paid, the District Collector may cause the defaulter to be imprisoned
25 in the same manner and for the same period as if the amount due from him under sub-section (1) were an arrear of land revenue in respect of which imprisonment might have been imposed under section 48
30 of Madras Act II of 1864.

31. (1) Where survey marks have been laid down for the purposes of a demarcation conducted
Maintenance of survey marks laid down to demarcate disputed boundaries. conducted
35 under sub-section (2) of section 28, the provisions of sections 15 to 19 inclusive shall thereupon be applicable, *mutatis mutandis*, for the maintenance of such marks, provided that all costs incurred in
40 the construction, renewal or repair thereof shall be apportioned and recoverable in the manner provided in section 30.

CHAPTER V.

MISCELLANEOUS.

32. Subject to such rules as the Local Government may prescribe, the proceedings of Survey
45 Survey Officer's proceedings to be governed by the Code of Civil Procedure as far as practicable. Officers under this Act and of District Collectors acting under Chapter IV of this Act shall be governed, so far as may be practicable, by the Code of Civil Procedure.

50 33. For the purposes of any survey or inquiry under this Act, the Survey Officer or District Collector shall have
55 Power to enter upon and examine lands and to summon witnesses and require production of documents. power—

x omit
B.S.H.

*I had added whether the property of
State or not after land. The power
to enter on private land is very
exceptional, & should be made quite
clear.*

(Burma Act
V of 1880,
section 16.)

X Orisit

- (a) either in person or by means of his subordinates to enter upon, examine and measure any land, and
- (b) to summon and enforce the attendance of parties and witnesses, to compel the production of documents and to examine witnesses so far as may be by the same means and in the same manner as is provided in the Code of Civil Procedure.

34. (1) The District Collector or Survey Officer may, with the consent of 15 all the parties concerned, refer to arbitration any dispute as to a boundary.

(2) The procedure laid down in Chapter XXXVII of the Code of Civil Procedure shall thereupon apply (as far as may be) to such reference.

35. In computing the periods of limitation for appeals prescribed by this Act the provisions of the Indian Limitation Act, 1877, shall apply.

(Burma Act
V of 1880,
section 32.)

36. The Local Government may, after previous publication 30 make rules consistent with this Act—

- (a) for the collection and record of any information in respect of any land; 35
- (b) prescribing and limiting the powers and duties of officers conducting proceedings under this Act;
- (c) regulating the delegation to subordinate officers of the powers and duties conferred and imposed upon Survey Officers by this Act or by the rules made thereunder; 45
- (d) for the publication, issue and service of all notifications and notices to be published, issued or served under this Act;
- (e) for the regulation of all proceedings to be taken under this Act; 50
- (f) generally for carrying out the purposes of this Act.

37. No suit or criminal prosecution shall lie against any officer specially empowered under this Act for any thing done in good faith under this Act.

Immunity for acts done in good faith.

*An action as to the above, as
assigned in form 40 of the above*

16/9/96 9/9/96

STATEMENT OF OBJECTS AND REASONS.

The law relating to the demarcation and survey of boundaries and to the settlement of boundary disputes is contained in Act XXVIII of 1860 and Madras Act II of 1884, the latter enactment having been framed in order to amplify the provisions of the former in regard to the maintenance of boundary marks already erected. The existing law contains no provision enabling a Boundary Settlement officer to summon and enforce the attendance of witnesses or to require the production of documents, and does not require him to record the evidence upon which his decision is based. The Act of 1860 contemplates a rough and ready settlement of boundary disputes, and with a view to expediting the conduct of survey operations leaves the Boundary Settlement officer free to arrive at his decision without any definite method of procedure.

2. It is desirable to amend this law in many essential respects. The older enactment is devoid of logical arrangement, and while the more recent law, as contained in Act II of 1884, has been practically reproduced in the present Bill, the provisions of both have been consolidated and amended, and the law recast in a manner more suited to present requirements. Experience has shown that the existing provisions in regard to the settlement of boundary disputes have worked badly, and in several cases the Government has been put to considerable loss by the irresponsible and unsatisfactory nature of the original decision. The sections of the earlier Act providing for a reference to arbitration have been excised, as it has been found that these provisions are seldom or never used in practice, and the decision of a non-official jury or committee is in any case likely to lack promptitude and precision. The Bill accordingly proposes to submit the decision of all disputes to the Boundary Settlement officer in the first instance, and prescribes the method in which he shall adjudicate thereon: it however enables him with the consent of the parties to refer any dispute to arbitration, if he considers it desirable to do so, under the provisions of the Code of Civil Procedure.

3. In order to remedy the evils noted above, the Bill proposes to enact that the decision of the Boundary Settlement officer who is to be styled "Survey Officer" shall be arrived at in a judicial manner. It is declared that the Survey Officer shall conform, as far as may be practicable, to the main provisions of procedure ordinarily followed in the civil courts, and the Code of Civil Procedure is made applicable, so far as may be, to proceedings under the new Act. Power is however taken to make subsidiary rules for the regulation of all such proceedings.

4. The decision of the Survey Officer in the case of a boundary dispute arising otherwise than in the course of a regular survey has been made final until reversed or modified by means of a regular suit in a civil court. This provision is in accordance with a ruling recently promulgated by the High Court, to the effect that the decision against which an appeal is allowed in the form of a regular suit is the original decision of the Survey Officer, and not that of his superior passed on revision.

5. Under the "Miscellaneous" chapter of the Bill, a section has been inserted securing to the Collector or Survey Officer immunity for anything done or omitted in good faith under the Act.

6. The definition of Survey Officer has been framed so as to enable the Government to select any person it may think fit for this duty. This power has been taken in view of the fact that doubts have from time to time been raised as to whether an officer, such as the manager of an estate under the Court of Wards, could legally be appointed as a Survey Officer under the Act. It is deemed advisable to leave the hands of Government entirely unfettered in this respect.

7. As already noted, the provisions relating to the maintenance of boundary marks have been taken practically as they stand from Act II of 1884; the duties of village officers in this respect are prescribed in a new section (16) which is modelled on section 27 of Act V of 1880 (the Burma Act). The sections relating to the conduct of surveys of Government lands have, however, been slightly amplified, in order to meet the difficulty brought to notice by the Superintendent of Revenue Survey, in regard to the levy of survey charges from the owners and occupiers of lands surveyed. In the survey of a village the labour of chainmen and flagmen for Field Surveyors has hitherto been supplied by the villagers, while the labour of these individuals when required for Deputy or Head Surveyors or for Sub-Assistants has recently been charged to the State. This forms a heavy additional item in the cost of survey, and in view of the fact that difficulty is now experienced in obtaining such labour free, even when required for Field Surveyors, the existing law has been amended and brought into conformity with the law relating to this subject in the Bombay Presidency (Bombay Act V of 1879, section 97).

8. The provisions contained in Act XXVIII of 1860 prescribing penalties for disobeying summons, for making false statements, for erasing, altering, removing or injuring boundary marks, and for obstructing operations undertaken under the Act, have been omitted as superfluous. In like manner, the sections of the same Act declaring Regulations IX of 1822 and VII of 1828 applicable to persons acting under that Act have been omitted. The Indian Penal Code and Code of Civil Procedure provide the necessary powers in these respects, and their provisions are simple in procedure and final in effect.

9. Advantage has at the same time been taken of the present opportunity to extend the application of the law relating to survey and to the settlement of boundary disputes to lands in the interior of permanently-settled or other estates. This power has been held to be non-existent under the present law, and it is especially desirable that the provisions of this law should be applicable to lands comprised in estates under the management of the Court of Wards. The want of this power has, in many instances, caused considerable inconvenience to the efficient administration of such estates, and while the main object of the present extension is to render it possible to include the estates of incapacitated owners, it is thought desirable also to empower Government to undertake the survey of any *zémindári* tract on the application of the proprietor, or for the purpose of preventing a disturbance.

The Act is now declared by section 1 to extend to the whole of the Presidency of Madras, and a separate Chapter is provided for the survey and demarcation of proprietary estates.

C. No

H. E. THE GOVERNOR.

THE HON'BLE MR. BLISS, C.I.E.

THE HON'BLE MR. GROSE, C.I.E.

SUBJECT.

FOR ORDERS.

I see the Bill speaks of "the Chief of the District" in several places. But in 1.3(8) of Mr. Art I of 1891 it is "District Collector" which is defined. I would say "District Collector" accordingly.

And Mr. Bliss's latest notes will be found at pp. 35 et seq. If the note for order.

With the accompanying revised copy of the Madras Survey Bill are submitted (1) a draft order, (2) a draft letter to the Govt. of India and (3) a draft despatch to the Secy. of State.

2. The revised Bill is submitted to Hon'ble Members as there are still one or two points with regard to which it is not quite clear what the views of the majority are.

The new material which has been introduced is under-lined in red ink and omissions are indicated by red ink marks thus

Section 3 (v):-- The words "heretofore or hereafter" have been inserted in the definition of "survey mark". The Hon'ble Mr. Bliss considered that it should somewhere be made clear that the provisions relating to the maintenance of survey marks applied to marks erected prior to the passing of the bill itself. The Hon'ble Mr. Grose was of opinion that the definition of survey mark sufficiently provided for this, but added "if not, it should be made so." For this reason the words "heretofore or hereafter" have been inserted for the purpose

c. 19/11/1906

and clauses 4 & 5 is respectfully ^{re-}sub-
mitted. It will be necessary to add after
the word "recoverable" ~~as if they were~~ ^{to work as if they were}
an arrear of revenue, and as the Hon'ble
Mr. Grose pointed out, the Collector would
in the case of a zamindari tenant, as
in that of a ryotwari puttadar, have
power to resort to arrest and imprisonment
under sec. 43 of Madras Act 2 of 1864.
The somewhat elaborate provisions laid
down in the proviso and in sub-sections
4 & 5 were designed for the purpose of
securing this result and such special
reasons were merely thought necessary
in consequence of the misapprehension
of the ~~fact~~ ^{effect} of section 43 of Madras Act
II of 1864. Their omission will render
the section simpler and will obviate the
necessity of a resort to a criminal pro-
secution. This is the more desirable
as the Govt. of India in connection
with the Municipal Bill took exception
to the procedure of prosecuting in a
criminal court individuals who have not
paid municipal taxes. The sanction of
the Govt. of India will be necessary
to such a penal clause as sub-section (4)
and the same objection is not unlikely
to be taken. The word "Collector" has not
been substituted for "District Collector"
in secs. 29, 30, 31, 33, 36 and 37 as
suggested by the Hon'ble Mr. Pliss
The Hon'ble Mr. Grose demurred to this
suggestion and the Secy. noted against
it. His Excellency ~~has~~ recorded no specific
opinion.

Sec. 26, subsection 2 should,

be struck out, as being ^{will be all right}
unnecessary, under Section 11 ^{if power is taken to}
amplified as suggested by me.

A. H. H. 4.12.96

Sec. 23. Would make the omission

proposed, but I would prefer the following

addition after the word "recoverable":—

"in the manner prescribed in Sec. 22" ^{and}
I think ^{follow}

A. H. H. 4.12.96

Sec. 34. If Section 19 be retained, it should

be mentioned as well Sec. 17, and the Section should

take the form of the latter part of Sec. 27.

It says "Section 17 & 21" ^{A. H. H. 4.12.96}
which covers 17 & 21

I don't know how this will work out

A. H. H. 4.12.96
The Section seems
me satisfactory
stands 99

al.

"Should retain 'District Collector' in Sections

29, 30, 31, 33 and 35. Would omit the

word 'District' before Collector in Sections

36 and 37.

A. H. H. 4.12.96

A. I don't agree

B. I don't see how the "Chs" comes in a book
from the word includes 'District Chs'

A. H. H.

I don't myself see the
object of the section

A. H. H.

5/12/96

It may be omitted

A. H. H.

8/12/96

Section 35.

The attention of Hon'ble Member
is invited to H.E. the Governor's remark
that this section "seems unnecessary"
"if procedure is to be regulated by
"rules".

L.D.
16-11-96

18/11/96

Conceded
Secy *90* *Survey Bill*

H. E. THE GOVERNOR.

SUBJECT.

THE HON'BLE MR. BLISS, C.I.E.

MADRAS SURVEY BILL

THE HON'BLE MR. GROSE, C.I.E.

FOR ORDERS.

The accompanying note indicates the various points in regard to which a complete agreement does not exist.

Section 11. H.E. the Governor would make the Bill lay down the principles regulating the distribution of charges on account of the cost of a survey. Hon'ble Members would prefer the elasticity which is gained by the use of Rules.

Sections 17, 19 and 18 (clause (a) only).

H.E. the Governor would omit these provisions as unnecessary. Hon'ble Members would retain them.

Section 22. H.E. the Governor would substitute "shall" for "may" in line 25 and would further make the section provide that the demand notice shall take the form of a Bill, giving all reasonable details of the charges to be recovered. Hon'ble Members have no objection to the word "shall", but point out that this

modification

To be provided by rules.
11/6/1906.

Retain them.
11/6/1906.

Shall. When in the Bill.

at 11/6/1906 when the Bill was

Gr. 11/6/6

✓
as with but not 25-26.
unless otherwise provided by
any other law in the time
being in force.

Things in the world are

shall be made in the
manner provided by
rules under Sec 40 and
shall be subject to approval
under Sec 21.

On 22 she applied.

These sections having the
"addition" the 2nd int

Section 26. H.E. the Governor would strike out sub-section (2) as being meaningless unless section 11 is amplified as to ~~lay down~~ the principles regulating the apportionment of the costs of the survey. Hon'ble Members note that the sub-section will be all right if power taken to make rules. It is presumed that their intention is to insert in sub-section (2) of section 11 ^{the same such a provision as} "subject to such rules as the Local Govt. may prescribe".

Section 34 . H.E. the Governor's point seems to be that the clause shown in brackets in lines 31-34 should run as follows:--

"As modified in the case of

estates by the substitution of the expression "Estate land" for "Govt. land" in section 17 and of the word "proprietor" for "Collector" and the expression "an estate" for "a district" in section 19. This would have the effect of throwing upon the proprietor the cost of maintaining a survey laid down to demarcate a disputed boundary ⁱⁿ an estate. Sections 22, 30, 33 and 35. H.E. and the Hon'ble Mr. Grose would retain District Collector. The Hon'ble Mr. Bliss would have the word "Collector"

Sections 36 & 37. The Hon'ble Mr. Bliss has no objection to the use of the expression "Collector" but does not see how it comes in. I first thought that the Collector "came in with reference to the provisions relating to the maintenance of survey, namely sections 19 and 20, but I doubt ^{whether} that a collector could be said to be "conducting a survey or an enquiry" (section 36) or to deal with any "dispute as to a boundary" (section 37). It would seem therefore that the District Collector might remain in both these sections unless it were thought desirable to amend section 36 by substituting for the words "for the purposes of any survey or enquiry under this Act" the more general expression "for the purposes of any survey, enquiry, or ^{any} proceeding taken under this Act," in which case the word "Collector" should remain in section 36, for the expression proceeding

29. District Cms.
20. ^{provided they} do any subordinate office to show any dispute is upon his disposal under this section being disposed of by himself or upon it to any officer but below the rank of D. C. & any officer below D. C. is delegated to be a survey or enquiry (in the surveying) 22. leave Dist. Cms. this Act. 35. District Cms. to manage. 35. The words Code of Civil Procedure. to be amended & matters to be regulated by rules. 26. District Cms. W. T. 37. do. do.

"proceeding" & would cover the action taken under section 20 of the Act.

To
14.12.16

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[3.]
25
300-5-10-95

DEPARTMENT.

C. No.
See 4

Op. No 4
4. 1. 97.

FOR ORDERS.

Attached is a revised copy
of the Survey Bill with statement
of Objects & Reasons also enclosed,
a draft G.O., letter to Javis &
Disposal to the Secy of State
If the Secy approves these,
they may all be used
for the work

27 12/11

Wm.
Paul Freese
4/1/97

M.
4/1/97

THE HON'BLE MR. J. GROSE.

55

97

52,

I am directed to request that H.E. the Governor General may be moved to sanction the repeal of Act XVIII of 1860, an Act for the establishment and maintenance of boundary marks and for facilitating the settlement of boundary disputes in the Presidency of Fort St. George). I am to explain that the question of consolidating and amending the law relating to the conduct of surveys and the settlement of boundary disputes has for some time past engaged the consideration of H.E. the Governor in Council and to say that a bill for the purpose of carrying out this object has now been prepared and transferred to the Legislative dept: for introduction into the local Legislative Council. From a copy of the Bill which is enclosed, it will be seen that section 3, if carried into law, will have the effect of repealing Act XVIII of 1860 and Madras Act II of 1834. The repeal of the former Act however requires the formal sanction of the Governor General under section 5 of the Indian Councils Act, 1861, inasmuch as it was passed in the year 1860. An additional ~~reference~~ ^{reference} which necessitates a reference to the Govt of India is the fact that Act XVIII of 1860 has been applied by notification to the province of Coorg.

11/12/76

George
11/12/76

Approved
11/12/76

The may require modification
Yes - This with the do shall - What to do. 26
is the law in Mysore? It may be
part to follow that
5/12/76

Sec 4
The proposed bill
sentence 1 & 2
27/12/76

There
16.11.76
11/12/76

DESPATCH

98

36

To

The Right Hon'ble the Secy. of St
for India

My Lord,

We have the honour to transmit herewith a bill for the consolidation and amendment of the law relating to the conduct and maintenance of surveys and settlement of boundary disputes in the Madras Presidency which is about to be introduced into the Madras Legislative Council. The objects and reasons of the proposed legislation are set out in the annexure to the Bill from which it will be seen that the measure is substantially little more than a consolidation of the existing ~~law~~ ^{law as contained in} Act XVIII of 1860 and Madras Act II of 1834. The opportunity has been taken to make it clear that Govt has power to survey proprietary estates, a point in regard to which the existing law is not free from doubt. ~~Care has been~~ ^{care has been} ever been taken to exempt the proprietors of the estates so surveyed from liability to defray the costs incurred except in cases where the survey is carried out at their request. The measure has been under consideration for a considerable period ^{and in} view of the unavoidable delay which has taken place in the past ~~to~~ ^{to} say that ~~the~~ ^{the} Governor in Council is proposing to take immediate steps ^{towards} the introduction of the bill into the Legislative Council in order that it may be referred

99
referred to a Select Committee in the
ensuing session. The final passing of
the measure will however be deferred
pending the receipt of any remarks which
Your Lordship may desire to offer on
the subject.

We have etc.

D
16-4-86

11/8/86
COPY to the Legislative dept., Govt. of Madras.

D
16-4-86

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100
Proof
5/11/96
RS
6/11
8
7/11

APPENDIX.

THE MADRAS SURVEY BILL. CONTENTS.

Preamble.

CHAPTER I.

Preliminary.

CHAPTER II.

The survey of Government lands—

- (a) The initiation and conduct of surveys of Government lands.
- (b) The maintenance of completed surveys of Government lands.
- (c) The revision and recovery of charges imposed on account of the conduct or maintenance of surveys of Government lands.

CHAPTER III.

The survey of estates.

CHAPTER IV.

The settlement of boundary disputes arising otherwise than in the course of a survey.

CHAPTER V.

Miscellaneous.

WHEREAS it is expedient to make better provision for the carrying out of surveys, for the erection, repair, restoration and maintenance of survey marks, and for the determination of boundary disputes; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) *Title*.—This Act may be called “The Madras Survey Act, 189.”

(2) It extends to the whole of the Presidency of Madras. 10

2. Act XXVIII of 1860 and Madras Act II of 1884 are hereby repealed. 10

3. In this Act, unless there is something repugnant in the subject or context,— 15

(i) “Estate” means—

(a) any permanently-settled estate, whether a zamín- 20
dárí, jághír, mitta or pálaiyam;

(b) any portion of such permanently-settled estate which has been separately registered in the office of the Collector; 25

(c) any unsettled pálaiyam or jághír;

(d) any inám village of which the grant was made or confirmed by the British Government; 30

(e) any portion, consisting of one or more villages of any of the estates specified above in clauses (a), (b) and (c), which is held on a permanent under-tenure. 35

(ii) “Government land” means any land other than land forming an estate as defined in clause (i). 40

(iii) “Proprietor” means any person in whose name any estate is for the time being registered in the office of the 45

(Madras Act II of 1894, section 4.)

(Madras Act II of 1894, section 4.)

Collector of the district wherein the estate is situated, and, in respect of an estate specified above in clause (e) of the definition of "estate," the holder thereof.

5 Where an estate is so registered in the names of two or more persons as joint owners thereof, the proprietor shall, for the purposes of this Act, be the person who is recognized by the other joint owners as the manager of the estate or who, in case of dispute, is registered by the Collector of the district as senior joint owner for the purposes of this Act, after such inquiry as he shall see fit.

District Collector

15 (iv) "Survey" includes demarcation.

A 20 (v) "Survey mark" means any mark heretofore or hereafter made, erected or placed above, on or below the surface of any land for the purpose of indicating survey points or lines by or by order of any person duly authorized to make a survey of such land or to settle the boundaries thereof on behalf of Government.

(Burma Act II of 1895, section 3.)

25 *Explanation.*—A survey of an estate or a settlement of a boundary-dispute conducted under the orders of any duly authorized Government officer shall be deemed to be made on behalf of Government, notwithstanding that it is made on the application of the proprietor of the estate or of a party to the dispute.

35 (vi) "Survey Officer" means a Survey Officer appointed under this Act.

4. (1) The Local Government may appoint any person to be a Survey Officer, and may

40 Local Government to appoint and remove Survey Officers. dismiss, suspend or remove any person so appointed.

(2) Every person so appointed shall exercise and perform within such local limits as the Local Government may direct the powers conferred and the duties imposed upon him

45 Local Government to exercise general control over Survey Officers. by this Act or by the rules made thereunder subject to the control of the Local Government or of any officer appointed by it in this behalf.

(3) The Local Government may delegate its powers

55 Local Government may delegate such powers. under this section to the Board of Revenue, and for the purposes of section 27 only to a District Collector.

CHAPTER II.

THE SURVEY OF GOVERNMENT LANDS.

(a) The initiation and conduct of surveys of Government lands.

(Bombay Act V of 1879, section 95.)

5. The Local Government may, by notification, direct the survey of any Government land.

(Burma Act V of 1880, section 5.)

6. (1) When the survey of any Government land has been directed under section 5, the Survey Officer shall publish a notification addressed to all persons directly or indirectly interested in such land, calling upon them to attend either in person or by agent at a specified place and time for the purposes of pointing out the boundaries and supplying information in connection therewith, of rendering aid in setting up or repairing the survey marks, and of affording such other assistance as may be required in order to facilitate the survey.

(2) A notification published under sub-section (1) shall be held to be good and sufficient notice to every person having any interest in the land about to be surveyed.

(Burma Act V of 1880, section 7.)

7. Such notification shall further require all owners, holders or occupiers of the land about to be surveyed within a specified period—

(a) by cutting down or removing any trees, jungle, fences, standing crops, or other obstructions, to clear the boundaries or other lines the clearance of which may be necessary for the purposes of the survey,

(b) to provide labour by furnishing flag-holders or chainmen, and

(c) otherwise to assist in the survey.

(Burma Act V of 1880, section 8.)

8. (1) If any demand for compensation is made in respect of the clearance of any line in accordance with a requisition under section 7, the Survey Officer shall determine and record the value of any trees, jungle,

fences, standing crops or other obstructions, which may have been cut down or removed, and shall pay or tender to the owners thereof the amount of compensation which, in his opinion, should be allowed therefor.

(2) From any award made under sub-section (1) an appeal as regards the sufficiency of the amount awarded shall lie to the District Collector, if preferred within one month of the date of payment or tender of such amount.

(3) The award made by the Survey Officer under sub-section (1), or, in the event of an appeal being filed, the decision of the District Collector, shall be final as regards the sufficiency of the amount awarded.

9. When the period specified in the notification issued under section 6 has elapsed, the Survey Officer may proceed with the survey. (Burma Act V of 1880, section 7.)

10. The Survey Officer may, at any time during the survey, issue a special notice to any person directly or indirectly interested in the land which is being surveyed, requiring him to attend, in person or by agent, for the purpose of assisting in the survey, at a specified place and on a specified date, which shall not be less than fifteen days after the service of such notice; and any person upon whom such notice is served shall be legally bound to attend. (Burma Act V of 1880, section 6, and Bengal Act V of 1875, section 7.)

11. (1) If the persons to whom the notification under section 6 and any notices issued under section 10 have been addressed fail to comply with the requisitions made therein, the Survey Officer may employ hired labour for the purposes of the survey. (Burma Act V of 1880, section 7.)

(2) The cost of such labour shall be apportioned by the Survey Officer on the lands which have been surveyed, and shall be charged to the owners, holders or occupiers of such lands in such proportions as the said officer may consider just.

Explanation.—For the purposes of sub-section (2) the Government shall be deemed to be the owner of unoccupied Government lands. (Act XXVIII of 1860, section 8.)

12. If the owners, holders or occupiers of the lands under survey do not provide suitable survey marks to the satisfaction of the Survey Officer, such officer may himself procure such marks, and the cost of procuring them shall be apportioned on the land and charged to the owners, holders or occupiers thereof in the same manner as charges imposed under sub-section (2) of section 11.

13. All charges incurred by the Survey Officer under section 11 or section 12 shall be defrayed in the first instance by Government but shall be recovered by the Collector, on receipt of intimation from the Survey Officer of the amount due from each individual, in the same manner as if they were arrears of land revenue.

(Bombay Act V of 1879, section 119.) 14. (1) A survey conducted under the provisions of this Chapter shall ordinarily proceed according to occupation. 25

(2) If, at the time of survey, the boundary of a field or holding is undisputed, the Survey Officer may order that it shall be laid down as pointed out by the holder or occupier, being present. 30

(3) If neither the holder nor the occupier is present, or if the boundary is disputed, the Survey Officer shall order it to be laid down, as nearly as may be, in accordance with the village records, the occupation as ascertained from the village officers and the holders or occupiers of adjoining lands, and such other evidence as the Survey Officer may be able to procure. 35

(4) The order passed by the Survey Officer in the case of any dispute under sub-section (3) shall be recorded in writing and communicated to the parties to the dispute and to all persons known to have an interest direct or indirect in the land affected. 40

(5) When the boundaries of any village or other defined local area forming part of the land under survey have been demarcated in accordance with the orders passed under 45

Completion of demarcation to be notified.

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Such
(b) The apportionment of cost & recovery of charges shall be made in accordance with the rules as to local roads.
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sub-sections (2), (3) and (4), the Survey Officer shall notify that the demarcation of such village or other local area has been completed.

5 15. (1) From any order passed by the Survey Officer under section 14 an appeal shall lie to the authority to whom he is immediately subordinate/ provided that it be filed,—

10 (a) in the case of a dispute decided under sub-section (3) of section 14, within three months of the date of the order recorded in writing under sub-section (4) of that section, and

15 (b) in the case of any other order, within three months of the date upon which the notification prescribed by sub-section (5) of section 14 was published.

20 (2) The decision of the appellate authority shall be recorded in writing and communicated to the parties to the dispute, if any, and to all persons known to have an interest direct or indirect in the lands affected.

25 (3) The order of the Survey Officer, or in the event of an appeal being filed, the decision of the appellate authority, shall be final unless reversed or modified by a decree of a Civil Court.

30 Such order or appellate decision final in certain cases.

35 16. An appeal shall lie to the Civil Courts by regular suit against any order passed under section 14 or any decision given under section 15, provided that it be filed,—

40 (a) in the case of any order or decision recorded in writing under sub-section (4) of section 14 or sub-section (2) of section 15, within six months of the date of such order or decision, and

45 (b) in the case of any other order, within six months of the date on which the notification prescribed by sub-section (5) of section 14 was published.

50 (b) The maintenance of completed surveys of Government lands.

17. Every owner, holder or occupier of Government land shall be responsible for the maintenance,

55 Ryots responsible for the maintenance of survey marks.

(Madras Act II of 1844, section 1.)

renewal and repair of the survey marks on or within the boundaries of his holding, and for any charges reasonably incurred by Government on account of the same.

(Burma Act V of 1880, section 27.)

18. It shall be the duty of every village headman and of every village accountant—

(a) to prevent, as far as possible, the destruction, injury, or alteration of any survey mark, on or within the limits of his jurisdiction; and

(b) when he becomes aware that any such mark has been destroyed, injured, or altered, to report the fact to his immediate official superior or the nearest Survey Officer having jurisdiction.

(Madras Act II of 1884, section 2.)

19. The charge of all the survey marks on or within the boundaries of a district shall vest in the Collector, and it shall be his duty to take measures for their maintenance, renewal and repair.

(Madras Act II of 1881, sections 3 and 4.)

20. (1) The Collector or a Survey Officer may, by notification, require the holders or occupiers of Government lands, within a reasonable specified period, to construct, renew or repair the survey marks on or within the boundaries thereof.

(2) If such holders or occupiers fail to comply with such requisition, the Collector or Survey Officer may himself cause them to be repaired, and recover costs from ryots. Or may himself cause the survey marks to be constructed, renewed or repaired, and shall apportion all costs thereby incurred on the lands, the survey marks on which have been constructed, renewed or repaired, and charge such costs to the holders or occupiers, in such proportions as he may consider just.

(3) In the exercise of the powers granted to him by this section, the Collector or Survey Officer may, subject to the control of the authority to whom he is immediately subordinate, direct that the survey marks shall be of such material and shall be erected in such manner and such number as he may think fit.

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(c) *The revision and recovery of charges imposed on account of the conduct and maintenance of surveys of Government lands.*

21. (1) Every order of a Survey Officer or of a Collector imposing charges under section 11, section 12, or section 20 shall be recorded in writing and communicated to the persons affected.

Order imposing charges to be communicated to persons affected.

(Act XXVII of 1860, section 26.)

(2) An appeal against every such order shall lie to the appellate authority to whom the officer passing it is immediately subordinate, provided that it be filed within one month of the date of such order.

Appellate authority.

(3) The order of the Survey Officer or Collector, if an appeal is not preferred, or, in the event of an appeal being filed, the decision of the appellate authority shall be final.

Order or appellate decision final.

22. (1) When the apportionment of costs has been made, or, in the event of an appeal having been filed, when the orders of the appellate authority have been received, the Collector ~~may, of his own motion or at the instance of the Survey Officer, cause to be issued to each person concerned a demand notice specifying the amount due from him and declaring that, if such amount remains unpaid at the expiry of one month from the date of the service of such notice, it will be recovered, together with the costs, if any, incurred in recovering it, in the same manner as if it were an arrear of land revenue due on the land in respect of which the charge was imposed.~~

Issue of demand notice.

(2) If the amount due is not paid in accordance with the terms of the demand notice, it shall be recoverable, together with the costs (if any) incurred in recovering it, in the same manner as if it were an arrear of land revenue due on the land in respect of which the charge was imposed.

Recovery of charges imposed.

Proviso.—Provided that if any amount be paid by or recovered from a tenant in satisfaction of such demand, such tenant shall be entitled to deduct the amount so paid or recovered from the rent payable by him on account of the land in respect of which the charge was imposed.

Tenant may deduct amount paid from his rent.

(Madras Act II of 1844, section 7.)

CHAPTER III.

THE SURVEY OF ESTATES.

23. The Local Government may, by notification, direct the survey of any estate or portion of an estate,—

Local Government may direct survey of an estate in certain cases.

- (a) on the application in writing of the proprietor of such estate, accompanied by a written statement of his consent to defray the whole cost of the survey, or,
- (b) for other reasons to be previously recorded.

Proviso.—Provided that the progress of a survey directed under clause (a) shall be stopped on his withdrawal by the proprietor of his application, unless the Local Government sees reason to direct the continuance of the survey in virtue of the powers conferred on it by clause (b).

24. (1) On the issue of a notification under section 23, a Survey Officer shall be appointed *ad hoc* for the purpose of carrying out the survey therein directed.

(2) Except as hereinafter provided in sections 25 and 26, the conduct of such survey and the proceedings of such officer shall be regulated by the procedure laid down in sections 6 to 16 inclusive with regard to the survey of Government lands.

25. All costs incurred by Government on account of a survey conducted under this Chapter shall be recoverable from the proprietor of the estate, the whole or a part of which has been surveyed, in the same manner as if they were an arrear of land revenue due on each estate.

26. (1) On the application of the proprietor of an estate under survey, the Local Government may direct the Survey Officer to apportion the whole or a specified proportion of the cost of hired labour employed for the purposes of the survey and of the expenses incurred on procuring survey marks among the tenants

Local Government may direct apportionment of particular costs among tenants.

Provides that the cost of a survey directed under clause (a) of section 23 shall be borne by the proprietor of the estate or a portion thereof as may be determined by the Local Government.

holding the lands which have been surveyed.

(2) Such apportionment shall be made in the manner prescribed in sections 11 and 12 and shall be subject to appeal in the manner prescribed in section 21.

(3) The amounts so apportioned shall be recoverable by the proprietor from the tenants concerned in the same manner as if they were arrears of rent due on the lands surveyed.

27. When an estate or a portion of an estate has been surveyed in pursuance of a notification issued under section 23, the Survey Officer shall

report the completion of the survey to the District Collector and to the proprietor, and the provisions of sections 17 to 19 inclusive, as modified by the substitution of the expression "Estate land" for "Government land" in section 17, and of the word "proprietor" for "Collector" and the expression "an estate" for "a district" in section 19, shall thereupon be applicable, for the maintenance of the survey.

23. (1) When the survey of an estate has been completed in pursuance of a notification issued

under section 23, the proprietor may, by notification, require the holders or occupiers of lands situated within such estate, within a reasonable specified period, to construct, renew or repair the survey-marks on or within the boundaries thereof.

(2) If such holders or occupiers fail to comply with such requisition, the Collector may, on application by the proprietor, cause the survey-marks to be constructed, renewed or repaired, and apportion all costs thereby incurred on the lands concerned, and charge them to the holders or occupiers thereof.

(3) The proceedings of a Collector acting under sub-section (2) shall be regulated by the provisions of sub-sections (2) and (3) of section 20 and shall be subject to appeal as provided by section 21.

(4) Costs incurred under sub-section (2) shall be recoverable by the Collector in the manner hereinafter provided in sub-sections (3), (4) and (5) of section 33, provided that the Collector shall have power,

following circumstances shall be taken into account in determining the amount of the survey fee to be levied on the proprietor of an estate surveyed under section 23, namely—

1. The area of the estate surveyed.

subject to the control of the Board of Revenue, to recover the whole or a portion of such costs from the proprietor as if it were an arrear of land revenue due on his estate.

CHAPTER IV.

THE SETTLEMENT OF BOUNDARY DISPUTES ARISING OTHERWISE THAN IN THE COURSE OF A SURVEY.

29. The District Collector may direct settlement of boundary-dispute.

(a) of his own motion, or,

(b) on the application of any of the disputants,

direct that any dispute, arising otherwise than in the course of a survey, as to the boundaries of any lands shall be decided under the provisions of this Act.

30. Unless the Local Government or the Board of Revenue appoints a Survey Officer under section 4 for the purpose of settling such dispute, the District Collector shall thereupon—

(a) proceed to deal therewith himself, or,

(b) if empowered under sub-section (3) of section 4, appoint one of his subordinates not below the rank of Deputy Tahsildar as Survey Officer to deal therewith.

31. (1) The District Collector or Survey Officer, as the case may be, shall, after giving due notice of the time and place at which his inquiry will be held, proceed to investigate the claims of the various parties and record the evidence of all persons examined by him.

(2) At the close of the investigation, he shall record in writing his decision and the reasons upon which it is based, and, after duly informing the parties of the same, and intimating to them the date on which he intends to demarcate according to his decision, shall proceed to mark out the requisite boundaries conformably therewith.

(3) The date on which the demarcation is completed shall be entered on the record of the case and forthwith communicated to the parties.

(4) The decision so arrived at shall be final unless reversed or modified by the decree of a Civil Court.

5 **32.** An appeal shall lie to the Civil Courts by regular suit against any decision passed under section 31, if preferred within six months from the date of the decision.

Proviso.—Provided that at any time within six months from the date on which the demarcation was completed, the Local Government may, upon just and reasonable cause being shown, extend, for such time as it may think fit, the period for preferring such appeal.

20 **33.** (1) In the case of any dispute settled under the provisions of this Chapter, the costs of settlement shall be apportioned by the District Collector or the Survey Officer among the parties to the dispute and the proprietors, holders or occupiers of the lands the boundaries of which were disputed in such proportions as may seem to him just.

30 (2) Appeals against orders passed under sub-section (1) shall be governed by the provisions of section 21.

(3) Costs apportioned under this section shall be recoverable—

35 (a) in the case of the proprietor of an estate, or a holder or occupier of Government land, as if such costs were an arrear of revenue due thereon;

40 (b) in the case of a holder or occupier of land forming part of an estate, by distraint and sale of his movable property in the same manner as if such costs were an arrear of land revenue due from him.

45 *Proviso.*—Provided that if for any reason the distraint or a sufficient distraint of such property is impracticable, the District Collector or Survey Officer may cause the defaulter, to be prosecuted before a Magistrate.

50 (4) Every person who is prosecuted under the proviso to clause (b) of sub-section (3) shall be liable, on proof, to the satisfaction of the Magistrate that he has wilfully or negligently omitted to pay the

(Act XXVIII of 1860, section 25.)

(Act XXVIII of 1860, section 25.)

amount due from him or that he has wilfully prevented distraint or a sufficient distraint, to pay a fine not exceeding twice the amount due from him together with the costs, if any, of distraint and prosecution. 5

(5) If any fine imposed under sub-section (4) be not paid, the District Collector may cause the defaulter to be imprisoned in the same manner and for the same period as if the amount due from him under sub-section (1) were an arrear of land revenue in respect of which imprisonment might have been imposed under section 48 of Madras Act II of 1864.

34. (1) When survey marks have been laid down for the purposes of a demarcation conducted under sub-section (2) of section 31, the provisions of sections 17 to 21 inclusive (as modified in the case of estates by the substitution of the expression "Estate land" for "Government land" in section 17) shall thereupon be applicable for the maintenance of such marks, provided that all costs incurred in the construction, renewal or repair thereof shall be apportioned and recoverable in the manner provided in section 33.

CHAPTER V. MISCELLANEOUS.

35. Subject to such rules as the Local Government may prescribe, the proceedings of Survey Officers under this

Survey Officer's proceedings to be governed by the Code of Civil Procedure as far as practicable.

Act and of District Collectors, acting under Chapter IV of this Act shall be governed, so far as may be practicable, by the Code of Civil Procedure.

(Act XXVIII of 1860, section 28, and Burma Act V of 1880, section 15).

36. For the purposes of any survey, or inquiry, under this Act, the Survey Officer or District Collector shall have power—

- either in person or by means of his subordinates to enter upon, examine and measure any land, whether Government land or not, and
- to summon and enforce the attendance of parties and witnesses, to compel the production of documents and to examine witnesses so far as may be by the same means and in the same manner as is provided in the Code of Civil Procedure.

Power to enter upon and examine lands and to summon witnesses and require production of documents.

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37. (1) The District Collector or Survey Officer may, with the consent of all the parties concerned, refer to arbitration any dispute as to a boundary.

(2) The procedure laid down in Chapter XXXVII of the Code of Civil Procedure shall thereupon apply (as far as may be) to such reference.

38. In computing the periods of limitation for appeals prescribed by this Act the provisions of the Indian Limitation Act, 1877, shall apply.

39. The Local Government may empower a District Collector or Survey Officer to delegate to his subordinates such of the powers and duties conferred and imposed on him by this Act or by rules made thereunder as it may think fit.

40. The Local Government may, after previous publication make rules consistent with this Act—

(a) for the collection and record of any information in respect of any land;

(b) prescribing and limiting the powers and duties of officers conducting proceedings under this Act;

(c) regulating the delegation to subordinate officers of the powers and duties conferred and imposed upon Survey Officers by this Act or by the rules made thereunder;

(d) for the publication, issue and service of all notifications and notices to be published, issued or served under this Act;

(e) for the regulation of all proceedings to be taken under this Act;

(f) generally for carrying out the purposes of this Act.

41. No suit or criminal prosecution shall lie against any officer specially empowered under this Act for anything done in good faith under this Act.

STATEMENT OF OBJECTS AND REASONS.

The law relating to the demarcation and survey of boundaries and to the settlement of boundary disputes is contained in Act XXVIII of 1860 and Madras Act II of 1884, the latter enactment having been framed in order to amplify the provisions of the former in regard to the maintenance of boundary marks already erected. The existing law contains no provision enabling a Boundary Settlement officer to summon and enforce the attendance of witnesses or to require the production of documents, and does not require him to record the evidence upon which his decision is based. The Act of 1860 contemplates a rough and ready settlement of boundary disputes, and with a view to expediting the conduct of survey operations leaves the Boundary Settlement officer free to arrive at his decision without any definite method of procedure.

2. It is desirable to amend this law in many essential respects. The older enactment is devoid of logical arrangement, and while the more recent law, as contained in Act II of 1884, has been practically reproduced in the present Bill, the provisions of both have been consolidated and amended, and the law recast in a manner more suited to present requirements. Experience has shown that the existing provisions in regard to the settlement of boundary disputes have worked badly, and in several cases the Government has been put to considerable loss by the irresponsible and unsatisfactory nature of the original decision. The sections of the earlier Act providing for a reference to arbitration have been excised, as it has been found that these provisions are seldom or never used in practice, and the decision of a non-official jury or committee is in any case likely to lack promptitude and precision. The Bill accordingly proposes to submit the decision of all disputes to the Boundary Settlement officer in the first instance, and prescribes the method in which he shall adjudicate thereon: it however enables him with the consent of the parties to refer any dispute to arbitration, if he considers it desirable to do so, under the provisions of the Code of Civil Procedure.

3. In order to remedy the evils noted above, the Bill proposes to enact that the decision of the Boundary Settlement officer who is to be styled "Survey Officer" shall be arrived at in a judicial manner. It is declared that the Survey Officer shall conform, as far as may be practicable, to the main provisions of procedure ordinarily followed in the civil courts, and the Code of Civil Procedure is made applicable, so far as may be, to proceedings under the new Act. Power is however taken to make subsidiary rules for the regulation of all such proceedings.

4. The decision of the Survey Officer in the case of a boundary dispute arising otherwise than in the course of a regular survey has been made final until reversed or modified by means of a regular suit in a civil court. This provision is in accordance with a ruling recently promulgated by the High Court, to the effect that the decision against which an appeal is allowed in the form of a regular suit is the original decision of the Survey Officer, and not that of his superior passed on revision.

5. Under the "Miscellaneous" chapter of the Bill, a section has been inserted securing to the Collector or Survey Officer immunity for anything done or omitted in good faith under the Act.

6. The definition of Survey Officer has been framed so as to enable the Government to select any person it may think fit for this duty. This power has been taken in view of the fact that doubts have from time to time been raised as to whether an officer, such as the manager of an estate under the Court of Wards, could legally be appointed as a Survey Officer under the Act. It is deemed advisable to leave the hands of Government entirely unfettered in this respect.

7. As already noted, the provisions relating to the maintenance of boundary marks have been taken practically as they stand from Act II of 1884; the duties of village officers in this respect are prescribed in a new section (18) which is modelled on section 27 of Act V of 1880 (the Burma Act). The sections relating to the conduct of surveys of Government lands have, however, been slightly amplified, in order to meet the difficulty brought to notice by the Superintendent of Revenue Survey, in regard to the levy of survey charges from the owners and occupiers of lands surveyed. In the survey of a village the labour of chainmen and flagmen for Field Surveyors has hitherto been supplied by the villagers, while the labour of these individuals when required for Deputy or Head Surveyors or for Sub-Assistants has recently been charged to the State. This forms a heavy additional item in the cost of survey, and in view of the fact that difficulty is now experienced in obtaining such labour free, even when required for Field Surveyors, the existing law has been amended and brought into conformity with the law relating to this subject in the Bombay Presidency (Bombay Act V of 1879, section 97).

Power when when L
under Rules over

8. The provisions contained in Act XXVIII of 1860 prescribing penalties for disobeying summons, for making false statements, for erasing, altering, removing or injuring boundary marks, and for obstructing operations undertaken under the Act, have been omitted as superfluous. In like manner, the sections of the same Act declaring Regulations IX of 1822 and VII of 1828 applicable to persons acting under that Act have been omitted. The Indian Penal Code and Code of Civil Procedure provide the necessary powers in these respects, and their provisions are simple in procedure and final in effect.

9. Advantage has at the same time been taken of the present opportunity to extend the application of the law relating to survey and to the settlement of boundary disputes to lands in the interior of permanently-settled or other estates. This power has been held to be non-existent under the present law, and it is especially desirable that the provisions of this law should be applicable to lands comprised in estates under the management of the Court of Wards. The want of this power has, in many instances, caused considerable inconvenience to the efficient administration of such estates, and while the main object of the present extension is to render it possible to include the estates of incapacitated owners, it is thought desirable also to empower Government to undertake the survey of *any* zémindári tract on the application of the proprietor, or for the purpose of preventing a disturbance.

The Act is now declared by section 1 to extend to the whole of the Presidency of Madras, and a separate Chapter is provided for the survey and demarcation of proprietary estates.

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WHEREAS it is expedient to make better provision for the carrying out of surveys, for the erection, repair, restoration and maintenance of survey marks, and for the determination of boundary disputes; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) *Title.*—This Act may be called “The Madras Survey Act, 1894.”

(2) *It extends to the whole of the Presidency of Madras.* 10

2. *Act XXV of 1860 and Madras Act II of 1884 are hereby repealed.*

3. *In this Act, unless there is something repugnant in the subject or context,—*

(i) “Estate” means—

(Madras Act II of 1894, section 4.)

(a) any permanently-settled estate, whether “Estate.”; azamín- 20
dārī, jāghīr, mitta or pālaiyam;

(b) any portion of such permanently-settled estate which has been separately registered in the office of the Collector; 25

(c) any unsettled pālaiyam or jāghīr;

(d) any inām village of which the grant was made or confirmed by the British Government; 30

(e) any portion, consisting of one or more villages of any of the estates specified above in clauses (a), (b) and (c), which is held on a permanent under-tenure. 35

(ii) “Government land” means any land other than land forming an estate as defined in clause (i). 40

(Madras Act II of 1894, section 4.)

(iii) “Proprietor” means any person in whose name any estate is for the time being registered in the office of the 45

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IX:

THE SURVEY BILL.

ENTS.

Preamble.

CHAPTER I.

Preliminary.

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The survey of Government lands.

- (a) The initiation and conduct of surveys of Government lands.
- (b) The maintenance of conduct of surveys of Government lands.
- (c) The revision and recovery of charges imposed on account of the conduct or maintenance of surveys of Government lands.

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The survey of estates.

CHAPTER IV.

The settlement of boundary disputes arising otherwise than in the course of a survey.

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CHAPTER II.

THE SURVEY OF GOVERNMENT LANDS.

(a) The initiation and conduct of surveys of Government lands.

(Bombay Act
V of 1879,
section 95.)

5. The Local Government may, by notification, direct the survey of any Government land.

Local Government may direct survey of Government land.

(Burma Act
V of 1880,
section 5.)

6. (1) When the survey of any Government land has been directed under section 5, the Survey Officer shall publish a notification addressed to all persons directly or indirectly interested in such land, calling upon them to attend either in person or by agent at a specified place and time for the purposes of pointing out the boundaries and supplying information in connection therewith, of rendering aid in setting up or repairing the survey marks, and of affording such other assistance as may be required in order to facilitate the survey.

Notification to be published by Survey Officer.

(2) Such notification shall be held to be good and sufficient notice to every person having an interest in the land about to be surveyed.

Such notification sufficient notice to interested.

(Burma Act
V of 1880,
section 7.)

7. Such notification shall further require all owners, tenants or occupiers of the land about to be surveyed within a specified period—

(a) by cutting down trees, jungle, crops, or other obstructions, to clear the boundaries of which are of such nature as to require removal or the purpose of the survey.

(b) to provide labour for flag-holders or other persons engaged in the survey.

(c) otherwise to assist in the survey.

(Burma Act
V of 1880,
section 8.)

8. (1) If any demand for compensation for injury caused by clearance of boundaries, &c., is made in accordance with a requisition made under section 7, the Survey Officer shall record the value of any land

Compensation for injury caused by clearance of boundaries, &c.

compensation made in clearance line in accordance with section 7, the Survey Officer shall record the value of any land

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fences, standing or other obstructions, which may have been cut down or removed, and shall pay or tender to the owners thereof the amount of compensation which, in his opinion, should be allowed therefor.

5 (2) From any award made under sub-section (1) an appeal as regards the sufficiency of the amount awarded shall lie to the District Collector, if preferred within one month of the date of payment or tender of such amount.

10 (3) The award made by the Survey Officer under sub-section (1), or, in the event of an appeal being filed, the decision of the District Collector, shall be final as regards the sufficiency of the amount awarded.

15 9. When the period specified in the notification issued under section 6 has elapsed, the Survey Officer may proceed with the survey. (Burma Act V of 1880, section 7.)

20 10. The Survey Officer may, at any time during the survey, issue a special notice to any person directly or indirectly interested in the land which is being surveyed, requiring him to attend, in person or by agent, for the purpose of assisting in the survey, at a specified place and on a specified date, which shall not be less than fifteen days after the service of such notice; and any person upon whom such notice is served shall be legally bound to attend.

25 11. (1) If the persons to whom the notification under section 6 and any notices issued under section 10 have been addressed fail to comply with the requisitions made therein, the Survey Officer may employ hired labour for the purposes of the survey. (Burma Act V of 1880, section 7.)

30 (2) The cost of such labour shall be borne by the holders or occupiers of the lands surveyed. (The same) 50 been surveyed, and shall be charged to the owners, holders or occupiers of such lands in such proportions as the said officer may consider just.

55 Explanation.—For the purposes of sub-section (2) the Government shall be deemed to be the owner of unoccupied Government lands. (Act XXVIII of 1860, section 8.)

The Survey Officer shall, in accordance with such rules as he may prescribe, appoint the

the same
in accordance with the rules as the Local Government may prescribe.

Section 11(2)

The Survey Officer shall in accordance with the rules as he may prescribe, appoint the

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12. If the owner

holders or occupiers of the lands under survey do not provide suitable survey marks to the satisfaction of the Survey Officer, such Officer may himself procure such marks and the cost of procuring them shall be apportioned on the land and thereof in the manner as charges imposed under sub-section (2) of section 11.

13. All charges

incurred by the Survey Officer under section 11 or section 12 shall be defrayed in the first instance by Government but shall be recovered by the Collector, on receipt of intimation from the Survey Officer of the amount due from each individual, in the same manner as if they were arrears of land revenue.

(Bombay Act V of 1879, section 119.)

14. (1) A survey

ordinarily conducted under the provisions of this Chapter shall ordinarily proceed according to occupation.

(2) If, at the

time of survey, the boundary of a field or holding is undisputed, the Survey Officer may order that it shall be laid down being present, the holder or occupier,

(3) If neither

the holder nor the occupier is present, or if the boundary is disputed, the Survey Officer shall order it to be laid down, as nearly as may be, in accordance with the village records, the occupation as ascertained from the village officers and the holders or occupiers of adjoining lands, and such other evidence as the Survey Officer may be able to procure.

(4) The order

passed by the Survey Officer in the case of any dispute under sub-section (3) shall be recorded in writing and communicated to the parties to the dispute and to all persons known to have an interest direct or indirect.

(5) When

the boundaries of any village or other defined local area forming part of the land have been demarcated in accordance with the orders passed under

(in the lands affected.)

sub-sections (2), (3) and (4), the Survey Officer shall notify that the demarcation of such village or other local area has been completed.

15 15. (1) From any order passed by the Survey Officer under section 14 an appeal shall lie to the authority to whom he is immediately subordinate, provided that it be filed,—

10 (a) in the case of a dispute decided under sub-section (3) of section 14, within three months of the date of the order recorded in writing under sub-section (4) of that section, and

15 (b) in the case of any other order, within three months of the date upon which the notification prescribed by sub-section (5) of section 14 was published.

20 (2) The decision of the appellate authority shall be recorded in writing and communicated to the parties to the dispute, if any, and to all persons known to have an interest direct or indirect in the lands affected.

25 (3) The order of the Survey Officer, or in the event of an appeal being filed, the decision of the appellate authority, shall be final unless reversed or modified by a decree of a Civil Court.

30 16. An appeal shall lie to the Civil Courts by regular suit against any order passed under section 14 or any decision given under section 15, provided that it be filed,—

35 (a) in the case of any order or decision recorded in writing under sub-section (4) of section 14 or sub-section (2) of section 15, within six months of the date of such order or decision, and

45 (b) in the case of any other order, within six months of the date on which the notification prescribed by sub-section (5) of section 14 was published.

50 (b) The maintenance of completed surveys of Government lands.

55 17. Every owner, holder or occupier of Government land shall be responsible for the maintenance, marks.

(Madras Act II of 1884, section 1.)

reval
rules as the local authority may prescribe

renewal and repair of the survey marks on or within the boundaries of his holding, and for any charges reasonably incurred by Government on account of the same.

(Burma Act V of 1880, section 27.)

18. It shall be the duty of every village headman and every village accountant—

Duties of village officers in this respect.

(a) to prevent, as far as possible, the destruction, injury, or alteration of any survey mark, on or within the limits of his jurisdiction; and

(b) when he becomes aware that any such mark has been destroyed, injured, or altered, to report the fact to the nearest Survey Officer having jurisdiction.

(Madras Act II of 1884, section 2.)

19. The charge of the survey marks on or within the boundaries of a district shall vest in the Collector, and it shall be his duty to take measures for their maintenance, renewal and repair.

(Madras Act II of 1884, sections 3 and 4.)

20. (1) The Collector or a Survey Officer may, by notification, require the holders or occupiers of Government lands, within a reasonable specified period, to construct, renew or repair the survey marks on or within the boundaries thereof.

Collector or Survey Officer may require ryots to repair survey marks.

(2) If such holders or occupiers fail to comply with such requisition, the Collector or Survey Officer may himself cause them to be repaired, and recover costs from ryots.

Or may himself cause them to be repaired, and recover costs from ryots. Officer may himself cause them to be repaired, and shall apportion all costs thereof, renewed or repaired, and charge the same in such proportions as he may consider just.

(3) In the exercise of the powers conferred on him by this section, the Collector or Survey Officer may, subject to the immediate subordination to whom he is subordinate, direct that such marks shall be erected in such manner as he may think fit.

Nature of repairs may be prescribed.

Officer may, subject to the immediate subordination to whom he is subordinate, direct that such marks shall be erected in such manner as he may think fit.

in accordance with the Act

11/11/97

22. The cost of a survey directed and conducted by the Government shall be borne by the Government and not by the landowner.

(c) The revision and recovery of charges imposed on account of the conduct and maintenance of surveys of Government lands.

21. (1) Every order of a Survey Officer or of a Collector imposing charges under section 11, section 12, or section 15 shall be recorded in writing and communicated to the persons affected.

Order imposing charges to be communicated to persons affected.

(Act XXVII of 1860, section 26.)

(2) An appeal against every such order shall lie to the authority to whom the officer passing it is immediately subordinate, provided that it be filed within one month of the date of such order.

Appellate authority

(3) The order of the Survey Officer or Collector, if an appeal is not preferred, or, in the event of an appeal being filed, the decision of the appellate authority shall be final.

Order or appellate decision final.

22. (1) When the apportionment of costs has been made, or, in the event of an appeal having been filed, when the orders of the appellate authority have been received, the Collector may, of his own motion or at the instance of the Survey Officer, cause to be issued to each person concerned a demand notice specifying the amount due from him and declaring that, if such amount remains unpaid at the expiry of one month from the date of the service of such notice, it will be recovered, together with the costs, if any, incurred in recovering it, in the same manner as if it were an arrear of land revenue due on the land in respect of which the charge was imposed.

Issue of demand notice

(2) If the amount due is not paid in accordance with the terms of the demand notice, it shall be recoverable, together with the costs (if any) incurred in recovering it, in the same manner as if it were an arrear of land revenue due on the land in respect of which the charge was imposed.

Recovery of charge imposed.

23. ~~Provided that~~ If any amount be paid by or recovered from a tenant in satisfaction of such demand, such tenant shall be entitled to deduct the amount so paid or recovered from the rent payable by him on account of the land in respect of which the charge was imposed.

Tenant may deduct amount paid from his rent.

(Madras Act I of 1884, section 7.)

used under section 22

The cost of a survey directed and conducted by the Government shall be borne by the Government and not by the landowner.

R III.

OF ESTATES.

THE Government may, by notification, direct the survey of any estate or portion of an estate,—

Local Government direct survey of an estate in certain cases.

(a) on the condition in writing of the proprietor of such estate, and by a written statement of his consent to defray the cost of the survey, or, in the case of a portion of an estate, the cost of the survey of the portion.

(b) for other reasons, provided that the proprietor of such estate has given his written consent to the Local Government to direct the survey of the estate or portion of the estate, and that the Local Government is satisfied that the survey is necessary for the purposes of the survey.

23. (1) On the application of the proprietor of an estate or portion of an estate, the Local Government may direct the survey of the estate or portion of the estate, and may appoint a Survey Officer to conduct the survey.

(2) Except as otherwise provided in sections 24 and 25, the Survey Officer shall regulate the conduct of the survey and the proceedings of the survey in accordance with the provisions of sections 26 to 30 inclusive.

24. All costs incurred by the Government in the survey of an estate or portion of an estate, and the costs of the Survey Officer in the conduct of the survey, shall be paid by the proprietor of the estate or portion of the estate.

25. All costs incurred by the Government in the survey of an estate or portion of an estate, and the costs of the Survey Officer in the conduct of the survey, shall be paid by the proprietor of the estate or portion of the estate, and shall be recoverable from the proprietor of the estate or portion of the estate in the same manner as if they were an estate or portion of an estate.

26. (1) On the application of the proprietor of an estate or portion of an estate, the Local Government may direct the survey of the estate or portion of the estate, and may appoint a Survey Officer to conduct the survey. The Survey Officer may direct the Survey Officer to incur the cost of the survey, and the Survey Officer may direct the Survey Officer to incur the cost of the survey.

Provided that clause (b) of section 23 shall not apply to the survey of an estate or portion of an estate.

subject to the cost of the Board of Revenue, to recover of such costs from the proprietor as if it were an error of law.

at the Board of Revenue, to recover of such costs from the proprietor as if it were an error of law.

CHAPTER IV.
THE SETTLEMENT OF
DISPUTES ARISING OTHERWISE
IN THE COURSE OF A SURVEY.

IV.
SECONDARY DISPUTES
THAN IN THE

Collector may direct settlement of boundary-dispute.

20. The District Collector may,—

- (a) of his own motion, or,
 - (b) on the application of any of the disputants,
- direct that any dispute arising otherwise than in the course of a survey, as to the boundaries of any land shall be decided under the provisions of this Act.

30. Unless the Government or the Board of Revenue appoints a Survey Officer under section 4 for the purpose, the District Collector shall thereupon—

- (a) proceed to deal therewith himself, or,
- (b) if empowered by sub-section (3) of section 31, appoint one of his subordinates below the rank of Deputy Survey Officer to

31. (1) The District Collector or Survey Officer, as the case may be, shall, after giving due notice of the time and place at which his inquiries of the various parties and records of evidence of all persons examined by the investigation,

(2) At the close of the investigation, the District Collector or Survey Officer shall record in writing his decision and the reasons therefor, and, after duly giving notice of the same, and intimating to the parties on which he intends to demarcate the boundaries, shall proceed to mark out the required boundaries in accordance with the demarcation completed.

(3) The date on which the demarcation is completed shall be entered on the record of the case and forthwith communicated to the parties.

Handwritten notes:
If any dispute arises between the parties to a survey, the District Collector or Survey Officer may direct that the dispute be referred to him for decision. If he is not satisfied with the decision of the parties, he may refer it to the Board of Revenue for their decision. The Board of Revenue may direct that the dispute be referred to a Survey Officer for his decision. The Survey Officer may direct that the dispute be referred to him for decision. If he is not satisfied with the decision of the parties, he may refer it to the Board of Revenue for their decision.

Handwritten notes:
(2) Any officer to whom any dispute is referred by the District Collector or Survey Officer under sub-section (1) may refer it to the Board of Revenue for their decision. The Board of Revenue may direct that the dispute be referred to a Survey Officer for his decision. The Survey Officer may direct that the dispute be referred to him for decision. If he is not satisfied with the decision of the parties, he may refer it to the Board of Revenue for their decision.

Handwritten notes:
Kolo
Sub-section (3) of section 31. So well
that it is difficult to find
any fault with it.

(4) The decision so arrived at shall be final unless reversed or modified by the Court.

decree of a Civil Court shall lie to the Civil Courts by regular suit against any decision passed

3. Appeal to Civil Court against decision. 1, if preferred within six months from the date of the decision.

10 months from the date of the decision. *Proviso.*—Provided that at any time within six months from the date on

2. which the demerit was completed, the Local Government may, upon just and being shown, extend, for reasonable cause, such time as it may think fit, the period for preferring such appeal.

20 33. (1) In the case of any dispute settled under the provisions of this Chapter, the costs of

4. settlement shall be apportioned by the District Collector or the Survey Officer to the dispute and the among the parties or occupiers of the proprietors, holders of which were dis-

25 lands the boundaries as may seem to be apportioned by the District Collector or the Survey Officer to the dispute and the among the parties or occupiers of the proprietors, holders of which were dis-

30 (2) Appeals (1) shall be governed by under sub-section section 21. the provisions of section 21.

(3) Costs apportioned under this section shall be recoverable of the proprietor of

35 (a) in the case of a holder or occupier of an estate Government land, as if such costs were an arrear of such estate due thereon;

40 (b) in the case of a holder or occupier of a land forming part of an estate, as if such costs were an arrear of land revenue due thereon.

45 *Proviso.*—Provided that if for any reason a sufficient dity of such property is not sufficient, the District Collector or Survey Officer may cause the default to be prosecuted before a Magistrate.

50 (4) Every person who is prosecuted under the proviso to clause (b) of sub-section (3) shall be liable to be prosecuted before a Magistrate that he has satisfaction of the Magistrate that he has wilfully or negligently omitted to pay the

(Act XXVIII of 1860, section 25.)

(Act XXVIII of 1860, section 25.)

According to the provisions of the Act of 1860, section 25.

in the manner provided in the Act of 1860, section 25.

37. (1) The District Collector or Survey Officer may, with the consent of all the parties concerned, refer to arbitration any dispute as to a boundary.

(2) The procedure laid down in Chapter XXXVII of the Code of Civil Procedure shall thereupon apply (as far as may be) to such reference.

38. In computing the periods of limitation for appeals prescribed by this Act the provisions of the Indian Limitation Act, 1877, shall apply.

39. The Local Government may empower a District Collector or Survey Officer to delegate to his subordinates such of the powers and duties conferred and imposed on him by this Act or by rules made thereunder as he may think fit.

40. The Local Government may, after previous publication make subsidiary rules consistent with this Act—

- (a) for the collection and record of any information in respect of any land;
- (b) prescribing and limiting the powers and duties of officers conducting proceedings under this Act;
- (c) regulating the delegation to subordinate officers of the powers and duties conferred and imposed upon Survey Officers by this Act by the rules made thereunder;
- (d) for the publication, issue and service of all notifications and notices to be published, issued or served under this Act;
- (e) for the regulation of all proceedings to be taken under this Act;
- (f) generally for carrying out the purposes of this Act.

41. No suit or criminal prosecution shall lie against any officer specially empowered under this Act for anything done in good faith under this Act.

Script as otherwise herein separately provided.

STATEMENT OF

The law relating to the demarcation of boundary disputes is contained in Act XX of 1884, the latter enactment having been framed in order to enable a Boundary Settlement officer to require the production of documents, and which his decision is based. The Act of 1884, however, does not require him to record the evidence upon which his decision is based. The Act of 1884, however, does not require him to record the evidence upon which his decision is based. The Act of 1884, however, does not require him to record the evidence upon which his decision is based.

2. It is desirable to amend this law, as it is devoid of logical arrangement, and while it has been practically reproduced in the present Bill, the provisions of both have been consolidated and amended, and the law recast in a manner more suited to the settlement of boundary disputes. The existing law contains no provision in regard to the attendance of witnesses or for erecting boundary marks. The existing law contains no provision in regard to the attendance of witnesses or for erecting boundary marks. The existing law contains no provision in regard to the attendance of witnesses or for erecting boundary marks.

3. In order to remedy the evils noted above, the Bill proposes to amend that the decision of the Boundary Settlement officer who is to be styled "Survey Officer" shall be arrived at in a judicial manner. It is declared that the Survey Officer shall conform, as far as may be practicable, to the main provisions of procedure ordinarily followed in the civil courts, and the Code of Civil Procedure is made applicable, so far as may be, to proceedings under the new Act. Power may be, to proceedings under the new Act. Power may be, to proceedings under the new Act.

4. The decision of the Survey Officer in the case of a boundary dispute arising otherwise than in the course of a regular survey has been made final until reversed or modified by means of a regular suit in a civil court. This provision is in accordance with a ruling recently promulgated by the High Court, to the effect that the decision of the Survey Officer, and not that of his superior passed on revision.

5. Under the "Miscellaneous" chapter of the Bill, a section has been inserted securing to the Collector or Survey Officer immunity for anything done or omitted in good faith under the Act.

6. The definition of Survey Officer has been framed so as to enable the Government to select any person it may think fit for this duty. This power has been taken in view of the fact that doubts have from time to time been raised as to whether an officer, such as the manager of an estate under the Court of Wards, could legally be appointed as a Survey Officer. It is deemed advisable to have the hands of Government entirely unfettered in this respect.

7. As already noted, the provisions relating to the maintenance of boundary marks have been taken practically as they stand from Act II of 1884; the duties of village officers in this respect are prescribed in a new section (16), which is modelled on section 27 of Act V of 1880 (the Burma Act). The sections relating to the conduct of surveys of Government lands have, however, been slightly amplified, in order to meet the difficulty brought to notice by the Superintendent of Revenue Survey, in regard to the levy of survey charges from the owners and occupiers of lands surveyed. In the survey of a village the labour of chainmen and flagmen for Field Surveyors has hitherto been supplied by the villagers, while the labour of these individuals when required for Deputy or Head Surveyors or for Sub-Assistants has recently been charged to the State. This is a heavy additional item in the cost of survey, and in view of the fact that difficulty is experienced in obtaining such labour free, even when required for Field Surveyors, the existing law has been amended and brought into conformity with the law relating to this subject (section 97).

OBJECTS AND REASONS.

and survey of boundaries and to the settlement of VIII of 1860 and Madras Act II of 1884, the latter to amplify the provisions of the former in regard to the erection of boundary marks. The existing law contains no provision for erecting boundary marks. The existing law contains no provision for erecting boundary marks. The existing law contains no provision for erecting boundary marks.

in many essential respects. The older enactment is the more recent law, as contained in Act II of 1884, the provisions of both have been consolidated in the present Bill, the provisions of both have been consolidated in the present Bill, the provisions of both have been consolidated in the present Bill.

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Government {1897} of Madras.
REVENUE.

Recd.

Enclosures

Regd.

1897.

Spare copies

G.O., No. 4, 4th January 1897.

JANUARY.

Madras Survey Bill.

Considering that, in view of the delay which has already taken place in the preparation of the —, it should be transferred to the Legislative Department forthwith, and that any further criticisms which the Board may desire to offer should be communicated to the Legislative Council for consideration by the Select Committee, and requesting the Government of India to sanction the proposed repeal of Act XXVIII of 1860.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following Proceedings of the Board of Revenue (Land Revenue), No. 181, dated 22nd May 1896 :—

Read—Government Order, No. 823, Revenue, dated 18th December 1895.

ABSTRACT.—Passing orders on Board's Proceedings submitting a bill to amend the Boundary Marks Act.

Resolution—No. 181, dated 22nd May 1896.

The Board submits its remarks on the draft Bill to amend the "Boundary Act" forwarded with the Government Order read above.

2. *Section 4 of the Bill*—provides for a Survey officer being appointed by Government or by the Board, to which the Government may delegate its powers under this section. Section 29, however, states that the District Collector may himself deal with a boundary dispute or appoint one of his subordinates as *Survey officer* to dispose of it, the power of the Local Government to appoint any one it pleases being reserved. The two sections are not necessarily inconsistent, but the Board would add to the last clause of section 29 a reference to section 4.

3. *Section 7*.—As an appeal lies from the decision of a Survey officer in any dispute settled by him under this section, the Board considers that there should be a distinct provision in the section that this decision should be recorded in writing, and that it should be communicated to the landholders concerned. Paragraph 3 of the Statement of Objects and Reasons premises that the decision of a Survey officer shall be arrived at in a judicial manner, and in the case of disputes settled under Chapter V of the Bill it is distinctly stated that the finding shall be reduced to writing—*vide* section 30.

4. *Section 11*.—The Board considers that the decision of the District Collector under this section should be declared to be final. The time within which applications should be made to the Collector should also be fixed: the Board would enter it as one month from the date of the payment or tender of compensation.

5. *Section 12* does not, like section 6 of the Burma Act, from which it has been copied, specify the purposes for which persons interested may be required to attend. The Board recommends that the words "and for such of the purposes aforesaid" may be added after the words "at such place."

6. *Section 13* authorises the Survey officer to charge the costs of survey and demarcation to "persons possessing a right of ownership or occupancy" in the lands surveyed. As Chapter III (a), in which this section is found, relates to the conduct of surveys of Government lands, the Board presumes that by the words "persons possessing a right of occupancy" reference is made to the tenants or lessees of ryotwari lands. If so, it is desirable to express the meaning more clearly and to re-produce section 7 of Act II of 1884 as an additional section. Otherwise there will be no provision enabling the tenant or lessee to deduct the amount of costs recovered from him by Government from the rent payable by him to his landlord. A similar provision was contained in the draft Bill submitted by the Board—*vide* section 11 of the Bill at page 9 of Board's Proceedings, No. 390, dated 3rd July 1893. The Board assumes that charges connected with survey and demarcation should ultimately fall on the landholder.

7. *Section 17*—Clause (1) requires village officers to report the destruction, injury or alteration of survey marks to the officer in charge of the nearest police station or to the nearest Magistrate. But the action to be taken by either officer is not stated. The Board suggests the following addition to section 17, clause (1) :— "The officer to whom reference is made by the village officer shall report the matter to the authority competent to take action under section 19."

8. *Section 21* provides for appeals from orders passed by the Survey officer under sections 13, 14 and 19, but not from orders passed by a Collector under section 19. The Board considers that the defect may be removed by inserting the words "or Collector" in the section after the words "the Survey officer." But a better plan would be to add a new clause to section 3 (2) as follows :—"The term 'Survey officer' in sections 21 and 33 to 35 includes also a Collector."

9. *Section 23*.—The Board presumes that if a proprietor withdraws his application after the survey has been commenced, work should be discontinued and considers that this point should be specifically provided for.

10. *Section 24*.—The manner in which the Government should notify a survey of Government lands is specified in Chapter III (a) and not in Chapter II. The words "in the manner prescribed in Chapter II" should therefore be omitted or reference should be made to Chapter III (a). It should, however, be distinctly stated that the proceedings of the Survey officer taken under Chapter IV must be governed by the provisions of Chapter II.

11. *Section 29*.—The Board considers that provision should be made for the Local Government delegating its power under this section to the Board as in section 4, clause (3).

12. *Section 30*.—The decisions passed by a Collector or Survey officer under this section are final and conclusive, unless modified by the decree of a Civil Court, while in the case of disputes arising in the course of survey and dealt with by a Survey officer under section 7, a departmental appeal lies to the authority to whom the Survey officer is subordinate—*vide* section 8. The Board considers that such a distinction is right, but it must be noted that it deviates from paragraph 4 of the Statement of Objects and Reasons and from paragraph 5 of the Government Order.

13. *Section 32*.—The time for appealing to the Civil Courts should, in the Board's opinion, be calculated from the date of completion of the demarcation and not from the date of the decision; for, until the boundaries are marked out on the spot, the parties are not likely to know how far the decision is unfavourable to them. The Bill, as drafted by the Board, provided for this—*vide* section 22 of the Bill at page 11 of Board's Proceedings, No. 390, dated 3rd July 1893—and the Government Order does not declare why this provision has been amended.

14. *Section 33*.—The Government has negatived the Board's proposal that proceedings under the Act should be summary, and observes that such a provision is inconsistent with the declaration that the investigation should be of a thoroughly judicial character. The Board would respectfully submit that the proposal involves no real inconsistency. The proceedings of a Small Cause Court or of a Collector acting under Madras Act VIII of 1865 are summary, but they are none the less judicial on that account. The Board's object was to provide for a speedy settlement of disputes and it considered that a Survey officer should not be hampered by elaborate rules of procedure. The Board doubts whether it is advisable to leave this question to be settled by rules under section 37 of the Act.

15. In paragraph 6 of the Statement of Objects and Reasons, the second clause of the first sentence should be omitted, as there is no section in the Government Bill "relating to the conferring of powers under the Act." In line 3 of paragraph 7, the words "Erection of boundary marks" should be replaced by "The conduct of a survey and the erection of survey marks." The Board considers that paragraph 9 should be amended so as to agree with paragraph 4 of the Government order.

16. The Board regrets the delay in the submission of this report. The Government order was received in the Board's office at the commencement of the Christmas

holidays, and as the subject was of considerable importance, it was hardly possible for the Board to submit its criticisms on the new Bill in time to allow of the measure being introduced during the Legislative Session of 1895-96. The Board is of opinion that the Bill, as modified above, is a great improvement on the existing enactments, and would recommend that early steps may be taken to pass it into law.

(True Copy and Extract.)

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

To the Secretary to Government, Revenue Department.

ORDER—No. 4, Revenue, dated 4th January 1897.

Miscellaneous.

The draft Bill to amend the law relating to survey and the settlement of boundary disputes has been subjected to a further scrutiny since the receipt of the proceedings read above, and it has been found necessary materially to alter its form. The Board will observe that effect has been given to nearly all the suggestions made in the resolution under reply. The Board's opinion in regard to the further alterations which have been made would be of much service to Government, but, in view of the delay which has already taken place in the preparation of the Bill, the Government considers that it should be transferred to the Legislative Department forthwith, and that it will suffice to communicate to the Legislative Council any further criticisms which the Board may desire to offer in order that they may be fully considered by the Select Committee to which the Bill will be referred in due course. In the meantime the Government of India will be requested to sanction the proposed repeal of Act XXVIII of 1860.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Board of Revenue (Land Revenue).
„ the Legislative Department.

APPENDIX.

THE MADRAS SURVEY BILL.

CONTENTS.

Preamble.

CHAPTER I.

Preliminary.

CHAPTER II.

The survey of Government lands—

- (a) The initiation and conduct of surveys of Government lands.
- (b) The maintenance of completed surveys of Government lands.
- (c) The revision and recovery of charges imposed on account of the conduct or maintenance of surveys of Government lands.

CHAPTER III.

The survey of estates.

CHAPTER IV.

The settlement of boundary disputes arising otherwise than in the course of a survey.

CHAPTER V.

Miscellaneous.

WHEREAS it is expedient to make better provision for the carrying out of surveys, for the erection, repair, restoration and maintenance of survey marks, and for the determination of boundary disputes; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) *Title*.—This Act may be called "The Madras Survey Act, 189 ."
- (2) It extends to the whole of the Presidency of Madras. 10
2. Act XXVIII of 1860 and Madras Act II of 1884 are hereby repealed. 10
3. In this Act, unless there is something repugnant in the subject or context,—
 - (i) "Estate" means—
 - (a) any permanently-settled estate, whether a zamín- 20
dárí, jághír, mitta or pálaiyam;
 - (b) any portion of such permanently-settled estate which has been separately registered in the office of the Collector; 25
 - (c) any unsettled pálaiyam or jághír;
 - (d) any inám village of which the grant was made or confirmed by the British Government; 30
 - (e) any portion, consisting of one or more villages of any of the estates specified above in clauses (a), (b) and (c), which is held on a permanent under-tenure. 35
 - (ii) "Government land" means any land other than land forming an estate as defined in clause (i). 40
 - (iii) "Proprietor" means any person in whose name any estate is for the time being registered in the office of the 45

(Madras Act
II of 1894,
section 4.)

(Madras Act
II of 1894,
section 4.)

Collector of the district wherein the estate is situated, and, in respect of an estate specified above in clause (e) of the definition of "estate," the holder thereof.

- 5 Where an estate is so registered in the names of two or more persons as joint owners thereof, the proprietor shall, for the purposes of this Act, be the person who is recognized by the other joint owners as the manager of the estate or who, in case of dispute, is registered by the District Collector as senior joint owner for the purposes of this Act, after such inquiry as he shall see fit.

15 (iv) "Survey" includes demarcation.

(v) "Survey mark" means any mark heretofore or hereafter made, erected

- 20 or placed above, on or below the surface of any land for the purpose of indicating survey points or lines by or by order of any person duly authorized to make a survey of such land or to settle the boundaries thereof on behalf of Government.

Explanation.—A survey of an estate or a settlement of a boundary-dispute conducted under the orders of any duly authorized Government officer shall be deemed to be made on behalf of Government, notwithstanding that it is made on the application of the proprietor of the estate or of a party to the dispute.

35 (vi) "Survey Officer" means a Survey Officer appointed under this Act.

40 4. (1) The Local Government may appoint any person to be a Survey Officer, and may dismiss, suspend or remove any person so appointed.

45 (2) Subject to the control of the Local Government or of any officer appointed by it in this behalf every person so appointed shall exercise and perform, within such local limits as the Local Government may direct, the powers conferred and the duties imposed upon him by this Act or by the rules made thereunder.

55 (3) The Local Government may delegate its powers under this section to the Board of Revenue, and for the purposes of section 31 only to a District Collector.

CHAPTER II.

THE SURVEY OF GOVERNMENT LANDS.

(a) *The initiation and conduct of surveys of Government lands.*

(Burmah Act
V of 1879,
section 95.)

5. The Local Government may, by notification, direct the survey of any Government land.

(Burma Act
V of 1880,
section 5.)

6. (1) When the survey of any Government land has been directed under section 5, the Survey Officer shall publish a notification addressed to all persons directly or indirectly interested in such land, calling upon them to attend either in person or by agent at a specified place and time for the purposes of pointing out the boundaries and supplying information in connection therewith, of rendering aid in setting up or repairing the survey marks, or of affording such other assistance as may be required in order to facilitate the survey.

(2) A notification published under sub-section (1) shall be held to be good and sufficient notice to every person having any interest in the land about to be surveyed.

(Burma Act
V of 1880,
section 7.)

7. Such notification shall further require all owners, holders or occupiers of the land about to be surveyed within a specified period—

(a) by cutting down or removing any trees, jungle, fences, standing crops, or other obstructions, to clear the boundaries or other lines the clearance of which may be necessary for the purposes of the survey,

(b) to provide labour by furnishing flag-holders or chainmen, and

(c) otherwise to assist in the survey.

(Burma Act
V of 1880,
section 8.)

8. (1) If any demand for compensation is made in respect of the clearance of any line in accordance with a requisition under section 7, the Survey Officer shall determine and record the value of any trees, jungle,

fences, standing crops or other obstructions, which may have been cut down or removed, and shall pay or tender to the owners thereof the amount of compensation which, in his opinion, should be allowed therefor.

(2) From any award made under sub-section (1) an appeal as regards the sufficiency of the amount awarded shall lie to the District Collector, if preferred within one month of the date of payment or tender of such amount.

(3) The award made by the Survey Officer under sub-section (1), or, in the event of an appeal being filed, the decision of the District Collector, shall be final as regards the sufficiency of the amount awarded.

9. When the period specified in the notification issued under section 6 has elapsed, the Survey Officer may proceed with the survey.

(Burma Act V of 1880, section 7.)

10. The Survey Officer may, at any time during the survey, issue a special notice to any person directly or indirectly

(Burma Act V of 1880, section 6, and Bengal Act V of 1875, section 7.)

interested in the land which is being surveyed, requiring him to attend, in person or by agent, for the purpose of assisting in the survey, at a specified place and on a specified date, which shall not be less than fifteen days after the service of such notice; and any person upon whom such notice is served shall be legally bound to attend.

11. (1) If the persons to whom the notification under section 6 and any notices issued under section 10 have been addressed fail to comply with the requisitions made therein, the Survey Officer may employ hired labour for the purposes of the survey.

(Burma Act V of 1880, section 7.)

(2) The Survey Officer shall, in accordance with such rules as the Local Government may prescribe, apportion the cost of such labour on the lands which have been surveyed, and charge the same to the owners, holders or occupiers thereof.

Explanation.—For the purposes of sub-section (2) the Government shall be deemed to be the owner of unoccupied Government lands.

(Act XXVIII of 1860, section 8.)

12. If the owners, holders or occupiers of the lands under survey do not provide suitable survey marks to the satisfaction of the Survey Officer, such officer may himself procure such marks and the cost of procuring them shall be apportioned on the land and charged to the owners, holders or occupiers thereof in the same manner as charges imposed under sub-section (2) of section 11.

13. All charges incurred by the Survey Officer under section 11 or section 12 shall be defrayed in the first instance by Government but shall be recovered by the Collector, on receipt of intimation from the Survey Officer of the amount due from each individual, in the same manner as if they were arrears of land revenue.

(Bombay Act V of 1879, section 119.) 14. (1) A survey conducted under the provisions of this Chapter shall ordinarily proceed according to occupation.

(2) If, at the time of survey, the boundary of a field or holding is undisputed, the Survey Officer may order that it shall be laid down as pointed out by the holder or occupier, being present.

(3) If neither the holder nor the occupier is present, or if the boundary is disputed, the Survey Officer shall order it to be laid down, as nearly as may be, in accordance with the village records, the occupation as ascertained from the village officers and the holders or occupiers of adjoining lands, and such other evidence as the Survey Officer may be able to procure.

(4) The order passed by the Survey Officer in the case of any dispute under sub-section (3) shall be recorded in writing and communicated to the parties to the dispute and to all persons known to have an interest direct or indirect in the lands affected.

(5) When the boundaries of any village or other defined local area forming part of the land under survey have been demarcated in accordance with the orders passed under

Completion of demarcation to be notified.

sub-sections (2), (3) and (4), the Survey Officer shall notify that the demarcation of such village or other local area has been completed.

5 15. (1) From any order passed by the Survey Officer under section 14 an appeal shall lie to the authority to whom he is immediately subordinate, provided that it be filed,—

Appeals against orders under section 12.

10 (a) in the case of a dispute decided under sub-section (3) of section 14, within three months of the date of the order recorded in writing under sub-section (4) of that section, and

15 (b) in the case of any other order, within three months of the date upon which the notification prescribed by sub-section (5) of section 14 was published.

20 (2) The decision of the appellate authority shall be recorded in writing and communicated to the parties to the dispute, if any, and to all persons known to have an interest direct or indirect in the lands affected.

25 Appellate decision to be in writing. (3) The order of the Survey Officer, or in the event of an appeal being filed, the decision of the appellate authority, shall be final unless reversed or modified by a decree of a Civil Court.

30 16. An appeal shall lie to the Civil Courts by regular suit against any order passed under section 14 or any decision given under section 15, provided that it be filed,—

45 (a) in the case of any order or decision recorded in writing under sub-section (4) of section 14 or sub-section (2) of section 15, within six months of the date of such order or decision, and

50 (b) in the case of any other order, within six months of the date on which the notification prescribed by sub-section (5) of section 14 was published.

(b) The maintenance of completed surveys of Government lands.

55 17. Every owner, holder or occupier of Government land shall be responsible for the maintenance, (Madras Act II of 1884, section 1.)

renewal and repair of the survey marks on or within the boundaries of his holding, and for any charges reasonably incurred by Government on account of the same.

(Burma Act V of 1880, section 27.)

18. It shall be the duty of every village headman and of every village accountant—

Duties of village officers in this respect.

(a) to prevent, as far as possible, the destruction, injury, or alteration of any survey mark, on or within the limits of his jurisdiction; and

(b) when he becomes aware that any such mark has been destroyed, injured, or altered, to report the fact to his immediate official superior or the nearest Survey Officer having jurisdiction.

(Madras Act II of 1884, section 2.)

19. The charge of all the survey marks on or within the boundaries of a district shall vest in the Collector, and it shall be his duty to take measures for their maintenance, renewal and repair.

(Madras Act II of 1884, sections 3 and 4.)

20. (1) The Collector or a Survey Officer may, by notification, require the holders or occupiers of Government lands, within a reasonable specified period, to construct, renew or repair the survey marks on or within the boundaries thereof.

(2) If such holders or occupiers fail to comply with such requisition, the Collector or Survey Officer may himself cause the survey marks to be constructed, renewed or repaired, shall, in accordance with such rules as the Local Government may prescribe, apportion all costs thereby incurred on the lands, the survey marks on which have been constructed, renewed or repaired, and charge such costs to the holders or occupiers.

(3) In the exercise of the powers granted to him by this section, the Collector or Survey Officer may, subject to the control of the authority to whom he is immediately subordinate, direct that the survey marks shall be of such material and shall be erected in such manner and such number as he may think fit. 50

(c) *The revision and recovery of charges imposed on account of the conduct and maintenance of surveys of Government lands.*

21. (1) Every order of a Survey Officer or of a Collector imposing charges under section 11, section 12, or section 20 shall be recorded in writing and communicated to the persons affected.

(2) An appeal against every such order shall lie to the appellate authority, the officer passing it is immediately subordinate, provided that it be filed within one month of the date of such order.

(3) The order of the Survey Officer or Collector, if an appeal is not preferred, or, in the event of an appeal being filed, the decision of the appellate authority shall be final.

22. (1) When the apportionment of costs has been made, or, in the event of an appeal having been filed, when the orders of the appellate authority have been received, the Collector shall cause to be issued to each person concerned a demand notice specifying the amount due from him and declaring that, if such amount remains unpaid at the expiry of one month from the date of the service of such notice, it will be recovered, together with the costs, if any, incurred in recovering it, in the same manner as if it were an arrear of land revenue due on the land in respect of which the charge was imposed.

(2) If the amount due is not paid in accordance with the terms of the demand notice, it shall be recoverable, together with the costs (if any) incurred in recovering it, in the same manner as if it were an arrear of land revenue due on the land in respect of which the charge was imposed.

23. If any amount be paid by or recovered from a tenant in satisfaction of a demand issued under section 22, such tenant shall be entitled to deduct the amount so paid or recovered from the rent payable by him on account of the land in respect of which the charge was imposed.

(Act XXVII of 1860, section 26.)

(Madras Act II of 1884, section 7.)

CHAPTER III.

THE SURVEY OF ESTATES.

24. The Local Government may, by notification, direct the survey of any estate or portion of an estate,—

- (a) on the application in writing of the proprietor of such estate, accompanied by a written statement of his consent to defray the whole cost of the survey, or,
- (b) for other reasons to be previously recorded.

Proviso.—Provided that the progress of a survey directed under clause (a) shall be stopped on withdrawal by the proprietor of his application, unless the Local Government sees reason to direct the continuance of the survey in virtue of the powers conferred on it by clause (b).

25. (1) On the issue of a notification under section 24, a Survey Officer shall be appointed for the purpose of carrying out the survey therein directed.

(2) Except as hereinafter provided in sections 26 and 27, the conduct of such survey and the proceedings of such officer shall be regulated by the procedure laid down in sections 6 to 16 inclusive with regard to the survey of Government lands.

26. All costs incurred by Government on account of a survey conducted under this Chapter shall be recoverable from the proprietor of the estate, the whole or a part of which has been surveyed, in the same manner as if they were an arrear of land revenue due on such estate.

Provided that the cost of a survey directed under clause (b) of section 24 shall be borne by Government unless otherwise laid down in any other law for the time being in force.

27. (1) On the application of the proprietor of an estate under survey, the Local Government may direct the

Local Government may direct apportionment of particular costs among tenants.

Survey Officer to be appointed *ad hoc*.

Procedure to be observed during survey.

Cost of survey recoverable from proprietor.

Survey Officer to apportion the whole or a specified proportion of the cost of hired labour employed for the purposes of the survey and of the expenses incurred on procuring survey marks among the tenants holding the lands which have been surveyed.

(2) Such apportionment shall be made in accordance with such rules as the Local Government may prescribe, and shall be subject to appeal in the manner prescribed in section 21.

(3) The amounts so apportioned shall be recoverable by the proprietor from the tenants concerned in the same manner as if they were arrears of rent due on the lands surveyed.

28. When an estate or a portion of an estate has been surveyed in pursuance of a notification issued under section 24, the Survey Officer shall report the completion of the survey to the District Collector and to the proprietor, and the following consequences shall thereupon ensue:—

(i) Every holder or occupier of the land surveyed shall be responsible for the maintenance, renewal and repair of the survey marks on or within the boundaries of his holding, and for any charges reasonably incurred on that account by the Collector under sub-section (2) of section 29.

(ii) The headman and the accountant of every village, the whole or a part of which has been surveyed, shall be legally bound—

(a) to prevent, as far as possible, the destruction, injury, or alteration of any survey-mark on or within the limits of their village, and

(b) when aware that any such mark has been destroyed, injured, or altered, to report the fact to the proprietor of the estate.

(iii) It shall be the duty of the proprietor to take measures for the maintenance of the survey.

29. (1) When the survey of an estate has been completed the proprietor may, by notification, require the holders or occupiers of lands

situated within such estate, within a reasonable specified period, to construct, renew or repair the survey-marks on or within the boundaries thereof.

(2) If such holders or occupiers fail to comply with such requisition, the Collector may, on application by the proprietor, cause the survey-marks to be constructed, renewed or repaired, and apportion all costs thereby incurred on the lands concerned, and charge them to the holders or occupiers thereof.

(3) The proceedings of a Collector acting under sub-section (2) shall be regulated by the provisions of sub-sections (2) and (3) of section 20 and shall be subject to appeal as provided by section 21.

(4) Costs incurred under sub-section (2) shall be recoverable from the holders or occupiers concerned in the manner provided in section 22 provided that the Collector shall have power, subject to the control of the Board of Revenue, to recover the whole or a portion of such costs from the proprietor as if it were an arrear of land revenue due on his estate.

CHAPTER IV.

THE SETTLEMENT OF BOUNDARY DISPUTES ARISING OTHERWISE THAN IN THE COURSE OF A SURVEY.

30. The District Collector may,—

(a) of his own motion, or,

(b) on the application of any of the disputants,

direct that any dispute, arising otherwise than in the course of a survey, as to the boundaries of any lands shall be decided under the provisions of this Act.

31. (1) Unless the Local Government or the Board of Revenue appoints a Survey Officer under

section 4 for the purpose of settling such dispute, the District Collector shall thereupon—

(a) proceed to deal therewith himself, or,

(b) if empowered under sub-section (3) of section 4, appoint one of his subordinates not below the rank of Deputy Tahsildar as Survey Officer to deal therewith.

(2) Any officer to whom any dispute is referred for disposal by the Collector under sub-section (1) may either dispose

of it himself or refer it for disposal to any officer subordinate to himself not being below the rank of Deputy Tahsildar, and such subordinate officer shall be a Survey Officer for the purposes of this Act.

32. (1) The District Collector or Survey Officer, as the case may be, shall, after giving due notice of the time and place at which his inquiry will be held, proceed to investigate the claims of the various parties and record the evidence of all persons examined by him.

(2) At the close of the investigation, he shall record in writing his decision and the reasons upon which it is based, and, after duly informing the parties of the same, and intimating to them the date on which he intends to demarcate according to his decision, shall proceed to mark out the requisite boundaries conformably therewith.

(3) The date on which the demarcation is completed shall be entered on the record of the case and forthwith communicated to the parties.

(4) The decision so arrived at shall be final unless reversed or modified by the decree of a Civil Court.

33. An appeal shall lie to the Civil Courts by regular suit against any decision passed under section 32, if preferred within six months from the date of the decision.

Proviso.—Provided that at any time within six months from the date on which the demarcation was completed, the Local Government may, upon just and reasonable cause being shown, extend, for such time as it may think fit, the period for preferring such appeal.

34. (1) In the case of any dispute settled under the provisions of this Chapter, the costs of settlement shall be apportioned by the District Collector or the Survey Officer, in accordance with such rules as the Local Government may prescribe, among the parties to the dispute and the proprietors, holders or occupiers of the lands the boundaries of which were disputed.

(2) Appeals against orders passed under sub-section (1) shall be governed by the provisions of section 21.

(3) Costs apportioned under this section shall be recoverable in the manner prescribed in section 22.

35. The provisions of sections 17 to 21 inclusive shall be applicable for the maintenance of survey marks, laid down in the course of a demarcation conducted under sub-section (2) of section 32, wherever such marks be situated, and for the purpose of applying those provisions to the case of survey marks so laid down on land forming part of an estate, such land shall be deemed to be "Government land."

CHAPTER V.

MISCELLANEOUS.

36. The proceedings of Survey Officers under this Act and of District Collectors acting under Chapter IV of this Act shall be governed by such rules as the Local Government may prescribe in that behalf.

(Act XXVIII of 1860, section 28, and Burma Act V of 1880, section 16.) 37. For the purposes of any survey, inquiry or other proceeding under this Act, the Survey Officer or District Collector shall have power—

- either in person or by means of his subordinates to enter upon, examine and measure any land, whether Government land or not, and
- to summon and enforce the attendance of parties and witnesses, to compel the production of documents and to examine witnesses so far as may be by the same means and in the same manner as is provided in the Code of Civil Procedure.

(Burma Act V of 1880, section 16.) 38. (1) The District Collector or Survey Officer may, with the consent of all the parties concerned, refer to arbitration any dispute as to a boundary.

(2) The procedure laid down in Chapter XXXVII of the Code of Civil Procedure shall thereupon apply (as far as may be) to such reference.

39. In computing the periods of limitation for appeals prescribed by this Act the provisions of the Indian Limitation Act, 1877, shall apply except as otherwise herein expressly provided.

40. The Local Government may empower a District Collector or Survey Officer to delegate to his subordinates such of the powers and duties conferred and imposed on him by this Act or by rules made thereunder as it may think fit.

41. The Local Government may, after previous publication (Burma Act V of 1880, section 32.) make rules consistent with this Act—

- (a) for the collection and record of any information in respect of any land;
- (b) prescribing and limiting the powers and duties of officers conducting proceedings under this Act;
- (c) regulating the delegation to subordinate officers of the powers and duties conferred and imposed upon Survey Officers by this Act or by the rules made thereunder;
- (d) for the publication, issue and service of all notifications and notices to be published, issued or served under this Act;
- (e) for the regulation of all proceedings to be taken under this Act;
- (f) generally for carrying out the purposes of this Act.

42. No suit or criminal prosecution shall lie against any officer specially empowered under this Act for anything done in good faith under this Act.

STATEMENT OF OBJECTS AND REASONS.

The law relating to the demarcation and survey of boundaries and to the settlement of boundary disputes is contained in Act XXVIII of 1860 and Madras Act II of 1884, the latter enactment having been framed in order to amplify the provisions of the former in regard to the maintenance of boundary marks already erected. The existing law contains no provision enabling a Boundary Settlement officer to summon and enforce the attendance of witnesses or to require the production of documents, and does not require him to record the evidence upon which his decision is based. The Act of 1860 contemplates a rough and ready settlement of boundary disputes, and with a view to expediting the conduct of survey operations leaves the Boundary Settlement officer free to arrive at his decision without any definite method of procedure.

2. It is desirable to amend this law in many essential respects. The older enactment is devoid of logical arrangement, and while the more recent law, as contained in Madras Act II of 1884, has been practically reproduced in the present Bill, the provisions of both have been consolidated and amended, and the law recast in a manner more suited to present requirements. Experience has shown that the existing provisions in regard to the settlement of boundary disputes have worked badly, and in several cases the Government has been put to considerable loss by the irresponsible and unsatisfactory nature of the original decision. The sections of the earlier Act providing for a reference to arbitration have been excised, as it has been found that these provisions are seldom or never used in practice, and the decision of a non-official jury or committee is in any case likely to lack promptitude and precision. The Bill accordingly proposes to submit the decision of all disputes to the Boundary Settlement officer in the first instance, and prescribes the method in which he shall adjudicate thereon: it however enables him with the consent of the parties to refer any dispute to arbitration, if he considers it desirable to do so, under the provisions of the Code of Civil Procedure.

3. In order to remedy the evils noted above, the Bill proposes to enact that the decision of the Boundary Settlement officer who is to be styled "Survey Officer" shall be arrived at in a judicial manner, and power is taken to make rules for the regulation of all proceedings taken by Survey Officers under the Act.

4. The decision of the Survey Officer in the case of a boundary dispute arising otherwise than in the course of a regular survey has been made final until reversed or modified by means of a regular suit in a civil court. This provision is in accordance with a ruling recently promulgated by the High Court, to the effect that the decision against which an appeal is allowed in the form of a regular suit is the original decision of the Survey Officer, and not that of his superior passed on revision.

5. Under the "Miscellaneous" chapter of the Bill, a section has been inserted securing to the Collector or Survey Officer immunity for anything done or omitted in good faith under the Act.

6. The definition of Survey Officer has been framed so as to enable the Government to select any person it may think fit for this duty. This power has been taken in view of the fact that doubts have from time to time been raised as to whether an officer, such as the manager of an estate under the Court of Wards, could legally be appointed as a Survey Officer under the Act. It is deemed advisable to leave the hands of Government entirely unfettered in this respect.

7. As already noted, the provisions relating to the maintenance of boundary marks have been taken practically as they stand from Act II of 1884; the duties of village officers in this respect are prescribed in a new section (18) which is modelled on section 27 of Act V of 1880 (the Burma Act). The sections relating to the conduct of surveys of Government lands have, however, been slightly amplified, in order to meet the difficulty brought to notice by the Superintendent of Revenue Survey, in regard to the levy of survey charges from the owners and occupiers of lands surveyed. In the survey of a village the labour of chainmen and flagmen for Field Surveyors has hitherto been supplied by the villagers, while the labour of these individuals when required for Deputy or Head Surveyors or for Sub-Assistants has recently been charged to the State. This forms a heavy additional item in the cost of survey, and in view of the fact that difficulty is now experienced in obtaining such labour free, even when required for Field Surveyors, the existing law has been amended and brought into conformity with the law relating to this subject in the Bombay Presidency (Bombay Act V of 1879, section 97).

8. The provisions contained in Act XXVIII of 1860 prescribing penalties for disobeying summons, for making false statements, for erasing, altering, removing or injuring boundary marks, and for obstructing operations undertaken under the Act, have been omitted as superfluous. In like manner, the sections of the same Act declaring Regulations IX of 1822 and VII of 1828 applicable to persons acting under that Act have been omitted. The Indian Penal Code and Code of Civil Procedure provide the necessary powers in these respects, and their provisions are simple in procedure and final in effect.

9. Advantage has at the same time been taken of the present opportunity to extend the application of the law relating to survey and to the settlement of boundary disputes to lands in the interior of permanently-settled or other estates. This power has been held to be non-existent under the present law, and it is especially desirable that the provisions of this law should be applicable to lands comprised in estates under the management of the Court of Wards. The want of this power has, in many instances, caused considerable inconvenience to the efficient administration of such estates, and while the main object of the present extension is to render it possible to include the estates of incapacitated owners, it is thought desirable also to empower Government to undertake the survey of any *zémindari* tract on the application of the proprietor, or for other recorded reasons. Where the proprietor himself desires the survey, he is rendered liable to defray the cost, but in other cases it is provided that the cost shall be borne by Government unless otherwise laid down in any other enactment.

155
FORT SAINT GEORGE.

REVENUE (1897) DEPARTMENT.

(Copy.)

LETTER to the Right Honourable the Secretary of State
for India.

No. , dated January 1897.

FORWARDING a Bill for the consolidation and amendment of the law relating to the conduct and maintenance of surveys and the settlement of boundaries in the Madras Presidency which is about to be introduced into the Madras Legislative Council, and stating that the final passing of the measure will be deferred pending the receipt of any remarks which the Right Honourable the Secretary of State for India may desire to offer on the subject.

156
No. , REVENUE, JANUARY 1897.

REVENUE DEPARTMENT.

To

THE RIGHT HONOURABLE THE SECRETARY OF STATE FOR INDIA.

MY LORD,

We have the honour to transmit, herewith, a Bill for the consolidation and amendment of the law relating to the conduct and maintenance of surveys and the settlement of boundary disputes in the Madras Presidency which is about to be introduced into the Madras Legislative Council. The objects and reasons of the proposed legislation are set out in the annexure to the Bill from which it will be seen that the measure is substantially little more than a consolidation of the existing law as contained in Act XXVIII of 1860 and Madras Act II of 1884. The opportunity has been taken to make it clear that Government has power to survey proprietary estates—a point in regard to which the existing law is not free from doubt. The measure has been under consideration for a considerable period and in view of the unavoidable delay which has taken place in the past, we propose to take immediate steps towards the introduction of the Bill into the Legislative Council in order that it may be referred to a Select Committee in the ensuing session. The final passing of the measure will, however, be deferred pending the receipt of any remarks which Your Lordship may desire to offer on the subject.

We have the honour to be,

My Lord,

Your Lordship's most obedient, humble servants,

(Signed) A. E. HAVELOCK
(") H. W. BLISS.
(") J. GROSE.

FORT ST. GEORGE,
January 1897.

Exd. Shaik Karim.

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